

Texas Historical Statutes Project

1925
CONSTITUTION
OF THE
UNITED STATES AND TEXAS



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Revised Civil Statutes
of the
State of Texas

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

WHEREAS, It is expedient that the General Civil Statutes of this State should be arranged in appropriate titles, chapters and articles, and that the whole should, as far as practicable, be made concise, clear and consistent; therefore,

Section 1. BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

That the following titles, chapters, subdivisions and articles shall hereafter constitute

THE REVISED CIVIL STATUTES OF THE STATE OF TEXAS

TITLE 1.

GENERAL PROVISIONS.

Common Law _____ Article 1

Art. 1. [5492] [3258] **Common law.**—The common law of England, so far as it is not inconsistent with the Constitution and laws of this State, shall together with such Constitution and laws, be the rule of decision, and shall continue in force until altered or repealed by the Legislature.

SPECIAL LAWS.

| | Article | | Article |
|-----------------------------------|---------|--|---------|
| Special laws: notice..... | 2 | Where applicant is a non-resident..... | 6 |
| If no newspaper is published..... | 3 | Details unnecessary..... | 7 |
| Notice for each county..... | 4 | Proof of publication..... | 8 |
| Affecting persons..... | 5 | Proof of posting..... | 9 |

Art. 2. [5494] [3260] **Special laws: notice.**—Any person intending to apply for the passage of any local or special law shall give notice of such intention by having a statement of the substance of such law published in some newspaper published in the county embracing the locality to be affected by said law, at least once each week for the period of thirty days prior to the introduction into the Legislature of such contemplated laws. [Const. Art. 3, Sec. 57; Acts 1876, p. 7; G. L. Vol. 8, p. 843.]

Art. 3. [5495] [3261] **If no newspaper published.**—If no newspaper is published in said county, a written copy of such statement shall be posted at the court house door and in five other public places in the immediate locality to be affected thereby in said county, for thirty days, and such notice shall accurately define the locality to be affected by said law. [Id.]

Art. 4. [5496] [3262] **Notice for each county.**—Where the locality to be affected by said law shall extend beyond the limits of any one county, such notice shall be given for each county to be affected.

Art. 5. [5497] [3263] **Affecting persons.**—Whenever any person intends applying for the passage of a special law which shall affect persons chiefly, and not directly affect any particular locality more than others, such persons, if residing in this State, shall make publication of notice of such intention in the county of the residence of such person in the same manner as if the said law was to affect such locality. [Const. Art. 3, Sec. 2.]

Art. 6. [5498] [3264] **Where applicant is a non-resident.**

—If the applicant is a non-resident of this State, said publication need only be made in a newspaper published at the Capital, in like manner as if such person resided at the seat of government. [Id.]

Art. 7. [5499] [3265] **Details unnecessary.**—Said notice need not contain the particular form and terms of such contemplated law, but a statement only of the general purposes and nature of the same shall be sufficient. [Id.]

Art. 8. [5500] [3266] **Proof of publication.**—Whenever publication in a newspaper is required by law, proof of the same shall be made by the affidavit of the publisher accompanied with a printed copy of such notice as published.

Art. 9. [5501] [3267] **Proof of posting.**—The posting above provided for may be shown by the return of the sheriff or constable, or by any credible person made on a written copy of the notice so posted, showing the fact of such posting, and such proof or other competent proof of the giving of said notice shall accompany the introduction of every local or special law.

CONSTRUCTION OF LAWS.

General rules..... 10 | Grammatical errors..... 11

Art. 10. [5502] [3268] **General rules.**—The following rules shall govern in the construction of all civil statutory enactments:

1. The ordinary signification shall be applied to words, except words of art or words connected with a particular trade or subject matter, when they shall have the signification attached to them by experts in such art or trade, with reference to such subject matter.

2. The present or past tense shall include the future.

3. The masculine gender shall include the feminine and neuter.

4. The singular and plural number shall each include the other, unless otherwise expressly provided.

5. A joint authority given to any number of persons or officers may be executed by a majority of them, unless it is otherwise declared.

6. In all interpretations, the court shall look diligently for the intention of the Legislature, keeping in view at all times the old law, the evil and the remedy.

7. Whenever one law which shall have repealed another shall itself be repealed, the former law shall not be thereby revived without express words to that effect.

8. The rule of the common law that statutes in derogation thereof shall be strictly construed shall have no application to the Revised Statutes; but the said statutes shall constitute the law of this State respecting the subjects to which they relate; and the provisions thereof shall be liberally construed with a view to effect their objects and to promote justice.

Art. 11. [5503] [3269] **Grammatical errors.**—Grammatical errors shall not vitiate a law, and a transposition of words and clauses may be resorted to when the sentence or clause is without meaning as it stands. In no case shall the punctuation

of a law control or affect the intention of the Legislature in the enactment thereof.

MISCELLANEOUS.

| | Article | | Article |
|--|---------|-----------------------------|---------|
| Fiscal year..... | 12 | Officers of Texas..... | 22 |
| Report of officers..... | 13 | Definitions..... | 23 |
| Quorum..... | 14 | Affidavit by agent..... | 24 |
| Disqualifications..... | 15 | Form of oath..... | 25 |
| Oath of Office..... | 16 | By whom administered..... | 26 |
| Date to qualify..... | 17 | Seals and scrolls..... | 27 |
| Term of office..... | 18 | Legal notices..... | 28 |
| Vacancies: ratification by Senate..... | 19 | Official publications..... | 29 |
| Vacancy filled by election..... | 20 | Revised Statutes cited..... | 30 |
| Vacancy in board or commission..... | 21 | | |

Art. 12. [3935-36] **Fiscal year.**—The fiscal year of the State shall terminate on the thirty-first day of August of each year, and appropriations of the State government shall conform thereto. All officers who are required by law to report annually or biennially to the Legislature or Governor shall close their accounts on that date, and as soon thereafter as practicable shall prepare and compile their respective reports. [Acts 1901, p. 9.]

Art. 13. [3937-38] **Reports of officers.**—All annual or biennial reports intended for the use of the Legislature or Governor shall be sent by the respective officers to the Secretary of State on or before November first, and he shall promptly cause the same to be printed before the assembling of the Legislature, and upon its organization he shall send to the presiding officer of each house ten copies of each printed report for the members thereof. [Id.]

Art. 14. **Quorum.**—The majority of any legally constituted board or commission, unless otherwise specially provided, shall constitute a quorum for the transaction of business.

Art. 15. **Disqualifications.**—No judge or justice of the peace shall sit in any case wherein he may be interested or where either of the parties may be connected with him by affinity or consanguinity within the third degree, or where he shall have been counsel in the case. [Const. Art. 5, Sec. 11.]

Art. 16. **Oath of office.**—Each officer in this State, whether elected or appointed shall, before entering upon the duties of his office, take and subscribe the oath prescribed by Article 16, Section 1, of the Constitution of this State; and if he shall be required by law to give an official bond, said oath shall be filed with said bond.

Art. 17. **Date to qualify.**—After each general election, those who are elected to the various county and precinct offices shall qualify by taking the official oath and entering upon and assuming the duties of their respective offices on the first day of January following the last general election, or as soon thereafter as possible. Those officers holding office at said time shall surrender their offices to their successors accordingly on said date, or as soon after such date as their successors shall have qualified and be ready to assume the duties thereof. [Acts 1921, p. 96.]

Art. 18. **Term of office.**—Each officer, whether elected or appointed under the laws of this State, and each Commissioner, or member of any board or commission created by the laws of this State, shall hold his office for the term provided by law and

until his successor is elected or appointed and qualifies; and each, on retiring from office, shall deliver to his successor all books, papers and documents relating to his office.

Art. 19. Vacancies; ratification by Senate.—All vacancies in State or district offices, except members of the Legislature, shall be filled unless otherwise provided by law, by appointment of the Governor, which appointment, if made during its session, shall be with the advice and consent of two-thirds of the Senate present. If made during the recess of the Senate, the said appointee, or some other person to fill such vacancy, shall be nominated to the Senate during the first ten days of its session. If rejected, said office shall immediately become vacant, and the Governor shall, without delay, make further nominations until a confirmation takes place. But should there be no confirmation during the session of the Senate, the Governor shall not thereafter appoint any person to fill such vacancy, who has been rejected by the Senate; but may appoint some other person to fill the vacancy until the next session of the Senate, or until the regular election to said office, should it sooner occur. Appointments to vacancies in offices elective by the people shall only continue until the first general election thereafter. [Const. Art. 4, Sec. 12.]

Art. 20. Vacancy filled by election.—All elections to fill vacancies in office shall be to fill the unexpired term only.

Art. 21. Vacancy in board or commission.—Any vacancy in the office of any commissioner, commission or board created by law where the appointment to such office shall be authorized to be made by the Governor shall be filled by the Governor for the unexpired time, unless otherwise provided by law.

Art. 22. Officers of Texas.—When an officer is referred to in any civil or criminal law of this State, it shall mean an officer of this State, unless otherwise expressly provided.

Art. 23. [5504] [3270] Definitions.—The following meaning shall be given to each of the following words, unless a different meaning is apparent from the context:

1. "Property" includes real and personal property.
2. "Person" includes a corporation.
3. "Written" or "in writing" includes any representation of words, letters or figures, whether by writing, printing or otherwise.
4. "Oath" includes affirmation.
5. "Swear" or "sworn" includes affirm.
6. "Signature" or "subscribe" includes the mark of a person unable to write.
7. "Justice" when applied to a magistrate, means justice of the peace.
8. "Preceding Federal census" shall be construed to mean the United States census of date preceding the action in question and each such subsequent census as it occurs.
9. "Governing body," the governing or legislative body of any incorporated town, city or village, whether known as a council, commission, board of commissions, common council, board of aldermen, city council or by whatever name such bodies may be known or designated.

10. "Official oath" means the oath required by Article 16, Section 1, of the Constitution of Texas.

11. "Comptroller" means the Comptroller of Public Accounts of the State of Texas.

12. "Land Commissioner" means the Commissioner of the General Land Office of Texas.

13. "Preceding" when used by way of reference to title, chapter or article, means the next preceding.

14. "Succeeding" in like manner, means the next succeeding.

15. "Month" means a calendar month.

16. "Year" means a calendar year.

17. "Effects" includes all personal property and all interest therein.

18. "Affidavit" means a statement in writing of a fact or facts signed by the party making it, and sworn to before some officer authorized to administer oaths, and officially certified to by such officer under his seal of office.

Art. 24. [11] [5] **Affidavit by agent.**—Whenever it may be necessary or proper for any party to a civil suit or proceeding to make an affidavit, it may be made by either the party or his agent or attorney. [Acts Jan. 11, 1856, p. 13.]

Art. 25. [9] [3] **Form of oath.**—All oaths and affirmations shall be administered in the mode most binding upon the conscience of the individual taking same and shall be subject to the pains and penalties of perjury. [Const. Art. 1, Sec. 5.]

Art. 26. [10-13-14] **By whom administered.**—All oaths, affidavits or affirmations may be administered and a certificate of the fact given:

1. If within this State, by a notary public, judge or clerk of any court of record or justice of the peace.

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

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

4. Any member of any board or commission created by the laws of this State, in matters pertaining to the duties thereof, may administer oaths or affirmations.

Art. 27. [7092] [7093] **Seals and scrolls.**—Each commissioner and each commission and each board which is or may be created by the laws of this State shall have authority to adopt a seal with which to attest its official documents, certificates or any official written paper of any kind. No private seal or scroll shall be required in this State on any written instrument except such as are made by corporations.

Art. 28. **Legal notices.**—Whenever by law notice is required to be given of any act or proceeding, whether public or private, or relating to a judicial, executive or legislative matter, which

notice is now authorized by law or by contract to be made by posting notices in one or more public places, such notices shall be given by publication thereof in a newspaper of general circulation which has been continuously and regularly published for a period of not less than one year, in the county in which said act or proceeding is to occur. Nothing in this article shall be construed to require the publication of any general election notice, public road notice or probate notice when the appraised value of the estate in which same is issued is less than one thousand dollars, nor shall this article apply to sales made under a written contract wherein it is provided that notice of sale thereunder may be posted. All notices published hereunder shall be printed at least once each week for the period of time now required for posting such notices. If no paper should be published in the county where such notice is required to be given, then such notice may be posted as now provided by law. The price to be paid for all publications hereunder shall be not more than one dollar per square of one hundred words for first insertion, and not more than fifty cents per one hundred words for each subsequent insertion, said publication fee to be taxed as other costs in the case. [Acts 1917, p. 391.]

Art. 29. **Official publications.**—All proclamations of the Executive Department and all other notices required to be published by the State, or any department or institution thereof, or the Board of Control, and all publications or advertising of any department, institution, board, district, county, or subdivision thereof, which are to be paid for out of State, district, or county funds, or that are required to be published under any law of this State and charged as costs or fees, shall be published in the newspaper selected by the Secretary of State if from the Executive Department, or in the newspaper selected by the department or institution or Board of Control or district or county official issuing such notice or charged with the publication thereof. The rate charged for such official publication shall not exceed the lowest rate accorded commercial advertisers for a like amount of space. Within ten days after a request therefor by said officer, department or official, any newspaper carrying any such publication shall file with such official a schedule of rates showing the rate then charged by such newspaper for space therein; and said official may at any time require any further or additional information or proof necessary to insure the rigid compliance with the terms of this article. All bills for publication shall be accompanied by a certificate of the publisher, under oath, certifying the number of publications and the dates thereof, together with the clipping of said publication from an issue of said newspaper, and said bill shall be audited by said official. The Board of Control, or any district or county official charged with the publication of any notice required by law to be published, is hereby fully authorized and empowered to cancel any contract made by them, or either of them, in the event said Board or official may ascertain or determine that a higher rate is being charged by said newspaper for similar space for like or advertising purposes. All political advertising shall be done

at the same rate as legal notices, and under the same supervision and regulations. Political advertising shall include the announcements for public office. [Acts 1923, p. 97.]

Art. 29a. **Political advertisements.**—For the purpose of this Act the word "Publication" shall mean any proclamation, publication, notice, citation, advertisement or matter required or authorized by law to be printed in a newspaper or newspapers which the law directs shall be inserted or caused to be inserted in such newspaper or newspapers by any institution, board, commission, department, officer, agent, representative or employee of the State or of any subdivision or department of the State, or of any county, political subdivision, or district, whether to be paid for out of public funds or charged as costs or fees. [Acts 1925, p. 372.]

The officer, agency or person charged with the duty of so inserting such publication shall select the newspaper or newspapers, in which same is to be inserted, and the charge for such publication shall not exceed the lowest rate accorded classified advertisers. Before any newspaper of this State shall be authorized to publish legal advertising of any character, such newspaper shall file with such officer, agency or person charged with the duty of so inserting such publication, a schedule or rates then charged by such newspaper for classified advertising and shall make such additional proof of rates charged as may be required by the officer, agency or person inserting such publication. [Id.]

Newspapers shall not charge more for political advertising than is charged classified advertisers for a like class of advertising or matter. [Id.]

It is the purpose of this Act to provide a legal rate of charge for publications aforesaid regardless of the source of the fund out of which it is to be paid or the purpose of such publications, whether herein mentioned or not, and according to all laws, special or general. The fact that there may be a statute on a particular or special subject dealing with the subject matter of this Act shall not prevent this Act applying to the subject matter of any such statute. Without intending to exclude any other publication to which this Act applies, it is specially provided that this Act shall apply to citations or notices of any kind in delinquent tax suits and those under Article 3757 of the Revised Civil Statutes, and the fact that publications may be posted or printed in certain instances shall not prevent this Act applying to such publications if they are printed in a newspaper. Provided that if said newspapers refuse to publish legal notices in accordance with the terms of this Act, then said legal notices may be posted. [Id.]

If any portion of this law be held unconstitutional by the courts of this State, such decision shall not affect the validity of the law as a whole nor any other portion thereof, except the portion directly involved. [Id.]

Art. 30. **Revised Statutes cited.**—These Revised Civil Statutes shall be known and may be cited as the "Revised Statutes."

TITLE 2.

ACCOUNTANTS—PUBLIC AND CERTIFIED.

| | | | |
|-------------------------|------------|--------------------------------|------------|
| Board created..... | Article 31 | Reciprocity | Article 37 |
| Qualifications | 32 | Fees | 38 |
| Rules and by-laws | 33 | Expenses | 39 |
| Meetings | 34 | Revocation of certificate..... | 40 |
| Records | 35 | Construction of law..... | 41 |
| Applicant | 36 | | |

Art. 31. **Board created.**—The State Board of Public Accountancy shall be composed of five members, who shall be public accountants of good moral character, each of whom shall have had at least three years practical experience as a public accountant on his own account, immediately preceding his appointment. [Acts 1915, p. 184.]

Art. 32. **Qualifications.**—On and after the third Tuesday in January, and regularly biennially thereafter, the Governor shall appoint five members on said board. All appointments or vacancies in said board shall be filled from the roster of certified public accountants created under this law. The revocation of the certificate of any member of this board shall terminate his membership thereon. [Id.]

Art. 33. **Rules and by-laws.**—At the first meeting after each biennial appointment the board shall elect from among its members a chairman and secretary-treasurer. The board may prescribe rules, regulations and by-laws not inconsistent with this title nor with the laws of this State for its own proceedings and government and for the examination of applicants for certificates as certified public accountants. All rules, regulations and by-laws adopted by the said board shall be filed in the office of the Secretary of State. [Id.]

Art. 34. **Meetings.**—The board shall meet within sixty days after its appointment and at least once in each year for the purpose of examining applicants for certificates, and may meet as many times during the year as may be in its discretion advisable. Notice of all meetings shall be given at least thirty days prior to the dates selected for same by publication three consecutive times in three daily newspapers published in the three most populous cities in the State, such notice giving the time and place of meeting and stating the purpose to be for the examination of applicants for certificates as certified public accountants. The board may hold any number of meetings, and at any time, without giving notice by publication of such meetings, if a meeting be called for any other purpose than the examination of applicants for certificates. Any applicant who has successfully passed an examination before said board upon three of the subjects required may have a re-examination upon the unsuccessful subject under the supervision of said board. Examinations by the board shall be on the following subjects: "Theory of Accounts," "Practical Accounting," "Auditing," and "Commercial Law as affecting Accountancy." Each applicant shall be required to make a general average of at least seventy-five per cent on all subjects. To each person passing such examination, if he has otherwise qualified, shall be issued by the board a cer-

tificate as a "Certified Public Accountant of the State of Texas."
[Id.]

Art. 35. **Records.**—The board shall preserve a record of its proceedings in a book kept for that purpose, showing the name, age and duration of residence of each applicant, the time spent by the applicant in practice as a public accountant, or in employment in the office of a public accountant, and the year and school, if any, from which degrees were granted or in which the course of study was successfully completed by the applicant as required by law. Said register will show whether applicants were rejected or licensed, and shall be prima facie evidence of all matters contained therein. The secretary of the board shall, on December 31st of each year, transmit an official copy of said register to the Secretary of State for permanent record, certified copy of which, under the hand and seal of the secretary of said board or Secretary of State, shall be admitted in evidence in any court or proceeding. [Id.]

Art. 36. **Applicant.**—No person shall be permitted to take an examination unless he be twenty-one years of age, of good moral character, a citizen of the United States, and shall have had one year's study and practice in accountancy or accounting work. [Id.]

Art. 37. **Reciprocity.** — The board may in its discretion waive the examination and issue a certificate to any person who has received and holds a valid and unrevoked certificate as a certified public accountant issued by or under the authority of any State or Territory of the United States or the District of Columbia, or who holds the equivalent of such certificate by and under the express legal authority of any foreign nation, if such certificate or degree shall, in the opinion of the board, have been issued under a standard fully equivalent to that of the requirements of said board, and issued by such State or Territory as may extend the same privilege to certified public accountants holding certificates from this State; provided, that such applicant shall have qualified as provided in article 36. [Id.]

Art. 38. **Fees.**—Each applicant for a certificate as certified public accountant shall, at the time of making application, pay to the treasurer of said board a fee of twenty-five dollars, and no application shall be considered by said board until said fee shall have been paid. In case of failure to pass a satisfactory examination, said applicant may have the privilege of appearing at any subsequent examination conducted by said board for re-examination, upon the payment of an additional fee of ten dollars. The holder of each certificate issued hereunder shall pay an annual fee of one dollar into the treasury of the State Board of Public Accountancy. The failure on the part of the holder of any certificate issued under this law to pay this fee shall automatically cancel the privilege of using the title "Certified Public Accountant," but re-instatement may be had at any time within two years and two months, by the payment of the fee and application in such form as the board may provide and the payment of a penalty of \$2.50 for each year lapsed. [Id.]

Art. 39. **Expenses.**—Each member of said board shall receive from the secretary-treasurer of the board, out of the funds

in the hands of the board, if there be sufficient thereof, all of his necessary railroad and hotel expenses for attending the meetings of said board; but otherwise shall serve without compensation. The secretary-treasurer shall be required to keep an account of all money received and disbursed, and shall render an annual statement to the Governor showing receipts and disbursements and the balance on hand. The balance shall remain in the treasury of the board, and all expenses in connection with the maintenance of the board shall be paid from same. No provisions of this law shall be a charge upon the common funds of this State. [Id.]

Art. 40. Revocation of certificate.—The State Board of Public Accountancy shall revoke and recall any certificate issued under this Act if the holder thereof:

(1) Shall be convicted of a felony; (2) shall be declared by any court to have committed any fraud; or (3) shall be declared by any court or commission to be insane or otherwise incompetent; or (4) shall be held by this board to be guilty of any act or default discreditable to the profession. Written notice of the cause of such contemplated action and the date of the hearing thereof by this board shall be served upon the holder of such certificate at least fifteen days prior to such hearing, or shall be mailed to the last known address of such holder of such certificate at least twenty days prior to such hearing. At such hearing the Attorney General, or any one of his assistants, or any district attorney designated by him, may sit with the board as legal counsellor. [Id.]

Art. 41. Construction of law.—Nothing herein shall be construed to prevent any person from being employed as an accountant in this State in either public or private practice. The purpose of this law is to provide for the examination and the issuance of a certificate or degree, granting the privilege of the use of the title "Certified Public Accountant," and the use of the initials "C. P. A.," as indicative of the holder's fitness to serve the public as a competent and properly qualified accountant in public practice, and to prevent those who have no such certificate or degree from using such title or initials. [Id.]

TITLE 3.**ADOPTION.**

Art. 42. [1] **Mode of adoption.** Any person wishing to adopt another as his legal heir shall file in the office of the county clerk of the county in which he resides a written statement signed by him and duly authenticated or acknowledged as deeds are required to be, reciting in substance that he adopts the person named therein as his legal heir, and the same shall be admitted to record in said office. [Acts 1850, p. 36; G. L. Vol. 3, p. 474.]

Art. 43. [2-5] **Rights of adopted heir.**—When such statement is so recorded it shall entitle any child so adopted to all the rights and privileges, both in law and equity, of a legal heir of the adoptive parent, as a child has by law against lawful parents. If the adoptive parent has at the time of such adoption or shall thereafter have, a child begotten in lawful wedlock, such adopted heir shall in no case inherit more than one-fourth of the estate of the adoptive parent. [Id; Acts 1907, p. 103.]

Art. 44. [3-4-6] **Authority transferred.**—The parent or parents of a child who is to be so adopted may, by an instrument in writing duly signed and authenticated or acknowledged as deeds are required to be, transfer their parental authority and custody over such child to the adoptive parent. Where the lawful parent or parents have voluntarily abandoned such child and left it to the care of others for a period of at least three years, or voluntarily left it to be cared for by charity for a period of at least three years, and such child shall be so adopted, such parent or parents shall be held to have transferred their parental authority and custody over said child to the adoptive parent; and in all such cases such lawful parents shall thereafter be barred from exercising any authority, control or custody over the person or estate of such child as against the adoptive parent. No adoptive parent shall transfer his authority and custody to any other person. [Acts 1907, p. 103; Acts 3rd C. S. 1920, p. 115.]

Art. 45. [7] **Authority of court.**—Nothing in this title shall prevent a court of competent jurisdiction from taking away from such adoptive parent the custody of the adopted child and awarding the same to its natural parents, or either of them or to any other person, upon proof of the bad moral character of such adoptive parent, or upon proof of abuse, neglect or ill treatment of such adopted child by the adoptive parent. [Id.]

Art. 46. [8] **Adoptions prohibited.**—No white child can be adopted by a negro person, nor can a negro child be adopted by a white person. [Id.]

TITLE 4.

AGRICULTURE AND HORTICULTURE.

| | Chapter | | Chapter |
|----------------------------------|---------|-----------------------------|---------|
| Commissioner of Agriculture..... | 1 | Commercial Fertilizer | 5 |
| Plant Breeder Examiners..... | 2 | Packs and Grades..... | 6 |
| Pink Bollworm | 3 | Nursery Stock | 7 |
| Agricultural Seeds | 4 | Experiment Stations | 8 |

CHAPTER ONE.

COMMISSIONER OF AGRICULTURE.

| | Article | | Article |
|---------------------------------|---------|-------------------------------------|---------|
| Election and qualification..... | 47 | Ex-officio duty..... | 52 |
| Bond | 48 | Shall make report..... | 53 |
| Clerks | 49 | Report printed and distributed..... | 54 |
| Chief clerk | 50 | Commissioner shall co-operate..... | 55 |
| Duties | 51 | | |

Art. 47. [4435-4436-4438] **Election and qualification.**—A Commissioner of Agriculture shall be elected at each general election for a term of two years. He shall be an experienced and practical farmer, and shall have knowledge of agriculture, manufacture and general industry. His office shall be in Austin. [Acts 1907, p. 127.]

Art. 48. [4437] **Bond.**—He shall first execute a good bond in the sum of five thousand dollars, payable to the State of Texas, to be approved by the Governor and conditioned for the faithful discharge of the duties of his office. [Id.]

Art. 49. [4439] **Clerks.**—Said commissioner shall appoint one chief clerk, who shall possess a practical knowledge of agriculture, horticulture, manufacturing and kindred industries, and the proper methods of marketing the products of said industries. He may appoint such other clerks as the labors of his office may require. All clerks shall be removable at the pleasure of the commissioner. [Id.]

Art. 50. [4440-1] **Chief clerk.**—The chief clerk shall possess all the powers and perform such duties as may be prescribed by the commissioner, and all duties attached by law to the office of commissioner during the necessary or unavoidable absence of the commissioner, or his inability to act for any cause. The commissioner shall be responsible for the acts of his chief clerk, who shall, before entering upon the duties of his position, take the oath required of the commissioner, and enter into bond in the sum of three thousand dollars with two or more sureties to be approved by the Governor, and payable to the State of Texas, conditioned for the faithful performance of his duties. His expenses while traveling on the business of the office, under the direction of the commissioner, shall be paid by the State. [Id.]

Art. 51 [4443-4448-4449] **Duties.**—The duties of the commissioner shall be as follows:

1. He shall cause to be executed all laws in relation to agriculture.
2. He shall encourage the proper development of agriculture, horticulture and kindred industries.
3. He shall encourage the organization of agricultural societies; and, for the benefit of the agricultural communities, he

shall cause to be held farmers' institutes at such times and at such places throughout the State as will best promote the advancement of agricultural knowledge and the improvement of agricultural methods and practices. He shall publish and distribute such papers and addresses read or delivered at these institutes as he shall deem to be of value to the farming interest.

4. He shall investigate the subject of sub-soiling, the problems of drainage and of irrigation, their relation to agriculture, with a view to extending the area of the same, and the best modes of affecting each in the different portions of the State.

5. He shall investigate and report upon the question of broadening the market and of increasing the demand for cotton goods and all other agricultural and horticultural products, both in the United States and in foreign countries. He shall compile the statistics showing from abroad the number of bales of cotton consumed by the spinners, and demands for our cotton, the methods and course that sales to foreign countries now take, showing the purchasers, brokers, etc., through whose hands the cotton largely passes after leaving the producers, likewise showing in what countries an increased trade could be worked up, and thereby giving a better outlet for the trade and the best method to bring consumer and purchaser together, and all other information beneficial to farmers.

6. He shall cause to be investigated the diseases of grain, cotton, fruit, and other crops grown in this State, with a view to discovering remedies for such diseases. He shall also investigate the habits and propagation of the various insects that are injurious to the crops of this State, and the best methods for their destruction. The protection of fruit trees, shrubs and plants shall be under his direct supervision and control, and he shall have and exercise all the powers and perform all the duties in relation thereto, conferred or imposed by law.

7. He shall investigate the subject of grasses and report upon their value and the cultivation of the varieties best adapted to the different sections of the State. He shall collect and publish information relating to forestry, tree planting, the best means of preserving and replenishing forests, and shall encourage the planting and culture of nut trees and recommend such legislation as may be necessary for the protection, restoration and preservation of the forests of this State.

8. He shall inquire into the subjects connected with stock raising, dairying and poultry; the obtaining and rearing of such domestic animals and fowls as are of most value, and the breeding and improvement of the same. He shall encourage the raising of fish and the culture of bees.

9. He shall investigate and report upon the growing of wool, and the utility and profit of sheep raising; he shall also inquire into the culture of silk, its preparation for market and its manufacture.

10. He shall correspond with the department of agriculture at Washington, and with such departments of the several states and territories of the United States, and, at his option, with those of foreign countries, and with the representatives of the

United States in foreign countries, with the view of gathering information that will advance the interests of agriculture in Texas. He may also, for the same purpose, correspond with such organizations, societies, associations and individuals in the State as he may choose, having for their object the promotion of agriculture in any of its branches.

11. He shall collect and publish statistics and such other information regarding such industries of this State and of other states as may be considered of benefit in developing the agricultural resources of this State. He shall cause a proper collection of agricultural statistics to be made annually; and shall furnish blank forms to the tax assessors of each county before the first of January of each year, including forms as to the acreage in cotton, grain and other leading products of the State to be filled out by persons assessed for taxes, together with such instructions as will properly direct said assessor in filling them out. The heads of the several State departments, and of the State institutions, are required to furnish accurately such information as may be at their command whenever called upon for same by said commissioner. In the prosecution of his work, the commissioner is hereby empowered to enter manufacturing establishments chartered or authorized to do business in this State, and said corporations shall furnish such information as said commissioner may request of them.

12. He shall collect and publish statistics and other information regarding the irrigation of rice and other crops as may be of benefit in developing a more efficient system of laws safeguarding and defining the rights of users and sellers of water for irrigation purposes; he may employ a competent engineer and expert, possessing a practical knowledge of the application of irrigation to the raising of rice and other crops, for the purpose of assisting him in performing the duties required of him in this article, and he shall make up and file an annual report on same with such recommendations as he may deem beneficial to the industry, which report shall be filed with the Governor and transmitted to the Legislature.

13. He shall make and publish such rules and regulations as he may deem necessary to carry into effect the provisions of this chapter. [Id. Sec. 11, Acts 1909, p. 353.]

Art. 52. [4444] **Ex-officio duty.**—The Commissioner shall be ex-officio a member of the board of directors of the Agricultural and Mechanical College of the State and shall be allowed all necessary expense in attending the meetings of said board. [Id. Sec. 12.]

Art. 53. [4445] **Shall make report.**—The commissioner shall make and submit to the Governor, on or before the first day of November of each year, a full report showing the work and expenditures of his office during the fiscal year preceding, which report shall be transmitted by the Governor to the Legislature. [Id. Sec. 13.]

Art. 54. [4446] **Report printed and distributed.**—Under the direction of the Commissioner, the Board of Control shall

cause to be printed annually not to exceed ten thousand copies of the annual report of said commissioner, said report to be distributed to the farmers through the farmers' institutes and other agricultural organizations or otherwise, at the discretion of the commissioner. [Id. Sec. 14.]

Art. 55. [4447] **Commissioner shall co-operate.**—No provision of this chapter shall be construed to in any way conflict with the scope and character of the work of the Agricultural and Mechanical College or of the agricultural experiment stations, but the said commissioner shall co-operate with the said college and said experiment stations in all lines looking toward the agricultural and horticultural interests of the State. [Id. Sec. 15.]

CHAPTER TWO.

PLANT BREEDER EXAMINERS.

| | Article | | Article |
|-------------------------------|---------|-------------------------------|---------|
| State Register | 56 | Certificate as grower | 62 |
| Appointment | 57 | Form of application | 63 |
| Fees | 58 | Tags and labels | 64 |
| May register as breeder | 59 | Inspection fee | 65 |
| Certificate as breeder | 60 | Fund | 66 |
| May register as grower | 61 | Cancelling registration | 67 |

Art. 56. **State Register.**—The Commissioner of Agriculture is directed to establish a State Register of Cotton Seed Breeders and Cotton Seed Growers who produce and offer for sale cotton seed for planting purposes and who voluntarily apply for registration under the provisions of this chapter and conform to the rules and regulations established for the administration and enforcement thereof by said Commissioner. [Acts 2nd C. S. 1923, p. 127.]

Art. 57. **Appointment.**—The Commissioner of Agriculture of this State and the president of the A. & M. College of this State, shall appoint a State Board of Plant Breeder Examiners composed of three men who shall be experienced in the science of plant breeding. The State Board of Plant Breeder Examiners shall meet in the City of Austin on the second Tuesday in December of each year and shall hold such other meetings as may be necessary. All applicants for license as Cotton Breeder and all applicants for license as Certified Cotton Seed Grower shall appear in person before said Board and shall furnish such information as the Board may require. The Board shall prescribe the qualifications of inspectors that may be employed under this law. [Id.]

Art. 58. **Fees.**—All applicants for license as Registered Cotton Seed Breeder and Certified Cotton Seed Grower shall pay to the said Board a fee of ten dollars as a prerequisite to such application for such license. Such fees as may be collected shall be used by the said Board in defraying expenses incident to conducting such examinations. [Id.]

Art. 59. **May register as breeder.**—Any cotton breeder in the State, or any person, firm or corporation engaged in breeding cotton, who produces and offers for sale cotton seed for planting purposes, and who has in his or its employ experienced and com-

petent cotton breeder or breeders shall be eligible to registration as a Registered Cotton Seed Breeder, when he or it has satisfied the State Board of Plant Breeder Examiners herein provided for:

1. That he or it is a person, firm or corporation of good character and reputation for honesty, competency and fair dealing;

2. That he is skilled in the science of cotton breeding or has in his or its employment one or more persons who are skilled in the science of cotton breeding;

3. That he, or persons in his or its employment has originated or made distinctive improvements in the character of a useful strain of cotton;

4. That he or it owns or controls land and other facilities necessary in the breeding and production of seed of high purity and excellence; and has complied with the rules and regulations established by said State Board of Plant Breeder Examiners in pursuance of law. [Id.]

Art. 60. Certificate as breeder.—When the application of breeder of cotton seed made under the provisions of this law has been approved by said Board, said applicant shall be registered as a “Registered Cotton Seed Breeder” and shall be issued a certificate to that effect and shall be entitled to use the title “Registered Cotton Seed Breeder” and to advertise and sell cotton seed produced in conformity with the provisions of this law and the rules and regulations established in pursuance thereof as “Registered Cotton Seed;” which certificate shall expire one year from the date of issue unless otherwise revoked as herein provided. [Id.]

Art. 61. May register as grower.—Any person, firm or corporation engaged in producing cotton seed to be offered for planting purposes shall be eligible for registration as a “Certified Cotton Seed Grower,” when he or it has satisfied the State Board of Plant Breeder Examiners:

1. That he or it is a person, firm or corporation of good character and reputation for honesty, competency and fair dealing.

2. That he or it will plant only seed obtained from a registered cotton seed breeder, and will offer for sale only the first or second year progeny of such registered cotton seed.

3. That he or it owns or controls land and other facilities necessary in the production of seed of high purity and excellence; and has complied with the rules and regulations established by said Board in pursuance of this law. [Id.]

Art. 62. Certificate as grower.—When the application of a cotton seed grower made under the provisions of this law has been approved by the said Board, said applicant shall be registered as a “Certified Cotton Seed Grower” and shall be issued a certificate to that effect and shall be entitled to use the title “Certified Cotton Seed Grower,” and to advertise and sell cotton seed produced in conformity with the provisions of this law and the rules and regulations established in pursuance thereof as

“Certified Cotton Seed.” Said certificate shall expire one year from date of issuance unless otherwise revoked as herein provided for. [Id.]

Art. 63. **Form of application.**—The Board shall prepare suitable form of application for registration for cotton seed breeders and cotton seed growers, and shall establish rules and regulations, tests and standards to carry into effect the purposes of this law, which are to provide supplies of high grade cotton seed for planting purposes, and to enable the farmers to secure pure bred cotton seed for planting true to name. Said forms shall be in conformity with the provisions of this law and all tags furnished the registered seed breeders and certified seed growers, shall contain the words, “Registered Cotton Seed Breeder,” or the words “Certified Cotton Seed Grower,” and such other conditions as may be prescribed by the State Board of Plant Breeders. The Commissioner of Agriculture shall employ a sufficient number of competent inspectors to inspect fields of cotton, and the facilities for ginning, storing and handling cotton seed owned or controlled by persons registered under this law and used in the production of cotton seed to be offered for sale for planting purposes. Said inspectors shall make reports upon forms provided by said commissioner. [Id.]

Art. 64. **Tags and labels.**—If the reports of said inspectors show that the cotton grown by a licensee hereunder and the facilities for ginning, storing, and handling same conform to the rules and regulations and standards established by the board, there shall be issued to him or it a certificate evidencing his or its right to offer for sale the cotton seed so produced as “Registered Cotton Seed” or “Certified Cotton Seed.” Then the said Commissioner of Agriculture shall also issue to said cotton seed breeders and cotton seed growers tags or labels to attach to packages or containers containing said cotton seed certifying that same has been produced under the terms of this law, and an amount sufficient to cover all cost of printing tags and inspection shall be collected by said Commissioner.

Art. 65. **Inspection fee.**—Before any cotton seed breeder or cotton seed grower is registered under this law he or it shall agree in writing to pay to the said Commissioner of Agriculture an inspection fee to be fixed by said commissioner to pay the expense of inspecting his fields, gin and other facilities used in producing cotton seed, and for printing tags. Said fee shall not exceed 25 cents per acre for each acre of cotton, and \$1.00 for each gin and warehouse. [Id.]

Art. 66. **Fund.**—All money so collected shall belong to a special fund of this State and shall be paid over by the Commissioner of Agriculture to the State Treasurer, during the first week of each month, and shall be credited to the “Special Pure Bred Cotton Seed Inspection Fund,” and such funds shall be expended in the enforcement of this law, by the Commissioner of Agriculture, and in the purchase and supply of means to enable the commissioner and his agents to enforce the provisions

of this law. All such expenditures shall be verified by the affidavit of the Chief of the Division of Plant Pathology and Seeds to the Commissioner of Agriculture, and on the approval of such expenditures by the commissioner, the Comptroller shall draw his warrant on the Treasurer for the amount of such expenditures in favor of the person claiming the same, to be paid out of the "Special Pure Bred Cotton Seed Inspection Fund." [Id.]

Art. 67. Cancelling registration.—If the report of an inspector shall show that the character, quality and varietal purity of any field of cotton grown by any licensee hereunder does not conform to the rules, regulations, tests, and standards promulgated under authority of this law, or that the gin, warehouse, or other facilities do not conform to such rules, regulations, tests or standards, or if charges be made that any of the licensees hereunder have been guilty of any dishonest, unfair or improper conduct or practice in the conduct of his or its business of breeding or growing and selling cotton seed, the said Commissioner of Agriculture shall give written notice thereof to said breeder or grower and fix a time for hearing evidence relating to said report or charges of which the accused party shall have at least ten days' notice. If in the judgment of said Commissioner of Agriculture such adverse report or charges are sustained he shall cancel the registration and certificate of accused party and retake all tags or labels and license or certificate issued to him or it. If any registered cotton seed breeder or certified cotton seed grower is not satisfied with such verdict of the Commissioner of Agriculture, such person or persons shall have the right to appeal the case to the State Board of Plant Breeder Examiners, and shall be entitled to a hearing. [Id.]

CHAPTER THREE.

PINK BOLLWORM.

| | Article | | Article |
|---------------------------------------|---------|-------------------------------|---------|
| Declared a nuisance..... | 68 | Pink Bollworm Commission..... | 76 |
| Definitions..... | 69 | Salary and expenses..... | 77 |
| Policy and methods..... | 70 | Powers..... | 78 |
| Investigation and recommendation..... | 71 | Inspectors..... | 79 |
| Emergency quarantine..... | 72 | Federal co-operation..... | 80 |
| Destruction of cotton..... | 73 | Payment of claims..... | 81 |
| Examination of area..... | 74 | Former zones..... | 82 |
| Compensation Claim Board..... | 75 | | |

Art. 68. Declared a nuisance.—The *Pectinophora gossypiella*, Saunders, known as the pink bollworm, is hereby declared a public nuisance and a menace to the cotton industry, and its eradication is a public necessity. [Acts 3rd C. S. 1917, p. 62, Acts 1919, p. 72, Acts 3rd C. S. 1920, p. 71, Acts 1st C. S. 1921, p. 121.]

Art. 69. Definitions.—The term "pink bollworm" shall mean the insect in its various stages of development, including the egg, larval, pupal, and adult stages. The term "cotton" or "cotton products" shall mean cotton in the seed, ginned lint cotton, seed, hulls, cotton in the bolls, cotton stalks, and any and all character of cotton products except oil and meal. [Id.]

Art. 70. Policy and methods.—It is hereby declared the policy of the State in endeavoring to control and eradicate the

pink bollworm to employ all such methods as scientific research demonstrates to be successful and as may be sanctioned by constitutional warrant, including inspection of cotton plants in the fields, or of cotton products wherever stored; the quarantine and fumigation of cotton and cotton products found to be contaminated; supervision of the growing of cotton in areas known to be contaminated; destruction of infested fields of cotton, or cotton products; and the prevention of planting of cotton in areas where infestation has been found. [Id.]

Art. 71. Investigation and recommendation.—If the Commissioner of Agriculture determines, through his co-operation with the Secretary of Agriculture of the United States, that the pink bollworm exists outside of Texas but adjacent to the Texas border, he shall certify that fact to the Governor, who shall thereupon cause the convening of the Pink Bollworm Commission appointed as hereinafter provided for, which commission shall give notice of, and hold a hearing in the manner hereinafter provided at some central and easily accessible point in the county or counties in this State along the boundary adjacent to such infestation, and investigate into the danger to the cotton industry of Texas from such infestation adjacent to the Texas border and make such recommendation to the Governor as they deem sufficient to the protection of the cotton industry of the State. Should this report express the conclusion that it is dangerous to the cotton industry of Texas that cotton be grown in this State along the boundary adjacent to such infestation, the Governor shall thereupon proclaim such area as may be set out in said report a non-cotton zone, in which it shall be unlawful to plant, cultivate or grow any cotton for such period as the proclamation may specify; and if such report indicates that it will be safe to grow cotton under rules and regulations within such zone adjacent to the infestation outside of Texas, the Governor shall thereupon issue his proclamation declaring it unlawful to grow cotton within such area as may be recommended by the Pink Bollworm Commission, except under such rules and regulations as the Commissioner of Agriculture shall promulgate. Should the report of such commission indicate that it may be dangerous to the cotton industry of this State to allow the free movement of contaminated material from such infested territory into this State, the Governor shall thereupon proclaim a quarantine against such infested territory, and thereafter it shall be unlawful to import into Texas from such quarantined territory anything or substance liable to be contaminated with pink bollworm, and it shall be the duty of the Commissioner of Agriculture to maintain a rigid inspection of articles liable to be contaminated which are being carried from such quarantined territory into the State of Texas. Before recommending the establishment or continuance in any county in this State bounded by an international boundary line, or a non-cotton zone, under this or any other article of this chapter, the Pink Bollworm Commission shall give careful consideration to the conditions existing, or likely to exist, on the non-Texas side of said boundary

line, and the evidence concerning such conditions shall be such as to reasonably show that the establishment of a non-cotton zone in said county will effectively protect the cotton industry of Texas against the further spread of the infestation. [Id.]

Art. 72. Emergency quarantine.—If the pink bollworm shall be found in any gin, cotton seed oil mill, cotton seed warehouse, compress, or transportation vehicle in the State, or in any field of cotton, the Commissioner of Agriculture shall immediately certify that fact to the Governor, who shall proclaim a special emergency quarantine surrounding the known location of the pest to such extent as may be determined sufficient to prevent the spread of the pink bollworm, and it shall be unlawful for any person or persons to ship any cotton or cotton products of any kind from such quarantine district, or transport any car, vehicle, or freight, or any other article liable to carry the pink bollworm from the quarantined area through, or to any other point in the State, except under such rules and regulations as the Commissioner of Agriculture shall promulgate; such emergency quarantine shall continue in full force and effect until such time as a hearing, as provided for in this chapter, can be held by the said Pink Bollworm Commission.

Art. 73. Destruction of cotton.—When it is deemed necessary to the protection of the cotton industry of Texas that the Commissioner of Agriculture shall destroy cotton, cotton products, or fields or cotton in which the pink bollworm shall have been found or which are probably contaminated by being near infestation of the pink bollworm; he shall report such condition to the Governor, setting out in detail the area or amount of cotton or cotton products to be destroyed. The Governor shall thereupon declare such cotton or fields of cotton a public menace. Before the destruction of such cotton or cotton products the Compensation Claim Board, hereinafter provided for, shall go upon the premises and report to the Commissioner of Agriculture the value of the fields of cotton or cotton products to be destroyed. The Commissioner of Agriculture shall then be empowered to use all authority requisite to the complete destruction of such cotton, cotton products or fields of cotton to prevent the spread of the pink bollworm from such localities. The Commissioner of Agriculture shall certify to the fact of such cotton products or fields of cotton having been destroyed and shall file such report and certificate with the State Comptroller, who shall issue his warrant upon the State Treasurer for such sum as may be declared just and due. [Id.]

Art. 74. Examination of area.—Whenever the Commissioner of Agriculture shall deem it necessary to the protection of the cotton industry of Texas that the growing cotton within any area within the State, except as provided for in the preceding articles hereof, be placed under supervision, or that cotton growing be prohibited as a means of aiding in the control and eradication of the pink bollworm, he shall cause to be made a thorough examination of such area by a competent and expe-

rienced entomologist, who shall, after going upon the premises and after making an examination in person, report the result thereof to the Commissioner of Agriculture. Should this report express the conclusion that the pink bollworm exists within the territory under investigation, the Commissioner of Agriculture shall certify this report to the Governor, who shall cause the Pink Bollworm Commission, hereinafter provided for, to hold a hearing at some central and easily accessible point within the area under investigation; due notice of the time and place of such hearing shall be published in some newspaper in or near the county or counties under investigation, at least ten days before such hearing. The Commissioner of Agriculture shall present to the Commission a statement setting forth the following facts:

1. The name of the entomologist making the examination on behalf of the State Department of Agriculture.
2. The date when such examination was made.
3. The locality where the pink bollworm is alleged to exist.
4. Any other information deemed necessary by the Commission for the discharge of its duties under the provisions of this chapter.

Such statement shall be verified by oath of the person making the same and shall be filed and preserved in the office of the Commissioner of Agriculture and be open to the inspection of the public. Said Pink Bollworm Commission shall make a report to the Governor immediately after the hearing. Should this report and recommendation be for the prevention of the planting of cotton in any area and for the establishment of a non-cotton zone, such recommendation shall specify the area to be embraced in the proposed non-cotton zone. Upon receipt of this report, the Governor shall declare the growing of cotton within such area as may be recommended by the Pink Bollworm Commission a public menace, and thereafter it shall be unlawful to plant, cultivate or grow cotton, or to allow cotton to grow within such zone, such proclamation of the Governor to remain in effect until the Pink Bollworm Commission, herein provided for, shall have certified that the condition of menace no longer exists. In the event of the establishment of any non-cotton zone as authorized by this chapter, all persons prevented from producing cotton in the non-cotton zones shall be entitled to receive compensation from the State in the measure of the actual and necessary losses sustained thereby. The Compensation Claim Board, herein provided for, shall have full power and authority to determine the amount of compensation to such persons. In determining the actual and necessary losses, the Compensation Claim Board shall take into consideration the value of the average yield of cotton and other crops second in economic importance thereto in that vicinity; the total amount of land planted to crops during the year for which compensation is claimed; the percentage of such land customarily planted in cotton in that vicinity, and such other factors as they deem essential. The

words "cultivated crops" as used above shall not be construed to include any small grain crops, hay or pasture crops which are not cultivated during the growing season. No person shall be entitled to compensation who does not in good faith obey the proclamation of the Governor establishing such non-cotton zone. Should the report of the Pink Bollworm Commission express the conclusion that it will not be dangerous to the cotton industry of Texas to permit the growing of cotton within such district under such rules and regulations as it shall be deemed adequate to prevent the spread of the pink bollworm, the Governor shall proclaim such area as may be set out in the report of the Pink Bollworm Commission a regulated zone, in which it shall be unlawful to plant, cultivate and market cotton under such rules and regulations as shall be promulgated therefor by the Commissioner of Agriculture, which may include the planting of seed from non-infested territory, ginning at designated gins, milling or disinfecting of all seed produced within such zone, marketing, cleaning of fields, and such other rules as may be found necessary; provided that no ginner shall be authorized to gin cotton from regulated zones unless he shall disinfect all seed under such rules as the Commissioner of Agriculture shall prescribe. Such proclamation of the Governor, establishing such regulated zone shall remain in effect until the Pink Bollworm Commission shall have certified that the menace no longer exists. [Id.]

Art. 75. Compensation Claim Board.—The Governor shall appoint a Compensation Claim Board for the State, who shall serve until relieved therefrom by the Governor, whose duty it shall be to determine in the manner herein provided the measure of compensation due persons prevented from growing cotton and the damages sustained by persons having cotton condemned and destroyed as provided for herein. The said board shall be composed of three citizens of the State residing outside any area under quarantine under the provisions of this law, at least two of whom are actually engaged in the production of cotton. Before entering upon their duties, the members of the Board shall take the official oath, and shall organize by electing one of its members chairman and the Commissioner of Agriculture shall act as ex-officio secretary. The concurrence of two members of the Board shall constitute legal action. The Compensation Claim Board shall conduct a public hearing in the county or counties from which the claims for compensation have been filed, due notice of which hearing shall be given by publication in some newspaper published in or near the county or counties in which the claimant resides, not less than ten days before the date of such hearing, and by mailing from the office of the Commissioner of Agriculture a letter to each claimant, not less than ten days before the date of such hearing, which notices shall state the time and place of each hearing. Every such claim for compensation from the State shall be made under oath, attested by two citizens of the county in which the claimant resides, upon blanks to be furnished by the Commissioner of Agriculture, and

except when the claim is for compensation for losses under previous acts, shall be filed in the office of the Commissioner of Agriculture not later than November 15 of the year for which claim for compensation is made. Every such claim shall state:

1. The name and post office of the claimant.
2. The location of the farm upon which the claim is based.
3. The total acreage of all cultivated crops produced in the year in which such claim is presented.
4. All other information deemed essential by the said Compensation Claim Board for the performance of the duties devolved upon them by this law.

Each allotment of compensation shall be evidenced by a written order, entered in a permanently bound book kept by the Board in the office of the Commissioner of Agriculture, and a certified copy of each allotment shall be given the claimant. If any claimant is dissatisfied with the action of the Claim Board on his claim, he shall have the right within six months after the decision of the Claim Board to make application to the District Court of the county of which he is a resident or in which his cotton was destroyed or in which he was prevented from growing cotton and have the action of the Claim Board reviewed by such District Court. If the State, acting through the Commissioner of Agriculture, is dissatisfied with any such decision of the Claim Board, it shall likewise have the right to resort to said court for such review. [Id.]

Art. 76. Pink Bollworm Commission.—The Governor shall appoint a Pink Bollworm Commission for the State composed of five men who shall serve until relieved therefrom by the Governor. One shall be appointed upon the recommendation of the Commissioner of Agriculture; one upon the recommendation of the Secretary of Agriculture of the United States; one upon the recommendation of the District Judge of the county or counties under consideration; and two upon his own discretion. The latter two shall be actual cotton growers. Should any of the officials herein authorized to make recommendations for appointment fail or refuse so to do, or should any person so nominated refuse to serve or become incapacitated for service, the Governor shall make such appointment upon his own discretion. Said Bollworm Commission shall take the official oath. They shall organize by electing one of their number chairman and the Commissioner of Agriculture shall be ex-officio secretary. [Id.]

Art. 77. Salary and expenses.—The members of the said Board and of said Commission shall each receive a salary of five dollars per day and actual traveling expenses when engaged in the performance of their duties. [Id.]

Art. 78. Powers.—The Commissioner of Agriculture and his authorized agents shall have the power to enter into any field of cotton or upon any premises in which cotton or its products may be stored or held, and may examine any products or container of cotton or thing or substance liable to be infested with the pink bollworm, and shall have power to enter upon any premises for the purpose of issuing permits and to examine all books and

records of purchasers or handlers or common carriers of cotton products. [Id.]

Art. 79. Inspectors.—The Commissioner of Agriculture shall make adequate investigation to determine the presence of the pink bollworm in the State and shall take prompt action to secure the establishment and maintenance of an effective quarantine of all infested areas that may be discovered within the State, pursuant to the provisions of this chapter. The Commissioner of Agriculture may employ inspectors, and such other help as he may deem necessary, and may prescribe the duties of such inspectors and other help. No person shall be appointed as an inspector who has not had at least two years actual experience as an entomologist, or two years training as an entomologist in the Science Department of some reputable college or university. Such inspectors shall be paid not exceeding one hundred and fifty dollars per month and their necessary expenses. [Id.]

Art. 80. Federal co-operation.—The Commissioner of Agriculture shall co-operate with the Secretary of Agriculture of the United States in any measure authorized and to be undertaken by authority of the Federal Government in preventing the introduction or establishment of the pink bollworm in the State of Texas. If the Congress of the United States should appropriate any moneys with which to assist this State in the payment of compensation to farmers for being deprived of the right to plant cotton, and should such appropriation by Congress provide for this money to be disbursed by the State of Texas, the State Treasurer is hereby authorized to receive such moneys from the United States Government, and the Commissioner of Agriculture is hereby authorized to disburse same in accordance with the laws of this State and the United States. [Id.]

Art. 81. Payment of claims.—All claims for damages and claims for compensation arising from the enforcement of the provisions of this law shall be paid on certified statement by the Chairman of the Compensation Claim Board, or upon certified copy of the final judgment of a court of competent jurisdiction, by warrants drawn by the Comptroller upon the State Treasurer, and all salaries and other expenses incurred in the administration of this law shall be paid in the usual way upon a certified statement of the Commissioner of Agriculture. [Id.]

Art. 82. Former zones.—All regulated zones and non-cotton zones in effect for 1921 are hereby renewed and carried forward and shall be subject to the provisions of this chapter and all procedure heretofore taken to establish such zones is hereby validated. [Id.]

CHAPTER FOUR.

AGRICULTURAL SEEDS.

| | Article | | Article |
|-----------------------------------|---------|--------------------------------|---------|
| "Agricultural seeds" defined..... | 83 | Samples | 89 |
| Label | 84 | Liability for damages..... | 90 |
| Mixture of | 85 | Publishing report..... | 91 |
| Exceptions | 86 | Appropriation and expense..... | 92 |
| Analysis | 87 | Definitions | 93 |
| Fees for test..... | 88 | | |

Art. 83. "Agricultural seeds" defined.—For the purpose of

this chapter, agricultural seeds are defined as the seeds of alfalfa, Irish potatoes, sweet potatoes, clovers, corn, cotton, saccharine sorghums, non-saccharine sorghums, broomcorn, small grains, (including rice), cow peas, soy beans, velvet beans, peanuts, vetch, rape, millet, Johnson grass, Bermuda grass, Kentucky blue grass, orchard grass, sudan grass, onion and Rhodes grass, which are to be used for sowing or seeding purposes. [Acts 2nd C. S. 1919, p. 158.]

Art. 84. **Label.**—Agricultural seeds, except as herein otherwise provided, which are offered or exposed for sale within this State for seeding purposes, in lots of ten pounds or more, shall bear a plainly written or printed statement in the English language stating:

- (a) Commonly accepted name of agricultural seed.
- (b) Correct weight in pounds and ounces.
- (c) Name of State where seed was grown, and if unknown, a statement that the locality where grown is unknown.
- (d) Approximate percentage of germible seed as determined by germination test and date on which germination test was made. Name and address of person, firm or party or agency making the germination test, provided however, that the statement shall not be a basis for prosecution under this chapter.
- (e) Name and address of vendor.
- (f) The approximate percentage, by weight, or purity, meaning freedom of such agricultural seed from foreign matter and from other seed distinguishable by their appearance.
- (g) The approximate total percentage, by weight, of weed seeds or other foreign matter.
- (h) The name and approximate number per pound of each kind of the seed of the following named noxious weeds which are present at the rate of, or in excess of, one such noxious weed seed in five grams of agricultural seed. Such noxious weed seed are defined as seeds of dodder (*cascuta*, various species), bind weed or wild morning glory (*convolvulus*, various species), blue weed (*helianthus ciliatus*), wire grass (*pasplum distinchum*), Bermuda grass, Johnson grass, and all other seeds of foreign matter known by science to be noxious, are hereby defined as noxious weed seeds. [Id.]

Art. 85. **Mixture of.**—Mixtures of seed offered or exposed for sale within the State for seeding purposes, in lots of ten pounds or more, containing one or more kinds of the agricultural seeds defined in the preceding article in excess of five per centum, by weight, of the total mixture, shall bear a plainly written or printed statement in the English language, stating:

- (a) That such seed is a mixture.
- (b) The approximate percentage, by weight of inert matter.
- (c) The requirements provided in paragraphs (c) (g) and (h) of the preceding article. [Id.]

Art. 86. **Exceptions.**—The provisions of this chapter shall not apply to agricultural seeds, or mixtures of seeds, when plainly labeled, "not clean seed," or "not tested seed" nor "seeds sold to merchants to be recleaned before being sold or exposed for sale for seeding purposes", or when in storage for the purpose of recleaning. [Id.]

Art. 87. Analysis.—The percentage of purity of agricultural seed and the mixture as defined in this chapter, and other percentages required by this law, shall be based upon a test or analysis, conducted either by the Commissioner of Agriculture, or his assistants, or by the vendor of the agricultural seed or "mixture," provided that any test or analysis made by the vendor or his agent shall conform to the reasonable regulations which said Commissioner of Agriculture is hereby authorized and directed to prescribe, or shall conform to the reasonable regulations or methods of testing adopted or used by the Association of Official Seed Analysts of the United States Department of Agriculture. [Id.]

Art. 88. Fees for test.—Whoever buys or sells said agricultural seeds, or mixtures of seeds, for the use in this State for seeding purposes, may submit fair samples of such seeds to the Commissioner of Agriculture for examination, and test of purity and of vitality, and said commissioner shall cause such examination and test to be promptly made, and report thereon, and return to the sender. For the test of purity, said commissioner shall charge a fee of twenty-five cents, for the examination of each sample, and for a test of vitality, a fee of twenty-five cents, either or both of which fees shall be payable in advance, provided that these tests shall be made free of charge to the citizens of this State. All money received from receipt of such fees shall be paid into the State Treasury. [Id.]

Art. 89. Samples.—The enforcement of this law shall be entrusted to the Commissioner of Agriculture, and he is authorized in person or by his inspectors, or assistants, to take for analysis, paying the reasonable purchase price, a sample not exceeding four ounces in weight, from any lot of agricultural seeds or "mixtures" offered or exposed for sale. Said sample shall be drawn or taken in the presence of the vendor or parties interested, or his or their agents or representatives, and shall not be less than ten per cent of the whole lot inspected and shall be thoroughly mixed and then divided into two samples and placed in glass or metal vessels or containers, carefully sealed, and a label placed on each vessel stating the name of the agricultural seed or mixture sampled, the name of the vendor from whose stock said samples were taken, and the date and place of taking such samples, and said label shall be signed by said commissioner, or his authorized agent; or said sample may be taken in the presence of the disinterested witnesses if the vendor or party in interest fails or refuses to be present, when notified. One of said duplicate samples shall be left with or on the premises of the vendor or party in interest, and the other retained by the commissioner for analysis and comparison with the labels required by law. The Commissioner of Agriculture shall annually and prior to December first, make and submit to the Governor a report of the services performed by him or his assistants, together with an itemized account of all moneys paid out as authorized under this chapter. [Id.]

Art. 90. Liability for damages.—No action for the recovery of damages or any liability whatsoever for any violation of any

provision of this chapter, or for the breach of any legal duty or obligation in the sale of the agricultural seeds defined in the first article of this chapter, or the sale of mixtures defined in the third article of this chapter, shall be maintained by the buyer and against the vendor of such seeds, unless the claim or claims of such buyer are based upon properly drawn samples of such seed, from the bulk thereof, and examined in the way provided in this law. Nothing in this chapter shall be construed as preventing one farmer from selling to another farmer such seed grown on his own farm as covered by the provisions of this chapter without having such seed tested and labeled as provided for herein. [Id.]

Art. 91. Publishing report.—The result of the analysis and tests of seed made by the Commissioner of Agriculture of samples drawn by him or his inspectors may, at his discretion, be published in his report. [Id.]

Art. 92. Appropriation and expense.—There shall be appropriated annually from the State Treasury a sum in favor of the Department of Agriculture and the same together with the fees provided for in this law, may be expended in the enforcement of this law. So much of said appropriation and the moneys secured as fees for tests and analysis of seed after first exhausting the moneys secured from the collection of the fees as herein provided for, shall be paid to the Commissioner of Agriculture as he may show by his bills has been expended in performing the duties required by this chapter. [Id.]

Art. 93. Definitions.—The words, “persons”, “vendor”, and “party” in interest and “whoever” as used in this chapter shall include both the plural and singular, as the case demands, and shall include corporations, companies, societies and individuals. [Id.]

CHAPTER FIVE.

COMMERCIAL FERTILIZERS.

| | Article | | Article |
|--|---------|-----------------------------|---------|
| Branding or labeling..... | 94 | Statement of sales..... | 102 |
| Statement to be furnished chemist..... | 95 | Seizure..... | 103 |
| Words prohibited on tag..... | 96 | Injunction..... | 104 |
| Tax tags..... | 97 | Sale to user..... | 105 |
| Analysis and publication..... | 98 | Containers and weights..... | 106 |
| Sale of inferior fertilizer..... | 99 | Analysis by purchaser..... | 107 |
| Forbidden materials in fertilizer..... | 100 | Definitions..... | 108 |
| Statement of quantity..... | 101 | | |

Art. 94. Branding or labeling.—All corporations, firms or persons, before selling or offering for sale any commercial fertilizer for use within this State, shall brand or attach to each bag, barrel or package a plainly printed statement, showing the brand or name of said fertilizer, the net weight of the contents of the package, the name and address of the corporation, firm or person registering said fertilizer and the minimum percentages guaranteed to be present of available phosphoric acid, of nitrogen and of potash soluble in distilled water. Only such potash shall be claimed to be present as sulphate, which is in excess of the quantity required to combine with the chlorine present, less one-half per cent. In bone meal, tankage, or other similar products, the phosphoric acid shall be claimed as total phosphoric acid, unless it be desired to claim available phosphoric acid only

in which latter case the guarantee must take the form above set forth. In the case of bone meal and tankage, information showing the fineness of the product may be branded or attached to the package, provided it takes a form approved by the State Chemist. All branding or labeling must be durable and legible, and so placed as to be easily read. [Acts 1911, p. 218.]

Art. 95. Statement to be furnished chemist.—All firms, corporations or persons, before selling or offering for sale any commercial fertilizer for use within this State, shall annually file with the chemist of the Texas Agricultural Experiment Station, herein termed the State Chemist, a certified statement giving the information required by the preceding article and the true names and sources of all the ingredients used in the manufacture of the said fertilizer. If the same fertilizer is sold under a different name or names, said fact shall be stated, and the different brands which are identical shall be named. If the source of any ingredient of said fertilizer is changed, notification must be promptly furnished the State Chemist. A copy of the brand or stamp on the bag or other package or on the label attached thereto shall be filed with the State Chemist on or before delivery to the dealers, agents or consumers in this State, which brand or stamp shall be uniformly used during the fiscal year for which it is filed, but such brand or stamp shall truly set forth the data required in the first article of this chapter, and be otherwise in accordance with its provisions. On receipt of the certified statement above described, and the copy of the brand or stamp, and after compliance with other requirements of this chapter, the State Chemist shall issue a certificate of registration for the commercial fertilizer, which shall be in force until the succeeding September first. A brand name previously registered shall not be allowed to be registered by another firm, corporation or individual, and no brand or name shall be allowed to be registered which is so nearly similar to another as to lead to uncertainty, confusion or fraud. The party whom the previous records of the State Chemist's office show to have first registered the name shall be permitted to retain it, subject, however, to appeal and hearing before the State Chemist to determine who is entitled to the brand; but the action of the State Chemist shall be without prejudice to the legal rights of the parties to the brand or trade-mark. No brand or name once registered shall be changed to a lower grade at any subsequent registration. The State Chemist shall publish annually a list of brands or trade-marks registered with him. [Id.]

Art. 96. Words prohibited on tag.—The words "high grade" shall not appear upon any bag or other package of any complete fertilizer which complete fertilizer contains, by its guaranteed analysis, less than ten per cent available phosphoric acid, one and sixty-five one-hundredths per cent nitrogen and two per cent of potash, or a grade or analysis of equal total commercial value; the word "standard" shall not appear upon any bag or other package of any complete fertilizer which contains, by its guaranteed analysis, less than eight per cent available phosphoric acid, one and sixty-five one-hundredths per cent nitrogen and two per cent potash, or a grade or analysis of equal total

commercial value; the words "high grade" shall not appear upon any bag or other package of any acid phosphate with potash, which shall contain, by its guaranteed analysis, less than thirteen per cent available phosphoric acid, and one per cent of potash, or a grade or analysis of equal total commercial value; the word "standard" shall not appear upon any bag or other package of any acid phosphate with potash which shall contain by its guaranteed analysis, less than eleven per cent available phosphoric acid, and one per cent potash, or a grade or analysis of equal total commercial value; the words "high grade" shall not appear upon any bag or other package of any plain acid phosphate which shall contain by its guaranteed analysis, less than fourteen per cent available phosphoric acid; and the word "standard" shall not appear upon any bag or other package of any plain acid phosphate which shall contain by its guaranteed analysis less than twelve per cent available phosphoric acid. The word "standard" shall not appear upon any bag or other package of acid phosphate with nitrogen which shall contain, by its guaranteed analysis, less than nine per cent of available phosphoric acid and two per cent nitrogen, or a grade or analysis of equal total commercial value. No commercial fertilizer shall be sold, offered or exposed for sale for use within this State, upon which the use of the words "high grade" or "standard" is prohibited by this article, unless the words "low grade" is printed in two inch letters in a conspicuous place upon the package of said commercial fertilizer. No claim or guarantee for less than one per cent of phosphoric acid or of potash, or for less than a 0.82 per cent of nitrogen, shall be allowed in any commercial fertilizer. [Id.]

Art. 97. **Tax tags.**—To defray the expenses connected with the inspection of commercial fertilizer sold, or exposed, or offered for sale in this State, and experiments relative to the value thereof, all firms, corporations or persons engaged in the manufacture or sale of commercial fertilizers shall pay to the State Chemist an inspection tax of twenty-five cents per ton (2000 pounds) for such commercial fertilizers sold or exposed, or offered for sale in this State in order to entitle the same to inspection and delivery, and shall attach a tag furnished by the State Chemist as evidence that said tax is paid, and goods so tagged shall not be liable to any further tax. But nothing in this article shall interfere with fertilizers passing through the State in transit; nor apply to the delivery of fertilizing materials in bulk, to fertilizing factories for manufacturing purposes. The fees received by the State Chemist and all the penalties collected under this chapter shall be deposited with the treasurer of the Agricultural and Mechanical College of Texas, and shall be expended under the direction of the Board of Trustees of said College in defraying the expenses of inspecting and analyzing commercial fertilizers, the preparation of tags, and bulletins, experiments relative to the value of fertilizers, and for such other purposes as the Board of Trustees of said College shall allow or direct. Firms, corporations or persons, or agents representing them, who have registered their brands in compliance with this law, shall forward to the State Chemist a request for tax tags,

stating that the said tags are to be used upon the brands of commercial fertilizers registered and sold in accordance with this chapter, and said request shall be accompanied with the inspection tax, whereupon the State Chemist shall issue tags to parties applying, who shall attach said tags to each bag, barrel or package thereof. All firms, corporations or persons are hereby forbidden to attach the tag prescribed by this article to any bag, barrel or package of any commercial fertilizer which has not been previously registered as required in this chapter, and which is not in accordance with all other provisions of this chapter. No tags shall be used after the end of the fiscal year for which they are issued, and they shall not be redeemed by the State Chemist. The fiscal year shall be comprised between the dates of September first and August thirty-first, inclusive. The State Chemist is hereby empowered to adopt a form for said tags. [Id.]

Art. 98. Analysis and publication.—The State Chemist shall cause one analysis or more to be made annually of such commercial fertilizer sold or offered for sale under the provisions of this Act as may be sampled under his direction. The State Chemist, in person or by deputy, shall have power to enter into any car, warehouse, store, building, boat, vessel, steamboat, or place, supposed to contain fertilizers for the purpose of inspection or sampling, and shall have the power to take a sample for analysis, not exceeding two pounds, from any package or lot of fertilizer found within the State. Said sample shall be drawn by means of a sampling tube of uniform diameter and at least eighteen inches long, placed in a jar or can, sealed and labeled by the inspector. Said sample shall be taken from not less than five bags, but in lots of 100 and over, from not less than 5 per cent of the entire number. All analyses shall be made by the official methods of the Association of Official Agricultural Chemists of North America. In the trial of any suit or action wherein is called in question the value or composition of any fertilizer, a certificate signed by the State Chemist and attested with his seal, setting forth the analysis made by the State Chemist, or under his direction, of the sample of said fertilizer analyzed by him under the provisions of this chapter, shall be prima facie proof that the fertilizer was of the value and consistency shown by his said analysis. And the said certificate of the State Chemist shall be admissible in evidence to the same extent as if it were his deposition taken in said action in the manner prescribed by law for the taking of depositions. The State Chemist shall issue at least one bulletin annually, setting forth the analyses of fertilizers made under the provisions of this chapter, the operations of the law, and such other information concerning violations or operations of this chapter, or otherwise pertaining to the sale of fertilizers as may be considered necessary. The State Chemist shall also investigate the composition, properties and agricultural values of fertilizers or of fertilizer materials or ingredients of fertilizers sold or offered for sale within the State of Texas, and shall publish his results as he may find. [Id.]

Art. 99. Sale of inferior fertilizer.—Whenever the State Chemist shall be satisfied that any lot or shipment of fertilizer

is four per cent or more below the guaranteed value in plant food, he shall assess such deficiency against the manufacturer or guarantor of the fertilizer, and require that the value of the deficiency be made good to all persons who have purchased said fertilizer; and the State Chemist may seize any fertilizer belonging to such manufacturer or guarantor if the deficiency shall not be paid within thirty days after notice to such manufacturer. Any person, firm or corporation who shall intentionally or knowingly sell or offer for sale any commercial fertilizer for use within this State which is materially below the guaranteed value in plant food, shall refund to all purchasers of said commercial fertilizer twice the value of the deficiency in plant food. [Id.]

Art. 100. **Forbidden materials in fertilizer.**—It shall be unlawful to sell or offer for sale in this State any fertilizer or fertilizing materials which contain an undue quantity of hair, or which contains leather scraps, peat, or other substances of low availability as food for plants, but in which such forbidden materials aid in making up the required or guaranteed analysis. Whenever the analysis by the State Chemist shall show the presence of any of these unlawful materials in goods registered for sale, publication shall be made in bulletins giving the name or brand of the goods and the unlawful substance contained in its composition. No manufacturer or seller of such goods shall be allowed to collect pay for the same, and if payment has been made it shall be returned by the seller to the purchaser. A copy of the bulletin containing the statement of the presence of said unlawful materials in the named goods shall be evidence in any court in this State in bar of payment and for recovery of money paid for goods so named. The presence of any forbidden material shall vitiate the whole, provided that manufacturers who desire to use any such material may do so under such regulations as the State Chemist may prescribe, if it be shown that it is available for a proper purpose. [Id.]

Art. 101. **Statement of quantity.**—It shall be lawful for the State chemist to require the officers, agents, or managers of any railroad, steamboat or other transportation company, transporting fertilizers or fertilizing material in the State, to furnish monthly statements of the quantity of such fertilizers, with the names of the consignor and consignee and the name or brand delivered on their respective lines at any and all points within this State. The State chemist is hereby empowered to compel such officers, agents or managers to submit their books for examination, if found expedient so to do. [Id.]

Art. 102. **Statement of sales.**—Every firm, corporation or person who has registered fertilizers for sale within this State, shall mail to the State chemist, on forms provided by the State chemist, within three days of each sale, shipment or delivery, a statement showing the official name of fertilizer, the quantity and the name and address of the person to whom the fertilizer is sold, and if such fertilizer is to be used for manufacturing purposes, the fact must be so stated, and also the composition of said fertilizer. Every corporation, firm or person registered to sell fertilizers within this State according to this chapter, shall annually on the first day of May, submit to the State

chemist a statement of their sales of said fertilizer since September 1, preceding, and the State chemist is hereby authorized to require other statements of sales, if necessary, in such form as he may prescribe. The sales or shipments of any individual, corporation, firm, or person shall not be disclosed. [Id.]

Art. 103. Seizure.—Any commercial fertilizer sold, offered, or exposed for sale within this State in violation of any provision of this chapter, shall be liable to seizure at the instance of the State chemist. Upon complaint being filed by the State chemist, in person or by duly authorized deputy, with any county judge or justice of the peace, describing the commercial fertilizer and the place where it is believed that said commercial fertilizer is sold, offered or exposed for sale in violation of law, such county judge or justice of the peace shall issue his warrant directing and commanding the sheriff or any constable of his county to search such place, and if the law is being violated, to seize the commercial fertilizer, and it shall be the duty of the officer to whom such warrant is delivered to search the place described in the warrant and to seize all commercial fertilizer found therein which is in violation of law, and if admission into said place is refused, the officer executing said warrant is hereby authorized to force open the same. If it appears at the hearing before the county judge or justice of the peace who issued said writ, that the commercial fertilizer was being sold, exposed or offered for sale in violation of any provision of this chapter, said commercial fertilizer shall be condemned and delivered to an officer or agent of the State chemist, to be sold by or under the direction of the State chemist, and the net proceeds paid to the treasurer of the Agricultural and Mechanical College of Texas, for the purpose of enforcing the provisions of this chapter. The sale shall be made at the courthouse door in the county in which the seizure is made, after thirty days' advertisement in some newspaper published in said county, or if no newspaper is published in such county, then by like advertisement in a newspaper published in the nearest county thereto having a newspaper. The advertisement shall state the name or brand of the goods, the quantity, and why seized and offered for sale. Said commercial fertilizer shall be sampled and subjected to analysis, if necessary, or tagged or branded and otherwise brought into compliance with the requirements of this chapter, before being sold. The State chemist, however, may, in his discretion, release the commercial fertilizer seized or condemned, upon the payment of the required tax or charge and all cost and expense incurred in any proceeding connected with such seizure and condemnation and upon compliance with all other requirements of this chapter. [Id.]

Art. 104. Injunction.—The Attorney General and the several county attorneys, when requested by the State chemist, shall institute suit to enjoin any person, firm or corporation, resident or non-resident, from manufacturing, or selling or soliciting orders for the sale of fertilizers in this State or selling fertilizers for use in this State without complying with all the provisions

of this chapter, which injunction may issue without bond or advanced cost. [Id.]

Art. 105. Sale to user.—Manufacturers, jobbers, dealers or manipulators of commercial fertilizers may sell acid phosphate or other commercial fertilizer in bulk to persons, individuals or firms who desire to purchase the same for their own use on their own land but not for sale or distribution, under rules prescribed by the State chemist which shall not be inconsistent with the provisions of this chapter; provided, that the inspection tax shall be paid upon such fertilizer as provided in this chapter. But if such bulk fertilizer is offered for sale or distribution it must be tagged and branded and otherwise accord with the provisions of this chapter. [Id.]

Art. 106. Containers and weights.—All fertilizers or fertilizing materials sold or offered for sale for use within this State shall be in bags or packages of one hundred pounds net weight, except as provided in the preceding article. The weight of fertilizers shall be ascertained by the inspectors of the State chemist before drawing a sample, or by the purchaser within ten days of delivery to him, in the presence of at least two disinterested witnesses, one chosen by the purchaser and the other by the manufacturer, and the purchaser shall within five days notify the manufacturer to make good the deficiency. Upon failure of the manufacturer to do so within twenty days thereafter he shall be liable to a penalty of three dollars for each sack, barrel or package, which immediately attaches and becomes recoverable by the State, one-half of the penalty so received to be paid to the purchaser in case of a sale. If any such manufacturer shall refuse, decline or neglect to be present or to choose a witness within six days as herein provided, after having been notified or requested in writing by the purchaser so to do, then he shall have forfeited his right to do so and the purchaser may select two witnesses who shall select a third, and the three shall proceed to ascertain said weight. [Id.]

Art. 107. Analysis by purchaser.—Any person not a dealer in, or agent for the sale of any fertilizer, who may purchase any commercial fertilizer for his own use within this State and not for sale, may take a sample of same for analysis, which analysis shall be made free of charge by or under the direction of the State chemist. Said sample or samples of fertilizer shall be taken in the presence of both purchaser and seller. One cupful of the fertilizer shall be taken from the top and one cupful from the bottom of each sack, provided that there are not more than five sacks in the lot, but in lots of 10 to 100 sacks, from not less than five sacks; in lots of 100 and over, from not less than five per cent of the entire number. The samples so taken shall be intermixed upon some surface so as not to mix dirt or any other substance with the fertilizer. After thorough mixing, at least one pound of the material must be put into each of two cans or jars, one of which securely sealed and marked in such a way as to surely identify the sample and show by whom it was sent, but the name of the fertilizer or of the person from whom it was

purchased need not be given, and must be forwarded by express, all charges prepaid, to the State chemist; the other sample, securely sealed, shall be turned over to the company or agent selling same. The purchaser shall also send with the sample a certificate signed by himself and two disinterested witnesses, stating that the sender has purchased the fertilizer for his own use and not for sale and that the sample was taken in the manner prescribed in this article, and that the sender has in his possession a certificate signed by himself and the two witnesses, giving the name of the fertilizer and manufacturer thereof as tagged or branded on the packages and will forward this certificate to the State chemist on receipt of the analysis. If the person, company or agent shall refuse, decline or neglect to witness the taking of samples, after having been requested or notified by the purchaser in writing six days before so to do, then the sample may be taken in the manner already described in the presence of two disinterested witnesses. Any person having sent a sample for analysis under the provisions of this article, who shall, after having received the report of analysis of same, refuse to furnish the required certificate, shall thereafter forfeit the privilege of analysis of fertilizers under this article. [Id.]

Art. 108. **Definitions.**—The terms “commercial fertilizer,” “misbranded,” and “adulterated,” as used in this chapter, shall have the same meaning as is given those terms in Article 1716 of the Penal Code. [Id.]

CHAPTER SIX.

FRUITS AND VEGETABLES.

| | Article | | Article |
|---------------------------------|---------|----------------------------------|---------|
| Standards of containers..... | 109 | Snap beans..... | 114 |
| Grades and packs..... | 110 | Texas Bartlett pear grades..... | 115 |
| Culls..... | 111 | Texas Irish potato grades..... | 116 |
| Texas Bermuda Onion grades..... | 112 | Inspectors..... | 117 |
| Texas cabbage grades..... | 113 | Commissioner of Agriculture..... | 118 |

Art. 109. **Standards of containers.**—The following standards of containers for the shipment of fruits and vegetables in this State are hereby established and adopted as State standards.

1. **Standard Bushel Basket.** The standard bushel basket shall contain not less than 2150.4 cubic inches in the basket proper, regardless of the manner in which the lid is made.

2. **Standard Four Basket Crate.** The basket in said crates shall hold not less than three quarts dry measure, and the dimensions of such baskets shall be 5x8 inches at the bottom, 6x10 inches at the top, and 4 inches deep, and shall contain not less than 201.6 cubic inches. The heads of the crates holding said baskets shall be $4\frac{1}{2}$ inches wide by 11 inches at the bottom, and 13 inches at the top in length and not less than $\frac{7}{16}$ of an inch thick. The veneer or boards for the bottoms, sides and tops shall be not less than $4\frac{1}{2}$, 4, and $5\frac{1}{2}$ inches wide respectively, and not less than $\frac{1}{7}$ of an inch thick and 22 inches long. Both crates and baskets shall be made of good, substantial material, sufficiently strong to withstand the ordinary strain incident to transportation and handling.

3. Standard Six-basket Crate. Each basket of a six-basket crate shall contain not less than 268.8 cubic inches.

4. Standard Folding Onion Crate. The standard folding onion crate shall not be less than 19 $\frac{3}{8}$ inches long, 11 $\frac{3}{16}$ wide and 9 $\frac{13}{16}$ inches deep, inside measurements, containing not less than 2154.4 cubic inches.

5. Standard Orange Box. The dimensions of the standard orange box shall be 12x12x12 inches for each one-half of box, inside measurement, and the dimensions of a one-half (or strap box) shall be 12x12x6 inches for each one-half box, inside measurement.

6. Standard Berry Box or Crate. The standard quart berry box or crate shall contain not less than 24 quart baskets containing 67.2 cubic inches each, dry measure; and the standard pint berry box or crate shall hold not less than 24 pint baskets, containing not less than 33.6 cubic inches, dry measure. [Acts 1917, p. 396, Acts 3rd C. S. 1917, p. 55.]

Art. 110. **Grades and packs.**—The following “grades and packs” are hereby established as State standards for the State of Texas:

(a) Standard Peach Grades and Packs. Standard peach grades are three in number; namely, Fancy, Choice or No. 1, and No. 2.

Fancy peaches shall be medium to large size, good color for the variety named, firm and sound, or proper maturity for shipment to distant markets, carefully picked and closely packed in bushel baskets or crates of four or six basket capacity.

Choice or No. 1 peaches shall be of average size and color for the variety named, sound, firm, practically free from blemishes and defects, of proper maturity for shipment to distant markets, carefully picked and closely packed in bushel baskets or crates of four or six baskets capacity.

No. 2 peaches shall be all such sound fruit as is not good enough for No. 1's, such as small, slightly uneven surface, greens, ripens or slight defects of whatever kind, but suitable for market purposes and for reasonably distant shipments. Each and every package of fruits and vegetables offered for sale or shipment shall have plainly stamped on it the grade of such fruits or vegetables and the name and post office address of the person shipping the same, provided that this shall apply only to shipments of such fruits and vegetables as have grades established by law.

Culls. Any and all peaches that are too small in size, ill shaped and poor in general quality to measure up to any of the above grades, shall be known as culls, unfit for market purposes, and shall not be shipped unless branded “Culls” and shipped in a separate consignment.

Texas Standard Peach Packs. The standard peach packs for six basket crate shall be eight in number; namely, 72's, 96's, 138's, 162's, 180's, 216's, 270's and 324's.

To Pack 72's. (Begin at end of basket.) Place 1 and 2 alternately in 4 rows, two layers high, 6 to the layer on end, blossom end up.

To Pack 96's. Place 2 and 2 alternately in 4 rows, 2 layers high, 8 to the layer on end, blossom end up.

To Pack 138's. Place 2 and 1 alternately in 5 rows, 3 layers high, 8 and 7 alternately to the layer, flat.

To Pack 162's. Place 2 and 1 alternately in 6 rows, 3 layers high, 9 to the layer, flat.

To Pack 180's. Place 2 and 2 alternately in 5 rows, 3 layers high, 10 to the layer, flat.

To Pack 216's. Place 2 and 2 alternately in 6 rows, 3 layers high, 12 to the layer, flat.

To Pack 270's. Place 3 and 3 alternately in 5 rows, 3 layers high, 15 to the layer, flat.

To Pack 324's. Place 3 and 3 alternately in 6 rows, 3 layers high, 18 to the layer, flat.

All packages must be filled tight, in all layers from bottom to top, and extend approximately 1 inch above the top rim or edge of the package, whether it be a bushel basket, crate basket, or box. All peaches in the same crate or package shall be as nearly as possible of a uniform degree of ripeness.

(b) Texas Standard Tomato Grades and Packs. Texas standard tomato grades may be two in number; namely, Fancy and Choice. Texas standard tomato packs shall be seven (7) in number for the six basket crate and nine (9) in number for the four basket crate and the manner in which tomatoes are packed will partly determine their grade.

☐ Texas Standard Six Basket Crate. Fancy. To Pack 72's. Place 2 and 2 alternately in 3 rows, 2 layers high, 6 to layer, blossom end up, 12 to the basket.

☐ To Pack 84's. Place 2 and 2 alternately in 4 rows on edge 8 to the layer for first layer, and 2 and 2 alternately in 3 rows, flat, blossom end up, 6 to the layer for the first layer, and 3 and 3 alternately in 3 rows, on edge, blossom end out; 9 to the layer for the second or last layer; 15 to the basket.

☐ To Pack 108's. Place 3 and 3 alternately in 3 rows, on edge, 9 to the layer for the first layer, and 3 and 3 alternately in 3 rows on edge, blossom end out, 9 to the layer for the second or last layer, 18 to the basket.

☐ Choice:

☐ To Pack 120's. Place 2 and 2 alternately in 4 rows, on edge, 8 to the layer for the first layer, and 3 and 3 alternately in 4 rows, on edge, blossom end out, 12 to the layer for the second or last layer, 20 to the basket.

☐ To Pack 144's. Place 3 and 3 alternately in 4 rows, on edge, 12 to the layer for the first layer and 3 and 3 in 4 rows, on edge, blossom end out, 12 to the layer for the second or last layer, 24 to the basket.

To Pack 180's. Place 3 and 3 alternately in 5 rows, on edge, blossom end out, 15 to the layer for the second or last layer, 30 to the basket.

Texas Standard Four Basket Crate: Fancy:

To Pack 48's. Place 2 and 2 alternately in 3 rows, flat, blossom end up, 6 to the layer for the first layer and 2 and 2 alternately in 3 rows, flat, blossom end up, 6 to the layer for the second or last layer, 12 to the basket.

To Pack 56's. Place 2 and 2 alternately in 4 rows, on edge, 8 to the layer for the first layer and 2 and 2 alternately in 3 rows, flat, blossom end up, 6 to the layer for the second or last layer, 14 to the basket.

To Pack 60's. Place 2 and 2 alternately in 3 rows, flat, blossom end up, 6 to the layer for the first layer, and 3 and 3 alternately in 3 rows on edge, blossom end out, 9 to the layer for the second or last layer, 15 to the basket.

To Pack 64's. Place 2 and 2 alternately in 3 rows, flat, blossom end up, 6 to the layer for the first layer, and 1 and 2 alternately in 7 rows, on edge, blossom end out, 10 to the layer, 16 to the basket.

To Pack 72's. Place 3 and 3 alternately in 3 rows, on edge, 9 to the layer, for the first layer, and 3 and 3 alternately in 3 rows, on edge, blossom end out, 9 to the layer for the second or last layer, 18 to the basket.

Choice:

To Pack 84's. Place 3 and 3 alternately in 3 rows, on edge, 9 to the layer, for the first layer, and 3 and 3 alternately in 4 rows, on edge, blossom end out, 12 to the layer for the second or last layer, 21 to the basket.

To Pack 88's. Place 3 and 3 alternately in 3 rows, on edge, 9 to the layer for the first layer and 1 and 2 alternately in 9 rows, on edge, blossom end out, 18 to the layer, 22 to the basket.

To pack 96's. Place 3 and 3 alternately in 4 rows, on edge, 12 to the layer for the first layer, and 3 and 3 alternately in 4 rows, on edge, blossom end out, 12 to the layer for the second or last layer, 24 to the basket.

To Pack 104's. Place 1 and 2 alternately in 9 rows, on edge, 13 to the layer for the first layer, and 1 and 2 alternately in 9 rows, on edge, 13 to the layer, blossom end out, for the second or last layer, 26 to the basket. All tomatoes in the same crate or package shall be as nearly as possible of a uniform degree of ripeness.

All fruit for both fancy and choice grades must be sound and free from undesirable scars, "cat faces", and damage from insects or other causes.

(c) Texas Standard Orange Grades.

Texas orange, satsuma, tangerine and grape fruit grades may be four in number, namely; Fancy Bright, Bright, Fancy Russet and Russet.

Fancy Brights shall be bright color, shapely form, practically free from any skin defects or blemishes, fine texture, reasonably thin, heavy, juicy and free from frost damage.

Brights shall be fairly bright color, texture not as fine or smooth as Fancy Brights, skin thicker, and may have other reasonable skin defects that do not affect the merchantable quality of the fruit.

Fancy Russets shall be of the same general quality as fancy brights, except in color which shall be "Golden" russet.

Russets shall be same general quality as Brights, except in color, which may be rusty brown, not "Golden" enough for fancy Russets.

Texas Standard Orange Packs. The Standard orange

packs shall be 8 in number; namely, 96's, 126's, 150's, 176's, 200's, 216's, 252's, and 288's.

To Pack 96's. Put 3 and 3 alternately in 4 rows, 4 layers high, 12 to layer.

To Pack 126's. Put 3 and 2 alternately in 5 rows, 5 layers high, 13 and 12 alternately to layer.

To Pack 150's. Put 3 and 3 alternately in 5 rows, 5 layers high, 15 to the layer.

To Pack 176's. Put 4 and 3 alternately in 5 rows, 5 layers high, 18 and 17 alternately to the layer.

To Pack 200's. Put 4 and 4 alternately in 5 rows, 5 layers high, 20 to the layer.

To Pack 216's. Put 3 and 3 alternately in 6 rows, 6 layers high, 18 to the layer.

To Pack 252's. Put 4 and 3 alternately in 6 rows, 6 layers high, 21 to the layer.

To Pack 288's. Put 4 and 4 alternately in 6 rows, 6 layers high, 24 to the layer.

The Standard Satsuma and Tangerine packs shall be 7 in number; namely 90's, 106's, 120's, 168's, 196's, 216's and 224's.

To Pack 90's. Put 3 and 3 alternately in 5 rows, 3 layers high, 15 to the layer.

To Pack 106's. Put 4 and 3 alternately in 5 rows, 3 layers high, 18 and 17 alternately to the layer.

To Pack 120's. Put 4 and 4 alternately in 5 rows, 3 layers high, 20 to the layer.

To Pack 168's. Put 4 and 3 alternately in 6 rows, 4 layers high, 21 to the layer.

To Pack 196's. Put 4 and 3 alternately in 7 rows, 4 layers high, 25 and 24 alternately to the layer.

To Pack 216's. Put 5 and 4 alternately in 6 rows, 4 layers high, 27 to the layer.

To Pack 224's. Put 4 and 4 alternately in 7 rows, 4 layers high, 28 to the layer.

All oranges, satsumas and tangerines to conform to this standard must be packed "stem-in, twist" with blossom end down in first layer and stem end down in all other layers.

The standard grapefruit packs shall be 7 in number; namely, 28's, 36's, 46's, 54's, 64's, 80's, 96's.

To Pack 28's. Put 2 and 1 alternately in 3 rows, 3 layers high, 5 and 4 alternately to the layer.

To Pack 36's. Put 2 and 2 alternately in 3 rows, 3 layers high, 6 to the layer.

To Pack 46's. Put 3 and 2 alternately in 3 rows, 3 layers high, 8 and 7 alternately to the layer.

To Pack 54's. Put 3 and 3 alternately in 3 rows, 3 layers high, 9 to the layer.

To Pack 64's. Put 2 and 2 alternately in 4 rows, 4 layers high, 8 to the layer.

To Pack 80's. Put 2 and 2 alternately in 4 rows, 5 layers high, 8 to the layer.

To Pack 96's. Put 3 and 3 alternately in 4 rows, 4 layers high, 12 to the layer.

All grapefruit to conform to this standard must be packed on edge, except the 80 pack, which should be packed flat in the same manner as oranges.

In the enforcement of the above standards of grade and pack, an allowance may be made of not exceeding ten per cent difference in size between the fruit on top and in the interior of the package. A variation of not more than three per cent of actual count may be made in the number of any kind of fruit prescribed for each particular pack. [Acts 1917, p. 396.]

Art. 111.—Culls.—Any and all fruits and vegetables for which standard grades and packs are established in this chapter or for which standard grades and packs may be hereafter promulgated by the Commissioner of Agriculture under the authority of this law, that are too small in size, ill shaped, and too poor in general quality to measure up to the grades herein established, shall be classed as “culls,” and shall not be shipped, unless branded “culls” and shipped in a separate consignment. [Acts 3rd C. S. 1917, p. 55.]

Art. 112. Texas Bermuda Onion Grades.—

Grade No. 1.—This grade shall consist of onions which are sound, mature, bright, well-shaped, of one variety, free from doubles, splits, bottle necks, and seed stems, and practically free from damage caused by dirt or other foreign matter, moisture, sunburn, cuts, disease, insects, or mechanical means. The minimum diameter shall be two inches. In order to allow for variation incident to commercial grading and handling, six per centum, by weight, of any lot need not meet the foregoing requirements of this grade. In the case of yellow onions, not more than five per centum, by weight, of any lot may be noticeably pink.

If any lot which meets the requirements of this grade contains more than ten per centum, by weight, of onions with a minimum diameter of three and one-half inches, the grade shall be “Grade No. 1, Large.”

Boiler Grade.—This grade shall consist of onions which are sound, mature, bright, well-shaped, of one variety, free from doubles, splits, bottle necks, and seed stems and practically free from damages caused by dirt or other foreign matter, moisture, sunburn, cuts, disease, insects, or mechanical means. The minimum diameter shall be one inch and the maximum diameter shall be two inches. In order to allow for variations incident to commercial grading and handling, six per centum by weight, of any lot need not meet the foregoing requirements of this grade. In case of yellow onions, not more than five per centum, by weight, of any lot may be noticeably pink.

Grade No. 2.—This grade shall consist of onions not meeting the requirements of Grade No. 1, which are sound, of one variety, free from doubles, splits, bottle necks and seed stems, and practically free from damage caused by moisture, sunburn, cuts, disease, insects, or mechanical means. The minimum diameter shall be two inches. In order to allow for variations incident to commercial grading and handling, ten per centum by weight, of any lot need not meet the requirements of this grade

If any lot which meets the requirements of this grade contains more than ten per centum, by weight of onions, with a minimum diameter of three and one-half inches, the grade shall be "Grade No. 2, Large."

Grade No. 3.—This grade shall consist of onions not meeting the requirements of any of the foregoing grades, which are sound, free from doubles, splits, bottle necks, and seed stems, and practically free from damage caused by moisture, sunburn, cuts, disease, insects or mechanical means. The minimum diameter shall be one inch. In order to allow for variations incident to commercial grading and handling, ten per centum, by weight, of any lot, need not meet the foregoing requirements of this grade.

Culls.—Culls shall consist of doubles, splits, bottle necks, and seed stems, or other onions which do not meet the requirements of any of the foregoing grades.

Terms Defined.—"Sound" means free from water-soaked, decayed, sprouted, or otherwise unsound onions.

"Mature" means having reached a state of development at which the onions are firm—not soft or spongy.

"Bright" means having the normal, attractive, pearly luster of Bermuda onions.

"Well-shaped" means the general appearance of being round—not three, four, or five-sided, or badly pinched by dry, hard soil, or thick-necked, but need not be of the exact, typical, flat Bermuda shape.

"One variety" means one variety or type, such as the Crystal Wax (white, or White Bermuda (yellow), or Red Bermuda (red), and not a mixture of different varieties or types.

"Practically free from damage" means that the appearance shall not be injured to an extent readily apparent upon casual examination.

"Sunburn" means discoloration due to exposure to the sun, but does not mean the green color running down the "veins" in the Crystal Wax (white) variety, unless such green color covers the surface between the veins.

"Diameter" means the greatest dimension at right angles to a straight line running from stem to the root.

"Noticeable pink" means the pink color often found in the White Bermuda (yellow) variety which is to be readily apparent upon casual examination. [Acts 4th C. S. 1918, p. 145.]

Art. 113. Texas Cabbage Grades.—

Grade No. 1.—This grade shall consist of sound, green colored, partially trimmed, and reasonably hard heads, weighing not less than one and one-half pounds nor more than eight pounds each; which are free from cracked or over-ripe heads, stem rot and other diseases, and practically free from dirt, worm holes and lice.

In order to allow for variations incident to commercial grading and handling, five per centum by weight, of any lot, may be under prescribed size, and in addition, three per centum, by weight, of any such lot, may be below the remaining requirements of this grade.

Grade No. 2.—This grade shall consist of sound cabbage not meeting the requirements of Grade No. 1.

Terms Defined. "Over-ripe" means such cabbage as shows signs of going to seed and turning white from age.

"Partially Trimmed" means that not more than three outside leaves shall be left on the head. [Id.]

Art. 114. Snap Beans.—

Grade No. 1.—This grade shall consist of sound, bright, clean beans of one variety and color, from one-half to full grown; which are free from leaves, stems, spots, insect damage, rust, or other diseases, and over-ripe pods.

In order to allow for variation incident to commercial grading and handling, three per centum, by weight, may be of another variety of the same color.

Grade No. 2.—Any beans not meeting the above requirements shall be classed as No. 2.

All beans are to be packed in hamper weighing, when packed, not less than 17 pounds net weight for one-half bushel hamper, and 34 net weight for one bushel.

Terms Defined.—"Over-ripe" are such pods as will not snap on being broken, and where there is an absence of abundant juice (water) in the pods; also, when the beans in the pod show evidence of maturing.

Art. 115. Texas Bartlett Pear Grades.—

Extra Fancy. Shall consist of Bartlett Pears clean, bright, natural color and shape, sound, free from worms, specks, blemishes, bruises or limb scar red fruit.

Fancy. Shall be the same as "Extra Fancy," except it may contain ten per cent slightly scarred fruit and slight blemishes that do not injure texture of the skin or its keeping qualities.

Choice. Shall be the same as "Fancy," except as it may contain ten per cent of fruit that is misshapen and with worm strings that have healed over.

Culls. Any pears not measuring up to the above specifications shall be branded as "Culls."

Packing.—Fruit shall be tightly packed in clean standard boxes, one end stamped with the grade, number of pears, name of and post office of packer.

Packs Defined.—"Four Tier" shall be packed in four layers. Minimum pack 120 pears to the box.

"Five Tier" shall be packed in six layers. Minimum pack 135, maximum pack 180 pears to box.

"Six Tier" shall be packed in six layers, containing 216 pears to the box, or five layers containing 195 or 210 to the box, but will be considered "six tier."

Art. 116. Texas Irish Potato Grades.—

Grade No. 1. This grade shall consist of sound potatoes of similar varietal characteristics, which are practically free from dirt or foreign matter, frost injury, sunburn, second growth, cuts, scab, blight, dry rot, and damage caused by disease, insects, or mechanical means. The minimum diameter shall be one and three-fourths inches. In order to allow for variation incident to

commercial grading and handling, five per centum, by weight, of any lot, may be under the prescribed size, and, in addition, three per centum by weight of any such lot may be below the remaining requirements for quality of this grade.

Grade No. 2. This grade shall consist of potatoes of similar varietal characteristics, which are practically free from frost injury and decay, and which are free from serious damage caused by dirt or other foreign matter, sunburn, second growth, cuts, scab, blight, dry rot, or other disease, insects, or mechanical means. The minimum diameter shall be one and one-half inches. In order to allow for variations incident to commercial grading and handling, five per centum, by weight, of any lot, may be under the prescribed size, and, in addition, five per centum, by weight, of any such lot, may be below the remaining requirements for quality of this grade.

Culls. Any potatoes that do not measure up to the requirements for size and general quality in the grades number one and two shall be classed as "Culls," and shall not be shipped unless branded or marked "Culls" and shipped in separate consignments.

Three per centum, by weight, shall be allowed on all Texas grown new potatoes, for natural shrinkage. In instances where dirt adheres to the potatoes a fair and reasonable estimate by weight, of such dirt, shall be made and deducted from the gross weight of the potatoes and dirt, which estimate may be made by removing and weighing the dirt from three or more samples of not less than fifty pounds each, that, when taken together, represents the average conditions of the potatoes.

All potato containers must have some mark or brand showing the name and post-office address of the grower or shipper.

Terms Defined. "Practically Free" means the appearance shall not be injured to an extent readily apparent upon casual examination, and that any damage from the causes mentioned can be removed by the ordinary process of paring without appreciable increase in waste over that which would occur if the potato were perfect. Loss of the outer skin (epidermis) only, shall not be considered as an injury to the appearance.

"Diameter" means the greatest dimensions at right angles to the longitudinal axis.

"Free from serious damage" means the appearance shall not be injured to the extent of more than twenty per centum of the surface and that any damages from the causes mentioned can be removed by the ordinary processes or paring without increase in waste of more than ten per centum, by weight, over that which would occur if the potato were perfect. [Id.]

Art. 117. **Inspectors.**—The Commissioner of Agriculture shall appoint inspectors to inspect fruits and vegetables at the different shipping or loading stations in this State, when called upon by the growers, shippers or shippers' agents representing the growers, and the expenses of such inspectors shall be paid by said growers, shippers or shippers' agents. Where two or more shipping agents are operating at the same shipping point, and one of them requests a State Inspector and such inspector is

appointed by the Commissioner of Agriculture, each shipping agency at said shipping point shall be required to come under the State Inspector, and each shall pay his pro rata share of the expense of inspection.

In the grading, packing and inspection of onions, only those shippers who desire State Inspection shall be required to have their onions inspected under State authority, and all railway and express companies may accept and ship onions not inspected by State Inspectors, provided that graded and non-graded onions shall not be shipped in the same car, except in less than carload lots.

The Commissioner shall furnish a blank form or certificate to all State Inspectors, to be filled out by them to accompany each carload of fruits and vegetables, where State inspection is enforced. Said certificate shall contain the name and number of the car, the kind and grade of fruits or vegetables and number of the car, the kind and grade of fruits or vegetables, and number of packages contained, the date of shipment and name of inspector, together with the words, "Graded and Packed under State Inspection." [Acts 1917, p. 396; Acts 1919, p. 93.]

Art. 118. Commissioner of Agriculture.—The Commissioner of Agriculture is hereby authorized and empowered to enforce each provision of this chapter, and he shall promulgate and publish all necessary rules and regulations for the enforcement of this law, and such other information as will aid fruit and truck growers and the manufacturers of containers in complying with the provisions of this chapter. [Acts 1917, p. 401.]

CHAPTER SEVEN. NURSERY STOCK.

| | Article | | Article |
|---|---------|---------------------------------------|---------|
| Control | 119 | Nursery stock shipped into State..... | 128 |
| Diseases and pests | 120 | May revoke certificate | 129 |
| Abatement of nuisance | 121 | Transportation companies not lia- | |
| Notice | 122 | ble | 130 |
| Treatment or destruction | 123 | Unlawful shipments | 131 |
| Appeal | 124 | Chief inspector | 132 |
| Expense of treatment | 125 | Inspection fees | 133 |
| Examination and certificate | 126 | Salary and expenses | 134 |
| Certificate to accompany shipment | 127 | Definitions | 135 |

Art. 119. [4458-68] Control.—The protection of fruit trees, shrubs, and plants shall be under the supervision and control of the Commissioner of Agriculture. The Commissioner shall prepare and enforce suitable rules and regulations for the traffic and shipment of cape jasmine, cut flowers, and such greenhouse and floral shipments as may require control, and for the inspection of nurseries, greenhouses, orchards, forest trees, and all products originating from the same, within the meaning of this chapter. He shall enforce the provisions of this chapter and make and enforce such other rules and regulations not inconsistent herewith as may be deemed necessary to carry the same into effect. He shall also provide such rules and regulations concerning city, private or public parks, avenues of shade trees, shrubbery and ornamentals along the streets of cities, for city residences, and city property generally, as will secure a pro-

tection and immunity from insect pests and contagious diseases intended to be provided for by this law. [Acts 1909, p. 316.]

Art. 120. [4459] **Diseases and pests.**—No person in this State shall knowingly or wilfully keep any peach, almond, apricot, nectarine or other trees affected with the contagious disease known as yellows, nor keep for sale any apple, peach, plum or other tree affected with nematode galls, crown galls, fire blight or root rot. No person shall knowingly or wilfully keep any plum, cherry or other trees affected with the contagious disease or fungus known as black knot or plum canker; nor any tree, shrub or plant infested with or by the San Jose scale or other insect pest dangerously injurious to or destructive of trees, shrubs or other plants; nor any grapefruit, orange or lemon trees, citrus stocks, cape jasmines or other trees, plants or shrubs infested with "white fly," Florida scale, cottony cushion scale, wooly aphid, or other injurious insect pests, or citrus canker, or other contagious diseases of citrus fruits; nor subtropical plants, shrubs, evergreens or ornamentals; nor any china, forest or other trees, shrubs, or plants, infested with injurious insect pests or contagious diseases. [Acts 1921, p. 100.]

Art. 121. [4459] **Abatement of nuisance.**—Every such infected or diseased tree, shrub or plant shall be a public nuisance, and it shall be the duty of the Commissioner or his representatives to abate it. For such purpose, he shall have power to enter upon any premises so affected for the purpose of legally inspecting and treating or destroying the same, and no damages shall be awarded against the Commissioner or his representatives for the exercise of such duties. [Id.]

Art. 122. [4459] **Notice.**—If it shall be determined that any such tree, shrub, or plant should be destroyed, written notice, signed by the Commissioner or his representative, shall be delivered in person to the owner of such trees, shrubs or plants, or left at his usual place of residence, or left with the person in charge of such premises, trees, plants, or shrubs, if such owner be not a resident of the locality. Such notice shall contain a brief statement of the facts found to exist, whereby it is necessary to destroy such trees, shrubs, or plants, and call attention to the law under which it is proposed to destroy them. [Id.]

Art. 123. [4459] **Treatment or destruction.**—Within ten days from the receipt of such notice, the owner shall remove and burn all such diseased or infected trees, shrubs, or plants. If, however, in the judgment of said Commissioner or his representative, any such tree, shrub, or plant can be treated with sufficient remedies, he may direct such treatment to be carried out by the owner under the direction of the Commissioner or his representative. [Id.]

Art. 124. [4459] **Appeal.**—In case of objections to the findings of the chief inspector, employe or representative of the commissioner, an appeal may be made to the Commissioner, whose decision shall be final. An appeal must be taken within five days from the service of said notice, and shall act as a stay

of proceedings until it is heard and decided. If the decision on such appeal be against such owner, he shall be ordered to forthwith proceed with such treatment or destruction, and upon his refusal or neglect to do so, then the Commissioner, or chief inspector or employe or representative appointed by him, may employ all necessary assistance for that purpose and such representative or representatives, agent or agents, employe or employes, may enter upon any or all premises necessary for the purpose of such treatment or destruction, and shall forthwith treat or destroy such trees, shrubs, or plants. [Id.]

Art. 125. [4459] **Expense of treatment.**—All charges and expenses of such treatment or destruction shall be paid by such owner or person in charge of said trees, shrubs, or plants, and shall constitute a legal claim against such owner or person in charge, which may be recovered by suit brought by such Commissioner or chief inspector or the county attorney of the county where such premises are situated, together with all costs, including an attorney fee of ten dollars, to be taxed as other costs.

Art. 126. [4460] **Examination and certificate.**—To ascertain whether nursery stock is infected with diseases or pests, the Commissioner shall cause to be made at least once each year, an examination of each nursery or other place where nursery stock is exposed for sale. If such stock so examined is apparently free in all respects from any contagious or infectious disease or dangerously injurious insect pests, the Commissioner shall issue to the owner or proprietor of such stock a certificate reciting that the stock so examined was at the time of such examination apparently free from any such disease or pest. No such certificate shall be negotiable or transferable, and if sold or transferred, it shall be void. [Acts 1909, p. 316.]

Art. 127. [4461] **Certificate to accompany shipment.**—All nursery stock consigned for shipment, or shipped by freight, express or other means of transportation, shall be accompanied by a copy of said certificate attached to each car, box, bale, bundle or package. When such box, bale, bundle, or package, contains nursery stock to be delivered to more than one person, partnership, or corporation, each portion of such nursery stock to be delivered to such person, partnership or corporation, shall also bear a copy of the certificate of inspection issued as provided in the preceding article. [Id.]

Art. 128. [4462] **Nursery stock shipped into State.**—No person, partnership, or corporation outside the State shall be permitted to ship nursery stock into this State without having first filed with the Commissioner of Agriculture a certified copy of his or their certificate of inspection issued by the proper authorities in the State from which the shipment originates. Such certificate must show that the stock to be shipped has been examined by the proper officers of inspection in such State, and that it is apparently free from all dangerous insect pests or contagious diseases and when fumigation is required by the Commissioner of Agriculture, that the stock has been properly fumigated. Upon receipt of such certificate, the Commissioner shall make such investigation as to moral standing and integrity

as will satisfy him that the applicant is entitled to receive such certificate. A fee of five dollars shall be required from the applicant, upon the receipt of which the Commissioner may issue a certificate permitting the applicant to ship such nursery stock into this State.

Each box, bale or package of nursery stock from outside the State shall bear a tag on which is printed a copy of the certificate of this State, and also a copy of the certificate of the State in which it originates. [Id.]

Art. 129. [4464] **May revoke certificate.**—The Commissioner may revoke any certificate issued under this chapter when he finds that false representations have been made by the party to whom the same was issued, or upon refusal of such party to comply with the law, instructions or rules given by the Commissioner as authorized by this chapter. [Id.]

Art. 130. [4463] **Transportation companies not liable.**—No transportation company or common carrier shall be liable for damages to the consignee or consignor for refusing to receive for transportation or deliver such trees, packages, bales, bundles or boxes when not accompanied by copies of the certificates provided for in the second preceding article. The agent of any such company or carrier shall immediately report to the Commissioner of Agriculture any such shipment not so accompanied. [Id.]

Art. 131. [4463] **Unlawful shipments.**—The Commissioner shall inspect shipments of nursery stock into this State, or originating within this State without tags or proper certificates as above provided for, for diseases or pests, and if infected, the same shall be dealt with as infected nursery stock. [Id.]

Art. 132. [4465] **Chief Inspector.**—The Commissioner shall appoint one person who shall be designated Chief Inspector, who shall inspect, or cause to be inspected, under the direction of the Commissioner, all trees, plants, and shrubs of every kind whatsoever, grown, produced or offered for sale by any nursery, dealer, person or corporation in this State, and also inspect, or cause to be inspected, all orchards provided for above. Such inspector may employ such persons or experts as may be necessary to enforce these provisions. [Id.]

Art. 133. [4465] **Inspection fees.**—The Commissioner shall fix and collect reasonable fees for the inspection herein provided for, of not less than two dollars and fifty cents nor more than fifteen dollars for each inspection. [Id.]

Art. 134. [4465] **Salary and expenses.**—Each person employed by the Commissioner as herein provided shall be paid a salary not exceeding five dollars per day and traveling expenses while actually engaged in the performance of his duties. [Id.]

Art. 135. [4467] **Definitions.**—The terms “nursery stock”, “nursery” “dealer,” and “agent of a nursery or dealer,” as used in this chapter, shall have the same meaning as is given those terms by Article 1698 of the Penal Code. Any such agent shall have proper credentials from the dealer he represents or cooperates with; and failing in that, any such agent shall be classed as a dealer, and subject to such rules as may be adopted relating

to them, and shall be amenable to the same penalties for the violation of any provision of this law. [Id.]

CHAPTER EIGHT.

EXPERIMENT STATIONS.

1. STATE EXPERIMENT STATIONS.

| | | | |
|----------------------------|-------------|---------------------------|-------------|
| Purposes | Article 136 | Leases | Article 143 |
| Main station | 137 | Inspections | 144 |
| Supervising Board..... | 138 | Expenses of Board..... | 145 |
| Powers of Board..... | 139 | Director of stations..... | 146 |
| Sale of stations..... | 140 | Reports | 147 |
| Valley Citrus Station..... | 141 | Bulletin | 148 |
| Donations | 142 | Disbursements | 149 |

Art. 136. **Purposes.**—There shall be established at such places in this State as the board hereinafter named may deem proper, experiment stations for the purpose of making experiments and conducting investigations in the planting and growing of agricultural and horticultural crops and soils, and the breeding, feeding and fattening of livestock for slaughter. Proceeds from the sale, barter or exchange of crops raised on any of said experiment stations shall go to defray the expenses of operating the same. [Acts 1st C. S. 1913, p. 98.]

Art. 137. **Main station.**—The experiment station located at the Agricultural and Mechanical College in Brazos County which is in part supported by the Federal Government shall remain at said point as a permanent institution. It shall be known as the Main State Experiment Station, and shall be under the supervision of the Board of Directors of such college. Such Board shall have the authority to accept from the Federal Government such aid in its support as may be provided by Congress. All other experiment stations of whatever character, now or which may hereafter be established under the authority of this subdivision shall be considered sub-stations. [Id.]

Art. 138. **Supervising Board.**—The Board of Directors of such college is vested with the authority, duties, and powers conferred by this subdivision upon said Board, and shall exercise a general supervision and direction over all sub-experiment stations established hereunder. [Acts 1st C. S. 1921, p. 148.]

Art. 139. **Powers of Board.**—The Board shall have power:

1. To establish sub-experiment stations at such places in this State as it shall deem proper, in addition to those now in operation.

2. To abandon or discontinue any sub-station which may become undesirable for experiment purposes, and if deemed necessary to establish others in their stead at such other places in the same county as it shall deem advisable.

3. To sell any land or other State property used in the operation of an experiment station when so abandoned, and to apply the proceeds of such sale in the purchase of other land and property for the establishment of experiment stations. [Acts 1st C. S. 1913, p. 98.]

Art. 140. **Sale of stations.**—In the event of any such sale, the title to said property shall not pass from this State until a

deed of conveyance therefor is made to the purchaser duly signed by the Governor and attested by the Secretary of State under his official seal. All funds received from the sale of station lands or property shall be deposited in the State Treasury and shall be paid out in accordance with the provisions of this chapter. [Id.]

Art. 141. Valley Citrus Station.—The Board is authorized to establish and maintain a horticultural and agricultural experiment station in the citrus belt of Cameron or Hidalgo County for the purpose of making scientific investigations and experiments in the production of citrus fruits and in determining the best methods of eradicating insect pests and dangerous diseases that infect citrus trees, and for the purpose of studying the other horticultural and agricultural problems of that region. For such purposes, the Board is empowered to secure a suitable site for the location of said station in either of said counties containing a sufficient amount of land not exceeding one hundred acres well adapted to the growing of citrus fruits and supplied with water for irrigation purposes. Said station shall be subject to all the provisions of this chapter applicable to its operation, maintenance and control. [Acts 1923, p. 69.]

Art. 142. Donations.—The board shall have power to accept and receive all donations in money or other property when given to be used in connection with any experiment work authorized by this subdivision. [Acts 1923, p. 69.]

Art. 143. Leases.—In the location of any experiment station, said board may take into consideration and receive any donation either in money, land or other property, to be used in the operation, equipment or management of any such station, and for experiment work, may lease such land as may, in its judgment, be necessary for any of the purposes named in this chapter. [Id.]

Art. 144. Inspections.—The board shall visit said stations once each year, and make such criticisms to the director and his assistants as it shall deem expedient and needful. [Id.]

Art. 145. Expenses of Board.—The necessary traveling expenses of the members of the board and those of the director and his assistants, shall be paid out of the funds appropriated by this State for the maintenance and support of said experiment stations. In addition to their actual traveling expenses, the members of said board, when traveling upon the official business of said stations, shall each be paid five dollars per day while actually engaged in the discharge of their duties. [Id.]

Art. 146. Director of Stations.—All sub-stations embraced within this subdivision shall be subject to the provisions of this law and shall be under the supervision, control, management and direction of the Director of the Texas Agricultural Experiment Station at the Agricultural and Mechanical College. Such director shall reside at College Station. The board is authorized to pay a part of the director's salary from the funds appropriated by the Legislature for the maintenance and support of said experiment stations, in such proportion as in its judgment may be just and proper; taking into consideration the division of his time between said sub-stations and the Main

Station, and the sum appropriated for such purposes by the Federal Government. The director may employ such assistants and labor and may purchase such live stock, farming implements, tools, seed, and such other materials and supplies as he shall deem necessary to the successful management of any or all of such experiment stations, subject to the approval of the board. [Id.]

Art. 147. **Reports.**—On the first day of each month the director shall make a complete report to the board showing receipts and disbursements, the source of such receipts and for what the same were disbursed; and on or before the first day of January of each year, he shall make a full and detailed report to said board of the operation of said stations, including a statement of receipts and expenditures for the entire year. Such annual report shall be transmitted to the Governor with such additional report as the board shall deem proper. [Id.]

Art. 148. **Bulletin.**—The director shall issue and circulate among the farmers and live stock raisers of Texas, from time to time, as may be deemed beneficial to such industries, printed bulletins showing the results of such experiments, and the results accomplished and the progress made in the improvement of the agricultural and live stock interests of this State. Such bulletins shall be mailed to such persons as may desire them. The director shall invite the co-operation of persons engaged in such industries, and shall give them advice when requested, with reference to the management and cultivation of their farms, and the care, management and feeding of their stock. [Id.]

Art. 149. **Disbursements.**—Before warrants are issued by the Comptroller in payment of State experiment station accounts, vouchers covering the same shall be audited and signed by the director or an assistant designated by him, in writing, for that purpose, and also by a member of the board. [Id.]

2. COUNTY FARMS AND STATIONS.

| | | | |
|---------------------------------|-------------|--------------------------|-------------|
| Establishment | Article 150 | Labor | Article 158 |
| Petition and election | 151 | Records | 159 |
| Returns | 152 | Bulletins | 160 |
| Acquisition of property | 153 | Information | 161 |
| Location of station | 154 | Sale of products | 162 |
| Supervision | 155 | Expenses | 163 |
| Director | 156 | Demonstration work | 164 |
| Supplies and improvements | 157 | | |

Art. 150. **Establishment.**—The commissioners court of any county shall, under the terms and provisions of this subdivision, establish and maintain an agricultural experiment farm and station within their county. [Acts 1911, p. 208.]

Art. 151. **Petition and election.**—On petition of not less than ten per cent of the legal voters of such county who voted for Governor in the preceding election, the commissioners court shall submit the question of the adoption of the provisions of this subdivision to the qualified voters of said county; and said court shall order an election to be held not less than thirty nor more than sixty days from the date of the election order, which shall be signed by the county judge. Such election shall be held

at the usual voting places and by the usual election officers, and as near as may be shall be conducted in accordance with the general election laws of Texas. Notice of such order shall be given by posting copies thereof at all the post offices within such county and at the court house door of such county. At such election those favoring a county experiment farm and station under the provisions of this subdivision shall vote a ticket on which shall be written or printed the words, "For a County Experiment Farm and Station," and those who are opposed shall vote a ticket on which shall be written or printed the words, "Against a County Experiment Farm and Station." Both tickets may be written or printed on the same piece of paper, and the voter may vote by erasing or drawing a line through the one he does not favor. [Id.]

Art. 152. **Election returns.**—The officers of the election shall make their report to and certify to the commissioners court the number of votes cast for and against such proposition, and if it appear that a majority of the votes cast at such election are in favor of such farm and station, the court shall so declare the result, and shall then proceed to execute the provisions of this law by establishing such farm and station. [Id.]

Art. 153. **Acquisition of property.**—Said farm and station shall consist of such number of acres of land as might be reasonably expected to produce a revenue sufficient to maintain the same, to be determined by the commissioners court, and shall, with sufficient houses, residences, barns and lots thereon, be donated to the county with good and legal title thereto, free of cost to the county. [Id.]

Art. 154. **Location of station.**—Said farm shall be located at the county seat or as near thereto as practicable, but if no such donation is offered at or within reasonable distance from the county seat, not to exceed two miles, then such farm may be located elsewhere in the county, having due regard for the benefits to be derived from such farm and station. [Id.]

Art. 155. **Supervision.**—Said experiment farm shall be affiliated with and directed in a manner similar to that of all experiment stations, and shall be under the advisory direction of the Director of State experiment stations. [Id.]

Art. 156. **Director.**—The said station shall be in charge of and under the direction of a director who shall be appointed by the commissioners court. He shall be a practical farmer, and shall pass a satisfactory examination touching his general knowledge, information, education, and his knowledge of farming, stock raising and other affairs incident to successful farm life. Such examination shall be prescribed by and taken under the Director of State Experiment stations or some one designated by him for such purpose. The said director shall be furnished a residence on said farm, free of cost for himself and family, as a part of his compensation, and shall receive such salary as the commissioners court may fix, not less than seventy-five dollars per month. The commissioners shall not rent or lease said farm to any one, nor permit it to be done by any one. [Id.]

Art. 157. **Supplies and improvements.**—The commissioners court shall supply said farm and station with sufficient houses, barns, lots, machinery, farm utensils, scientific instruments, materials, seeds and such other necessities as may be necessary, and shall make all needed improvements. Said farm shall be supplied with such stock, including work stock and cattle, both for service and breeding purposes, as may be necessary to promote the improvement of the farm and stock raising industry of such county. [Id.]

Art. 158. **Labor.**—The director of said farm shall conduct the same, and employ the necessary labor with the approval and advice of the commissioners court to conduct said farm. County paupers shall not be maintained or permitted to work upon said farm. [Id.]

Art. 159. **Records.**—The director shall keep a complete and accurate record of rainfall, temperature, the winds, and general climatic conditions; the planting, cultivation and marketing of all crops of every character; of his management and observation, and of his management of the live stock on said farm. [Id.]

Art. 160. **Bulletins.**—He shall make an annual report to the commissioners court showing in detail his methods and results, which report shall be published by the county, with the consent of the commissioners court, and mailed without cost to every person in the county engaged in farming and to others on request, to every experiment station in Texas, and to the State and United States Departments of Agriculture. [Id.]

Art. 161. **Information.**—The director shall at all reasonable times keep said farm open to the inspection of the public, and it shall be his duty to disseminate information, and to explain to all persons his manner and methods of preparation, soil culture, cultivation, gathering, preservation and marketing of the products of said farm. [Id.]

Art. 162. **Sale of products.**—He shall sell and market the products of said farm, under the rules made therefor by the commissioners court, and shall pay the proceeds thereof to the county treasurer, who shall place the same to the credit of the general fund of the county. The director shall perform such other duties as the commissioners court may prescribe not inconsistent with law. [Id.]

Art. 163. **Expenses.**—The labor necessary for the cultivation and care of said farm, including the salary of the director, and all expenses and expenditures provided for in this chapter, shall be paid by the county out of its general funds upon warrants drawn by the director and approved by the county judge. [Id.]

Art. 164. **Demonstration work.**—The commissioners court of any county may appropriate and use under such rules as they may prescribe, not exceeding one thousand dollars per year, for farmers co-operative demonstration work in the county, and not exceeding fifteen hundred dollars per year for a canning demonstration agent, along the same lines as such work is conducted by the United States Department of Agriculture, and the Agricultural and Mechanical College, respectively, and may con-

duct such work jointly with the agents of such institutions, upon such terms and conditions as may be agreed upon between the agents thereof and the commissioners court. [Acts 1911, p. 105; Acts 1st C. S. 1917, p. 56.]

3. RAILWAY FARMS AND STATIONS.

Art. 165. Powers.—Any railway corporation in Texas may acquire by lease or purchase, and maintain and operate, or cause to be operated, demonstration and experimental farms, orchards and gardens, no one of which shall exceed one thousand acres in size, for the purpose of aiding in the development of the agricultural and horticultural resources of Texas. No such corporation shall own or control more than four such farms. [Acts 1913, p. 319.]

TITLE 5.

ALIENS.

| | Article | | Article |
|-----------------------------------|---------|---------------------------------------|---------|
| Ownership of land prohibited..... | 166 | Proceedings to escheat..... | 172 |
| Exceptions..... | 167 | Qualification as guardian, etc..... | 173 |
| Time to alienate..... | 168 | Corporation controlled by aliens..... | 174 |
| Liens, loans and debts..... | 169 | Land owned in trust..... | 175 |
| Term of title..... | 170 | Reports and record of ownership..... | 176 |
| May sell before escheat..... | 171 | Personal property..... | 177 |

Art. 166. [15] [19] **Ownership of land prohibited.**—No alien or alien corporation shall acquire any interest, right or title either legal or equitable in or to any lands in the State of Texas, except as hereinafter provided. [Acts 1854, p. 98, Acts C. S. 1892, p. 6, Acts 1921, p. 261.]

Art. 167. [16] [10] **Exceptions.**—This title shall not apply to any land now owned in this State by aliens, not acquired in violation of any law of this State, so long as it is held by the present owners; nor to lots or parcels of land owned by aliens in any incorporated town or city of this State, nor to the following classes of aliens, who are, or who shall become bona fide inhabitants of this State, so long as they shall continue to be bona fide inhabitants of this State:

1. Aliens who were bona fide inhabitants of this State on the date on which this Act becomes a law.

2. Aliens eligible to citizenship in the United States who shall become bona fide inhabitants of this State, and who shall, in conformity with the naturalization laws of the United States, have declared their intention to become citizens of the United States.

3. Aliens who are natural born citizens of nations which have a common land boundary with the United States.

4. Aliens who are citizens or subjects of a nation which now permits citizens of this State to own land in fee in such country. [Id.]

Art. 168. [16] [10] **Time to alienate.**—Any resident alien who shall acquire land under any provision of the preceding article shall have five years after he shall cease to be a bona fide inhabitant of this State in which to alienate said land. [Id.]

Art. 169. [17] [11] **Liens, loans and debts.**—The provisions of this title shall not prevent aliens or alien corporations from lending money secured by lien upon real estate or any interest therein, nor from enforcing any such lien, nor from acquiring and holding title to such real estate or any interest therein when sold for the purpose of enforcing such lien, or for enforcing the collection of a debt. [Id.]

Art. 170. [18] [12] **Term of title.**—All aliens and all alien corporations who are prohibited from owning land in this State under the provisions of this title, who shall hereafter acquire real estate in Texas by devise, descent, or by purchase as permitted by this title, may hold same for five years, and if such alien is a minor, he may hold same for five years after attaining his majority, or if of unsound mind for five years after the appointment of a legal guardian. [Id.]

Art. 171. [19] [13] **May sell before escheat.**—Any alien

who shall hereafter acquire lands in Texas, in contravention of the provisions of this title, may, nevertheless, convey the fee simple title thereof at any time before the institution of escheat proceedings as hereinafter provided. If any such conveyance shall be made by such alien either to an alien or to a citizen of the United States, in trust, and for the purpose and with the intention of evading the provisions of this title, such conveyance shall be null and void; and any such land so conveyed shall be forfeited and escheated to the State. [Id.]

Art. 172. [20] [14] **Proceedings to escheat.**—The Attorney General or the district or county attorney when he shall be informed or have reason to believe that lands in this State are being held contrary to the provisions of this title shall institute suit in behalf of the State of Texas praying for the escheat of the same on behalf of the State.

Art. 173. **Qualification as guardian, etc.**—No alien shall ever be appointed or permitted to qualify as guardian of the estate of any minor or person of unsound mind, or as executor or administrator of the estate of any descendent in the State, unless he is permitted to own land under the provisions of this title. [Acts 1921, p. 262.]

Art. 174. **Corporations controlled by aliens.**—No corporation in which the majority of the capital stock is legally or equitably owned by aliens prohibited by law from owning land in Texas shall acquire title to or own any lands in Texas or any leasehold or other interest in such lands except as hereinafter provided and land so owned shall be subject to escheat as though owned by a non-resident alien. [Id.]

Art. 175. **Land owned in trust.**—Land owned in trust, either by an alien or by a citizen of the United States, for the beneficial use of any alien or aliens, or any corporation prohibited from owning land in this State under the provisions of this title, shall be subject to escheat as though the legal title thereto was in such alien or corporation. [Id.]

Art. 176. **Report and record of ownership.**—All alien and all alien corporations now owning lands in this State shall on or before the last day of January 1926 file a written report under oath, with the clerk of the county court of the county in which such land is located, giving the name, age, occupation, personal description, place of birth, last foreign residence and allegiance, the date and place of arrival of said alien in the United States, and his or her present residence and post-office address, and the length of time of residence in Texas, the foreign prince, potentate, State or sovereignty, of which the alien may at the time be a citizen or subject, and the number of acres of land owned by such alien in such county, the name and number of the survey, the abstract and certificate number, the name of the person or persons, from whom acquired, and shall either describe said land by metes and bounds, or refer to recorded deed in which same is so described, which report shall be known as "REPORT OF ALIEN OWNERSHIP." All aliens and all alien corporations hereafter purchasing, or in any manner acquiring lands located in Texas, shall, within six months after such pur-

chase, or acquisition, file with the county clerk of the county in which such land is located, a "Report of Alien Ownership," in terms as above required. Any alien or alien corporation who may now own land in Texas, or who may hereafter acquire any land in Texas, by purchase or otherwise, who does not within the time prescribed in this article, file the reports herein provided for, shall be subject to have such land forfeited and escheated to the State of Texas. The reports herein required shall, when the alien is a minor or insane person, be filed by the parent or guardian of such alien. The county clerk of each county shall file and record the reports above provided for in a separate volume, to be entitled "RECORD OF ALIEN OWNED LANDS," for said county. The recording of such reports shall be paid by the alien owner. [Id.]

Art. 177. [15] [9] **Personal property.**—Aliens shall have and enjoy in this State such rights as to personal property as are or shall be accorded to citizens of the United States by the laws of the Nation to which such alien shall belong or by the treaties by such Nation with the United States. [Id.]

TITLE 6.

AMUSEMENTS—PUBLIC HOUSES OF.

| | | | | | |
|------------------------------|----------------|--|--------|----------------|--|
| "Public houses of amusement" | Article 178 | \| | Leases | Article 179 | |
|------------------------------|----------------|--|--------|----------------|--|

Art. 178. **"Public houses of amusement"**.—All buildings constructed, fitted and equipped for the purpose of theaters, commonly called theaters, opera houses, play houses, or by whatever name designated, which are and shall hereafter be used for public performances, the production and exhibition of plays, dramas, operas, or other shows of whatever nature, to which admission fees are charged, are hereby declared to be public houses of amusement, and the same shall be subject to regulation by ordinance, statute, or other law. Owners and lessees shall have the right to assign seats to patrons thereof, and to refuse admission to objectionable characters. [Acts 1907, p 21.]

Art. 179. **Leases**.—Upon the failure or refusal of any lessee, or his assigns, of any such public house of amusement to comply with the law governing such places of amusement, or upon conviction of the violation of any provision of the Penal Code relating to discrimination in the booking of plays, opera shows, or other productions, by whatever name known, which are and shall hereafter be used for public performances, he shall forfeit his lease and all rights and privileges thereunder. [Id.]

TITLE 7.

ANIMALS.

1. CRUELTY TO ANIMALS.

| Definitions | Article | Enforcing lien | Article |
|--------------------------|---------|--------------------------|---------|
| Cruelty to fowls | 180 | Impounded animal | 185 |
| Cruelty to animals | 181 | May destroy animal | 186 |
| May take animal | 182 | Badge | 187 |
| Lien | 183 | Duty of officers | 188 |
| | 184 | | 189 |

Art. 180. **Definitions.**—As used in this subdivision, the word “animal” includes every living dumb creature; the words “torture” and “cruelty” include every act, omission or neglect whereby unnecessary or unjustifiable pain or suffering is caused, permitted or allowed to continue when there is a reasonable remedy or relief. The words “owner” and “person” include corporations, and the knowledge and acts of agents and employes of corporations in regard to animals transported, owned, used by or in custody of the corporation shall be held to be the knowledge and acts of such corporation. [Acts 1913, p. 168.]

Art. 181. **Cruelty to fowls.**—Whoever receives live fowls, poultry or other birds for transportation or to be confined on wagons or stands, or by the owners of grocery stores, commission houses or other market houses, or by other persons when to be closely confined, shall place same immediately in coops, crates or cages made of open slats or wire on at least three sides and of such height that the fowls can stand upright without touching the top, have troughs or other receptacle easy of access at all times by the birds confined therein, and so placed that their contents shall not be defiled by them, in which troughs or other receptacles clean water and suitable food shall be constantly kept; keep such coops, crates or cages in a clean and wholesome condition; place only such numbers in each coop, crate or cage as can stand without crowding one another, but have room to move around; not expose same to undue heat or cold, and remove immediately all injured, diseased or dead fowls or other birds. [Id.]

Art. 182. **Cruelty to animals.**—It shall be unlawful for any person to overdrive, wilfully overload, drive when overloaded, overwork, torture, torment, deprive of necessary sustenance, unnecessarily or cruelly beat, or needlessly mutilate or kill any animal or carry any animal in or upon any vehicle, or otherwise, in a cruel or inhuman manner, or cause or procure the same to be done, or who having the charge or custody of any animal unnecessarily fails to provide it with proper food, drink or cruelly abandons it. [Id.]

Art. 183. **May take animal.**—When any person arrested under any provision of this law is, at the time of such arrest, in charge of any vehicle drawn by or containing any animal cruelly treated, any agent of the State Humane Society, having been authorized by the sheriff of the county to make arrests in such cases, may take charge of such animal and such vehicle and its contents, and the animal or animals drawing same, and shall

give notice thereof to the owner, if known, and shall care and provide for them until their owner shall take charge of the same; and such agent shall have a lien on said animals and on said vehicle and its contents for the expense of such care and provision, or the said expense or any part thereof remaining unpaid may be recovered by such agent in a civil action. [Id.]

Art. 184. Lien.—Any officer or agent of said humane society may lawfully take charge of any animal found abandoned, neglected or cruelly treated and shall thereupon give notice thereof to the owner, if known, and may care and provide for such animal until the owner shall take charge of same, and the expense of such care and provision shall be a charge against the owner of such animal and collectible from such owner by said humane society in an action therefor. When said humane society shall provide neglected abandoned animals with proper food, shelter and care, it may detain such animals until the expense of such food, shelter and care is paid, and shall have a lien upon such animals therefor. [Id.]

Art. 185. Enforcing lien.—Any person or corporation entitled to a lien under any provision of this subdivision may enforce the same by selling the animals and other personal property upon which such lien is given, at public auction, upon giving notice to the owner, if he be known, of the time and place of such sale, at least five days previous thereto, and by posting three notices of the time and place of such sale in three public places within the county, at least five days previous thereto. If the owner be not known, then such notice shall be posted at least ten days previous to such sale. [Id.]

Art. 186. Impound animal.—Every person who under the laws of this State or of any municipality thereof shall impound or cause to be impounded any animal in any pound or corral shall supply it during such confinement with sufficient wholesome food and water. If any animal so impounded shall continue to be without necessary food and water for more than twelve successive hours it shall be lawful for any person as often as necessary to enter into or upon said pound or corral and supply such animal with necessary food and water; the reasonable cost for such food and water may be collected by him from the owner of such animal which shall not be exempt from levy and sale upon execution issued upon a judgment therefor. [Id.]

Art. 187. May destroy animal.—Any agent or officer of said humane society may lawfully destroy or cause to be destroyed any animal in his charge when, in the judgment of such agent or officer, and by written certificate of two reputable citizens called to view same in his presence, one of whom may be selected by the owner of said animal if he shall so request, it appears humane to do so, and said citizens shall so certify that said animal appears to be injured to such an extent that it would be humane to destroy it. [Id.]

Art. 188. Badge.—Officers and agents of said humane society shall be provided with a certificate by said society stating that they are such officers or agents, or with a badge bearing

the name and seal of said society; and shall on request show such certificate or badge when acting officially. [Id.]

Art. 189. **Duty of officers.**—Any member of said humane society may require any sheriff, constable, marshal or any policeman of any town or city or any agent of said society authorized by the sheriff to make arrests for the violation of the law relating to cruelty to animals, to arrest any person violating any provision thereof, and to take possession of any animal cruelly treated in their respective counties, cities or towns. [Id.]

2. DESTRUCTION OF ANIMALS.

| | | | |
|-------------------|-----|----------------|-----|
| By poison..... | 190 | Bounties | 192 |
| Prairie dogs..... | 191 | | |

Art. 190. **By poison.**—

1. May buy poison.—The commissioners court of each county may purchase the necessary poisons and accessories required by the citizens of such county for the purpose of destroying prairie dogs, wild cats, gophers, ground squirrels, wolves, coyotes, rats, English sparrows and ravens, and pay for the same out of the general fund of the county, and may furnish the same at cost or free to such citizens. If the court shall elect to sell the same, the proceeds shall be turned into the treasury to the credit of the general fund.

2. Notice of putting out poison.—Said court shall designate a certain day or days for putting out poison, giving notice of same by posting up notices in public places, such as school houses, gins and mills, or other public places, and also publishing the same in at least one county newspaper, if there be one, for three successive issues. Said notices shall be given at least twenty days prior to the first day of the time designated to put out the poison. Said notice shall state the time of putting out poison, and that the poisons can be secured from the commissioners court, and the terms on which it can be had.

3. Commissioner of Agriculture.—The Commissioner of Agriculture shall furnish said court with formulas and instructions for preparing the poisons and plans for using the same, and shall, upon the request of any such court, as soon as practicable after receiving such request, demonstrate and give instructions how to prepare the poison and when and how to apply the same.

4. Duty of land holder.—Every land holder whose premises are infested with any of such pests shall procure poison and apply the same as set forth in the plans furnished by the Commissioner of Agriculture.

5. Duty of lessee or tenant.—Every lessee or tenant holding premises by contract shall secure the poison and destroy all such pests. All such expenses incurred by such tenant or lessee in thus destroying such pests shall be charged against the owner of the land and collectible as other valid debts. [Acts 4th C. S. 1918, p. 144.]

Art. 190a. It shall hereafter be lawful for the commissioners' Court of McCulloch, San Saba and Lampasas Counties

to pay out of the general fund of said counties, bounties for the destruction of wolves, wildcats and other predatory animals within said counties, as hereinafter provided.

On the petition of two hundred resident freeholders of any one of said counties, being presented to the commissioners' court of such county, the commissioners' court may, by resolution entered upon its minutes, provide for the destruction of such animals and the amount of bounty to be paid for the destruction of each of said predatory animals and the method of proving such destruction so as to entitle the person destroying such predatory animals to receive said bounty.

The amounts paid as bounties for the destruction of predatory animals in said counties shall be paid by warrant drawn upon the general fund of the county by the judge of such county on the filing with him of such proof as the commissioners' court may require. [Acts 1925, p. 179.]

Art. 191. Prairie dogs.—Prairie dogs are hereby declared to be a public nuisance, and it shall be the duty of every owner of land in this State to destroy all prairie dogs on his land.

1. **Duty of commissioners court.**—The commissioners court of any county in which the prairie dogs exist, shall investigate and determine whether owners of lands in their respective commissioner's precincts have killed or caused to be killed all prairie dogs, and if such land owners have failed to do so, said commissioners shall immediately notify the sheriff of his county of such failure, and of the name and post-office address of such owner, or his agent, and said sheriff shall immediately mail, by registered letter, a notice to the said owner, or his agent, that if he shall fail, within thirty days from and after the date of mailing of notice, to kill or cause to be killed such prairie dogs, he, the said sheriff, will proceed to destroy all prairie dogs on said land.

2. **Duty of sheriff.**—If any land owner has not within thirty days after receiving said notice destroyed the prairie dogs on his land, said sheriff shall immediately proceed to destroy said prairie dogs by the use of practical and economical methods in general use. He shall report his action, together with a sworn itemized bill of expenses to the first term of the commissioners court of said county, which court shall examine said account, and if found correct and reasonable, shall allow the same, and by its order duly entered, assess said amount against said owner and enter same as a lien against his land. Said court may pay the sheriff not exceeding five dollars per day for each day he has performed actual services in supervising the destruction of said prairie dogs.

3. **Suit to recover assessment.**—If the owner of any land against which costs and expenses have been assessed by the commissioners court shall fail to pay the same within thirty days after notice of such assessment, the county attorney of such county shall bring suit to enforce the payment thereof. The county attorney shall, in each suit brought by him for said purpose, be allowed a reasonable fee to be fixed by the court trying the cause, to be taxed as costs in the case, and upon the

rendition of any judgment for such costs and expenses, execution and order of sale shall issue and be executed as in other cases. [Acts 1st C. S. 1915, p. 26.]

Art. 192. [7166-7-8] **Bounties.**—When any person shall kill in this State any wolf, coyote, jack rabbit, panther, tiger, leopard or wild cat, he shall be paid five dollars for each panther, Mexican lion, tiger or leopard; two dollars for each wolf, one dollar for each coyote or wild cat, and five cents for each jack rabbit so killed.

1. Proof.—The scalps of said animals so killed shall be presented by the person having killed said animals to the commissioners court of the county in which said animals were killed, accompanied by affidavit stating where and when he killed said animal, and the kind of each; that affiant in person, and no other, killed said animal or animals.

2. Scalps.—Such scalp shall consist of the scalp and both ears, so that the court may sufficiently identify the class of animals so killed. The court, when not satisfied as to the sufficiency of the evidence before it, under this law, may reject any and all claims. The court shall immediately take and pass upon said scalp and burn the same, but in no case shall any such court be authorized under this law to issue warrant for bounty on any scalp when presented with either ear of same disfigured in the least, cut, slit or any defect whatever, except such cut, slit or defect that may have been caused in shooting, trapping or killing the animal. Both ears must be absolutely whole. Such court shall issue a certificate signed by at least three members of said court, and attested by the signature of the clerk of said court, and under the seal of said court showing the kind of animals killed and the number of each, and the name of the party who killed same and the amount due such party. The county clerk shall issue a warrant on the county treasurer for the amount specified, payable to the party named in such certificate.

3. Statement of payments.—The commissioners court of each county at each regular session of each year shall make an itemized statement showing the several amounts paid, to whom and when paid, by order of said court under the provisions of this law, said statement shall be entered upon the minutes of said court, and a certified copy thereof shall be sent by the clerk of said court to the Comptroller. Upon receipt of said certified copy by the Comptroller, he shall draw his warrant upon the State Treasurer for one-half of the aggregate amount paid out by such county under the provisions of this law, as shown by said certified copy, payable to the treasurer of said county which said amount, when received by said county treasurer, shall be by him credited to the fund of the third class of said county.

4. No trespassing.—Nothing herein authorizes any person to enter on the enclosed or posted lands or premises of another for the purpose of trapping or hunting, or otherwise catching or trapping wild animals for their scalp without first obtaining the consent of the owner. [Acts 1903, p. 113, Acts 1911, p. 44, Acts 1915, p. 88.]

TITLE 8.

APPORTIONMENT.

| | Senatorial Dis- trict. | Repre- senta- tive Dis- trict. | Con- gres- sional Dis- trict. | Judi- cial Dis- trict. | Sup. Judi- cial Dis- trict. |
|-----------------|------------------------------|--|---|---------------------------------|---|
| Anderson | 6 | 55 | 7 | 3 | 1 |
| Andrews | 30 | 88 | 16 | 70 | 8 |
| Angelina | 3 | 12 | 2 | 2 | 9 |
| Aransas | 18 | 70 | 14 | 36 | 4 |
| Archer | 23 | 110 | 13 | 30 | 2 |
| Armstrong | 31 | 123 | 18 | 47 | 7 |
| Atascosa | 18 | 76 | 15 | 81 | 4 |
| Austin | 15 | 25 | 10 | 22 | 1 |
| Bailey | 30 | 120 | 18 | 64 | 7 |
| Bandera | 26 | 86 | 16 | 38 | 4 |
| Bastrop | 14 | 127 | 10 | 21 | 3 |
| Baylor | 23 | 113 | 13 | 50 | 2 |
| Bee | 18 | 70 | 14 | 36 | 4 |
| Bell | 21 | 95, 96 | 11 | 27 | 3 |
| Bexar | 26 | 78 | 14 | 37, 45, 57, 73, 94 | 4 |
| Blanco | 19 | 85 | 14 | 33 | 3 |
| Borden | 30 | 118 | 18 | 32 | 11 |
| Bosque | 21 | 98 | 11 | 18 | 10 |
| Bowie | 1 | 3, 1 | 1 | 102 | 6 |
| Brazoria | 17 | 21 | 9 | 23 | 1 |
| Brazos | 14 | 26 | 6 | 85 | 10 |
| Brewster | 29 | 87 | 16 | 83 | 8 |
| Briscoe | 31 | 120 | 18 | 64 | 7 |
| Brooks | 27 | 74 | 15 | 79 | 4 |
| Brown | 25 | 125 | 17 | 35 | 3 |
| Burleson | 14 | 65 | 10 | 21 | 1 |
| Burnet | 20 | 84 | 17 | 33 | 3 |
| Caldwell | 19 | 81 | 10 | 22 | 3 |
| Calhoun | 18 | 69 | 9 | 24 | 4 |
| Callahan | 24 | 107 | 17 | 42 | 11 |
| Cameron | 27 | 72 | 15 | 103 | 4 |
| Camp | 7 | 4 | 1 | 76 | 6 |
| Carson | 31 | 123 | 18 | 31 | 7 |
| Cass | 1 | 2, 3 | 1 | 5 | 6 |
| Castro | 31 | 120 | 18 | 64 | 7 |
| Chambers | 17 | 17 | 7 | 75 | 1 |
| Cherokee | 3 | 31 | 2 | 2 | 6 |
| Childress | 31 | 121 | 18 | 100 | 7 |
| Clay | 23 | 110 | 13 | 97 | 2 |
| Cochran | 30 | 119 | 18 | 72 | 7 |
| Coke | 25 | 92 | 16 | 51 | 3 |
| Coleman | 25 | 125 | 17 | 35 | 3 |
| Collin | 10 | 43, 45 | 4 | 59 | 5 |

APPORTIONMENT.

65

| | Sena- torial Dis- trict. | Repre- senta- tive Dis- trict. | Con- gres- sional Dis- trict. | Judi- cial Dis- trict. | Sup. Judi- cial Dis- trict. |
|---------------|-----------------------------------|--|---|---------------------------------|---|
| Collingsworth | 31 | 122 | 18 | 100 | 7 |
| Colorado | 15 | 25 | 9 | 25 | 1 |
| Comal | 19 | 80 | 14 | 22 | 3 |
| Comanche | 25 | 104 | 17 | 52 | 11 |
| Concho | 25 | 92 | 17 | 35 | 3 |
| Cooke | 9 | 46 | 13 | 16 | 2 |
| Coryell | 21 | 94 | 11 | 52 | 10 |
| Cottle | 30 | 121 | 18 | 50 | 7 |
| Crane | 29 | 88 | 16 | 70 | 8 |
| Crockett | 29 | 86 | 16 | 83 | 3 |
| Crosby | 30 | 119 | 18 | 72 | 7 |
| Culberson | 29 | 90 | 16 | 34 | 8 |
| Dallam | 31 | 124 | 18 | 69 | 7 |
| Dallas | 11 | 50, 51 | 5 | 14, 44, 68, 95 | 5 |
| Dawson | 30 | 119 | 18 | 106 | 11 |
| Deaf Smith | 31 | 123 | 18 | 69 | 7 |
| Delta | 8 | 126 | 1 | 8, 62 | 5 |
| Denton | 22 | 49, 102 | 13 | 16 | 2 |
| DeWitt | 18 | 68 | 9 | 24 | 1 |
| Dickens | 30 | 118 | 18 | 50 | 7 |
| Dimmit | 27 | 77 | 15 | 49 | 4 |
| Donley | 31 | 122 | 18 | 100 | 7 |
| Duval | 27 | 71 | 15 | 79 | 4 |
| Eastland | 24 | 106, 107 | 17 | 88, 91 | 11 |
| Ector | 29 | 88 | 16 | 70 | 8 |
| Edwards | 29 | 86 | 16 | 63 | 4 |
| Ellis | 12 | 100 | 5 | 40 | 5 |
| El Paso | 29 | 89, 90 | 16 | 34, 41, 65 | 8 |
| Erath | 21 | 105 | 12 | 29 | 11 |
| Falls | 13 | 62, 96 | 11 | 82 | 10 |
| Fannin | 9 | 38, 41 | 4 | 6 | 6 |
| Fayette | 15 | 66 | 9 | 22 | 3 |
| Fisher | 24 | 117 | 18 | 39 | 7 |
| Floyd | 30 | 120 | 18 | 64 | 11 |
| Foard | 23 | 114 | 18 | 46 | 7 |
| Fort Bend | 17 | 20 | 8 | 23 | 1 |
| Franklin | 8 | 126 | 1 | 76 | 6 |
| Freestone | 6 | 57 | 6 | 77, 87 | 10 |
| Frio | 27 | 76 | 15 | 81 | 4 |
| Gaines | 30 | 119 | 18 | 106 | 8 |
| Galveston | 17 | 17, 18 | 7 | 10, 56 | 1 |
| Garza | 30 | 118 | 18 | 106 | 7 |
| Gillespie | 25 | 85 | 16 | 33 | 4 |
| Glasscock | 29 | 91 | 16 | 70 | 8 |
| Goliad | 18 | 69 | 9 | 24 | 4 |
| Gonzales | 19 | 67 | 9 | 25 | 4 |
| Gray | 31 | 122 | 18 | 31 | 7 |

APPORTIONMENT.

| | Senatorial District. | Representative District. | Con- gres- sional Dis- trict. | Judi- cial Dis- trict. | Sup. Judi- cial Dis- trict. |
|------------|-------------------------|-----------------------------|---|---------------------------------|---|
| Grayson | 9 | 44, 45 | 4 | 15, 59 | 5 |
| Gregg | 2 | 6, 33 | 3 | 71 | 6 |
| Grimes | 5 | 26, 27 | 8 | 12 | 1 |
| Guadalupe | 19 | 80 | 14 | 25 | 4 |
| Hale | 30 | 120 | 18 | 64 | 7 |
| Hall | 31 | 121 | 18 | 100 | 7 |
| Hamilton | 21 | 94 | 11 | 52 | 10 |
| Hansford | 31 | 124 | 18 | 31 | 7 |
| Hardeman | 23 | 114 | 18 | 46 | 7 |
| Hardin | 4 | 14 | 2 | 9, 75 | 9 |
| Harris | 16 | 19 | 8 | 11, 55, 61, 80 | 1 |
| Harrison | 2 | 5, 6 | 2 | 71 | 6 |
| Hartley | 31 | 124 | 18 | 69 | 7 |
| Haskell | 24 | 113 | 18 | 39 | 11 |
| Hays | 19 | 81 | 10 | 22 | 3 |
| Hemphill | 31 | 124 | 18 | 31 | 7 |
| Henderson | 6 | 54 | 3 | 3 | 5 |
| Hidalgo | 27 | 73 | 15 | 79, 93 | 4 |
| Hill | 12 | 59, 60 | 6 | 66 | 10 |
| Hockley | 30 | 119 | 18 | 72 | 7 |
| Hood | 12 | 105 | 12 | 29 | 2 |
| Hopkins | 8 | 39, 126 | 1 | 8 | 6 |
| Houston | 5 | 30 | 7 | 3 | 1 |
| Howard | 30 | 91 | 16 | 32 | 11 |
| Hudspeth | 29 | 90 | 16 | 34 | 8 |
| Hunt | 10 | 40, 42 | 4 | 8, 62 | 5 |
| Hutchinson | 31 | 124 | 18 | 31 | 7 |
| Irion | 25 | 91 | 16 | 51 | 3 |
| Jack | 22 | 109 | 13 | 43 | 2 |
| Jackson | 18 | 22 | 9 | 24 | 1 |
| Jasper | 3 | 13 | 2 | 1 | 9 |
| Jefferson | 4 | 15, 16 | 2 | 58, 60 | 9 |
| Jeff Davis | 29 | 88 | 16 | 83 | 8 |
| Jim Hogg | 27 | 74 | 15 | 49 | 4 |
| Jim Wells | 27 | 71 | 15 | 79 | 4 |
| Johnson | 12 | 98, 99 | 12 | 18 | 2 |
| Jones | 24 | 115 | 17 | 39 | 11 |
| Karnes | 18 | 79 | 14 | 81 | 4 |
| Kaufman | 6 | 51, 52 | 3 | 86 | 5 |
| Kendall | 26 | 85 | 14 | 38 | 4 |
| Kenedy | 27 | 74 | 15 | 28 | 4 |
| Kent | 30 | 118 | 18 | 39 | 7 |
| Kerr | 26 | 86 | 16 | 38 | 4 |
| Kimble | 25 | 86 | 16 | 33 | 4 |
| King | 30 | 114 | 18 | 50 | 7 |
| Kinney | 29 | 87 | 15 | 63 | 4 |
| Kleberg | 27 | 74 | 15 | 28 | 4 |

APPORTIONMENT.

| | Senatorial District. | Representative District. | Congressional District. | Judicial District. | Sup. Judicial District. |
|-------------|----------------------|--------------------------|-------------------------|--------------------|-------------------------|
| Knox | 23 | 114 | 18 | 50 | 2 |
| Lamar | 8 | 37, 38 | 1 | 6, 62 | 6 |
| Lamb | 30 | 120 | 18 | 64 | 7 |
| Lampasas | 20 | 93 | 17 | 27 | 3 |
| LaSalle | 27 | 76 | 15 | 81 | 4 |
| Lavaca | 15 | 23 | 9 | 25 | 1 |
| Lee | 14 | 65 | 10 | 21 | 3 |
| Leon | 5 | 56 | 6 | 12 | 10 |
| Liberty | 4 | 14 | 7 | 75 | 9 |
| Limestone | 13 | 61 | 6 | 77, 87 | 10 |
| Lipscomb | 31 | 124 | 18 | 31 | 7 |
| Live Oak | 18 | 76 | 15 | 36 | 4 |
| Llano | 20 | 85 | 17 | 33 | 3 |
| Loving | 29 | 88 | 16 | 70 | 8 |
| Lubbock | 30 | 119 | 18 | 72 | 7 |
| Lynn | 30 | 119 | 18 | 106 | 7 |
| Madison | 5 | 56 | 6 | 12 | 10 |
| Marion | 1 | 3 | 1 | 76 | 6 |
| Martin | 30 | 88 | 16 | 70 | 8 |
| Mason | 25 | 86 | 16 | 33 | 4 |
| Matagorda | 17 | 21 | 9 | 23 | 1 |
| Maverick | 29 | 87 | 15 | 63 | 4 |
| McCulloch | 25 | 93 | 17 | 35 | 3 |
| McLennan | 13 | 96, 97 | 11 | 19, 54, 74 | 10 |
| McMullen | 27 | 76 | 15 | 36 | 4 |
| Medina | 29 | 77 | 15 | 38 | 4 |
| Menard | 25 | 86 | 16 | 33 | 4 |
| Midland | 29 | 88 | 16 | 70 | 8 |
| Milam | 13 | 64, 65 | 6 | 20 | 3 |
| Mills | 25 | 104 | 17 | 27 | 3 |
| Mitchell | 24 | 117 | 16 | 32 | 11 |
| Montague | 22 | 47 | 13 | 97 | 2 |
| Montgomery | 5 | 27 | 7 | 9 | 9 |
| Moore | 31 | 124 | 18 | 69 | 7 |
| Morris | 1 | 35 | 1 | 76 | 6 |
| Motley | 30 | 121 | 18 | 50 | 7 |
| Nacogdoches | 3 | 9 | 2 | 2 | 9 |
| Navarro | 6 | 58, 60 | 6 | 13 | 5 |
| Newton | 3 | 13 | 2 | 1 | 9 |
| Nolan | 24 | 117 | 17 | 32 | 11 |
| Nueces | 27 | 71 | 14 | 28 | 4 |
| Ochiltree | 31 | 124 | 18 | 31 | 7 |
| Oldham | 31 | 123 | 18 | 69 | 7 |
| Orange | 4 | 15 | 2 | 1 | 9 |
| Palo Pinto | 22 | 108 | 17 | 29 | 11 |
| Panola | 2 | 7 | 2 | 4 | 6 |
| Parker | 22 | 103 | 12 | 43 | 2 |

APPORTIONMENT.

| | Senatorial District. | Representative District. | Congressional District. | Judicial District. | Sup. Judicial District. |
|---------------------|-------------------------|-----------------------------|----------------------------|-----------------------|-------------------------------|
| Parmer | 31 | 120 | 18 | 69 | 7 |
| Pecos | 29 | 88 | 16 | 83 | 8 |
| Polk | 5 | 28 | 7 | 9 | 9 |
| Potter | 31 | 123 | 18 | 47 | 7 |
| Presidio | 29 | 88 | 16 | 83 | 8 |
| Rains | 10 | 42 | 4 | 8 | 5 |
| Randall | 31 | 123 | 18 | 47 | 7 |
| Reagan | 29 | 91 | 16 | 83 | 8 |
| Real | 29 | 86 | 16 | 38 | 4 |
| Red River | 8 | 36 | 1 | 102 | 6 |
| Reeves | 29 | 88 | 16 | 70 | 8 |
| Refugio | 18 | 70 | 9 | 24 | 4 |
| Roberts | 31 | 124 | 18 | 31 | 7 |
| Robertson | 14 | 63 | 6 | 85 | 10 |
| Rockwall | 10 | 51 | 5 | 86 | 5 |
| Runnels | 25 | 92 | 17 | 35 | 3 |
| Rusk | 2 | 8 | 3 | 4 | 6 |
| Sabine | 3 | 11 | 2 | 1 | 9 |
| San Augustine | 3 | 11 | 2 | 1 | 9 |
| San Jacinto | 5 | 29 | 7 | 9 | 9 |
| San Patricio | 18 | 70 | 14 | 36 | 4 |
| San Saba | 20 | 93 | 17 | 33 | 3 |
| Schliecher | 25 | 86 | 16 | 51 | 3 |
| Scurry | 24 | 118 | 18 | 32 | 11 |
| Shackelford | 24 | 115 | 17 | 42 | 11 |
| Shelby | 2 | 10 | 2 | 4 | 9 |
| Sherman | 31 | 124 | 18 | 69 | 7 |
| Smith | 7 | 32, 33 | 3 | 7 | 6 |
| Somervell | 12 | 98 | 12 | 18 | 2 |
| Starr | 27 | 74 | 15 | 79 | 4 |
| Stephens | 24 | 108 | 17 | 90 | 11 |
| Sterling | 25 | 91 | 16 | 51 | 3 |
| Stonewall | 30 | 118 | 18 | 39 | 11 |
| Sutton | 29 | 86 | 16 | 83 | 4 |
| Swisher | 31 | 120 | 18 | 64 | 7 |
| Tarrant | 28 | 101, 102 | 12 | 17, 48, 67, 96 | 2 |
| Taylor | 24 | 116 | 17 | 42 | 11 |
| Terrell | 29 | 87 | 16 | 63 | 8 |
| Terry | 30 | 119 | 18 | 106 | 7 |
| Throckmorton | 24 | 113 | 13 | 39 | 11 |
| Titus | 1 | 35 | 1 | 76 | 6 |
| Tom Green | 25 | 91 | 16 | 51 | 3 |
| Travis | 20 | 82 | 10 | 53 | 3 |
| Trinity | 5 | 28 | 7 | 12 | 1 |
| Tyler | 3 | 12 | 2 | 75 | 9 |
| Upshur | 7 | 4 | 3 | 7 | 6 |
| Upton | 29 | 88 | 16 | 38 | 8 |

| | Senatorial District. | Representative District. | Congressional District. | Judicial District. | Sup. Judicial District. |
|------------------|----------------------|--------------------------|-------------------------|--------------------|-------------------------|
| Uvalde | 29 | 77 | 15 | 38 | 4 |
| Val Verde | 29 | 87 | 16 | 63 | 4 |
| Van Zandt | 7 | 53 | 3 | 86 | 5 |
| Victoria | 18 | 69 | 9 | 24 | 4 |
| Walker | 5 | 29 | 7 | 12 | 1 |
| Waller | 15 | 20 | 8 | 9 | 1 |
| Ward | 29 | 88 | 16 | 70 | 8 |
| Washington | 14 | 24 | 10 | 21 | 1 |
| Webb | 27 | 75 | 15 | 49 | 4 |
| Wharton | 17 | 22 | 9 | 23 | 1 |
| Wheeler | 31 | 122 | 18 | 31 | 7 |
| Wichita | 23 | 112 | 13 | 30, 78, 89 | 2 |
| Wilbarger | 23 | 112 | 13 | 46 | 7 |
| Willacy | 27 | 74 | 15 | 103 | 4 |
| Williamson | 20 | 83, 84 | 10 | 26 | 3 |
| Wilson | 18 | 79 | 14 | 81 | 4 |
| Winkler | 29 | 88 | 16 | 70 | 8 |
| Wise | 22 | 48 | 13 | 43 | 2 |
| Wood | 7 | 34 | 3 | 7 | 5 |
| Yoakum | 30 | 119 | 18 | 106 | 7 |
| Young | 23 | 109 | 13 | 30 | 2 |
| Zapata | 27 | 75 | 15 | 49 | 4 |
| Zavala | 27 | 77 | 15 | 38 | 4 |

SENATORIAL DISTRICTS.

Art. 193. [24] [16] [11] The Senatorial Districts of this State shall hereafter be composed respectively of the following named counties, each of which districts shall be entitled to elect one Senator, to-wit:

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

- No. 15. Fayette, Lavaca, Colorado, Austin and Waller.
- No. 16. Harris.
- No. 17. Wharton, Ft. Bend, Matagorda, Brazoria, Galveston and Chambers.
- No. 18. Wilson, Atascosa, Karnes, DeWitt, Victoria, Goliad, Live Oak, San Patricio, Bee, Refugio, Aransas, Calhoun and Jackson.
- No. 19. Blanco, Hays, Comal, Caldwell, Guadalupe and Gonzales.
- No. 20. San Saba, Lampasas, Llano, Burnet, Williamson and Travis.
- No. 21. Bell, Erath, Bosque, Hamilton and Coryell.
- No. 22. Montague, Jack, Wise, Denton, Palo Pinto and Parker.
- No. 23. Hardeman, Foard, Knox, Wilbarger, Baylor, Wichita, Archer, Young and Clay.
- No. 24. Scurry, Fisher, Jones, Shackelford, Stephens, Eastland, Callahan, Taylor, Nolan, Mitchell, Throckmorton and Haskell.
- No. 25. Comanche, Mills, Brown, Coleman, McCulloch, Mason, Menard, Concho, Runnels, Coke, Tom Green, Schleicher, Irion, Sterling, Gillespie and Kimble.
- No. 26. Kerr, Kendall, Bexar and Bandera.
- No. 27. Zavalla, Frio, McMullen, La Salle, Dimmit, Webb, Duval, Jim Wells, Kenedy, Nueces, Kleberg, Willacy, Brooks, Jim Hogg, Zapata, Starr, Hidalgo and Cameron.
- No. 28. Tarrant.
- No. 29. El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ward, Ector, Midland, Glasscock, Reagan, Upton, Crane, Crockett, Sutton, Edwards, Real, Kinney, Val Verde, Terrell, Brewster, Presidio, Jeff Davis, Pecos, Uvalde, Medina and Maverick.
- No. 30. Bailey, Lamb, Hale, Floyd, Motley, Cottle, Cochran, Hockley, Lubbock, Crosby, Dickens, King, Yoakum, Terry, Lynn, Garza, Kent, Stonewall, Gaines, Dawson, Borden, Andrews, Martin and Howard.
- No. 31. Dallam, Sherman, Hansford, Ochiltree, Lipscomb, Hartley, Moore, Hutchinson, Roberts, Hemphill, Oldham, Potter, Carson, Gray, Wheeler, Deaf Smith, Randall, Armstrong, Donley, Collingsworth, Parmer, Castro, Swisher, Briscoe, Hall and Childress. [Acts 1901, S. S. p. 10; Acts 1st C. S. 1921, p. 230.]
- Art. 194. [25] [17] [12] **Returns made to whom.**—The County Judges of the following counties shall receive returns and count the votes, and issue certificates of election to persons receiving the highest number for Senator at any election in their respective districts, to-wit:
- First District—Bowie.
- Second District—Harrison.
- Third District—Angelina.
- Fourth District—Jefferson.
- Fifth District—Walker.
- Sixth District—Navarro.

Seventh District—Smith.
 Eighth District—Lamar.
 Ninth District—Grayson.
 Tenth District—Hunt.
 Eleventh District—Dallas.
 Twelfth District—Ellis.
 Thirteenth District—McLennan.
 Fourteenth District—Bastrop.
 Fifteenth District—Colorado.
 Sixteenth District—Harris.
 Seventeenth District—Wharton.
 Eighteenth District—Bee.
 Nineteenth District—Caldwell.
 Twentieth District—Williamson.
 Twenty-first District—Bell.
 Twenty-second District—Wise.
 Twenty-third District—Wichita.
 Twenty-fourth District—Taylor.
 Twenty-fifth District—Brown.
 Twenty-sixth District—Bexar.
 Twenty-seventh District—Nueces.
 Twenty-eighth District—Tarrant.
 Twenty-ninth District—El Paso.
 Thirtieth District—Lubbock.
 Thirty-first District—Potter. [Id.]

REPRESENTATIVE DISTRICTS.

Art. 195. [26] [18] [13] The Representative Districts shall be composed respectively of the following named counties, each of which Districts shall be entitled to elect one Representative unless otherwise provided herein:

- No. 1. Bowie.
- No. 2. Cass.
- No. 3. Bowie, Cass and Marion.
- No. 4. Camp and Upshur.
- No. 5. Harrison.
- No. 6. Harrison and Gregg.
- No. 7. Panola.
- No. 8. Rusk.
- No. 9. Nacogdoches.
- No. 10. Shelby.
- No. 11. San Augustine and Sabine.
- No. 12. Angelina and Tyler.
- No. 13. Jasper and Newton.
- No. 14. Hardin and Liberty.
- No. 15. Orange and Jefferson.
- No. 16. Jefferson—two Representatives.
- No. 17. Chambers and Galveston.
- No. 18. Galveston.
- No. 19. Harris—five Representatives.
- No. 20. Waller and Fort Bend.
- No. 21. Brazoria and Matagorda.
- No. 22. Wharton and Jackson.
- No. 23. Lavaca.

- No. 24. Washington.
- No. 25. Austin and Colorado.
- No. 26. Brazos and Grimes.
- No. 27. Grimes and Montgomery.
- No. 28. Polk and Trinity.
- No. 29. Walker and San Jacinto.
- No. 30. Houston.
- No. 31. Cherokee.
- No. 32. Smith.
- No. 33. Smith and Gregg.
- No. 34. Wood.
- No. 35. Morris and Titus.
- No. 36. Red River.
- No. 37. Lamar.
- No. 38. Lamar and Fannin.
- No. 39. Hopkins.
- No. 40. Hunt.
- No. 41. Fannin.
- No. 42. Rains and Hunt.
- No. 43. Collin.
- No. 44. Grayson—two Representatives.
- No. 45. Grayson and Collin.
- No. 46. Cooke.
- No. 47. Montague.
- No. 48. Wise.
- No. 49. Denton.
- No. 50. Dallas—five Representatives.
- No. 51. Dallas, Rockwall and Kaufman.
- No. 52. Kaufman.
- No. 53. Van Zandt.
- No. 54. Henderson.
- No. 55. Anderson.
- No. 56. Leon and Madison.
- No. 57. Freestone.
- No. 58. Navarro.
- No. 59. Hill.
- No. 60. Navarro and Hill.
- No. 61. Limestone.
- No. 62. Falls.
- No. 63. Robertson.
- No. 64. Milam.
- No. 65. Milam, Burleson and Lee.
- No. 66. Fayette.
- No. 67. Gonzales.
- No. 68. DeWitt.
- No. 69. Victoria, Goliad and Calhoun.
- No. 70. Aransas, Refugio, Bee and San Patricio
- No. 71. Nueces, Jim Wells and Duval.
- No. 72. Cameron.
- No. 73. Hidalgo.
- No. 74. Kleberg, Willacy, Kenedy, Jim Hogg, Brooks and Starr.
- No. 75. Zapata and Webb.

- No. 76. LaSalle, McMullen, Live Oak, Atascosa and Frio.
- No. 77. Dimmit, Zavalla, Uvalde and Medina.
- No. 78. Bexar—five Representatives.
- No. 79. Wilson and Karnes.
- No. 80. Guadalupe and Comal.
- No. 81. Hays and Caldwell—two Representatives.
- No. 82. Travis—two Representatives.
- No. 83. Williamson.
- No. 84. Williamson and Burnet.
- No. 85. Blanco, Llano, Kendall and Gillespie.
- No. 86. Mason, Menard, Schleicher, Crockett, Sutton,
Kimble, Kerr, Bandera, Real and Edwards.
- No. 87. Maverick, Kinney, Val Verde, Terrell and Brewster.
- No. 88. Presidio, Jeff Davis, Reeves, Loving, Winkler, Ward,
Ector, Crane, Pecos, Upton, Midland, Martin and Andrews.
- No. 89. El Paso—two Representatives.
- No. 90. El Paso, Hudspeth and Culberson.
- No. 91. Glasscock, Howard, Sterling, Reagan, Irion and
Tom Green.
- No. 92. Coke, Runnels and Concho.
- No. 93. McCulloch, San Saba and Lampasas.
- No. 94. Hamilton and Coryell.
- No. 95. Bell.
- No. 96. Bell, Falls and McLennan.
- No. 97. McLennan—two Representatives.
- No. 98. Johnson, Somervell and Bosque.
- No. 99. Johnson.
- No. 100. Ellis—two Representatives.
- No. 101. Tarrant—four Representatives.
- No. 102. Tarrant and Denton.
- No. 103. Parker.
- No. 104. Comanche and Mills.
- No. 105. Erath and Hood.
- No. 106. Eastland.
- No. 107. Eastland and Callahan.
- No. 108. Palo Pinto and Stephens.
- No. 109. Young and Jack.
- No. 110. Archer and Clay.
- No. 111. Wichita—two Representatives.
- No. 112. Wichita and Wilbarger.
- No. 113. Baylor, Haskell and Throckmorton.
- No. 114. Hardeman, Foard, Knox and King.
- No. 115. Jones and Shackelford.
- No. 116. Taylor.
- No. 117. Nolan, Fisher and Mitchell.
- No. 118. Dickens, Stonewall, Kent, Scurry, Borden and
Garza.
- No. 119. Gaines, Dawson, Yoakum, Terry, Lynn, Cochran,
Hockley, Lubbock and Crosby.
- No. 120. Bailey, Parmer, Castro, Lamb, Hale, Swisher, Bris-
coe and Floyd.
- No. 121. Motley, Cottle, Hall and Childress.
- No. 122. Donley, Collingsworth, Wheeler and Gray.

No. 123. Carson, Armstrong, Randall, Potter, Deaf Smith and Oldham.

No. 124. Hartley, Dallam, Sherman, Moore, Hutchinson, Hansford, Ochiltree, Roberts, Hemphill and Lipscomb.

No. 125. Brown and Coleman.

No. 126. Delta, Hopkins and Franklin.

No. 127. Bastrop. [Id; Acts 2nd C. S. 1921, p. 264.]

Art. 196. [27] [19] [14] **Returns made to whom.**—In all districts composed of only one county, the county judge of each county shall receive the returns and issue a certificate of election to the Representative elected, as shown by the highest number of votes cast for any one person; but in the several districts composed of more than one county, the county judge of the following named counties shall receive the returns and issue certificates of election to the Representative elected in their respective districts, to-wit:

Third District—Marion County.

Sixth District—Harrison County.

Eleventh District—San Augustine County.

Twelfth District—Angelina County.

Thirteenth District—Newton County.

Fourteenth District—Liberty County.

Fifteenth District—Jefferson County.

Seventeenth District—Galveston County.

Twentieth District—Fort Bend County.

Twenty-first District—Brazoria County.

Twenty-second District—Wharton County.

Twenty-fifth District—Colorado County.

Twenty-sixth District—Brazos County.

Twenty-seventh District—Montgomery County.

Twenty-eighth District—Polk County.

Twenty-ninth District—Walker County.

Thirty-third District—Gregg County.

Thirty-fourth District—Wood County.

Thirty-fifth District—Titus County.

Forty-second District—Hunt County.

Forty-fifth District—Grayson County.

Fifty-first District—Rockwall County.

Fifty-sixth District—Leon County.

Sixtieth District—Navarro County.

Sixty-fifth District—Burlleson County.

Sixty-ninth District—Goliad County.

Seventieth District—Bee County.

Seventy-first District—Nueces County.

Seventy-fourth District—Starr County.

Seventy-fifth District—Webb County.

Seventy-sixth District—Atascosa County.

Seventy-seventh District—Uvalde County.

Seventy-ninth District—Karnes County.

Eightieth District—Guadalupe County.

Eighty-first District—Caldwell County.

Eighty-fourth District—Burnet County.

Eighty-fifth District—Blanco County.

Eighty-sixth District—Kerr County.
 Eighty-seventh District—Val Verde County.
 Eighty-eighth District—Reeves County.
 Ninetieth District—El Paso County.
 Ninety-first District—Tom Green County.
 Ninety-second District—Runnels County.
 Ninety-third District—McCulloch County.
 Ninety-fourth District—Coryell County.
 Ninety-sixth District—McLennan County.
 Ninety-eighth District—Bosque County.
 One Hundred and Second District—Denton County.
 One Hundred and Fourth District—Comanche County.
 One Hundred and Fifth District—Erath County.
 One Hundred and Seventh District—Eastland County.
 One Hundred and Eighth District—Palo Pinto County.
 One Hundred and Ninth District—Young County.
 One Hundred and Tenth District—Clay County.
 One Hundred and Twelfth District—Wilbarger County.
 One Hundred and Thirteenth District—Haskell County.
 One Hundred and Fourteenth District—Hardeman County.
 One Hundred and Fifteenth District—Jones County.
 One Hundred and Seventeenth District—Mitchell County.
 One Hundred and Eighteenth District—Scurry County.
 One Hundred and Nineteenth District—Lubbock County.
 One Hundred and Twentieth District—Hale County.
 One Hundred and Twenty-first District—Hall County.
 One Hundred and Twenty-second District—Donley County.
 One Hundred and Twenty-third District—Potter County.
 One Hundred and Twenty-fourth District—Dallam County.
 One Hundred and Twenty-fifth District—Brown County.
 One Hundred and Twenty-sixth District—Hopkins County.

[Id.]

CONGRESSIONAL DISTRICTS.

Art. 197 [28] [20] [15] The State shall be apportioned into congressional districts composed of the following named counties, and each district shall be entitled to elect one member of the Congress of the United States:

First—Bowie, Red River, Lamar, Delta, Hopkins, Franklin, Titus, Camp, Morris, Cass and Marion.

Second—Panola, Shelby, San Augustine, Sabine, Newton, Jasper, Orange, Jefferson, Hardin, Tyler, Angelina, Nacogdoches, Cherokee and Harrison.

Third—Kaufman, Van Zandt, Wood, Upshur, Smith, Gregg, Henderson and Rusk.

Fourth—Fannin, Grayson, Collin, Hunt and Rains.

Fifth—Dallas, Ellis and Rockwall.

Sixth—Navarro, Freestone, Limestone, Robertson, Brazos, Milam, Leon, Madison and Hill.

Seventh—Galveston, Chambers, Liberty, San Jacinto, Polk, Trinity, Houston, Anderson, Walker and Montgomery.

Eighth—Harris, Fort Bend, Waller and Grimes.

Ninth—Brazoria, Fayette, Colorado, Wharton, Matagorda,

Jackson, Lavaca, Gonzales, DeWitt, Victoria, Calhoun, Goliad and Refugio.

Tenth—Washington, Austin, Burleson, Lee, Bastrop, Caldwell, Hays, Travis and Williamson.

Eleventh—Bell, Coryell, Hamilton, Bosque, McLennan and Falls.

Twelfth—Erath, Hood, Somervell, Johnson, Tarrant and Parker.

Thirteenth—Cooke, Denton, Wise, Montague, Clay, Jack, Young, Archer, Wichita, Wilbarger, Baylor and Throckmorton.

Fourteenth—Aransas, San Patricio, Bee, Karnes, Wilson, Bexar, Comal, Kendall, Blanco, Nueces and Guadalupe.

Fifteenth—Cameron, Willacy, Kleberg, Jim Wells, Brooks, Hidalgo, Starr, Jim Hogg, Zapata, Webb, Duval, Live Oak, McMullen, LaSalle, Dimmit, Maverick, Zavala, Frio, Atascosa, Medina, Uvalde, Kinney and Kenedy.

Sixteenth—Andrews, Martin, Howard, Mitchell, Coke, Sterling, Glasscock, Midland, Ector, Winkler, Loving, Ward, Crane, Upton, Reagan, Irion, Tom Green, Menard, Schleicher, Crockett, Sutton, Kimble, Terrell, Pecos, Reeves, Culberson, El Paso, Jeff Davis, Presidio, Brewster, Hudspeth, Real, Kerr, Gillespie, Bandera, Val Verde, Edwards and Mason.

Seventeenth—Burnet, Llano, Comanche, McCulloch, San Saba, Lampasas, Mills, Brown, Coleman, Callahan, Eastland, Stephens, Shackelford, Jones, Palo Pinto, Taylor, Nolan, Concho and Runnels.

Eighteenth—Hardeman, Foard, Knox, Haskell, Fisher, Stone-wall, King, Cottle, Childress, Collingsworth, Wheeler, Hemp-hill, Lipscomb, Ochiltree, Roberts, Gray, Donley, Hall, Motley, Dickens, Kent, Scurry, Borden, Garza, Crosby, Floyd, Briscoe, Armstrong, Carson, Hutchinson, Hansford, Sherman, Moore, Potter, Randall, Swisher, Hale, Lubbock, Lynn, Dawson, Gaines, Terry, Hockley, Lamb, Castro, Dallam, Hartley, Oldham, Deaf Smith, Parmer, Bailey, Yoakum and Cochran. [Acts 1903, p. 44; Acts 1905, p. 96; Acts 1909, p. 156; Acts 1917, ch. 119.]

SUPREME JUDICIAL DISTRICTS.

Art. 198. [29] [21] [16] This State shall be divided into supreme judicial districts composed of the following named counties for the purpose of constituting and organizing a court of civil appeals in each district:

First—Houston, Walker, Harris, Grimes, Washington, Waller, Fort Bend, Brazoria, Matagorda, Wharton, Colorado, Austin, Lavaca, Jackson, Anderson, Chambers, DeWitt, Galveston, Burleson, and Trinity.

Second—Wichita, Cooke, Montague, Clay, Archer, Young, Jack, Wise, Denton, Tarrant, Parker, Hood, Somervell, Johnson, Palo Pinto, Baylor and Knox.

Third—Coleman, Mills, Lampasas, San Saba, McCulloch, Concho, Llano, Burnet, Williamson, Milam, Lee, Bastrop, Travis, Blanco, Hays, Comal, Caldwell, Sterling, Tom Green, Irion, Schleicher, Crockett, Brown, Bell, Runnels, Coke, and Fayette.

Fourth—Val Verde, Sutton, Edwards, Kinney, Maverick,

Menard, Kimble, Kerr, Bandera, Uvalde, Zavalla, Dimmit, Webb, LaSalle, Frio, Medina, Duval, McMullen, Atascosa, Bexar, Kendall, Gillespie, Mason, Guadalupe, Wilson, Live Oak, Zapata, Bee, Gonzales, Karnes, Calhoun, Victoria, Goliad, Refugio, San Patricio, Aransas, Nueces, Hildalgo, Cameron, Starr, Jim Hogg, Real, Brooks, Jim Wells, Kleberg, Kenedy and Willacy.

Fifth—Grayson, Collin, Dallas, Rockwall, Ellis, Navarro, Kaufman, Henderson, Van Zandt, Rains, Hunt, Wood and Delta.

Sixth—Lamar, Red River, Bowie, Hopkins, Franklin, Titus, Morris, Cass, Marion, Camp, Fannin, Cherokee, Gregg, Harrison, Panola, Smith, Upshur and Rusk.

Seventh—Dallam, Sherman, Hansford, Ochiltree, Lipscomb, Hartley, Moore, Hutchinson, Roberts, Hemphill, Oldham, Potter, Carson, Gray, Wheeler, Deaf Smith, Randall, Armstrong, Donley, Collingsworth, Parmer, Castro, Swisher, Brisco, Hall, Childress, Bailey, Lamb, Hale, Floyd, Motley, Cottle, Foard, Hardeman, Wilbarger, Crosby, Lubbock, Hockley, Cochran, Yoakum, Terry, Lynn, Garza, Dickens, Kent and King.

Eighth—Gaines, Andrews, Martin, Loving, Winkler, Midland, Glasscock, Reeves, Ward, Crane, Upton, Reagan, Terrell, Pecos, Brewster, Presidio, Jeff Davis, El Paso, Ector, Culberson and Hudspeth.

Ninth—Shebby, Nacogdoches, Angelina, San Jacinto, Montgomery, Liberty, Jefferson, Orange, Hardin, Newton, Jasper, Tyler, Polk, Sabine and San Augustine.

Tenth—McLennan, Coryell, Falls, Roberston, Hamilton, Limestone, Hill, Freestone, Madison, Bosque, Brazos and Leon.

Eleventh—Stonewall, Haskell, Throckmorton, Stephens, Shackelford, Jones, Mitchell, Nolan, Taylor, Callahan, Eastland, Dawson, Howard, Scurry, Fisher, Comanche, Erath, Palo Pinto and Borden. [Acts 1925, p. 258.]

JUDICIAL DISTRICTS.

Art. 199. [30] [22] [17] The judicial districts of the State shall be composed of the following named counties, and the terms of court in said districts shall be held therein each year, as follows:

1.—San Augustine, Sabine, Newton, Jasper and Orange.

San Augustine County: Beginning the first Monday in January and July and continue six weeks.

Newton County: Beginning the seventh Monday after the first Monday in January and July and continue four weeks.

Sabine County: Beginning on the eleventh Monday after the first Monday in January and July and continue five weeks.

Orange County: Beginning on the sixteenth Monday after the first Monday in January and July and continue five weeks.

Jasper County: Beginning on the twenty-first Monday after the first Monday in January and July and continue six weeks. [Acts 1907 p. 100; Acts 1913, p. 176; Acts 1917, p. 263.]

2.—Angelina, Cherokee and Nacogdoches.

Nacogdoches County: On the first Monday in September and second Monday in February and may continue seven weeks.

Angelina County: On the seventh Monday after the first

Monday in September and the seventh Monday after the second Monday in February and may continue seven weeks.

Cherokee County: On the fourteenth Monday after the first Monday in September and may continue until the second Monday in February, and the fourteenth Monday after the second Monday in February and may continue until the business is disposed of. [Acts 1911, p. 93.]

3.—Houston, Henderson and Anderson.

Henderson County: On the first Monday in February and the second Monday before the first Monday in September and may continue seven weeks.

Houston County: On the seventh Monday after the first Monday in February and on the fifth Monday after the first Monday in September, and may continue seven weeks.

Anderson County: On the fourteenth Monday after the first Monday in February and may continue eight weeks; on the twenty-second Monday after the first Monday in February and may continue until the business is disposed of; on the twelfth Monday after the first Monday in September and may continue until the business is disposed of. [Acts 1905, p. 141; Acts 1915, pp. 34, 83.]

4.—Rusk, Panola and Shelby.

The Fourth Judicial District shall be composed of the counties of Rusk, Panola and Shelby and the terms of the district court shall be held therein each year as follows:

In Rusk County, beginning on the first Monday in January and continuing for five weeks; on the third Monday in July and continuing for five weeks.

In Shelby County beginning on the second Monday in February and continuing for six weeks; on the first Monday in November and continuing for seven weeks.

In Panola County beginning on the fourth Monday in March and continuing for five weeks; on the fourth Monday in September and continuing for five weeks. [Acts 1925, p. 266.]

5.—Cass.

Cass County: On the tenth Monday after the first Monday in January and may continue seven weeks and on the first Monday in September and may continue seven weeks. [Acts 1907, p. 198; Acts 1911, p. 167; Acts 1915, p. 6; Acts 1st C. S. 1921, p. 20.]

6.—Fannin and Lamar.

SECTION 1. The terms of the court in and for the Sixth Judicial District shall be hereafter held therein each year as follows:

In the county of Fannin on the second Monday in January of each year and may continue in session for ten weeks;

In the county of Lamar on the eleventh Monday after the second Monday in January of each year and may continue in session for ten weeks;

In Fannin County on the twenty-first Monday after the second Monday in January of each year and may continue in session for eight weeks;

In Lamar County on the fifth Monday after the second Monday in August of each year and may continue in session six weeks;

In Fannin County on the eleventh Monday after the second Monday in August of each year and may continue in session six weeks;

In Lamar County on the seventeenth Monday after the second Monday in August of each year and may continue in session until the second Monday in January the following year.

SEC. 2. The judge of the Sixth Judicial District shall convene a grand jury in Lamar County at only two terms of court in each year unless in his judgment it be necessary for a grand jury the third term. [Acts 1925, p. 254.]

7.—Upshur, Wood and Smith.

Upshur County: On the first Monday in January and may continue four weeks; on the third Monday in April and may continue four weeks; and on the second Monday in September and may continue four weeks.

Wood County: On the fourth Monday after the first Monday in January and may continue four weeks; on the fourth Monday after the third Monday in April and may continue four weeks; and on the fourth Monday after the second Monday in September and may continue four weeks.

Smith County: On the eighth Monday after the first Monday in January and may continue six weeks; on the eighth Monday after the third Monday in April and may continue six weeks; and on the eighth Monday after the second Monday in September and may continue six weeks. [Acts 1909, p. 120; Acts 1917, p. 130; Acts 1923, p. 37.]

8.—Hunt, Hopkins, Delta and Rains.

Delta County: On the first Monday in January and may continue three weeks; and on the first Monday in June and may continue until the business is disposed of.

Hopkins County: On the fourth Monday in January and August and may continue six weeks.

Hunt County: On the sixth Monday after the fourth Monday in January and may continue nine weeks; and on the sixth Monday after the fourth Monday in August and may continue eight weeks.

Rains County: On the fifteenth Monday after the fourth Monday in January and may continue two weeks; and on the fourteenth Monday after the fourth Monday in August and may continue until the business is disposed of.

The District Courts of the Eighth and Sixty-second Judicial Districts in Hunt County, shall have concurrent jurisdiction with each other in said county throughout the limits thereof, of all matters, civil and criminal, of which jurisdiction is given to the district courts by the Constitution and laws of the State; and the District Courts of the Eighth and Sixty-second Judicial Districts in the county of Delta shall have concurrent jurisdiction with each other in said county, throughout the limits thereof, of all matters civil and criminal, of which jurisdiction is given to the district courts by the Constitution and laws of the State; provided that the judge of the Sixty-second Judicial District shall never impanel the grand jury in said court in the

counties of Lamar, Hunt and Delta, unless in his judgment he thinks it necessary. Either of the judges of the District Court of Hunt County may, in their discretion, either in term time or vacation, transfer any case or cases, civil or criminal, that may at any time be pending in his court, to the other district court in said county of Hunt, by order or orders entered upon the minutes of the court making such transfer; and, where such transfer or transfers are made, the clerk of said court shall enter such case or cases upon the dockets of the court to which such transfer or transfers are made, and, when so entered upon the docket, the judge of said court shall try and dispose of said cases in the same manner as if such cases were originally filed in said court. Either of the judges of the District Courts of the County of Delta may, in their discretion, either in term time or vacation, transfer any case or cases of a civil or criminal nature that may at any time be pending in his court, to the other district court in said Delta County, by order or orders entered upon the minutes of the court making such transfer; and, when such transfer or transfers are made, and when so entered upon the docket, the judge of said court shall try and dispose of said case or cases in the same manner as if such cases were originally filed in said court. The clerks of the District Courts of Delta and Hunt counties respectively, as heretofore constituted, and their successors in office, shall be the clerks of both the Eighth and Sixty-second District Courts in said counties respectively. [Acts 1897, p. 111; Acts 1905, p. 75.]

9.—Polk, San Jacinto, Montgomery and Waller.

The Ninth Judicial District of Texas shall hereafter be composed of the following named counties, to-wit:

Polk, San Jacinto, Montgomery and Waller, and the terms of the district courts in and for said Ninth Judicial District of Texas, shall be begun and holden therein as follows, to-wit:

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

In the county of San Jacinto on the sixth Monday after the first Monday in January and July and may continue in session for five weeks.

In the county of Waller on the eleventh Monday after the first Monday in January and July and may continue in session for six weeks.

In the county of Montgomery on the seventeenth Monday after the first Monday in January and July and may continue in session for six weeks.

10, 56.—Galveston County:

On the first Monday in February, April, June, October and December and may continue until the business is disposed of.

In all suits, actions or proceedings, it shall be sufficient for the address or designation to be merely the "District Court of Galveston County;" and the clerk of said courts shall file and docket the even numbers thereof in the Court of the Tenth Judicial District, and the odd numbers thereof in the Court of the Fifty-sixth Judicial District; but any case pending in either of said courts may, in the discretion of the judge thereof, be transferred

from one of said district courts to the other, and so from time to time; and in case of the disqualification of the judge of either of said courts in any case, such case, on his suggestion of disqualification, shall stand transferred to the other of said courts, and be docketed by the clerk accordingly. The clerk of the court of the Tenth Judicial District shall perform the duties of the clerk of the court of the Fifty-sixth Judicial District; in case of vacancy in said office of said clerk, the same shall be filled by appointment by the judge of the Tenth Judicial District. [Acts 1909, p. 116; Acts 1911, p. 111.]

11.—Harris County shall constitute the Eleventh, Fifty-fifth, Sixty-first and Eightieth Judicial Districts. None of said four district courts shall have nor exercise any criminal jurisdiction in Harris County. Said district courts of the Eleventh, Fifty-fifth, Sixty-first and Eightieth Judicial Districts shall have and exercise concurrent jurisdiction co-extensive within the limits of Harris County in all civil cases, proceedings and matters of which district courts are given jurisdiction by the Constitution and laws of this State. There shall be two terms of each of said four civil courts in Harris County in each year, and the first term, which shall be known as the January-June term, shall be begun on the first Monday in January and shall continue until and including Sunday next before the first Monday in July; and the second term, which shall be known as the July-December term, shall begin on the first Monday in July and shall continue until and including Sunday next before the first Monday in the following January.

In all suits, actions or proceedings in said courts it shall be sufficient for the address or designation to be merely "District Court of Harris County." The clerk of the civil district courts in Harris County shall be known as "Clerk of the District Court of Harris County, Texas." The clerk of said four civil district courts shall docket alternately on the dockets of the district courts of the Eleventh, Fifty-fifth, Sixty-first and Eightieth Judicial Districts in Harris County, all cases, actions, petitions, applications and other proceedings filed in the district courts of Harris County, so that the first case or proceedings filed after the first day of July 1923 and every fourth case or proceedings thereafter filed shall be docketed in the Eleventh Judicial District Court, and the second case or proceeding filed and every fourth case or proceeding thereafter filed shall be docketed in the Fifty-fifth Judicial District Court, and the third case or proceeding filed and every fourth case or proceeding thereafter filed shall be docketed in the Sixty-first Judicial District Court, and the fourth case or proceeding and every fourth case or proceeding thereafter filed shall be docketed in the Eightieth Judicial District Court, and so on seriatum, and all cases and proceedings shall in this manner be docketed in and divided and distributed among said four civil courts, one-fourth to each of them when first filed. All suits shall be filed by the clerk in the order in which the petitions are presented to or deposited with him and immediately after being so presented or

deposited. In case of the disqualification of the judge of any of said four civil courts in any case or proceeding, such case or proceeding, on his suggestion of disqualification, shall be transferred to another of said courts, and the order of transfer may be made by any judge of another of said courts and may be transferred to any other of said courts, or instead of transferring the case the judge of any other of said courts may sit in the court in which the case is then pending and there try the same, and all transferred cases or proceedings shall be docketed by the clerk accordingly. The judges of said four civil courts shall sign the minutes of each term of the courts in Harris County within thirty days after the end of the term, and shall also sign the minutes at the end of each volume of the minutes, and each judge sitting in said courts shall sign the minutes of such proceedings as were had before him.

Each judge of said courts may take a vacation and not attend court for six weeks between the first day of July and the first day of October in each year, during which time the term of the court of which he is judge shall remain open, and the judge of any other civil district court in Harris County may hold such court during the vacation of the judges thereof. During the period of such vacation it shall not be lawful for a special judge of such court to be elected by the practicing lawyers of such court because of the absence of the judge on his vacation, unless no judge of said civil district courts is in the county. The judges of said courts shall, by agreement among themselves, take their vacations alternately so that there shall at all times be at least one of said judges in the county; and the absence, sickness or disqualification of the judge of any of said civil district courts shall not be ground for the election of a special judge by the practicing lawyers unless all of the other judges of said courts in the county are also absent, sick or disqualified, or are unable or decline to serve. [Acts 1903, p. 22; Acts 1923, p. 203.]

12.—Trinity, Leon, Walker, Madison and Grimes.

Trinity County: On the third Monday in February and September and may continue four weeks.

Leon County: On the fourth Monday after the third Monday in February and September and may continue four weeks.

Walker County: On the eighth Monday after the third Monday in February and September and may continue four weeks.

Madison County: On the twelfth Monday after the third Monday in February and may continue three weeks; and on the twelfth Monday after the third Monday in September and may continue four weeks.

Grimes County: On the third Monday in June and on the sixteenth Monday after the third Monday in September and may continue six weeks. [Acts 1905, p. 55; Acts 1919, p. 111.]

13.—Navarro. On the first Mondays in January, April, July and October. The January, April and October terms shall each continue twelve weeks or until all the business be disposed of, and the July term shall continue six weeks or until the business be disposed of. Jury trials may be had at each and all of said

terms of court. There shall be organized grand juries at the April and October terms of said court, and at such other terms thereof as may be determined and ordered by the Judge thereof. The office of District Attorney for the Thirteenth Judicial District is hereby abolished; the County Attorney of Navarro County shall hereafter perform all the duties heretofore performed by said District Attorney. [Acts 1899, p. 38; Acts 1915, p. 11; Acts 1923, p. 45.]

14, 44, 68, 95, 101.—Dallas. None of the said district courts of Dallas County shall have nor exercise any criminal jurisdiction in Dallas County, but all of said courts shall have and exercise concurrent jurisdiction co-extensive with the limits of Dallas County in all civil cases, proceedings and matters of which district courts are given jurisdiction by the Constitution and laws of the State. The terms of said courts shall be as follows:

Fourteenth District: On the second Monday in January and ending on the Saturday before the second Monday in April; on the second Monday in April and ending on Saturday before the second Monday in July; on the second Monday in July and ending on Saturday before the second Monday in October; and on the second Monday in October and ending on Saturday before the second Monday in January.

Forty-fourth District: On the first Mondays in January, April, June and October and continue until all business be disposed of.

Sixty-eighth District: On the first Mondays in February, May, September and December and continue until all business be disposed of.

Ninety-fifth District: On the first Mondays in March, June, September and December, and each term shall continue until the Sunday immediately preceding the date set for the beginning of the next term thereof.

In case of vacancy by death, resignation or removal in the office of clerk of said district courts of Dallas County, his successor shall be appointed by a majority of the judges of the said four civil courts and the judges of the Criminal District Courts acting together, and if they fail to make such appointment within twenty days after such vacancy is created, then such appointment shall be made by the Commissioners Court of Dallas County.

The letters A, B, C and D shall be placed on the dockets and court papers in the respective district courts of Dallas County to distinguish them. A being used in connection with the Fourteenth District Court, B the Forty-fourth, C the Sixty-eighth, and D the Ninety-fifth District Court. All suits, prosecutions and proceedings hereafter instituted in the district courts of Dallas County shall be numbered consecutively, beginning with the next number after the last file number on the dockets of the Fourteenth, Forty-fourth and Sixty-eighth District Courts, and shall be entered by the district clerk upon the dockets of said courts alternately, beginning with the Fourteenth District Court, next the Forty-fourth District Court, third the Sixty-

eighth District Court, and fourth the Ninety-fifth District Court.

The respective judges of the district courts of Dallas County shall, from time to time as occasion may require, transfer cases from any one of such courts to any other such court in order that the business may be equally distributed among them, that the judges thereof may at all times be provided with cases to be tried or otherwise considered, and that the trial of no case need be delayed because of the disqualification of the judge in whose court it is pending; provided, however, no case shall be transferred from one court to another without the consent of the judge of the court to which it is transferred. When any transfer is made, proper order shall be entered on the minutes of the court as evidence thereof, and notice of the transfer shall be given in writing by the clerk to the attorneys of record of all parties to the cause. [Acts 1913, p. 171; Acts 1917, p. 130; Acts 1923, p. 118.] Acts 1925, p. 210, gives District 101 concurrent jurisdiction except as to criminal matters with other district courts in Dallas County.

15, 59.—Grayson County shall constitute the Fifteenth Judicial District, and with Collin County shall constitute the Fifty-ninth Judicial District. The District Courts shall be held therein as follows:

Fifteenth District: On the first Monday in January and continuing until and including the last Saturday before the second Monday in March; on the second Monday in March and continuing until and including the last Saturday before the third Monday in May; on the third Monday in May and continuing until and including the last Saturday before the second Monday in August or until the business is disposed of; and on the first Monday in October and continuing until and including the last Saturday before the first Monday in January.

Fifty-ninth District: (a) Collin County: On the third Monday in January and continuing until and including Saturday before the second Monday in March; on the fourth Monday in April and continuing to and including Saturday before the third Monday in June; and on the second Monday in September and continuing until and including Saturday before the first Monday in December.

Fifty-ninth District: (b) Grayson County: On the second Monday in March and continuing until and including Saturday before the fourth Monday in April; on the third Monday in June and continuing until and including the Saturday before the fourth Monday in July; and on the first Monday in December and continuing until and including Saturday before the third Monday in January.

The District Courts of the Fifteenth and Fifty-ninth Judicial Districts, in the County of Grayson, shall have concurrent jurisdiction with each other throughout the limits of Grayson County of all matters civil and criminal of which jurisdiction is given to the district courts by the Constitution and laws of this State; provided, that the judge of the Fifteenth Judicial District may impanel the grand jury in Grayson County when, in the dis-

cretion of said court, it is deemed by him proper so to do, he may draw and impanel such grand jury for any terms of his court as provided by law for other district courts for impaneling grand juries. Either of the judges of the District Court of Grayson County may, in their discretion, either in term time or in vacation, transfer any case or cases, civil or criminal, that may at any time be pending in his court, to the other district court in Grayson County, by order or orders entered upon the minutes of the court making such transfer; and, where such transfer or transfers are made, the clerk of said court shall enter such case or cases upon the dockets of the court to which such transfer or transfers are made, and when so entered upon the docket, the judge of said court shall try and dispose of said cases in the same manner as if such cases were originally in said court. The clerk of the District Court of Grayson County, as heretofore constituted, and his successor in office shall be the clerk of both the Fifteenth and Fifty-ninth District Courts in said Grayson County, and shall perform all the duties pertaining to the clerkship of both of said courts. [Acts 1903, p. 2; Acts 2nd C. S. 1909, p. 393; Acts 3rd C. S. 1923, p. 29.]

16.—Denton and Cooke.—Cooke County: On the first Monday in January and may continue eight weeks; on the sixteenth Monday after the first Monday in January and may continue six weeks; and on the first Monday in September and may continue eight weeks.

Denton County: On the eighth Monday after the first Monday in January and may continue eight weeks; on the twenty-second Monday after the first Monday in January and may continue six weeks; and on the eighth Monday after the first Monday in September and may continue eight weeks. [Acts 1917, p. 43; Acts 3d C. S. 1923, p. 42.]

17, 48, 67, 96.—Tarrant.—The district courts of the Seventeenth, Forty-eighth, Sixty-seventh and Ninety-sixth Districts shall have concurrent jurisdiction throughout the limits of Tarrant County of all civil matters of which jurisdiction is given to the district courts by the Constitution and laws of the State. None of said courts shall have nor exercise any criminal jurisdiction. The terms of said district courts shall be as follows:

Seventeenth and Ninety-sixth Districts: On the first Mondays in January, April, July and October and continue until the business is disposed of.

Forty-eighth District: On the first Mondays in February, May, August and November and continue until the business is disposed of.

Sixty-seventh District: On the first Mondays in March, June, September and December and continue until the business is disposed of.

The judges of said four courts shall each have the right, within his discretion, to make transfer of cases from his court to any other of said courts.

The clerk of the district courts of Tarrant County shall make up dockets for each of said Courts. All cases, prosecutions and proceedings filed with the Clerk shall by him be entered upon

the dockets of said courts alternately, so that the business may be equally distributed between them; provided, that all garnishment cases shall follow the cases in which they are sued out, and that such garnishment cases shall not be estimated by the clerk in dividing business. In all injunctions granted by said judges, the suits wherein granted shall be docketed in the court of the judge who granted such injunctions; and in all cases wherein receivers may be appointed by said judges, the suit wherein such receivers shall be appointed shall be docketed in the court of the judge who appointed such receivers. [Acts 1907, p. 338, Acts 1923, p. 104.]

18.—Johnson, Bosque and Somervell.

Johnson County: On the first Monday in January and may continue until and including Saturday before the Third Monday in March; on the first Monday in May and may continue until and including Saturday before the first Monday in July; and on the second Monday in October and may continue until and including Saturday before the first Monday in December.

Bosque County: On the third Monday in March and may continue until and including Saturday before the third Monday in April; on the third Monday in September and may continue until and including Saturday before the second Monday in October; and on the first Monday in December and may continue until and including Saturday before the first Monday in January.

Somervell County: On the third Monday in April and may continue until and including Saturday before the first Monday in May; on the first Monday in September and may continue until and including Saturday before the third Monday in September. [Acts 1905, p. 37; Acts 1917, p. 75.]

19, 54, 74.—McLennan.

Nineteenth District: On the first Mondays in January, April, July and October and continue until the business is disposed of; provided the October term shall not continue longer than the last Saturday before the 25th day of December.

Fifty-fourth District: On the first Monday in January, March, May, September and November, and each of said terms may continue until and including the Saturday next preceding the beginning of the next succeeding term, unless the business of the term shall be sooner disposed of; and grand juries shall be impaneled at the March and September terms of court and at such other terms as the judge of said district may determine and order.

Seventy-fourth District: On the second Mondays in February, April, June, August, October and December and continue until the business is disposed of.

The said three courts shall have concurrent jurisdiction throughout the limits of McLennan County in all civil and criminal cases and proceedings of which district courts are given jurisdiction by the Constitution and laws of the State. Any one of the judges of said courts may, in his discretion, either in term time or vacation, transfer any cause or causes, civil or criminal, that may at any time be pending in his court, to any other of

said courts by order or orders entered upon the minutes of his said court, and where such transfer or transfers are made, the clerk of said courts shall enter such cause or causes upon the docket of the court to which such transfer or transfers are made, and when so entered upon the docket, the judge of said court to which such cause or causes have been transferred, shall try and dispose of said cause or causes in the same manner as if such cause or causes were originally in said court.

The judges of the Nineteenth and Seventy-fourth Judicial Districts shall never impanel a grand jury in their courts, but may at any time reconvene the grand jury impaneled by the judge of the Fifty-fourth District, when a necessity therefor exists in the judgment of the judge or judges of said Nineteenth and Seventy-fourth Judicial Districts. No petit juries shall be drawn for the July term of the Nineteenth Judicial District or for the August term of the Seventy-fourth Judicial District, unless the judges of said courts shall deem the same necessary. [Acts 1893, p. 52; Acts 1915, p. 3; Acts 1917, p. 13.]

20.—Milam. On the first Mondays in January, March, May and September, and the second Monday in November, and each term may continue until and including the Saturday next preceding the beginning of the next succeeding term, unless the business of the term shall be sooner disposed of.

Grand juries in said district shall be organized at the May and November terms of said court and at such other terms as the judge of said court may determine and order by causing an order to that effect to be entered upon the minutes of said court by the clerk thereof.

The office of district attorney for said district is hereby abolished, and the regularly elected county attorney of said county shall perform all the duties of district attorney. [Acts 1893, p. 52; Acts 1917, p. 256.]

21.—Washington, Burleson, Lee and Bastrop.

Washington County: On the first Monday in March and September and may continue six weeks.

Lee County: On the sixth Monday after the first Monday in March and September and may continue four weeks.

Burleson County: On the tenth Monday after the first Monday in March and September and may continue five weeks.

Bastrop County: On the second Monday in January and may continue six weeks; and on the fifteenth Monday after the first Monday in March and may continue six weeks. [Acts 1911, p. 39; Acts 1917, p. 310.]

22. Comal, Hays, Caldwell, Fayette and Austin.

Comal County: On the first Monday in February and September and may continue three weeks.

Hays County: On the fourth Monday in February and may continue four weeks; on the first Monday in July and may continue three weeks; and on the fourth Monday in September and may continue four weeks.

Caldwell County: On the seventh Monday after the first Monday in February and may continue five weeks; on the fourth

Monday in July and may continue five weeks; and on the seventh Monday after the first Monday in September and may continue four weeks.

Fayette County: On the twelfth Monday after the first Monday in February and may continue five weeks; and on the eleventh Monday after the first Monday in September and may continue six weeks.

Austin County: On the first Mondays in January and June and may continue four weeks.

The judge of said district court may, in his discretion, impanel a grand jury at the July terms of the district courts in Hays and Caldwell Counties. [Acts 1915, p. 113; Acts 1923, p. 196.]

23.—Brazoria, Fort Bend, Wharton and Matagorda.

Brazoria County: On the first Monday in September and may continue five weeks; and on the first Monday in February and may continue six weeks.

Fort Bend County: On the fifth Monday after the first Monday in September and may continue five weeks; and on the sixth Monday after the first Monday in February and may continue six weeks.

Wharton County: On the tenth Monday after the first Monday in September and may continue five weeks; and on the twelfth Monday after the first Monday in February and may continue six weeks.

Matagorda County: On the seventeenth Monday after the first Monday in September and may continue five weeks; and on the eighteenth Monday after the first Monday in February and may continue six weeks. [Acts 1905, p. 80; Acts 1915, 1st C. S. p. 37; Acts 1917, p. 73.]

24.—Goliad, Jackson, Refugio, Calhoun, Victoria and DeWitt.

Goliad County: On the second Monday in February and the first Monday in September and may continue three weeks.

Jackson County: On the third Monday after the second Monday in February and the third Monday after the first Monday in September and may continue three weeks.

Refugio County: On the sixth Monday after the second Monday in February and the sixth Monday after the first Monday in September and may continue two weeks.

Calhoun County: On the eighth Monday after the second Monday in February, and the eighth Monday after the first Monday in September and may continue three weeks.

Victoria County: On the eleventh Monday after the second Monday in February, and the eleventh Monday after the first Monday in September and may continue five weeks.

DeWitt County: On the first Monday in January, such term to continue five weeks, and on the sixteenth Monday after the second Monday in February and may continue five weeks. [Acts 1913, p. 190.]

25.—Colorado, Gonzales, Guadalupe and Lavaca.

Colorado County: On the second Monday in September and the fifth Monday after the first Monday in January and may continue five weeks.

Lavaca County: On the fifth Monday after the second Monday in September and on the tenth Monday after the first Monday in January and may continue five weeks.

Guadalupe County: On the tenth Monday after the second Monday in September, and on the fifteenth Monday after the first Monday in January and may continue five weeks.

Gonzales County: On the first Monday in January and July and may continue five weeks. [Acts 1907, p. 37.]

26.—Williamson. On the first Monday in January and may continue to and including the last Saturday in February; on the first Monday in March and may continue to and including the last Saturday in April; on the first Monday in May and may continue to and including the last Saturday in June; on the first Monday in September and may continue to and including the last Saturday in October; and on the first Monday in November and may continue to and including the last Saturday in December.

Grand juries for said district court shall be organized at the January, May and September terms of said court; provided, that the judge of said court may, when deemed necessary, organize and impanel grand juries at any other term of said court by entering an order therefor.

27.—Bell, Lampasas and Mills.

Bell County: On the first Monday in January, March and June and on the third Monday in October and may continue until the business is disposed of, except that the June term may continue for eight weeks only.

Lampasas County: On the sixth Monday after the first Monday in March and on the first Monday in September and may continue three weeks.

Mills County: On the ninth Monday after the first Monday in March and on the fourth Monday in September and may continue three weeks. [Acts 1913, p. 115; Acts 1918 4th C. S. p. 60.]

28.—Nueces, Kleberg and Kenedy.

1. Criminal District Court.—There is hereby continued as established for the counties of Nueces, Kleberg, Kenedy, Willacy and Cameron a criminal district court, which shall have and exercise all of the criminal jurisdiction now vested in and exercised by the district court of the Twenty-eighth Judicial District of Texas, and said Criminal District Court shall try and determine all causes for divorce between husband and wife and adjudicate property rights in connection therewith in said counties, and try and determine all causes for the collection of delinquent taxes and the enforcement of liens for the collection of same. All appeals from the judgments of said courts shall be to the Court of Criminal Appeals, except appeals in divorce cases and suits for the collection of delinquent taxes, which shall be to the Court of Civil Appeals under the same rules and regulations as now or may hereafter be provided by law for the appeals in civil cases from district courts.

2. From and after the time when this Act shall take effect,

the District Court of the Twenty-eighth Judicial District composed of the counties of Nueces, Kleberg and Kenedy, and the District Court of the One Hundred and Third Judicial District Court, composed of the counties of Willacy and Cameron, shall cease to have and exercise any criminal jurisdiction in either of said counties, and shall cease to have and exercise any jurisdiction of divorce cases in either of said counties, and shall cease to have and exercise any jurisdiction of suits for the collection of any delinquent taxes or the enforcement of liens for same.

3. The judge of said Criminal District Court for the counties of Nueces, Kleberg, Kenedy, Willacy and Cameron shall be elected by the qualified voters of said counties, for a term of four years, and shall hold his office until his successor shall have been duly elected and qualified. He shall possess the same qualifications as are required of the judge of the district court, and shall receive the same salary as is now or may hereafter be paid to district judges, to be paid in like manner. He shall have and exercise all the powers and duties now or hereafter to be vested in or exercised by district judges in criminal cases. The judge of said court may exchange with any district judge, as provided by law in cases of district judges; and in case of disqualification or absence of the judge, a special judge may be selected or appointed as provided by law in cases of district judges; the judge of said criminal district court shall be and remain judge of said court as provided in this Act, until the expiration of his term of office to which he was elected, and until his successors shall have been elected and qualified.

4. The sheriff and clerk of the district court of Nueces county, as now provided by law, shall be the sheriff and clerk, respectively, of said criminal district court of Nueces county; and the sheriff and clerk of the district court of Kleberg County, as now provided by law, shall be the sheriff and clerk, respectively, of the criminal district court of Kleberg County; and the sheriff and clerk of the district court of Kenedy County, as now provided by law, shall be sheriff and clerk, respectively, of the criminal district court of Kenedy County; and the sheriff and clerk of the district court of Willacy County, as now provided by law, shall be the sheriff and clerk, respectively, of the criminal district court of Willacy County; and the sheriff and clerk of the district court of Cameron County, as now provided by law, shall be sheriff and clerk, respectively, of the criminal district court of Cameron County; and the district attorney of the said criminal district court elected and now acting for said district, shall be district attorney for said criminal district court in the counties of Nueces, Kleberg, Kenedy, Willacy and Cameron, and shall hold his office until the time for which he has been elected district attorney for the said criminal district court of Texas shall expire, and until his successor is duly elected and qualified; and there shall be elected for two years, beginning with the next general election after this Act takes effect, a district attorney for said criminal district court, whose power and duties shall be the same as other district attorneys; and said clerk, sheriff and district attorney shall, respectively, receive

such fees and salaries as are now or may hereafter be prescribed by law for such officers in the district courts of the State of Texas, to be paid in the same manner.

5. Said criminal district court shall have a seal in like design as the seal now prescribed by law for district courts, except for Nueces County, the words "Criminal District Court of Nueces County, Texas" shall be engraved around the margin thereof; and for Kleberg County, the words "Criminal District Court of Kleberg County, Texas" shall be engraved around the margin thereof; and for Kenedy County, the words "Criminal District Court of Kenedy County, Texas" shall be engraved around the margin thereof; and for Willacy County, the words "Criminal District Court of Willacy County, Texas" shall be engraved around the margin thereof; and for Cameron County, the words "Criminal District Court of Cameron County, Texas" shall be engraved around the margin thereof.

6. The terms of said criminal district court shall be held in said district each year as follows:

In the county of Kenedy, on the first Monday in January of each year, and may continue in session one week, and on the tenth Monday after the first Monday in August of each year, and may continue in session two weeks.

In the county of Willacy, on the first Monday after the first Monday in January of each year, and may continue in session three weeks; and on the second Monday after the first Monday in August of each year, and may continue in session for two weeks.

In the county of Cameron on the sixth Monday after the first Monday in January of each year, and may continue in session ten weeks; and on the fourth Monday after the first Monday in August of each year, and may continue in session six weeks.

In the county of Kleberg, on the fourth Monday after the first Monday in January of each year, and may continue in session two weeks; and on the first Monday in August of each year, and may continue in session two weeks.

In the county of Nueces, on the sixteenth Monday after the first Monday in January of each year, and may continue in session six week; and on the twelfth Monday after the first Monday in August, of each year, and may continue in session nine weeks.

7. The trials and proceedings in said criminal district court shall be conducted in criminal cases according to the laws governing pleadings, practice and proceedings in criminal cases in the district courts.

The judge of the said criminal district court as heretofore existing, shall be and remain judge of said court as provided in this Act, until the expiration of his term of office to which he was elected, and until his seccessor is elected and qualified as now provided by law.

8. A grand jury shall be drawn and selected for each term of said criminal district court held in Nueces, Kleberg, Kenedy, Willacy and Cameron Counties in the manner now provided by law, and all grand and petit jurors for criminal cases drawn and

selected for the said criminal district court under existing laws at the time this Act takes effect, shall be as valid as if no change had been made, and the persons constituting such juries shall be required to appear and serve at the next ensuing terms of said courts as fixed by this Act, and their acts shall be as if they had served as jurors in the court for which they were originally drawn, and all laws regulating the selection, summoning and impaneling of grand and petit jurors in the district court shall govern said criminal district court, and jury commissioners shall be appointed for drawing juries for said court as is now or may hereafter be required by law in district courts, and under like rules and regulations. [Acts 1925, p. 244.]

28.—The Twenty-eighth Judicial District of the State of Texas shall be composed of the counties of Kenedy, Nueces and Kleberg, and the terms of the district court shall be held therein each year as follows:

In the county of Kenedy on the last Monday in December of each year and may continue in session two weeks, and on the twenty-first Monday after the first Monday in January of each year and may continue in session one week.

In the county of Nueces on the first Monday after the first Monday in January of each year, and may continue in session nine weeks.

On the twelfth Monday after the first Monday in January of each year and may continue in session nine weeks.

On the twenty-second Monday after the first Monday in January of each year, and may continue in session until and including the last Saturday before the first Monday in August of each year.

On the first Monday in August of each year, and may continue in session eight weeks.

On the ninth Monday after the first Monday in August of each year and may continue in session six weeks.

On the seventeenth Monday after the first Monday in August of each year, and may continue in session until and including the last Saturday before the last Monday in December of each year.

In the county of Kleberg on the tenth Monday after the first Monday in January of each year, and may continue in session two weeks, and on the fifteenth Monday after the first Monday in August of each year and may continue in session two weeks.

The judge of the Twenty-eighth Judicial District as heretofore existing, shall be and remain judge of said Twenty-eighth Judicial District as provided in this Act, until the expiration of the term of office to which he was elected, and until his successor is elected and qualified as now provided by law.

All process issued or served before this Act goes into effect and returnable to the district courts as constituting the Twenty-eighth Judicial District, shall be considered as returnable to the district courts of said counties as established and fixed hereby and in accordance with the terms as prescribed by this Act, and all such process is hereby legalized and all petit juries drawn and selected under the existing law in any of the

counties comprising the Twenty-eighth Judicial District, as the same heretofore existed, shall be considered lawfully drawn for the next term of the district court for their respective counties as held in accordance with this Act, provided that if any court in any county of said Twenty-eighth Judicial District, as the same now exists shall be in session when this Act shall take effect, said court shall continue as a district court of said Twenty-eighth Judicial District of Texas until the term thereof shall expire under the provisions of the existing laws; but thereafter the district courts of said counties shall conform in all things to the requirements of this Act. [Id.]

29.—Hood, Palo Pinto and Erath.

Hood County: On the first Monday of March and September and may continue five weeks.

Palo Pinto County: On the fifth Monday after the first Monday in March and September and may continue eight weeks.

Erath County: On the thirteenth Monday after the first Monday in March and September and may continue until all business is disposed of. [Acts 1909, 2nd C. S. p. 390; Acts 1917, p. 75; Acts 1920 3rd C. S. p. 5.]

"30. The Thirtieth Judicial District shall be composed of the counties of Wichita, Archer and Young; and the terms of the district court shall be held therein each year as follows:

"In the county of Wichita, on the first Monday in January, April, July and October, and may continue in session four weeks.

"In the county of Archer, on the first Monday in February, May, August and November and may continue four weeks.

"In the county of Young, on the first Monday in March, June, September and December, and may continue four weeks.

"All suits now pending in the ninety-second district court for Young County shall be, and the same are hereby transferred to the thirtieth district court.

"All process issued, bonds and recognizances made, and all grand and petit juries drawn before this Act takes effect shall be valid for and returnable to the next succeeding terms of the district courts of the several counties, as herein fixed as though issued and served for such terms and returnable to and drawn for the same." [Acts 1925, p. 171.]

31. Roberts, Carson, Wheeler, Gray, Hutchinson, Hansford, Ochiltree, Lipscomb, and Hemphill.

Beginning in Roberts County on the second Monday of January and August in each year, and may continue in session two weeks;

Beginning in Carson County on the second Monday after the second Monday in January and August of each year, and may continue in session two weeks;

Beginning in Wheeler County on the fourth Monday after the second Monday in January and August of each year, and may continue in session three weeks;

Beginning in Gray County on the seventh Monday after the second Monday in January and August of each year, and may continue in session two weeks;

Beginning in Hutchinson County on the ninth Monday after

the second Monday in January and August of each year, and may continue in session one week;

Beginning in Hansford County on the tenth Monday after the second Monday in January and August of each year, and may continue in session one week;

Beginning in Ochiltree County on the eleventh Monday after the second Monday in January and August of each year, and may continue in session two weeks;

Beginning in Lipscomb County on the thirteenth Monday after the second Monday in January and August of each year, and may continue in session two weeks;

Beginning in Hemphill County on the fifteenth Monday after the second Monday in January of each year, and may continue in session until the business of the court is disposed of.

All process and writ heretofore issued out of the district courts of said respective counties and returnable to terms of court in said counties according to existing law are hereby made returnable to the terms of the district courts of said respective counties as said terms are fixed by this Act, and all bonds executed and recognizances entered in said courts shall bind the parties for their appearance or to fulfill the obligations of such bonds and recognizances at the terms of said courts as they are fixed by this Act, and all process heretofore returned, as well as all bonds and recognizances heretofore taken in the district courts of said respective counties shall be as valid as though no change had been made in the time of holding courts herein, and all grand and petit jurors drawn and selected under existing laws for any of the counties of said district are hereby declared lawfully drawn and selected for the first term of the district courts of such respective counties held in conformity with this Act.

Should any district court of the Thirty-first Judicial District be in session in any of the counties of said district, under existing laws, when this Act takes effect, such court shall continue and end its term under such existing laws as if no change in the time of holding courts in said district had been made, and all process, writs, judgments, decrees and other proceedings in said court during such time shall be valid to all intents and purposes and shall not be affected by the changes in the times of holding court therein made by this Act, but after the period provided in the above contingency the district courts of the respective counties herein mentioned shall be held in conformity with the terms as herein prescribed. [Acts 1925, p. 256.]

32.—Howard, Borden, Nolan, Mitchell and Scurry.

Howard County: On the first Mondays in February and September and may continue three weeks.

Borden County: On the third Mondays after the first Mondays in February and September and may continue one week.

Nolan County: On the fourth Monday after the first Monday in February and September and may continue seven weeks.

Mitchell County: On the eleventh Mondays after the first Monday in February and September and may continue five weeks.

Scurry County: On the sixteenth Mondays after the first Mondays in February and September and may continue four weeks. [Acts 1913, p. 4; Acts 1917, pp. 4, 20.]

33.—Kimble, Gillespie, Mason, Blanco, Menard, San Saba, Llano and Burnet.

Kimble County: On the first Monday in February and September and may continue two weeks.

Gillespie County: On the third Monday in February and on the nineteenth Monday after the first Monday in February, and on the third Monday in September and may continue two weeks.

Mason County: On the fourth Monday after the first Monday in February and September and may continue two weeks.

Blanco County: On the sixth Monday after the first Monday in February and September and may continue two weeks.

Menard County: On the eighth Monday after the first Monday in February and September and may continue two weeks.

San Saba County: On the tenth Monday after the first Monday in February and September and may continue three weeks.

Llano County: On the thirteenth Monday after the first Monday in February and September and may continue three weeks.

Burnet County: On the first Monday in January and on the sixteenth Monday after the first Monday in February and may continue three weeks. [Acts 1913, p. 68; Acts 1915, 1st C. S. p. 33; Acts 1923, p. 74.]

34. 41, 65.—El Paso County shall constitute the Forty-first and Sixty-fifth Judicial Districts, and with the Counties of Culberson and Hudspeth shall constitute the Thirty-fourth Judicial District, and the terms of the district courts therein shall be as follows:

Thirty-fourth District: (a) El Paso County: On the first Monday in September and may continue four weeks; on the first Monday in November and may continue until the last Saturday before the 25th day of December; on the first Monday in January and may continue until the last Saturday in March; and on the first Monday in May and may continue until the last Saturday in June. (b) Culberson County: On the first Monday in April and may continue four weeks; and on the first Monday in October and may continue four weeks. (c) Hudspeth County: to convene at the county seat of said county on the third Monday in April and October and continue two weeks.

Forty-first and Sixty-fifth Districts: On the first Mondays in January, March, May, September and November, and continue until the last Saturday before the next succeeding term of court, except the May term, which shall continue until the last Saturday before the first Monday in July.

The said three district courts of El Paso County shall have concurrent civil and criminal jurisdiction with each other in said county of matters over which the jurisdiction is given or shall be given by the Constitution and laws of Texas to district courts; provided, that no grand jury shall be impaneled in the district courts of said county, other than that of the Thirty-fourth Judicial District, unless by special order of the judge of

either of the other district courts a grand jury shall be called for either of said courts.

Any one of the judges of said district courts in El Paso County may, in his discretion, either in term time or vacation, transfer any case or cases, civil or criminal, to any other of said district courts by order entered on the minutes of his court, or minutes of orders made in chambers, as the case may be, which orders when made shall be copied and certified to by the clerk of said courts, together with all orders made in said case, and such certified copies of such orders shall be filed among the papers of any case thus transferred, and the fees therefor shall be taxed as part of the costs of said suit. And the clerk of said courts shall docket any such cause in the court to which it shall have been transferred, and when so entered, the court to which the same shall have been thus transferred shall have like jurisdiction therein as in cases originally brought in said court, and the same shall be dropped from the docket of the court from which it was transferred; provided, that where there shall be a transfer of any case from one court to another, as herein provided, on motion of either of the parties to said suit, notice must be given to either the opposite party or his attorney by the party making the motion to transfer, one week before the time of entering the order of transfer.

The district attorney of the Thirty-fourth Judicial District shall also act as district attorney in and for the Forty-first and Sixty-fifth Judicial Districts, and the clerk of the District Court of El Paso County shall act as clerk of the District Court for each of said District Courts. [Acts 1903, p. 78; Acts 1913, 1st C. S. p. 17; Acts 1915, p. 40.]

35.—McCulloch, Concho, Runnels, Brown and Coleman.

In McCulloch County the terms of said court shall be as follows:

A term beginning the first Monday in January of each year, and may continue in session three weeks. A term beginning the nineteenth Monday after the first Monday in January of each year and may continue in session three weeks.

In Concho County the terms of said court shall be as follows:

A term beginning on the third Monday after the first Monday in January of each year and may continue in session two weeks. A term beginning the first Monday in September of each year and may continue in session two weeks.

In Runnels County the terms of said court shall be as follows:

A term beginning the fifth Monday after the first Monday in January of each year and may continue in session four weeks. A term beginning the seventh Monday after the first Monday in September of each year and may continue in session four weeks.

In Brown County the terms of said court shall be as follows:

A term beginning the ninth Monday after the first Monday in January of each year and may continue in session five weeks. A term beginning the twenty-second Monday after the first Monday in January of each year, and may continue in session four weeks. A term beginning the eleventh Monday after the first Monday in September of each year and may continue five weeks.

In Coleman County the terms of said court shall be as follows:

A term beginning the fourteenth Monday after the first Monday in January of each year and may continue in session five weeks. A term beginning the second Monday after the first Monday in September of each year and may continue in session five weeks.

All process issued or served before this Act goes into effect, returnable to the district courts of said judicial district, shall be returnable to said courts as fixed by the terms of this Act, and said process is hereby legalized and validated and all grand and petit jurors selected and drawn under existing laws in any of the courts of said judicial district shall be considered lawfully drawn and selected for the term or terms of the said district court of the respective counties held after this Act takes effect, and all appearance bonds and recognizances taken in and for said courts shall bind the parties therein obligated to appear at the next terms of said court held under this Act.

This Act shall become effective and take effect on the first day of January, 1926, and from and after said date shall be in full force and effect in said Thirty-fifth Judicial District of the State of Texas.

36.—Aransas, San Patricio, Bee, Live Oak and McMullen.

Aransas County: On the first Monday in September and February and may continue two weeks.

San Patricio County: On the second Monday after the first Monday in September and February and may continue six weeks.

Bee County: On the eighth Monday after the first Monday in September and February and may continue eight weeks.

Live Oak County: On the sixteenth Monday after the first Monday in September and February and may continue three weeks.

McMullen County: On the nineteenth Monday after the first Monday in September and February and may continue two weeks. [Acts 1913, p. 190; Acts 1917, p. 247.]

37, 45, 57, 73, 94.—Bexar.

Thirty-seventh, Forty-fifth and Ninety-fourth Districts: On the first Mondays in October, November, January, March and May, and may continue until the last Saturday before the next succeeding term, except the May term which may continue until the last Saturday before the first Monday in July.

Fifty-seventh and Seventy-third Districts: On the first Mondays in October, December, February, April and June, and may continue until the last Saturday before the next succeeding term, except the June term which may continue until the last Saturday before the first Monday in July.

The said courts of Bexar County shall have concurrent jurisdiction throughout the limits of said county over all cases, proceedings and matters of which district courts are given jurisdiction by the Constitution and laws of the State, except, and as hereinafter provided, the courts of the Thirty-seventh and Ninety-fourth Judicial Districts shall give preference to the

trial of criminal cases, and the Ninety-fourth District Court shall also, next to the trial and determination of criminal causes, try and determine causes for divorce between husband and wife, the custody of children, and the adjudication of property rights in connection therewith, have power to issue writs of habeas corpus, mandamus, injunctions and certiorari and all writs necessary to enforce its jurisdiction, and may appoint receivers, and shall try and determine no other causes; and the said Thirty-seventh district court and the Ninety-fourth district court shall impanel grand juries alternately for each term of court in said two districts, and the grand jury shall return their indictments into the court by which they were impaneled.

The judges of said district courts may, in their discretion, or by agreement of the parties, transfer any civil or criminal suit or cause of action of which said court has jurisdiction as declared herein, from one district court to another, by an order duly entered upon the minutes of the court, and when such transfer is made, the clerk shall enter such case or cases upon the docket of the court to which the transfer is made. When such transfer is so made, then all writs, processes, bonds and recognizances, civil and criminal, issued, executed or entered prior to the entry of such order of transfer in said suit or cause of action shall be transferred with said cause.

The district attorney of the Thirty-seventh Judicial District shall be and remain the district attorney of said district as herein defined, and shall also represent the State in all cases, criminal and civil, in the Forty-fifth, Fifty-seventh, Seventy-third and Ninety-fourth, and shall be elected by the qualified voters of said Thirty-seventh Judicial District. [Acts 1923, p. 101.]

38.—Kerr, Kendall, Zavalla, Uvalde, Medina, Real and Bandera.

Kerr County: On the first Monday in February and August and may continue three weeks.

Kendall County: On the third Monday after the first Monday in February and August and may continue two weeks.

Zavalla County: On the fifth Monday after the first Monday in February and August and may continue two weeks.

Uvalde County: On the seventh Monday after the first Monday in February and August and may continue four weeks.

Medina County: On the eleventh Monday after the first Monday in February and August and may continue three weeks.

Real County: On the fourteenth Monday after the first Monday in February and August and may continue two weeks.

Bandera County: On the sixteenth Monday after the first Monday in February and August and may continue two weeks. [Acts 1923, p. 124.]

39.—Fisher, Kent, Stonewall, Throckmorton, Haskell and Jones.

Fisher County: On the sixth Monday after the first Monday in January and the first Monday in September and may continue three weeks.

Kent County: On the ninth Monday after the first Monday in January and third Monday after the first Monday in September and may continue two weeks.

Stonewall County: On the eleventh Monday after the first Monday in January and fifth Monday after the first Monday in September and may continue three weeks.

Throckmorton County: On the fourteenth Monday after the first Monday in January and the eighth Monday after the first Monday in September and may continue two weeks.

Haskell County: On the sixteenth Monday after the first Monday in January and tenth Monday after the first Monday in September and may continue five weeks.

Jones County: On the first Monday in January and the twenty-first Monday after the first Monday in January and may continue six weeks. [Acts 1917, ch. 4, 12.]

40.—Ellis. On the first Mondays in March, June, September and December and continue until the next succeeding term. [Acts 1913, p. 171; Acts 1917, p. 130.]

41.—See 34th District.

42.—Taylor, Callahan and Shackelford.

Taylor County: On the first Monday in September and may continue eight weeks; on the first Monday in January and may continue eight weeks; on the fourteenth Monday after the first Monday in January and may continue eight weeks; and on the twenty-eighth Monday after the first Monday in January and may continue four weeks or until the business is disposed of.

Callahan County: On the eighth Monday after the first Monday in September and may continue four weeks; on the eighth Monday after the first Monday in January and may continue three weeks; and on the twenty-second Monday after the first Monday in January and may continue three weeks.

Shackelford County: On the twelfth Monday after the first Monday in September and may continue to and including Saturday before the first Monday in January; on the eleventh Monday after the first Monday in January and may continue three weeks; and on the twenty-fifth Monday after the first Monday in January and may continue three weeks.

The district attorney for the said Forty-second Judicial District shall perform the duties of district attorney in the counties of Taylor, Callahan and Shackelford and his compensation for such services shall be the same as provided by law for district attorneys in districts containing two or more counties. [Acts 1919, p. 256, 2nd C. S. p. 24; Acts 1921, p. 112; Acts 1923, p. 346.]

43.—Jack, Parker and Wise.

Jack County: On the first Mondays in March and September and may continue four weeks.

Parker County: On the fourth Mondays after the first Mondays in March and September and may continue eight weeks.

Wise County: On the twelfth Mondays after the first Mondays in March and September and may continue until the business is disposed of. [Acts 1887, p. 68.]

44.—See 14th District.

45.—See 37th District.

46.—Wilbarger, Hardeman and Foard.

Wilbarger County: On the first Monday in January and may

continue six weeks; on the eleventh Monday after the first Monday in January and may continue six weeks; on the third Monday in August and may continue five weeks; and on the tenth Monday after the third Monday in August and may continue five weeks.

Foard County: On the sixth Monday after the first Monday in January; on the seventeenth Monday after the first Monday in January; and on the fifth Monday after the third Monday in August, and each term may continue two weeks.

Hardeman County: On the eighth Monday after the first Monday in January; on the nineteenth Monday after the first Monday in January; on the seventh Monday after the third Monday in August; and on the fifteenth Monday after the third Monday in August, and each term may continue three weeks. [Acts 1911 S. S. p. 100; Acts 1915, p. 24; Acts 1923, p. 148.]

47.—Randall, Potter and Armstrong.

Randall County: On the first Monday in January; on the first Monday in August, and each term may continue three weeks.

Potter County: On the fourth Monday in January and may continue ten weeks; on the twelfth Monday after the fourth Monday in January and may continue ten weeks; on the fourth Monday in August and may continue eight weeks; and on the eleventh Monday after the fourth Monday in August and may continue until the business is disposed of.

Armstrong County: On the tenth Monday after the fourth Monday in January, and the ninth Monday after the fourth Monday in August and may continue two weeks at each term. [Acts 1913, S. S. p. 19; Acts 1923, p. 148.]

48.—See 17th District.

49.—Dimmit, Zapata, Jim Hogg and Webb:

The Forty-ninth Judicial District of Texas shall be composed of the counties of Dimmit, Zapata, Jim Hogg and Webb, and the district courts shall be held therein each year as follows:

In Dimmit County on the first Monday in September and February of each year, and may continue in session three weeks.

In Zapata County on the third Monday after the first Monday in September and February of each year and may continue in session one week.

In Jim Hogg County on the fourth Monday after the first Monday in September and February of each year, and may continue in session two weeks.

In Webb County as follows:

One term beginning on the sixth Monday after the first Monday in September and may continue in session eight weeks;

One term beginning on the fourteenth Monday after the first Monday in September and may continue in session seven weeks;

One term beginning on the sixth Monday after the first Monday in February and may continue in session eight weeks;

One term beginning on the fourteenth Monday after the first Monday in February and may continue in session eight weeks. [Acts 1925, p. 181.]

50.—Baylor, Knox, King, Cottle, Motley and Dickens.

Baylor County: On the first Mondays in January and July and may continue six weeks.

Knox County: On the sixth Mondays after the first Mondays in January and July and may continue six weeks.

King County: On the twelfth Mondays after the first Mondays in January and July and may continue two weeks.

Cottle County: On the fourteenth Mondays after the first Mondays in January and July and may continue four weeks.

Motley County: On the eighteenth Mondays after the first Mondays in January and July and may continue three weeks.

Dickens County: On the twenty-first Mondays after the first Mondays in January and July and may continue three weeks. [Acts 1911, p. 212; Acts 1917, p. 299.]

51.—Tom Green, Irion, Schleicher, Coke and Sterling.

Tom Green County: On the first Monday in January and may continue ten weeks; on the eighteenth Monday after the first Monday in January and may continue until the last Saturday in August; and on the first Monday in September and may continue eight weeks.

Irion County: On the tenth Monday after the first Monday in January and the eighth Monday after the first Monday in September, and may continue two weeks.

Schleicher County: On the twelfth Monday after the first Monday in January and the tenth Monday after the first Monday in September and may continue two weeks.

Coke County: On the fourteenth Monday after the first Monday in January and the twelfth Monday after the first Monday in September and may continue two weeks.

Sterling County: On the sixteenth Monday after the first Monday in January and the fourteenth Monday after the first Monday in September and may continue two weeks. [Acts 1909, p. 56; Acts 1917, p. 125.]

52.—The Fifty-second Judicial District of Texas shall be composed of the counties of Coryell, Hamilton and Comanche, and the terms of district court shall be held therein as follows: In Coryell County, on the second Monday in January and July, and may continue in session seven weeks; in Hamilton County, on the seventh Monday after the second Monday in January and July, and may continue in session seven weeks; in Comanche County, on the fourteenth Monday after the second Monday in January and July, and may continue until business is disposed of. [Acts 1925, p. 6.]

53.—Travis.

On the first Monday in January and may continue in session until and including the last Saturday before the first Monday in March; on the first Monday in March and may continue to and including the last Saturday before the first Monday in May; on the first Monday in May and may continue to and including the last Saturday in July, provided, that the said term may by order of the court entered in the minutes be continued for such time as may be fixed by said order; and on the first Monday in October and may continue until the last Saturday before the 25th day of December.

The Criminal District Court of Travis County shall exercise, have and enforce all the powers and functions of a district court under the Constitution and laws of the State. The said crim-

inal district court shall have the right and power to certify and transfer to the Fifty-third Judicial District Court either civil or criminal cases and the Fifty-third Judicial District Court shall have the right to certify and transfer to the criminal district court of Travis County for trial, civil cases. Civil cases may be filed or instituted in either the criminal district court of Travis County or in the Fifty-third Judicial District Court in Travis County and both of said courts, or either of them shall have the right, power and jurisdiction to try either civil or criminal cases within its jurisdiction under the Constitution and General Laws of this State.

The Criminal District Court of Travis County shall hold its terms at the following time, to-wit: On the first Monday in February and may continue to and including the last Saturday in March; on the first Monday in April and may continue to and including the last Saturday in May; on the first Monday in June and may continue to and including the last Saturday in August; on the first Monday in October and may continue to and including the last Saturday in November; and on the first Monday in December and may continue to and including the last Saturday in January.

Either judge of the Fifty-third Judicial District or the Criminal District Court of Travis County may, in his discretion, at any time, transfer any cause pending on the docket of his court to the other District Court in Travis County, and when the said transfer is so made, the said cause so transferred shall be disposed of by the court to which the same was so transferred as though originally filed in the said court.

The district clerk of Travis County shall be the clerk of the district courts for the Fifty-third Judicial District and of the Criminal District Court of Travis County. [Acts 1913, 1st C. S. p. 17; Acts 1915, p. 27; Acts 1923, p. 130.] See 26th District.

54.—See 19th District.

55.—See 11th District.

56.—See 10th District.

57.—See 37th District.

58, 60.—Jefferson.

Fifty-eighth District: On the third Monday in September and may continue eleven weeks; on the second Monday in December and may continue ten weeks; on the first Monday in March and may continue eight weeks; and on the first Monday in May and may continue until the first Saturday before the third Monday in September.

Sixtieth District: On the first Monday in October and may continue until and including the last Saturday in November; on the first Monday in December and may continue until and including the last Saturday in January; on the first Monday in February and may continue until and including the last Saturday in March; on the first Monday in April and may continue until and including the last Saturday in May; and on the first Monday in June and may continue until and including the last Saturday in September.

The clerk of the district court of Jefferson County shall perform the duties of the clerk of the courts of both the Fifty-

eighth and the Sixtieth Judicial Districts, and in case of vacancy in said office of said clerk, the same shall be filled by appointment by the judge of the Fifty-eighth Judicial District.

In all suits, actions or proceedings, except criminal cases, it shall be sufficient for the address and designation to be merely the "District Court of Jefferson County," and the clerk of the said court shall file and docket the even numbers thereof in the court of the Fifty-eighth Judicial District, and the odd numbers thereof in the court of the Sixtieth Judicial District, but any cases pending in either of said courts may, in the discretion of the judge thereof, be transferred from one of said district courts to the other, and so on from time to time. In case of the disqualification of the judge of either of said courts, in any case, such case on the suggestion of such judge of this disqualification entered on the docket, shall stand transferred to the other of said courts, and be docketed by the clerk accordingly. [Acts 1903, p. 8.]

59.—See 15th District.

60.—See 58th District.

61.—See 11th District.

62.—Hunt, Delta and Lamar.

Hunt County: On the first Monday in December and may continue eight weeks; and on the third Monday in May and may continue ten weeks.

Lamar County: On the ninth Monday after the first Monday in December and may continue eight weeks; and on the first Monday in August and may continue eight weeks.

Delta County: On the seventeenth Monday after the first Monday in December and may continue three weeks; and on the ninth Monday after the first Monday in August and may continue three weeks. [Acts 1905, p. 75; Acts 1915, p. 46.] See 6th and 8th Districts.

63.—Terrell, Kinney, Maverick, Edwards and Val Verde.

Val Verde County: On the first Monday in January and may continue three weeks; on the thirteenth Monday after the first Monday in January and may continue three weeks; and on the fifteenth Monday after the first Monday in July and may continue until the business is disposed of.

Terrell County: On the third Monday after the first Monday in January and may continue two weeks; and on the second Monday in July and may continue two weeks.

Edwards County: On the fifth Monday after the first Monday in January and may continue three weeks; and on the third Monday after the first Monday in July and may continue three weeks.

Kinney County: On the eighth Monday after the first Monday in January and may continue two weeks; and on the sixth Monday after the first Monday in July and may continue two weeks.

Maverick County: On the tenth Monday after the first Monday in January and may continue three weeks; and on the eighth Monday after the first Monday in July and may continue three weeks. [Acts 1913, 1st C. S. p. 34; Acts 1917, pp. 125, 487; Acts 1923 3rd C. S. p. 48.]

64.—Hale, Floyd, Briscoe, Castro, Lamb, Swisher and Bailey.
Hale County: On the second Monday in January and first Monday in August and may continue seven weeks.

Floyd County: On the seventh Monday after the second Monday in January and first Monday in August and may continue five weeks.

Briscoe County: On the twelfth Monday after the second Monday in January and first Monday in August and may continue two weeks.

Castro County: On the fourteenth Monday after the second Monday in January and first Monday in August and may continue two weeks.

Lamb County: On the sixteenth Monday after the second Monday in January and first Monday in August and may continue two weeks.

Swisher County: On the eighteenth Monday after the second Monday in January and first Monday in August and may continue three weeks.

Bailey County: On the twenty-first Monday after the second Monday in January and first Monday in August and may continue one week. [Acts 1911, 1st C. S. p. 102; Acts 1917, p. 309; Acts 1919, p. 132; Acts 1919 2nd C. S. p. 26.]

65.—See 34th District.

66.—Hill. On the first Mondays in January, March, May, July, September and November, and each term may continue for a period of seven weeks, or until the business is disposed of, save and except the term beginning on the first Monday in July may continue for a period of five weeks or until the disposal of the business. [Acts 1905, p. 37; Acts 1915, p. 218.]

67.—See 17th District.

68.—See 14th District.

69.—Dallam, Sherman, Moore, Oldham, Hartley, Parmer and Deaf Smith.

Sherman County: On the second Monday in January and July and may continue two weeks.

Moore County: On the second Monday after the second Monday in January and July and may continue two weeks.

Oldham County: On the fourth Monday after the second Monday in January and July and may continue two weeks.

Hartley County: On the sixth Monday after the second Monday in January and July and may continue two weeks.

Dallam County: On the eighth Monday after the second Monday in January and July and may continue six weeks.

Parmer County: On the fourteenth Monday after the second Monday in January and July and may continue two weeks.

Deaf Smith County: On the sixteenth Monday after the second Monday in January and July and may continue until the business is disposed. [Acts 1909, pp.16, 69.]

70.—Midland, Ector, Winkler, Andrews, Martin, Glasscock, Reeves, Ward, and the unorganized counties of Crane and Loving.

Midland County: On the first Monday in February and September and may continue three weeks.

Ector County: On the third Monday after the first Monday in February and September and may continue two weeks.

Winkler County: On the fifth Monday after the first Monday in February and September and may continue one week.

Andrews County: On the sixth Monday after the first Monday in February and September and may continue one week.

Martin County: On the seventh Monday after the first Monday in February and September and may continue two weeks.

Glasscock County: On the ninth Monday after the first Monday in February and September and may continue two weeks.

Reeves County: On the eleventh Monday after the first Monday in February and September and may continue six weeks.

Ward County: On the first Monday in January and on the seventeenth Monday after the first Monday in February and may continue three weeks.

For Judicial and other purposes, the unorganized county of Loving is hereby attached to Reeves County, and the unorganized County of Crane is hereby attached to Ector County. [Acts 1917, pp. 4, 20, 125; Acts 1917, 3rd C. S., p. 51.]

71.—Harrison and Gregg.

Harrison County: On the first Monday in January and continue until the second Monday in February; on the second Monday in March and continue until the first Monday in June; on the fourth Monday in June and continue until the first Monday in September unless sooner adjourned by the court; on the first Monday in September and continue until the first Monday in October; and on the first Monday in November and continue until the first Monday in January.

Gregg County: On the second Monday in February and continue until the second Monday in March; on the first Monday in June and continue three weeks; and on the first Monday in October and continue until the first Monday in November.

The District Court of the Seventy-first Judicial District shall have such jurisdiction and power as is conferred on district courts under the Constitution and laws, and in addition thereto, shall have jurisdiction of all matters of a civil nature over which the county court of Harrison County has jurisdiction, original or concurrent, and over all appeals of a civil nature from justice courts of Harrison County appealable to the county court of said county under existing laws.

The county attorney of Harrison County and the county Attorney of Gregg County shall each have and perform all the duties and prerogatives of a district attorney in attendance upon the district court for each of their respective counties. [Acts 1911, p. 93; Acts 1921, p. 80; Acts 1923, p. 113.]

72.—Crosby, Lubbock, Hockley and Cochran.

The Seventy-second Judicial District of Texas shall be composed of the Counties of Crosby, Lubbock, Hockley and Cochran, and the terms of the district court in said counties shall be held as follows:

In the County of Lubbock, on the second Monday in January, and on the twelfth Monday after the second Monday in January, may continue in session six weeks, and on the third Monday in

August, and the ninth Monday after the third Monday in August, and may continue in session five weeks.

In the County of Hockley, on the sixth Monday after the second Monday in August, and may continue in session two weeks.

In the County of Crosby, on the eighth Monday after the second Monday in January, and on the twentieth Monday after the second Monday in January, and on the fourteenth Monday after the third Monday in August, and may continue in session four weeks.

In the County of Cochran, on the eighteenth Monday, after the second Monday in January, and on the seventh Monday after the third Monday in August, and may continue in session two weeks. [Acts 1925, p. 250.]

73.—See 37th District.

74.—See 19th District.

75.—Hardin, Liberty, Tyler and Chambers.

In the county of Hardin on the first Monday in January and on the nineteenth and thirty-third Mondays after the first Monday in January of each year, and may continue in session for four weeks.

In the county of Liberty on the fourth, twenty-third and thirty-seventh Mondays after the first Monday in January of each year, and may continue in session for six weeks.

In the county of Tyler on the tenth and forty-third Mondays after the first Monday in January of each year, and may continue in session for five weeks.

In the county of Chambers on the fifteenth and forty-eighth Mondays after the first Monday in January of each year, and may continue in session for four weeks. [Acts 1925, p. 379.]

76.—Titus, Franklin, Camp, Morris and Marion.

Titus County: On the first Monday in January and may continue six weeks and on the twenty-second Monday after the first Monday in January and may continue six weeks.

Franklin County: On the sixth Monday after the first Monday in January and may continue four weeks; and on the fourth Monday in August and may continue four weeks.

Camp County: On the tenth Monday after the first Monday in January and may continue four weeks; and on the fourth Monday after the fourth Monday in August and may continue four weeks.

Morris County: On the fourteenth Monday after the first Monday in January and may continue four weeks; and on the eighth Monday after the fourth Monday in August and may continue four weeks.

Marion County: On the eighteenth Monday after the first Monday in January and may continue four weeks; and on the twelfth Monday after the fourth Monday in August and may continue four weeks. [Acts 1915, p. 6; Acts 1917, p. 68.]

77, 87.—Limestone and Freestone.

Seventy-seventh District: (a) Limestone County: On the first Monday in December, March, June and September and shall continue eight weeks. (b) Freestone County: On the first

Mondays in February, May, August and November and shall continue four weeks.

Eighty-seventh District: (a) Limestone County: On the first Monday in February, May, August and November and shall continue eight weeks. (b) Freestone County: On the first Mondays in January, April, July and October and shall continue four weeks.

The said district courts shall have concurrent jurisdiction of all cases, civil and criminal and appellate, over which the district courts of this State have jurisdiction under the Constitution and laws of this State, co-extensive with the limits of Limestone County and Freestone County, respectively, and grand juries shall be drawn for the Eighty-seventh District Court in Limestone County at the May and November terms and grand juries shall be drawn for said court in Freestone County for the January and July terms, and at such other terms of said court, both in Limestone and Freestone Counties, as the judge of said court may, from time to time, so order. There shall be organized grand juries at the March and September terms of the Seventy-seventh District Court in Limestone County, and at the May and November terms of said court in Freestone County, and at such other terms of said court in each county, as may be determined and ordered by the judge thereof.

The judges of the Seventy-seventh and Eighty-seventh Districts for the counties of Limestone and Freestone shall each, in his discretion, either in term time or vacation, on motion of any party, or on agreement of the parties, or in his own motion, where he thinks the administration of justice may be facilitated thereby, or for the purpose of equalizing the dockets of said court, transfer any cause, civil or criminal, from the dockets of their respective courts to the docket of the other district court of said county, and shall cause said transfer to be entered of record upon the minutes of his court, whereupon the clerk of the district court to which said cause has been transferred shall docket same and the same shall be tried and disposed of as if it had been originally filed in said court, and no transcript of the record shall be necessary to the jurisdiction of the court to which such case has been transferred and no formal proceedings shall be necessary to such transfer; provided that in any cause pending on any of the dockets of said district courts in either of said counties in which the judge of said court may be disqualified, recused or otherwise unable to try, he shall transfer said cause as above provided, to the other district court in the county where such cause is pending.

The clerks of the said district courts shall make up the dockets of the district courts of said counties, respectively, and shall file the new cases in the courts to which he may be directed to file same by the party filing them; and all criminal cases shall be originally filed in the court to which the indictment or information is returned, and all appeals in probate cases shall be to the court beginning the first term after such appeal is filed. The clerks of said courts shall respectively prepare civil, divorce, criminal and tax dockets as may now be customary or provided by law for the Seventy-seventh and the Eighty-seventh District

Courts in their respective counties, and shall place letters on the envelope containing the file papers in each case after the number of said case, designating by the letter "A" causes pending in the Seventy-seventh District Court, and by the letter "B" causes pending in the Eighty-seventh District Court.

The clerk of the Seventy-seventh District Court in Limestone County and the clerk of the Seventy-seventh District Court in Freestone County shall be the clerk of the Eighty-seventh District Court of said counties, respectively; and the district attorney of the Seventy-seventh Judicial District shall be district attorney of said district in both Limestone and Freestone Counties and shall represent the State in all criminal causes in said court in said counties. The office of district attorney for the Eighty-seventh District is hereby abolished, and the duties enjoined by law upon said attorney shall be performed by the respective county attorneys of said district. [Acts 1923, p. 47-52.]

78.—See 30th District.

79.—Starr, Hidalgo, Brooks, Duval and Jim Wells:

In Starr County on the eighth Monday after the first Monday in January of each year and may continue in session two weeks, and on the first Monday in September of each year and may continue in session two weeks.

In Hidalgo County on the tenth Monday after the first Monday in January of each year and may continue in session seven weeks, and on the second Monday after the first Monday in September of each year and may continue in session nine weeks.

In Brooks County on the seventeenth Monday after the first Monday in January of each year and may continue in session four weeks, and on the eleventh Monday after the first Monday in September of each year and may continue in session four weeks.

In Duval County on the twenty-first Monday after the first Monday in January of each year and may continue in session four weeks, and on the first Monday in January of each year and may continue in session four weeks.

In Jim Wells County on the twenty-fifth Monday after the first Monday in January of each year and may continue in session four weeks, and on the fourth Monday after the first Monday in January of each year and may continue in session four weeks. [Acts 1925, p. 182.]

80.—The Eightieth District shall be composed of Harris County.

SECTION 1. There shall be two terms of the district court of the Eightieth Judicial District in each year, and the first term in each year, which shall be known as the January-June term, shall be begun on the first Monday in January in each year and shall continue until and including Sunday next before the first Monday in July of the same year, and the second term in each year, which shall be known as the July-December term, shall be begun on the first Monday in July in each year and shall continue until and including Sunday next before the first Monday in the following January.

SEC. 2. All cases and proceedings pending in the district court of Waller County when this law takes effect, shall be and

are hereby transferred from the Eightieth Judicial District as now constituted by said county, to the Ninth Judicial District Court as constituted by this Act; and all cases and proceedings pending in the district court of the Seventy-fifth Judicial District in Montgomery County when this law takes effect, shall be and are hereby transferred from the docket of the Seventy-fifth Judicial District Court as the same is now constituted in said county, to the docket of the Ninth Judicial District Court as the same is constituted by this Act; and all cases and proceedings pending on the docket of the Ninth Judicial District Courts in the counties of Hardin and Liberty when this Act takes effect, shall be and the same are hereby transferred from the Ninth Judicial District as now constituted in said counties, to the dockets of the Seventy-fifth Judicial District Courts of said Hardin and Liberty Counties as the same are constituted by this Act, and the judges of said Ninth and Seventy-fifth Judicial Districts as created by this Act shall carry into effect these provisions.

SEC. 3. The present judges of the Ninth and Seventy-fifth Judicial Districts as the same now exists, shall remain the district judges of their respective districts as reorganized under the provisions of this Act, and shall hold their offices until the next general election and until their successors are appointed or elected and duly qualified, and they shall receive the same compensation as is now, or may hereafter be provided by law for district judges, and a vacancy in either of said offices shall be filed as is now, or may hereafter be provided by law, and the present judge of the district court for the Eightieth Judicial District shall hold his office until his term expires and until his successor is elected and qualified, and a judge of said court shall hereafter be elected at the time and in the manner provided by law by the qualified voters of Harris County.

SEC. 4. The district attorneys of the Ninth and Seventy-fifth Judicial Districts as the same now exists, shall be and continue to remain as the district attorneys of said Ninth and Seventy-fifth Judicial Districts as the same are hereby reorganized, unless disqualified under the law to hold such offices hereunder, in which event the Governor shall appoint a district attorney for one or both of said districts with the qualifications required by law and he shall receive the salary as provided by law for such officers.

SEC. 5. All process and writs issued out of the district courts of the Seventy-fifth Judicial District in Montgomery County and out of the district court of the Ninth Judicial District in Hardin and Liberty Counties, and out of the district court of the Eightieth Judicial District in Waller County and all jurors selected prior to the taking effect of this Act are hereby made returnable to the terms of the Ninth Judicial District Court in Waller County and Montgomery County and the Seventy-fifth Judicial District Courts in Hardin and Liberty Counties, as said terms are fixed by this Act; and all bonds executed and recognizances entered in said courts shall bind the parties for their appearances or to fulfill the obligations of such bonds and recognizances at the terms of said courts as they are fixed by this

Act; and all processes heretofore returned, as well as all bonds and recognizances heretofore taken in any of the district courts of said counties shall be as valid as though no change had been made in said districts and the times of holding courts therein.

SEC. 6. Should a district court be in session under the existing law in any county affected by this Act, the same shall continue and end its term under such existing law as if no change in the district had been made, and all process writs, judgments and decrees issued and rendered therein shall be valid and shall not be affected by the change of said districts and the time of holding courts therein made by this Act. [Acts 1925, p. 379.]

81.—Frio, LaSalle, Atascosa, Wilson and Karnes.

Frio County: On the last Monday in August and the first Monday in February and may continue three weeks.

LaSalle County: On the third Monday after the last Monday in August and on the third Monday after the first Monday in February and may continue three weeks.

Atascosa County: On the sixth Monday after the last Monday in August and on the sixth Monday after the first Monday in February and may continue three weeks, at each of which terms a grand jury shall be impaneled. On the fifteenth Monday after the last Monday in August and on the fifteenth Monday after the first Monday in February and may continue three weeks.

Wilson County: On the ninth Monday after the last Monday in August and on the ninth Monday after the first Monday in February and may continue six weeks.

Karnes County: On the eighteenth Monday after the last Monday in August and on the eighteenth Monday after the first Monday in February and may continue five weeks. [Acts 1917, p. 247; Acts 1921, p. 32.]

82.—Falls County: On the first Monday in the months of January, March, May, September and November and each term may continue until and including the Saturday next preceding the beginning of the next succeeding term. Grand juries shall be organized at the May and November terms of said court, and at such other terms as the judge of said district may determine and order.

83.—Jeff Davis, Presidio, Brewster, Pecos, Upton, Reagan, Sutton and Crockett.

In the county of Jeff Davis on the second Monday in January and July and may continue in session two weeks.

In the county of Presidio on the third Monday after the first Monday in January and July and may continue in session three weeks.

In the county of Brewster on the sixth Monday after the first Monday in January and July and may continue in session three weeks.

In the county of Pecos on the ninth Monday after the first Monday in January and July and may continue in session three weeks.

In the county of Upton on the twelfth Monday after the first Monday in January and July and may continue in session two weeks.

In the county of Reagan on the fourteenth Monday after the first Monday in January and July and may continue in session two weeks.

In the county of Crockett on the sixteenth Monday after the first Monday in January and July and may continue in session two weeks.

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

That all process, writs and bonds issued, served or executed prior to the taking effect of this Act and returnable to the terms of said court in each of said counties, comprising said judicial district, and all processes heretofore returnable, as well as all bonds and recognizances heretofore entered into, in any of said counties in said judicial district shall be valid and binding.

SEC. 2. All process issued or served before this Act goes into effect, including recognizances and bonds, returnable to the district court of any of said counties, shall be considered as returnable to said courts, in accordance with the terms prescribed by this Act, and all such process is hereby legalized and all grand and petit juries drawn and selected under existing laws in any of the counties in said judicial district shall be considered lawfully drawn and selected for the next term of the district court for their respective counties held in accordance with this Act; provided, that if any court in any county of said judicial district shall be in session at the time this Act takes effect, said court shall continue in session until the term thereof shall expire under the terms of the existing law. Thereafter the courts of said counties shall conform to the requirements of this Act. [Acts 1925, p. 84.]

84.—(There is no 84th Judicial District.)

85.—Robertson and Brazos.

Robertson County: On the first Monday in January, April and July, and the second Monday in November and may continue five weeks.

Brazos County: On the second Monday in February and May, and third Monday in September and may continue six weeks.

There shall be organized grand juries at the January and July terms of said court in Robertson County, and at the February and September terms of said court in Brazos County, and at such other terms of the said court of each county as may be determined and ordered by the judge thereof.

The District Court of said Eighty-fifth Judicial District shall have all the powers and jurisdiction as district courts by and under the Constitution and laws of this State, and in addition thereto shall have and exercise jurisdiction in all civil and criminal matters and causes over which by the laws of this State the respective county courts of Robertson and Brazos Counties shall have jurisdiction, original or appellate, except as provided by law, and the same are hereby transferred to the District Court of said counties. [Acts 1917, p. 256.]

86.—Kaufman, Van Zandt and Rockwall.

Van Zandt County: On the first Monday in January and continue six weeks; on the thirteenth Monday after the first Mon-

day in January and continue six weeks; and on the first Monday in September and continue six weeks.

Kaufman County: On the sixth Monday after the first Monday in January and continue seven weeks; on the twenty-third Monday after the first Monday in January and continue until the last Saturday in August; and on the tenth Monday after the first Monday in September and continue until the last Saturday in December.

Rockwall County: On the nineteenth Monday after the first Monday in January and continue four weeks; and on the sixth Monday after the first Monday in September and continue four weeks.

The county attorney of Van Zandt County shall represent the State in criminal cases in said county and receive the same fees and compensation as is now provided by law for the County Attorney of Kaufman County. [Acts 1917, p. 130.]

87.—See 77th District.

88,91.—Eastland.

Eighty-eighth District: On the first Mondays in January, March, May, July, September and November, and may continue until the business is disposed of.

Ninety-first District: On the first Mondays in February, April, June, August, October and December, and may continue until the business of the court is disposed of.

The District Courts of Eastland County shall have concurrent civil and criminal jurisdiction with each other in said county in matters over which the jurisdiction is given or shall be given by the Constitution and laws of Texas to district courts; provided, that no grand jury shall be impaneled in the Ninety-first District Court, except that by the special order of the judge of said court, a grand jury shall be called for said court.

Either of the judges in the said District Courts of Eastland County may, in his discretion, either in term time or in vacation, transfer any case or cases, civil or criminal, to the other of said district courts by order entered on the minutes of his court, or minutes or orders made in chambers as the case may be, which orders when made shall be copied and certified to by the clerk of said courts together with all orders made in said case, and such certified copies of such orders shall be filed among the papers of any case thus transferred, and the fees thereof shall be taxed as a part of the costs of said suit, and the clerk of said court shall docket any such case in the court to which it shall have been transferred, and when so entered, the court to which it shall have been transferred shall have like jurisdiction therein as in cases originally brought in said court, and the same shall be dropped from the docket of the court from which it was transferred; provided, that when there shall be a transfer of any case from one court to the other, as herein provided, on motion of either of the parties to said suit, notice must be given to either the opposite party, or his attorney, by the party making the motion to transfer, one week before the time of entering the order of transfer.

The district clerk of Eastland County shall be the clerk of the

district court of said Ninety-first Judicial District, sitting in Eastland County.

The county attorney of Eastland County shall perform all the duties of county attorney and district attorney in both of said district courts and shall receive the same compensation for his services as is or may be fixed by law for a district attorney acting in judicial districts composed of two or more counties.

The clerk of the District Court of Eastland County shall file all suits in his office alternately in said Eighty-eighth and Ninety-first District Courts. [Acts 1919, p. 256; Acts 3rd C. S. 1920, p. 57; Acts 1923, p. 143.]

89.—See 30th District.

90.—Stephens: On the first Monday in January, March, May, July, September and November and may continue eight weeks, and the judge of said court may, in his discretion, have a grand jury drawn for and organized at any of said terms of court. [Acts 1921, p. 111; Acts 1923, p. 346.]

91.—See 88th District.

92.—(Expired. Acts 1923, p. 162.)

93.—Hidalgo: On the first Monday in January and may continue nine weeks; on the ninth Monday after the first Monday in January and may continue twelve weeks; on the twenty-first Monday after the first Monday in January, and may continue eight weeks; on the first Monday in September and may continue eight weeks; and on the eighth Monday after the first Monday in September and may continue to and including the last Saturday in December. [Acts 1923, p. 107.] See 79th District.

94.—See 37th District.

95.—See 14th District.

96.—See 17th District.

97.—Montague and Clay.

Montague County: On the first Monday in January and may continue six weeks; on the thirteenth Monday after the first Monday in January and may continue six weeks; on the twenty-fifth Monday after the first Monday in January and may continue six weeks; and on the forty-first Monday after the first Monday in January and may continue six weeks.

Clay County: On the seventh Monday after the first Monday in January and may continue six weeks; on the nineteenth Monday after the first Monday in January and may continue six weeks; on the thirty-fifth Monday after the first Monday in January and may continue six weeks; and on the forty-seventh Monday after the first Monday in January and may continue six weeks. [Acts 1923, p. 145.]

98.—(No 98th Judicial District.)

99.—(No 99th Judicial District.)

100.—Childress, Hall, Donley and Collingsworth.

In Childress County:

On the first Monday in January and on the twenty-first Monday after the first Monday in January and may continue in session five weeks.

In Hall County:

On the fifth Monday after the first Monday in January and on the first Monday in September and may continue in session six weeks.

In Donley County:

On the eleventh Monday after the first Monday in January and on the sixth Monday after the first Monday in September and may continue in session five weeks.

In Collingsworth County:

On the sixteenth Monday after the first Monday in January and on the eleventh Monday after the first Monday in September and may continue in session five weeks.

SEC. 2. That all process and writs heretofore issued out of the district courts of the respective counties constituting the One Hundredth Judicial District and returnable to terms of court in said counties according to existing law are hereby made returnable to the terms of the district courts of said respective counties as said terms are fixed by this Act.

And all bonds executed and recognizances entered in said courts shall bind the parties for their appearance or to fulfill the obligations of such bonds and recognizances at the terms of said court as they are fixed by this Act, and all process heretofore returned, as well as all bonds and recognizances heretofore taken in the district courts of said respective counties shall be as valid as though no change had been made in the time of holding courts therein, and all grand and petit jurors drawn and selected under existing laws for any counties of said district are hereby declared lawfully drawn and selected for the first term of the district courts of such respective counties held in conformity with this Act.

SEC. 3. Should district court be in session under existing laws in any of the counties of said district, when this Act takes effect, such court, shall continue and end its term under such existing laws as if no change had been made in the time for holding such term, and all process, writs, judgments, decrees and other proceedings of said court during such time shall be valid to all intents and purposes and shall not be affected by the changes in the time of holding court therein made by this Act, but after the period provided in the above contingency the district courts of the respective counties herein mentioned shall be held in conformity with the terms herein prescribed. [Acts 1925, p. 178.]

101.—An additional district court is hereby created in and for Dallas County, the limits of which shall be coextensive with the limits of the county. The district shall be known as the One Hundred and First Judicial District.

SEC. 2. The One Hundred and First District Court shall not have or exercise any criminal jurisdiction, but in all other respects it shall have and exercise the jurisdiction prescribed by the Constitution and laws of the State for district courts in general, and the judge thereof shall have and exercise the powers conferred by the Constitution and laws of the State on the judges of district courts. Its jurisdiction shall be concurrent with that of the existing district courts of Dallas County.

SEC. 3. The terms of the One Hundred and First District Court shall begin on the first Mondays, respectively, in March _____ June _____, September _____ and December _____ of each year, and each term shall continue

until the Sunday immediately preceding the date set for the beginning of the next term thereof.

SEC. 4. The Governor shall appoint a suitable person as judge for said One Hundred and First District Court, who shall hold his office until the next general election until his successor shall have been elected and qualified. Thereafter the judge of said court shall be elected as provided by the Constitution and laws of the State for the election of district judges.

SEC. 5. The clerk of the district courts of Dallas County shall, upon the taking effect of this Act, assume the duties of clerk of the One Hundred and First District Court and shall thereafter perform the duties of such position as if the court had existed at the time of his election. He shall promptly prepare a docket for the One Hundred and First District Court, placing thereon every fifth pending case on the respective dockets of the Fourteenth, Forty-fourth, Sixty-eighth and Ninety-fifth District Courts, continuing in this manner through said dockets until all the cases thereon are exhausted and the dockets of the five courts are equalized as near as may be; provided, that no case then on trial in any of the existing district courts nor any case pending on appeal therefrom shall be transferred to the docket of the court created hereby. The cases so transferred shall bear the same docket numbers as in the court from which they are transferred, and the judges of the existing district courts, respectively, shall make proper orders transferring from said courts to the One Hundred and First District Court the cases which shall have been placed upon the docket of the latter court in pursuance of this Act.

SEC. 6. The letters A, B, C, D, and E shall be placed on the dockets and court papers in the respective district courts of Dallas County to distinguish them, A being used in connection with the Fourteenth District Court, B, the Forty-fourth District Court, C the Sixty-eighth District Court, D the Ninety-fifth District Court and E the One Hundred and First District Court.

SEC. 7. All suits, prosecutions and proceedings hereafter instituted in the district courts of Dallas County shall be numbered consecutively, beginning with the next number after the last file number on the dockets of the existing courts, and shall be entered by the district clerk upon the dockets of said courts alternately, beginning with the Fourteenth District Court; next, the Forty-fourth District Court, third, the Sixty-eighth District Court, fourth, the Ninety-fifth District Court and fifth, the One Hundred and First District Court.

SEC. 8. The respective judges of the district courts of Dallas County shall from time to time, as occasion may require, transfer cases from any one of such courts to any other such court in order that the business may be equally distributed among them, that the judges thereof may at all times be provided with cases to be tried or otherwise considered, and that the trial of no case need be delayed because of the disqualification of the judge in whose court it is pending; provided, however, no case shall be transferred from one court to another without the consent of the judge of the court to which it is transferred. When any transfer is made, proper order shall be entered on the min-

utes of the court as evidence thereof and notice of the transfer shall be given in writing by the clerk to the attorneys of record of all parties to the cause.

102.—Red River and Bowie.

In the county of Red River on the first Monday in January of each year and may continue in session for ten weeks;

In the county of Bowie on the eleventh Monday after the first Monday in January of each year and may continue in session for seven weeks;

In the county of Red River on the eighteenth Monday after the first Monday in January of each year and may continue in session until the first Monday in September;

In the county of Bowie on the first Monday in September of each year and may continue in session for seven weeks;

In the county of Red River on the eighth Monday after the first Monday in September of each year and may continue in session until the first Monday in January of the following year.

SEC. 2. Immediately after this Act takes effect the Governor shall appoint some suitable person as judge of the One Hundred and Second Judicial District Court who shall hold said office until the next general election for State and county officers, and until the election and qualification of his successor in office.

SEC. 3. The clerk of the district court of Bowie County, Texas, as heretofore constituted, and his successors in office, shall be the clerk of both the Fifth Judicial District Court and of the One Hundred and Second Judicial District Court in Bowie County hereby created, and shall perform all the duties of the clerk of both courts in Bowie County.

SEC. 4. The clerk of the district court of Red River County, Texas, as heretofore constituted, and his successors in office, shall be the clerk of the One Hundred and Second Judicial District Court in Red River County hereby created, and shall perform all the duties of the clerk of said One Hundred and Second Judicial District Court in Red River County.

103.—Cameron and Willacy.

In the county of Cameron, on the third Monday in February of each year, and may continue in session eight weeks; on the third Monday in April of each year, and may continue in session eight weeks; on the third Monday in July of each year, and may continue in session eight weeks; on the third Monday in September of each year, and may continue in session eight weeks; on the third Monday in December of each year, and may continue in session eight weeks.

In the county of Willacy, on the third Monday in June of each year, and may continue in session four weeks; on the third Monday in November of each year, and may continue in session four weeks.

The Governor shall appoint a suitable person possessing qualifications prescribed by the constitution and laws of this State, as judge of the 103rd Judicial District Court, as herein constituted, and such person shall hold said office until the next general election and until his successor shall have been elected and qualified and thereafterwards the judges of said 103rd Judicial

District of Texas shall be elected as prescribed by the constitution and laws of this State for the election of district judges.

Immediately upon taking effect of this Act, all civil cases now pending in the Twenty-eighth Judicial District Court in the respective counties of Willacy and Cameron, together with all records and papers relating thereto, shall be transferred to said 103rd Judicial District Court in each said respective counties of Willacy and Cameron.

All process and writs issued out of the district court of said counties and jurors selected prior to the taking effect of this Act are hereby made returnable to the terms of said courts, as said terms are fixed by this Act and all bonds executed and recognizances entered in said courts shall bind the parties for their appearance or to fulfill the obligations of such bonds and recognizances at the terms of said courts as they are fixed by this Act, and all process heretofore returned to, as well as all bonds and recognizances, theretofore taken in any of said courts of said counties shall be as valid as though no change had been made in the said districts and the times of holding courts therein. [Id., p. 247.]

[Note.—The above applies also to the Twenty-eighth Criminal District Court and the Twenty-eighth Judicial District as created by this Act.]

104.—(No 104th Judicial District.)

105.—(No 105th Judicial District.)

106.—Terry, Lynn, Garza, Dawson, Gaines and Yoakum.

In the County of Terry, on the third Monday in January, and on the fourth Monday in August, and may continue in session four weeks.

In the County of Lynn, on the fourth Monday after the third Monday in January, and the fourth Monday after the fourth Monday in August, and may continue in session four weeks.

In the County of Garza, on the eighth Monday after the third Monday in January, and on the eighth Monday after the fourth Monday in August, and may continue in session four weeks.

In the County of Dawson, on the twelfth Monday after the third Monday in January, and may continue in session for five weeks, and on the twelfth Monday after the fourth Monday in August, and may continue in session four weeks.

In the County of Gaines, on the seventeenth Monday after the third Monday in January, and may continue in session three weeks, and on the sixteenth Monday after the fourth Monday in August and may continue in session two weeks.

In the County of Yoakum, on the twentieth Monday after the third Monday in January, and on the eighteenth Monday after the fourth Monday in August, and may continue in session two weeks.

SEC. 3. The Governor shall appoint, as soon as this Act takes effect, a person to act as judge of the One Hundred and Sixth Judicial District, and a person to act as a district attorney of such judicial district such persons to have the qualification as prescribed by law.

SEC. 4. All process issued, bonds and recognizances made,

and all grand and petit juries drawn before this Act takes effect shall be valid for and returnable to the next succeeding terms of the district courts of the several counties, as herein fixed as though issued and served for such terms and returnable to and drawn for the same.

SEC. 5. This Act shall take effect, and be in force from and after the first day of August, 1925. [Acts 1925, p. 250.]

Art. 200. [31] **Amendments affecting Judicial Districts.**—Wherever the law declaring what counties shall compose a judicial district, or the law prescribing the time or places for holding the terms of the district court of any judicial district shall have been or may hereafter be amended, in every such case all process and writs theretofore issued from any such district court and made returnable to a term of such court as fixed by law at the time of such issuance, shall be returnable to the next ensuing term of such court as prescribed by such amended law; and all such writs and process shall be as legal and valid as if the same had been made returnable to the term of such court as fixed by such amendment. All grand and petit jurors selected and drawn under theretofore existing laws in any county of any such judicial district shall be considered lawfully drawn and selected for the next term of the district court of such county as fixed by the amended law; and the obligees in all appearance bonds and recognizances taken in and for any such district court, as well as all witnesses summoned to appear before such district court under pre-existing law, shall be required to appear at the next term of such court as fixed by the amended law.

TITLE 9.
APPRENTICES.

| Article | Article | | |
|---|---------|----------------------------------|-----|
| When minor may be apprenticed..... | 201 | Residence of apprentice..... | 212 |
| Minor not apprenticed to whom..... | 202 | Removal from county..... | 213 |
| Duration of apprenticeship..... | 203 | When apprentice runs away..... | 214 |
| Shall not be apprenticed without notice..... | 204 | Apprentice discharged when..... | 215 |
| In what county shall be appren- ticed..... | 205 | Citation to master..... | 216 |
| Obligation entered into..... | 206 | Master released..... | 217 |
| Obligation approved and recorded..... | 207 | Inquiry into treatment..... | 218 |
| Minor 14 years of age may select..... | 208 | Minor again apprenticed..... | 219 |
| Order of court apprenticing..... | 209 | When proceedings may be had..... | 220 |
| Evidence of authority..... | 210 | Suit upon obligation..... | 221 |
| Rights of master..... | 211 | Costs paid by whom..... | 222 |
| | | Guardian of person..... | 223 |

Art. 201. [32] [23] [18] When minor may be apprenticed.
—The county court may bind a minor as an apprentice—

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

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

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

Art. 202. [33] [24] [19] Minor not apprenticed to whom.
—A minor shall in no case be apprenticed to any one who is not legally competent to act as the guardian of such minor.

Art. 203. [34] [25] [20] Duration of apprenticeship.—The duration of apprenticeship shall be until the minor, if a male, arrives at the age of twenty-one years; if a female, until she arrives at the age of eighteen years, or until she marries if she marries before that age.

Art. 204. [35] [26] [21] Shall not be apprenticed without notice.—A minor shall not be apprenticed without citation in the same manner as is provided in the case of an application for the guardianship of a minor.

Art. 205. [36] [27] [22] In what county minor shall be apprenticed.—A minor shall be apprenticed in the county in which he resides, and shall not be apprenticed to any person who is not at the time a resident of such county.

Art. 206. [37] [28] [23] Obligation entered into.—The person to whom such minor is apprenticed shall enter into an obligation in writing, payable to such minor, in the sum to be fixed by the county judge, not less than one thousand dollars, and to be approved by such county judge, conditioned:

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

2. That he will treat said minor humanely.

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

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

5. That he will send said minor to school for the full term of the public free school in the community in which he resides.

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

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

Art. 207. [39] [30] [25] **Obligation approved and recorded.**—The obligation provided for by the preceding article when approved by the court, shall be filed in the office of the clerk of the county court and recorded upon the minutes of the court.

Art. 208. [38] [29] [24] **Minor over 14 years of age may select.**—A minor who is fourteen years, or over, may select the person to whom he desires to be apprenticed; and the court shall if such person be competent, apprentice the minor to the person so selected.

Art. 209. [40] [31] [26] **Order of court apprenticing.**—When such obligation has been approved and filed, the court shall enter an order upon the minutes, reciting such facts and directing that the same be recorded in the minutes, and authorizing the person to whom such minor is apprenticed to take charge and control of the person of such minor, and to retain the same until such minor arrives at the age of twenty-one years; or, if a female, until she arrives at the age of eighteen years, or until she marries, and the age of such minor at the time of entering such order shall be distinctly stated therein.

Art. 210. [41] [32] [27] **Evidence of authority.**—A certified copy of such order, under the seal of the court, shall be sufficient evidence of the authority of the person named therein to control the person of such minor.

Art. 211. [42-43] **Rights of master.**—The person to whom a minor has been apprenticed shall have the right, in the management and control of such minor, to inflict such moderate corporal chastisement as may be necessary and proper, and shall have the right to control the person of such minor, and shall be entitled to his services, and to all the profits arising from any such service during the continuance of such apprenticeship.

Art. 212. [44] [35] [30] **Residence of apprentice.**—It shall not be lawful for any apprentice to reside out of the county in which he has been apprenticed without the order of the county judge of such county, entered upon the minutes of the court. When such leave is obtained, a certified copy of the order granting the same shall be filed in the office of the clerk of the county court of the county in which the future residence of the minor is to be, together with a certified copy of the obligation and order apprenticing such minor; and the same shall be filed and recorded upon the minutes of the county court of such last named county; and thereafter such court shall have the same power and control over the case as if it had been originally commenced therein.

Art. 213. [45] [36] [31] **Removal from county.**—When an apprentice has been removed out of the county in which he was apprenticed, by the person to whom he was apprenticed, or with the knowledge or consent of such person, and without an order authorizing such removal, as provided in the preceding article, and shall be detained out of said county for more than thirty days, such apprentice shall not be held bound for a further com-

pliance with his apprenticeship, and can only be retained at the pleasure of such apprentice.

Art. 214. [46] [37] [32] **When apprentice runs away.**—If any apprentice shall run away from or leave the employment of the person to whom he is apprenticed without permission, such person may pursue and recapture such apprentice and bring him before the county judge having jurisdiction of the case, who shall investigate the case; and if satisfied that said apprentice ran away or left the employment of such person without good and sufficient cause, he shall order such apprentice to return to his service; and upon his failure or refusal to do so the court may punish him as for contempt of court.

Art. 215. [47] [38] [33] **Apprentice discharged when.**—Upon the investigation provided for in the preceding article, if the court be satisfied that such apprentice has good and sufficient cause for running away from or leaving the employment of the person to whom he was apprenticed, the court shall discharge said apprentice and revoke all authority granted to the person to whom such minor was apprenticed, and shall enter an order to that effect upon the minutes.

Art. 216. [48] [39] [34] **Citation to master.**—The county judge may, upon the complaint of the minor or any other person, or without complaint, cause the person to whom a minor has been apprenticed, to be cited to appear before him at any time and place mentioned in such citation, and show cause why his authority over such minor should not be revoked and the minor discharged from his apprenticeship. And upon the return of such citation served, the judge, if satisfied that such person is incompetent from any cause to properly control such minor, or that such person has in any material respect violated the obligation entered into by him, shall enter an order upon the minutes revoking such authority granted to such person over such minor, and discharging such minor from such apprenticeship.

Art. 217. [49] [40] [35] **Master released.**—A person to whom a minor has been apprenticed may at any time, upon good cause shown to the county judge, be released from future liability upon his obligation of apprenticeship; and in such case an order shall be entered upon the minutes revoking the authority of such person over such minor, and declaring such apprenticeship at an end.

Art. 218. [50] [41] [36] **Inquiry into treatment.**—The county judge shall, from time to time, inquire into the treatment of the minors apprenticed by him, or by his predecessors in office, and shall defend them from all cruelty, neglect, breach of contract or misconduct on the part of the persons to whom they were apprenticed.

Art. 219. [51] [42] [37] **Minor again apprenticed.**—When the person to whom a minor has been apprenticed dies, or when his authority has been revoked, the minor may be again apprenticed as in the first instance.

Art. 220. [52] [43] [38] **Proceedings may be had.**—The proceedings provided for in the preceding articles of this title may be had either in term time or in vacation, except that a minor shall be apprenticed only at a regular term of the court

for probate business, and after notice as in the case of the appointment of a guardian.

Art. 221. [53] [44] [39] **Suit upon obligation.**—In case of a breach of the obligation on the part of the person to whom a minor has been apprenticed, the minor, or the county judge, or any person for the use of the minor, may sue upon such obligation in any court of the county where such obligation, or certified copy thereof, has been filed and recorded, and shall be entitled to recover such damages as the minor may have sustained by reason of such breach; and all such damages shall be the property of such minor.

Art. 222. [54] [45] [40] **Costs paid by whom.**—In all proceedings apprenticing a minor, or discharging him from apprenticeship, and in all other proceedings connected with such apprenticeship, the person to whom such minor was apprenticed shall pay the costs of such proceedings, and the same shall be adjudged against him and collected as in other cases, except in a suit brought under the preceding article, in which case the costs shall be adjudged as in other civil suits.

Art. 223. [55] [46] [41] **Guardian of person.**—When a minor is apprenticed, the person to whom such minor is apprenticed supplies the place of the guardian of the person of such minor, and in such case there shall be no guardian of the person of such minor.

TITLE 10.

ARBITRATION.

1. Arbitration in General.

| | Article | | Article |
|--------------------------------|---------|--|---------|
| Right to arbitrate..... | 224 | Umpire selected..... | 232 |
| Agreement..... | 225 | Appeal from award..... | 233 |
| Agreement filed..... | 226 | In case of appeal..... | 234 |
| Day of trial designated..... | 227 | Costs..... | 235 |
| Oath of arbitrators..... | 228 | Refusing to proceed..... | 236 |
| Continuances permissible..... | 229 | Corporations, etc., may arbitrate..... | 237 |
| Procedure on trial..... | 230 | Mode not exclusive..... | 238 |
| Award entered as judgment..... | 231 | | |

Art. 224. [56] [47] [42] **Right to arbitrate.**—All persons desiring to submit any dispute, controversy, or right of action supposed to have accrued to either party, to arbitration, shall have the right so to do in accordance with the provisions of this title. [Const., Art. 16, Sec. 13.]

Art. 225. [57] [48] [43] **Agreement.**—Such persons shall sign an agreement in writing, as plaintiff and defendant, to arbitrate their differences or matters in dispute, and in such agreement each party shall name for himself one arbitrator, who shall be over the age of twenty-one years, not related to either party by consanguinity or affinity, possessing the qualifications of a juror, and who is not interested in the result of the cause to be submitted for his decision. [Act April 25, 1846, p. 127. G. L. Vol. 2, p. 1433.]

Art. 226. [58] [49] [44] **Agreement filed.**—If the amount in dispute is two hundred dollars or less, exclusive of interest, such agreement shall be filed with some justice of the peace of the county in which the defendant resides or in which the controversy arose. If the matter in dispute exceeds two hundred dollars, exclusive of interest, then such agreement shall be filed with the clerk of the district or county court of the county in which the controversy arose, according as the amount involved, or matter in dispute, may come within the jurisdiction of one court or the other. [Id.]

Art. 227. [59] [50] [45] **Day of trial designated.**—When such agreement is filed, the justice of the peace or the clerk of county or district court, as the case may be, shall forthwith designate a day for the trial of the cause, not less than two days thereafter, and shall issue process for such witnesses as either party may desire, returnable on the day fixed for trial. [Id.]

Art. 228. [60] [51] [46] **Oath of arbitrators.**—On the assembling of the arbitrators on the day of trial, the justice or clerk shall administer an oath to each, substantially as follows: "You do solemnly swear that you will fairly and impartially decide the matter in dispute between the parties, according to the evidence adduced and the law and equity applicable to the facts proved. So help you God." [Id.]

Art. 229. [61] [52] [47] **Continuances permissible.**—After being sworn, the arbitrators may, for good cause shown, continue the hearing to some other day, and during the progress of any trial, for good cause, may adjourn the same over to some other time.

Art. 230. [62] [53] [48] **Procedure on trial.**—Any arbitrator shall administer the necessary oath to the witnesses, and the trial of the cause shall proceed in like manner with trials in the courts of this State, the plaintiff holding the affirmative, and entitled to open and conclude the argument.

Art. 231. [63] [54] [49] **Award entered as judgment.**—After hearing the evidence and arguments, if any, the arbitrators shall agree upon their award and reduce the same to writing, specifying plainly their decision, which award they shall file with the justice or clerk as the case may be, and at the succeeding term of the court if no appeal is applied for such award shall be entered and recorded as the judgment of the court, with like effect as other judgments of said court.

Art. 232. [64] [55] [50] **Umpire selected.**—If the arbitrators chosen as aforesaid can not agree, they shall select an umpire with like qualifications as themselves, or in case they disagree in the choice of an umpire, the justice or clerk shall select such umpire, and he shall be sworn in like manner as the arbitrators; and the cause may be tried anew at such time as the board of arbitration thus constituted may designate, with like proceedings as are prescribed in the preceding article.

Art. 233. [65] [56] [51] **Appeal from award.**—If a right of appeal is not expressly reserved in the original agreement to arbitrate, no such right shall exist, but the decision of the arbitrators shall be final. If such right of appeal is reserved, and either party desires to appeal from such decision or award, he shall file his written application to that effect with the justice or clerk, as the case may be, on or before the return day of the term of the court next thereafter. [Id.]

Art. 234. [66] [57] [52] **In case of appeal.**—When an application for appeal is filed, as prescribed in the preceding article the same shall be noted on the docket of the court, and the opposite party served with a citation, as in ordinary cases of suit by petition. Upon return of service upon the opposite party, the cause shall stand for trial de novo as in ordinary cases.

Art. 235. [67] [58] [53] **Costs.**—The arbitrators may award the costs to either party; and, if their decision or award is silent as to costs, the same shall be taxed equally against both parties.

Art. 236. [68] [59] [54] **Refusing to proceed.**—After an agreement to arbitrate is filed, the parties thereto shall be bound to that mode of trial under the following penalties, to-wit: Such agreement may be pleaded in bar to any suit thereafter brought by a plaintiff in such agreement for the same cause of action, when such plaintiff has refused to proceed under such agreement; and said agreement may be pleaded in bar to any right claimed or defense set up by defendant in such agreement who has refused to proceed thereunder, where such right or defense existed at the time of filing such agreement. [Act 1846, p. 127.]

Art. 237. [69] [60] [55] **Corporation, etc., may arbitrate.**—The provisions of this title shall apply to corporations as well as natural persons; and executors, administrators and guardians may also consent to an arbitration of any controversy or

matter of dispute relating to or affecting their respective trusts, with the consent of the court in which such administration or guardianship is pending.

Art. 238. [70] [61] [56] **Mode not exclusive.**—Nothing herein shall be construed as affecting the existing right of parties to arbitrate their differences in such mode as they may select.

2. Arbitration Between Employer and Employed.

| | | | |
|--------------------------------------|---------|------------------------------------|---------|
| | Article | | Article |
| Board of arbitration authorized..... | 239 | Powers and duties of chairman | 244 |
| District judge to establish board, | 240 | and board..... | 244 |
| etc..... | 240 | Adjudication terminates..... | 245 |
| Controversy involving labor or- | | Status quo preserved pending arbi- | |
| ganizations..... | 241 | tration..... | 246 |
| Submission in writing..... | 242 | Compensation..... | 247 |
| Arbitrators to take oath, etc..... | 243 | Award to take effect when..... | 248 |
| | | Judgment entered..... | 249 |

Art. 239. [71] **Board of arbitration authorized.**—Whenever any grievance or dispute of any nature, growing out of the relation of employer and employes, shall arise or exist between employer and employes, it shall be lawful, upon mutual consent of all parties, to submit all matters respecting such grievance or dispute in writing to a board of arbitrators to hear, adjudicate, and determine the same. Said board shall consist of five persons. When the employes concerned in such grievance or dispute, as the aforesaid, are members in good standing of any labor organization which is represented by one or more delegates in a central body, the said central body shall have power to designate two of said arbitrators, and the employer shall have the power to designate two others of said arbitrators; and the said four arbitrators shall designate a fifth person as arbitrator, who shall be chairman of the board. In case the employes concerned in any such grievance or dispute, as aforesaid, are members in good standing of a labor organization which is not represented in a central body, then the organization of which they are members shall designate two members of said board; and said board shall be organized as hereinbefore provided; and in case the employes concerned in any such grievance or dispute, as aforesaid, are not members of any labor organization, then a majority of said employes, at a meeting duly held for that purpose, shall designate two arbitrators for said board; and said board shall be organized as hereinbefore provided; provided, that when the two arbitrators shall have been selected by each of the respective parties to the controversy, the district judge of the district having jurisdiction of the subject matter shall, upon notice from either of said arbitrators that they have failed to agree upon the fifth arbitrator, appoint said fifth arbitrator. [Acts 1895, p. 85, G. L. Vol. 10, p. 815.]

Art. 240. [72] **District judge to establish board, etc.**—Any board, as aforesaid selected, may present a written petition to the district judge of the county where such grievance or dispute to be arbitrated may arise, signed by a majority of said board, setting forth in brief terms the facts showing their due and regular appointment, and the nature of the grievance or dispute between the parties to said arbitration, and praying the license or order of such judge establishing and approving of said board of arbitration. Upon the presentation of said petition,

said judge, if it appear that all requirements of this law have been complied with, shall make an order establishing such board of arbitration and referring the matters in dispute to it for hearing, adjudication and determination. The said petition and order, or a copy thereof, shall be filed in the office of the district clerk of the county in which the arbitration is sought. [Id.]

Art. 241. [73] Controversy involving labor organizations.—When a controversy involves and affects the interests of two or more classes or grades of employes belonging to different labor organizations, or of individuals who are not members of a labor organization, then the two arbitrators selected by the employes shall be agreed upon and selected by the concurrent action of all such labor organizations, and a majority of such individuals who are not members of a labor organization. [Id.]

Art. 242. [74] Submission in writing.—The submission shall be in writing, shall be signed by the employer or receiver and the labor organization representing the employes, or any laborer or laborers to be affected by such arbitration who may not belong to any labor organization, shall state the question to be decided, and shall contain appropriate provisions by which the respective parties shall stipulate as follows:

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

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

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

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

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

Art. 243. [75] Arbitrators to take oath, etc.—The arbitrators so selected shall sign a consent to act as such and shall take and subscribe an oath before some officer authorized to administer the same, to faithfully and impartially discharge his duties as such arbitrator, which consent and oath shall be immediately filed in the office of the clerk of the district court wherein such arbitrators are to act. When said board is ready for the transaction of business, it shall select one of its members to act as secretary, and the parties to the dispute shall receive notice of a time and place of hearing, which shall be not more than ten days after such agreement to arbitrate has been filed. [Id.]

Art. 244. Powers and duties of chairman and board.—The

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

Art. 245. [77] **Adjudication terminates powers.**—When said board shall have rendered its adjudication and determination, its powers shall cease, unless there may be at the time in existence other similar grievances or disputes between the same class of persons mentioned in the first article of this subdivision, and in such case such persons may submit their differences to said board, which shall have power to act and adjudicate and determine the same as fully as if said board were originally created for the settlement of such difference or differences. [Id.]

Art. 246. [78] **Status quo preserved.**—During the pendency of such arbitration it shall not be lawful for the employer or receiver party to such arbitration, nor his agent, to discharge the employes parties thereto, except for inefficiency, violation of law, or neglect of duty, or where reduction of force is necessary, nor for the organization representing such employes to order, nor for the employes to unite in, aid or abet strikes or boycotts against such employer or receiver. [Id.]

Art. 247. [79] **Compensation.**—Each of the said board of arbitrators shall receive three dollars per day for every day in actual service, not to exceed ten days, and traveling expenses not to exceed five cents per mile actually traveled in getting to, or returning from, the place where the board is in session. The fees of witnesses of the aforesaid board shall be fifty cents for each day's attendance and five cents per mile traveled by the nearest route to, and returning from, the place where attendance is required by the board. All subpoenas shall be signed by the secretary of the board and may be served by any person of full age authorized by the board to serve the same. And the fees and mileage of witnesses and the per diem and traveling expenses of said arbitrators shall be taxed as costs against either or all of the parties to said arbitration, as the board of arbitrators may deem just, and shall constitute part of their award; and each of the parties to said arbitration shall, before the arbitrators proceed to consider the matters submitted to them, give a bond, with two or more good and sufficient sureties, in an amount to be fixed by the board of arbitration, conditioned for the payment of all expenses connected with the said arbitration. [Id.]

Art. 248. [80] **Award to take effect when.**—The award shall be made in triplicate. One copy shall be filed in the district clerk's office, one copy shall be given to the employer or receiver, and one copy to the employes or their duly authorized representative. The award, being filed in the District Clerk's office, as hereinbefore provided, shall go into practical operation, and judgment shall be entered thereon accordingly, at the expiration of ten days from such filing, unless within such ten days

either party shall file exceptions thereto for matter of law apparent on the record; in which case said award shall go into practical operation, and judgment shall be rendered accordingly, when such exceptions shall have been fully disposed of by either said district court or on appeal therefrom. [Id.]

Art. 249. [81] **Judgment entered.**—At the expiration of ten days from the decision of the district court, upon exceptions taken to said award as aforesaid, judgment shall be entered in accordance with said decision, unless during the said ten days either party shall appeal therefrom to the court of civil appeals holding jurisdiction thereof. In such case, only such portions of the record shall be transmitted to the appellate court as is necessary to the proper understanding and consideration of the questions of law presented by said exceptions and to be decided. The determination of said court of civil appeals upon said questions shall be final, and being certified by the clerk of said court of civil appeals, judgment pursuant thereto shall thereupon be entered by said district court. If exceptions to an award are finally sustained, judgment shall be entered setting aside the award; but in such case the parties may agree upon a judgment to be entered disposing of the subject matter of the controversy, which judgment, when entered, shall have the same force and effect as judgment entered upon an award. [Id.]

TITLE 11.

ARCHIVES.

1. ARCHIVES OF THE GENERAL LAND OFFICE.

| | | | |
|--------------------------------|-------------|------------------|-------------|
| Enumeration | Article 250 | Deeds, etc. | Article 252 |
| Effect given to archives | 251 | Withdrawal | 253 |

Art. 250. [82] [62] [57] **Enumeration.**—The following shall be deemed the records, books and papers of the general land office and constitute a part of the archives of the same:

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

(2) All books, papers, records, documents and archives pertaining to the lands of the Republic or State of Texas that have heretofore been delivered by the Commissioner of the Court of Claims to the Comptroller and by him turned over to the Land Commissioner in pursuance and by authority of law.

(3) All other books, records, papers and archives of the colony of Martin de Leon heretofore delivered by the Secretary of State, in accordance with law, to the Land Commissioner.

(4) The duly certified copy of the book or register of land certificates, usually known as the "Lost Book of Harris County," transmitted to the Land Commissioner by the clerk of the county court, in accordance with law.

(5) All other books, transfers, powers of attorney, field-notes, maps, plats, legal proceedings, official reports, original documents and other papers appertaining to the land of the Republic or State of Texas that have been deposited or filed in the general land office in accordance with any law of the Republic or of this State. [Act Dec. 22, 1836, p. 216; Act June 12, 1837, p. 263; Act Dec. 14, 1837, pp. 44, 62; Act Dec. 2, 1850, p. 32; G. L. Vol. 1, pp. 1276, 1323, 1386; G. L. Vol. 3, p. 860.]

(6) All owners of land between the Nueces and Rio Grande rivers, under grants or titles from the former government, which grants or titles are such as are described in Section 4 of Article 13 of the present Constitution, and have been, previous to the adoption of his Constitution, recorded in the respective counties where the land is situated, but have not yet been deposited or archived in the general land office of this State, be and they are hereby authorized and required to deposit and archive said grants or titles in said general land office. Such titles when so archived, shall be subject to all defenses and objections to which they would have been subject if not so archived; and said act of archiving shall invest said titles with no greater validity than they before had as titles recorded in the proper county; and the Land Commissioner is hereby authorized and required to receive the same as archives of said office. [Acts 1881, p. 37; G. L. Vol. 9, p. 129.]

Art. 251. [83] [63] [58] **Effect given to archives.**—Nothing in the preceding article shall be construed to give any of the said books, records or other papers named in said article any greater force or validity by reason of their being so recognized as archives of the general land office than was accorded them by the laws in force at the date of their execution and deposit in the general land office. [Id.]

Art. 252. [84] [64] [59] **Deeds, etc.**—Deeds and other instruments of writing which were executed or issued prior to the second day of March A. D. 1836, upon stamped paper of the second or third seal, and which deeds or instruments of writing are not original documents in the general land office, nor expressly declared by law to be archives of the said office, are hereby declared to constitute no part of the archives of said office. [Act Feb. 11, 1850, p. 200; Act Jan. 11, 1862, p. 36; G. L. Vol. 3, p. 638; G. L. Vol. 5, p. 480.]

Art. 253. [85] [65] [60] **Withdrawal.**—The owners of any land to which the deeds or other instruments of writing named in the preceding article relate, may withdraw the same from the general land office on making a written sworn application therefor, to the Land Commissioner, setting forth the fact of such ownership; and, if the commissioner shall be satisfied that the person applying is in fact the owner of the land to which such deed or instrument of writing relates, he may deliver the same to such applicant, taking his receipt therefor, and describing in such receipt the deed or instrument of writing delivered, with a summary of its contents and the name of the original grantee of the land to which such deed or instrument of writing may relate or refer. [Id.]

2. OTHER PUBLIC ARCHIVES.

| | | | |
|------------------------------|-------------|--------------------------|-------------|
| Of State Department..... | Article 254 | Other archives..... | Article 258 |
| Archives of Republic..... | 255 | University archives..... | 259 |
| Historical archives..... | 256 | Loan of archives..... | 260 |
| Of Comptroller's Office..... | 257 | | |

Art. 254. [86] [66] [61] **Of State Department.**—The Secretary of State is authorized to take possession of rooms in the basement of the capitol for the use of the State Department and the better preservation of archives. [Acts 1856, p. 3; G. L. Vol. 4, p. 421.]

Art. 255. [87] [67] [62] **Archives of Republic.**—The entire archives of the Congress of the Republic of Texas, and of the several Legislatures of this State, arranged and filed according to law, together with the records, books and journals of said Congress and Legislatures, prepared in accordance with law, and heretofore, or hereafter, deposited in the office of the Secretary of State are declared to be archives of said office. [Acts 1854, p. 113; Acts 1887, p. 47; G. L. Vol. 3, p. 1557.]

Art. 256. [88] [68] [63] **Historical archives.**—All books, pictures, papers, maps, documents, manuscripts, memoranda and data which relate to the history of Texas as a province, colony, Republic or State, which have been or may be delivered to the State Librarian by the Secretary of State, Comptroller, Land Commissioner or by any head of any department, or by any

person or officer, in pursuance of law, shall be deemed books and papers of the State Library and shall constitute a part of the archives of said State Library; and copies therefrom shall be made and certified by the State Librarian upon application of any person interested, which certificate shall have the same force and effect as if made by the officer originally in custody of them. [Acts 1907, p. 283.]

Art. 257. [89] [69] [64] **Of Comptroller's office.**—All books, papers, records and archives, that were heretofore archives of the auditor's office, or of the office of the Commissioner of the Court of Claims, and which have heretofore, in pursuance of law, been delivered to the Comptroller, shall be deemed papers and records of the Comptroller's office, and shall constitute a part of the archives of his office. [Acts 1858, p. 40; Acts 1860, p. 48; G. L. Vol. 4, pp. 912, 1412.]

Art. 258. [90] [70] [65] **Other archives.**—All books, papers, records, rolls, documents, returns, reports, lists and all other papers that have been, are now, or that may be, required by law to be kept, filed or deposited in any office of the executive departments of this State, shall constitute a part of the archives of the offices in which the same are so kept, filed or deposited.

Art. 259. **University archives.**—The librarian of the University of Texas and the archivist of the Department of History of said University are hereby authorized to make certified copies of all public records in the custody of the University of Texas, and said certified copies shall be valid in law and shall have the same force and effect for all purposes as if certified to by the county clerk or other custodian as now provided for by law. In making the certificate to the said certified copies, either by the librarian or by the archivist of the Department of History, the said officer shall certify that the foregoing is a true and correct copy of said document, and after signing the said certificate shall swear to the same before any officer authorized to take oaths under the laws of this State. [Acts 1921, p. 94.]

Art. 260. **Loan of archives.**—County Commissioners and other custodians of public records are hereby authorized, in their discretion, to lend to the Library of the University of Texas, for such length of time and on such conditions as they may determine, such parts of their archives and records as have become mainly of historical value, taking a receipt therefor from the librarian of such University; and the librarian of said University is hereby authorized to receipt for such records as may be transferred to the said Library, and to make copies thereof for historical study. [Id.]

TITLE 12.

ASSIGNMENTS FOR CREDITORS.

| | Article | | Article |
|--|---------|-----------------------------------|---------|
| General assignment..... | 261 | Fraudulent sale of assignor..... | 268 |
| Details of assignment..... | 262 | Proof of claim, etc..... | 269 |
| Discharge of liability..... | 263 | Dividend and allowance..... | 270 |
| Notice of assignee's appointment..... | 264 | Surplus..... | 271 |
| Acceptance by creditors..... | 265 | Examination of assignor, etc..... | 272 |
| Qualifications and bond of assignee..... | 266 | May discount claims..... | 273 |
| Fraud will not defeat assignment..... | 267 | Final report of assignee..... | 274 |

Art. 261. [91] **General assignment.**—Every assignment made by a debtor for the benefit of his creditors shall provide for a distribution of all of his real and personal estate among all of his creditors consenting thereto, in proportion to their respective claims, and however made or expressed shall have the effect aforesaid and shall be construed to pass all such estate, whether specified therein or not. The term “real and personal estate” shall not include property exempt by law from execution. [Acts 1879, p. 57; G. L. Vol. 8, p. 1357.]

Art. 262. [92] **Details of Assignment.**—Assignments shall be in writing and proved or acknowledged and recorded in the manner provided by law for conveyances of real estate, and the debtor shall annex to such assignment an inventory containing the following statement:

1. A list of all the creditors of such debtor or debtors;
2. The place of residence of each creditor, if known;
3. The sum owing to each creditor, and the nature of the debt or demand;
4. The consideration of such indebtedness in each case, and the place where such indebtedness arose;
5. A statement of any existing judgment or security for the payment of any such debt;
6. An inventory of all such debtor's estate at the date of such assignment, both real and personal, and any incumbrances existing thereon, and of all vouchers and securities relating thereto, and the value of such estate.

Such inventory shall be signed and sworn to by the assignor or assignors that the same is just and true. [Id.]

Art. 263. [93] **Discharge of liability.**—A debtor may make such assignment and shall thereupon stand discharged from all further liability to such consenting creditors on account of their respective claims. Such debtor shall not be discharged from liability to such creditor who does not receive as much as one-third of the amount due and allowed in his favor as a valid claim against the estate of such debtor. [Acts 1883, p. 46; G. L. Vol. 9, p. 352.]

Art. 264. [94] **Notice of assignee's appointment.**—Every assignee shall, within thirty days after the execution of an assignment, give public notice of his appointment in some newspaper printed in the county where the assignor resides or where his principal business was conducted. If no newspaper be printed therein, then such notice shall be published in the newspaper nearest to such place of residence or business. Such notice shall be published for three successive weeks. The as-

signee shall also give notice by mail to each of the listed creditors of the assigner. [Acts 1879, p. 57; G. L. Vol. 8, p. 1357.]

Art. 265. [95] **Acceptance of creditors.**—The creditors of the assignor consenting to such assignment shall make their written consent known to the assignee within four months after the notice provided in the preceding article. No creditor not assenting shall receive or take any benefit under the assignment. Any creditor who had no actual notice of such assignment may assent before any distribution of assets under the assignment. The receipt by a creditor of any portion of his claim from the assignee, shall be conclusive evidence of the assent of such creditor to the assignment. [Id.]

Art. 266. [96] [104] **Qualifications and bond of assignee.**—Every such assignee shall be a resident of this State and of the county in which the assignor resides, or in which his principal business was conducted, and he shall forthwith after the execution and delivery of the assignment, cause the same to be recorded in the county of such assignee's residence and in every county in which there is any real property conveyed to him by such assignment; and shall execute a bond with sureties to be approved by either the judge of the county or district court in the county of residence of said assignee, in such sum as may be fixed by said judge, conditioned that he will faithfully discharge his duties as such assignee, and that he will make proportional distribution of the net proceeds of the assigned estate among the creditors entitled thereto. Such bond shall be payable to the State of Texas and shall be filed with the county clerk of the county in which such assignee resides, and shall inure to the benefit of the assignor and creditors. Upon filing said bond, the assignee shall take possession of the assigned property and proceed to execute the assignment; and if such assignee shall not within five days after the delivery of the assignment, execute an approved bond and file the same as herein provided, such assignment shall nevertheless take effect as against the assignor and his creditors. It shall be the duty of the county judge or judge of the district court of the county in which the assignee resides, either in term time or vacation, upon the application of the assignor or any creditor, and being satisfied that such bond has not been given, approved and filed, to appoint in writing another competent assignee who shall, upon the execution of such bond approved and filed as herein provided, take possession of the assigned property and proceed to execute the assignment. In case of vacancy by death or otherwise of any assignee, or upon removal of any assignee by the district or county judge for just cause, such judge shall appoint another in his place. [Acts 1883, p. 46; Id.; G. L. Vol. 8, p. 352.]

Art. 267. [97] **Fraud will not defeat assignment.**—No fraudulent act, intent or purpose of the assignor or assignee shall have the effect to defeat the assignment or to deprive the creditors consenting thereto from the benefits thereof; and any consenting creditor may be or become a party to prosecute or defend in any suit or proceeding necessary or proper for the enforcement of his rights under such assignments, or for the protection of his interests in the assigned property. [Id.]

Art. 268. [100] **Fraudulent sale by assignor.**—Except as to innocent purchasers for value, all property conveyed or transferred by the assignor previous to and in contemplation of assignment with the intent or design to defeat, delay or defraud creditors, or give preference to one creditor over another, shall pass to the assignee by the assignment, notwithstanding such transfer; and the assignee, or in case of his neglect or refusal, any creditor or creditors may in his name, upon securing such assignee against cost or liability, sue for, recover and collect the same, and cause the same to be applied for the benefit of creditors as other property belonging to the debtor's estate in the hands of the assignee. [Acts 1879, p. 57; G. L. Vol. 8, p. 1357.]

Art. 269. [98] [102] **Proof of claim, etc.**—Every creditor consenting to an assignment shall, within six months from the time of the first publication of the notice of the appointment of the assignee, file with such assignee a distinct statement of the particular nature and amount of his claim against the debtor, which shall be supported by an affidavit of the creditor, his agent or attorney, that the statement is true, that the debt is just and that all proper credits or offsets have been allowed, and the assignee shall allow such claim as a valid claim against the estate unless he has good reason to believe it is not just and true. No creditor shall take any benefit under any assignment who neglects to file such statement within such time. The assignor or any creditor disputing such claim may, within eight months after such first publication, sue to set aside any allowance made by the assignee, and to restrain the payment thereof, and such action shall be tried as in other cases. The assignee shall furnish to any creditor upon request a copy of any statement of a claim that has been filed with such assignee. [Id.]

Art. 270. [105] **Dividend and allowance.**—Whenever any assignee shall have in his hands funds sufficient to pay ten per cent of the debts due by the assignor, he shall make a pro rata distribution of the same among said creditors entitled thereto; and the assignee shall be entitled to reasonable compensation for his services and his necessary costs and expenses, including also his attorney's fees, to be allowed by the county or district judge. [Id.]

Art. 271. [99] **Surplus.**—Any creditor not consenting to the assignment may garnishee the assignee for any excess of such estate remaining in his hands after the payment to the consenting creditors the amount of their debts and the costs and expenses of executing the assignment. [Id.]

Art. 272. [101] **Examination of assignor, etc.**—The judge of the court in which any proceedings shall have been filed may, on the application of the assignee, or of any creditor of the assignor, or without such application if the judge see fit, at all times require, upon such reasonable notice as the judge may direct, the assignor or any other person to attend and submit to a sworn examination upon all matters relating to the disposition made, or status of the property of the estate assigned, including all transactions in the past bearing upon the rights of the assignee or creditors with respect to the estate in assignment, as contemplated in law. The judge may enforce attend-

ance and obedience to such orders so made by a writ or order as in other cases. Such examination shall be in writing, signed by the persons examined, and attested or sworn to before and filed with the clerk of the court wherein the proceedings are pending, for the use of those interested in the estate. No assignor or debtor shall be prosecuted or punished for any matter or thing disclosed by him on such examination as had above. The costs of such proceedings to be paid out of the estate assigned, or by the applicant for the examination, as the judge in each case may deem proper. [Id.]

Art. 273. [103] **May discount claims.**—Claims not due may be allowed at their present value by discounting them at the legal rate. If any creditor holds collateral security of less value than his debt, the value thereof may be estimated by the assignee, and only the difference between such sum and the debt shall be allowed. [Id.]

Art. 274. [106] **Final report of assignee.**—If any assignee shall desire to be finally discharged, he may make a sworn report of his proceedings under the assignment, showing the moneys and assets that have come into his hands, and how the same have been disbursed and disposed of. Such report shall thereupon be filed and recorded in the office of the county clerk of the county in which the assignment is recorded. No action shall be brought against such assignee by reason of anything done by him under the assignment as shown by his report, unless the same be brought within twelve months from the time of the filing thereof, as aforesaid; and any moneys or funds on hand shall be deposited in the district court subject to be paid out upon the decree of said court. [Id.]

TITLE 13. ATTACHMENT.

| | Article | | Article |
|--|---------|---|---------|
| Who may issue..... | 275 | Attachment of personal property..... | 290 |
| What facts must further appear..... | 276 | Claimant's bond and affidavit..... | 291 |
| Not to issue until suit begun..... | 277 | Replevy by defendant..... | 292 |
| May issue on debt not yet due..... | 278 | Sale of perishable property..... | 293 |
| Plaintiff must give bond..... | 279 | To protect interests..... | 294 |
| Form of bond..... | 280 | Procedure for sale..... | 295 |
| Attachment in tort or unliquidated demand..... | 281 | Return of sale..... | 296 |
| Writ to issue instanter..... | 282 | Judge may make necessary orders..... | 297 |
| Several writs..... | 283 | Return of writ..... | 298 |
| Form of writ..... | 284 | Report of disposition of property..... | 299 |
| Delivery of writ..... | 285 | Attachment creates a lien..... | 300 |
| Duty of officer..... | 286 | Judgment of foreclosure..... | 301 |
| May demand indemnity..... | 287 | Judgment when property is replevied..... | 302 |
| Property subject to attachment..... | 288 | Order of court when attachment quashed..... | 303 |
| Levy, how made..... | 289 | | |

Art. 275. [240] [186] [152] Who may issue.—The judges and clerks of the district and county courts and justices of the peace may issue writs of original attachment, returnable to their respective courts, upon the plaintiff, his agent or attorney, making an affidavit stating:

- (1) That the defendant is justly indebted to the plaintiff, and the amount of the demand; and
- (2) That the defendant is not a resident of the State, or is a foreign corporation, or is acting as such; or
- (3) That he is about to remove permanently out of the State, and has refused to pay or secure the debt due the plaintiff; or
- (4) That he secretes himself so that the ordinary process of law can not be served on him; or
- (5) That he has secreted his property for the purpose of defrauding his creditors; or
- (6) That he is about to secrete his property for the purpose of defrauding his creditors; or
- (7) That he is about to remove his property out of the State, without leaving sufficient remaining for the payment of his debts; or
- (8) That he is about to remove his property, or a part thereof, out of the county where the suit is brought, with intent to defraud his creditors; or
- (9) That he has disposed of his property, in whole or in part, with intent to defraud his creditors; or
- (10) That he is about to dispose of his property with intent to defraud his creditors; or
- (11) That he is about to convert his property, or a part thereof, into money, for the purpose of placing it beyond the reach of his creditors; or
- (12) That the debt is due for property obtained under false pretenses. [Acts 1864, p. 37; G. L. Vol. 5, p. 691.]

Art. 276. [241] [187] [153] What facts must further appear.—The affidavit shall further state that the attachment is not sued out for the purpose of injuring or harassing the defendant; and that the plaintiff will probably lose his debt unless such attachment is issued. [Id.]

Art. 277. [242] [188] [154] Not to issue until suit begun.—No such attachment shall issue until the suit has been duly instituted; but it may be issued in a proper cause either at the commencement of the suit or at any time during its progress. [Acts 1848, p. 65; G. L. Vol. 3, p. 65.]

Art. 278. [243] [189] [155] **May issue on debt not yet due.**—The writ of attachment above provided for may issue, although the plaintiff's debt or demand be not due, and the same proceedings shall be had thereon as in other cases, except that no final judgment shall be rendered against the defendant until such debt or demand shall become due. [Id.]

Art. 279. [244-5] **Plaintiff must give bond.**—Before the issuance of any writ of attachment, the plaintiff must execute a bond, with two or more good and sufficient sureties, payable to the defendant in a sum not less than double the debt sworn to be due, conditioned that the plaintiff will prosecute his suit to effect, and will pay all such damages and costs as shall be adjudged against him for wrongfully suing out such attachment. Such bond shall be delivered to and approved by the officer issuing the writ, and shall, together with the affidavit, be filed with the papers of the cause. [Id.]

Art. 280. [246] [192] [158] **Form of bond.**—The following form of bond may be used:

"The State of Texas,
County of _____

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

Art. 281. **Attachment in tort or unliquidated demand.**—Nothing in this title shall prevent the issuance of attachments in suits founded in tort or upon unliquidated demands against persons, co-partnerships, associations or corporations upon whom personal service cannot be obtained within this State. Where the demand is unliquidated, the amount of the bond to be made by the plaintiff shall be fixed by the judge or clerk of the court or by the justice of the peace issuing the attachment. The bond shall be made in the sum so fixed and upon the approval and filing of same the attachment shall issue as in other cases. [Acts 1st C. S. 1913, p. 31.]

Art. 282. [248] [194] [160] **Writ to issue instant.**—Upon the execution of such affidavit and bond, it shall be the duty of the judge or clerk, or justice of the peace, as the case may be, immediately to issue a writ of attachment, directed to the sheriff or any constable of any county where property of the defendant is supposed to be, commanding him to attach so much of the property of the defendant as shall be sufficient to satisfy the demand of the plaintiff and the probable costs of the suit. [Id.]

Art. 283. [249] [195] [161] **Several writs.**—Several writs of attachment may, at the option of the plaintiff, be issued at the same time, or in succession, and sent to different counties, until sufficient property shall be attached to satisfy the writ.

Art. 284. [250] [196] [162] **Form of writ.**—The following form of writ may be issued:

"The State of Texas,

To the sheriff or any constable of _____ county, greeting:

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

Art. 285. [251] [197] [163] **Delivery of writ.**—The writ of attachment shall be dated and tested as other writs, and may be delivered to the sheriff or constable by the officer issuing it, or he may deliver it to the plaintiff, his agent or attorney, for that purpose.

Art. 286. [252] [198] [164] **Duty of officer.**—The sheriff or constable receiving the writ shall immediately proceed to execute the same by levying upon so much of the property of the defendant subject to the writ, and found within his county, as may be sufficient to satisfy the command of the writ.

Art. 287. [253] [199] [165] **May demand indemnity.**—Whenever an officer shall levy an attachment, it shall be at his own risk. Such officer may, for his own indemnification, require the plaintiff in attachment to execute and deliver to him a bond of indemnity to secure him if it should afterward appear that the property levied upon by him does not belong to the defendant.

Art. 288. [254] [200] [166] **Property subject to attachment.**—The writ of attachment may be levied upon such property, and none other, as is, or may be, by law subject to levy under the writ of execution.

Art. 289. [255] [201] [167] **Levy, how made.**—The writ of attachment shall be levied in the same manner as is, or may be, the writ of execution upon similar property.

Art. 290. [256] [202] [168] **Attachment of personal property.**—When personal property is attached, the same shall remain in the hands of the officer attaching until final judgment, unless a claim be made thereto and bond be given to try the right to the same, or unless the same be replevied or be sold as provided by law.

Art. 291. [257] [203] [169] **Claimant's bond and affidavit.**—Any person other than the defendant may claim the personal property so levied on, or any part thereof, upon making the affidavit and giving bond required by the provisions of the title relating to the trial of the right of property.

Art. 292. [258] [204] [170] **Replevy by defendant.**—At any time before judgment, should the property not have been previously claimed or sold, the defendant may replevy the same, or any part thereof, by giving bond, with two or more good and sufficient sureties, to be approved by the officer who levied the writ, payable to the plaintiff, in double the amount of the plaintiff's debt, or, at the defendant's option, for the value of the property replevied, to be estimated by the officer, conditioned that should the defendant be condemned in the action, he shall satisfy the judgment which may be rendered therein, or shall

pay the estimated value of the property with lawful interest thereon from the date of the bond.

Art. 293. [259] [205] [171] **Sale of perishable property.**—Whenever personal property which has been attached shall have not have been claimed or replevied, the judge, or justice of the peace, out of whose court the writ was issued, may, either in term time or in vacation, order the same to be sold, when it shall be made to appear that such property is in danger of serious and immediate waste or decay, or that the keeping of the same until the trial will necessarily be attended with such expense or deterioration in value as greatly to lessen the amount likely to be realized therefrom.

Art. 294. [260] [206] [172] **To protect interests.**—In ascertaining the facts which authorize the making of such order of sale under the preceding article, the judge, or justice of the peace, may require or dispense with notice to the parties, and may act upon such information, by affidavit, certificate of the attaching officer, or other proof as may seem to him necessary to protect the interest of the parties.

Art. 295. [261] [207] [173] **Procedure for sale.**—Such sale shall be conducted in the same manner as sales of personal property under execution, except as to the time of advertisement, which may be fixed by the judge, or the justice, for a shorter period, according to the exigency of the case.

Art. 296. [262] [208] [174] **Return of sale.**—The proceeds of such sale shall, within five days thereafter, be paid over by the officer making the sale to the clerk of the court, or justice of the peace, as the case may be, accompanied by a statement in writing, signed by such officer officially, to be filed with the papers, stating the time and place of the sale, the name of the purchaser, and the amount received, with an itemized account of the expenses attending the sale.

Art. 297. [263] [209] [175] **Judge may make necessary orders.**—If the personal property be not replevied or claimed or sold under the provisions of this title, the judge, or justice of the peace, as the case may be, may either in term time or in vacation, make such order for the preservation or use of the same as appears to be to the interest of the parties.

Art. 298. [264-5] **Return of writ.**—The officer executing the writ of attachment shall return the writ, with his action endorsed thereon or attached thereto, signed by him officially, to the court from which it issued, on or before the first day of the next term thereof. Such return shall describe the property attached with sufficient certainty to identify it, and shall state when the same was attached, and whether any personal property attached remains still in his hands, and, if not, the disposition made of the same. When property has been replevied he shall deliver the replevy bond to the clerk to be filed with the papers of the cause.

Art. 299. [266] [212] [178] **Report of disposition of property.**—When the property levied on is claimed, replevied or sold, or otherwise disposed of after the writ has been returned, the officer having the custody of the same shall immediately make a report in writing, signed by him officially, to the clerk, or justice of the peace, as the case may be, showing such disposition

of the property. Such report shall be filed among the papers of the cause.

Art. 300. [267] [213] [179] Attachment creates a lien.—The execution of the writ of attachment upon any property of the defendant subject thereto, unless the writ should be quashed or otherwise vacated, shall create a lien from the date of such levy on the real estate levied on and on such personal property as remains in the hands of the attaching officer, and on the proceeds of such personal property as may have been sold.

Art. 301. [268] [214] [180] Judgment and foreclosure.—Should the plaintiff recover in the suit, such attachment lien shall be foreclosed as in case of other liens, and the court shall direct the proceeds of the personal property sold to be applied to the satisfaction of the judgment, and the sale of personal property remaining in the hands of the officer and of the real estate levied on, to satisfy the judgment. When an attachment issued from a county or justice court has been levied upon land, no order or decree foreclosing the lien thereby acquired shall be necessary, but the judgment shall briefly recite the issuance and levy of such attachment, and such recital shall be sufficient to preserve such lien. The land so attached may be sold under execution after judgment, and the sale thereof shall vest in the purchaser all the estate of the defendant in attachment in such land, at the time of the levy of such writ of attachment. [Acts 1885, p. 73; G. L. Vol. 9, p. 693.]

Art. 302. [269] [215] [181] Judgment when property is replevied.—When personal property has been levied on, as hereinbefore provided, the judgment shall also be against the defendant and his sureties on his replevy bond for the amount of the judgment, interest and costs, or for the value of the property replevied and interest, according to the terms of such replevy bond.

Art. 303. [270] [216] [182] Order of court when attachment quashed.—If the attachment be quashed or otherwise vacated by interlocutory judgment or order of the court, the court shall make the proper order making disposition of the property, or the proceeds of the sale thereof, if the same has been sold under order of the court, directing that it be turned over to the defendant. The property or the proceeds of the sale thereof, if the same has not been replevied, shall remain in the hands of the officers pending the final disposition of the main case and until it shall be finally disposed of, or until the time for perfecting an appeal has elapsed and no appeal has been perfected, when said order disposing of the property shall be carried into effect. Pending the final disposition of the main case, the defendant shall have the right at any time to replevy the property in the same manner as is provided for in cases of replevy before judgment. If the property has been sold, he may replevy the proceeds of such sale by giving bond in double the amount of the money arising from such sale, with like conditions as when replevied before judgment. Any replevy bond given in such case, whether before or after the quashing or vacating such attachment, shall be as valid and binding as if such attachment had never been quashed or vacated. [Acts 1891, p. 29; G. L. Vol. 10, p. 31.]

TITLE 14.

ATTORNEY AT LAW.

| | Article | | Article |
|---------------------------------|---------|----------------------------------|---------|
| Board of examiners..... | 304 | Disbarment | 313 |
| Duties of board..... | 305 | Complaint | 314 |
| Authority of Supreme Court..... | 306 | Citation to issue..... | 315 |
| Graduates exempt..... | 307 | Trial | 316 |
| Foreign attorneys..... | 308 | Retention of client's money..... | 317 |
| Oath of attorney..... | 309 | May inspect papers..... | 318 |
| Fees | 310 | Officers not to appear..... | 319 |
| Convicts barred..... | 311 | Attorney to show authority..... | 320 |
| Misbehavior or contempt..... | 312 | | |

Art. 304. [317] [257] Board of Examiners.—The Board of Law Examiners shall consist of five lawyers having the qualifications required of members of the Supreme Court. They shall be biennially appointed by the Supreme Court and shall each hold office for two years and be subject to removal by the Supreme Court for incompetency or inattention to duty. [Acts 1919, p. 63.]

Art. 305. Duties of Board.—Such board, acting under instructions of the Supreme Court as hereinafter provided, shall pass upon the eligibility of all candidates for examination for license to practice law within this State, and examine such of these as may show themselves eligible therefor, as to their qualifications to practice law. Such Board shall not recommend any person for license to practice law unless such person shall show to the Board, in the manner to be prescribed by the Supreme Court, that he is of such moral character and of such capacity and attainment that it would be proper for him to be licensed. [Id.]

Art. 306. Authority of Supreme Court.—The Supreme Court is hereby authorized to make such rules as in its judgment may be proper to govern eligibility for such examination and the manner of conducting the same, covering, among other points, proper guarantee to insure:

1. Good moral character on the part of each candidate for license.
2. Adequate pre-legal study and attainment.
3. Adequate study of the law for at least two years, covering the course of study prescribed by the Supreme Court, or the equivalent of such course.
4. The legal topics to be covered by such study and by the examination given.
5. The time and place for holding the examinations, the manner of conducting same and the grades to be made by the candidates to entitle them to be licensed.

Whenever as many as five applicants shall request the Board to conduct an examination in any particular town or city convenient to their place of residence, the examination of such applicants shall be conducted at such town or city at some suitable time, to be determined by the Board.

6. Any other such matters as shall be desirable in order to make the issuance of a license to practice law evidence of good character, and fair capacity and real attainment and proficiency in the knowledge of law.

No license to practice law in this State shall be issued by any court or authority, except by the Supreme Court of this State, under the provisions of this title. [Id.]

Art. 307. **Graduates exempt.**—The Supreme Court by general order shall exempt graduates of such law schools as may be approved by such Court from taking any examination as to pre-legal or legal studies and attainments, but such graduates must in all instances furnish evidence as to moral character required of candidates. Every law school in this State shall be approved for this purpose which maintains the following standards:

1. Admission requirements of law equivalent to successful completion of the four years' high school course.

2. A law curriculum extending over at least three scholastic years, with not less than ten hours class room work in law a week for each of the three classes respectively.

3. Standards for credit based upon written examination satisfactory to the Supreme Court.

4. A library of not fewer than twenty-five hundred well selected law books. [Id.]

Art. 308. **Foreign attorneys.**—The Supreme Court shall make such rules and regulations as to admitting attorneys from other jurisdictions to practice law in this State as it shall deem proper and just. All such attorneys shall be required to furnish satisfactory proof as to good moral character. [Id.]

Art. 309. [322] [260] [225] **Oath of attorney.**—Every person admitted to practice law shall, before receiving license, take an oath that he will support the Constitution of the United States and of this State; that he will honestly demean himself in the practice of law, and will discharge his duty to his client to the best of his ability; which oath shall be indorsed upon his license, subscribed by him and attested by the officer administering the same. [Acts 1860, p. 23; G. L. Vol. 4, p. 1385.]

Art. 310. **Fees.**—The fee for any examination given by the Board shall be fixed by the Supreme Court, not to exceed twenty dollars for each candidate, which shall be paid to the clerk of said court at the time the application for examination is made. The money thus obtained shall be used to pay all legitimate expenses incurred in holding the examination; and as compensation to the members of the Board, under such regulations as shall be agreed upon by the Board, or determined by the Supreme Court. [Acts 1919, p. 64.]

Art. 311. [323] [261] [226] **Convicts barred.**—No person convicted of a felony shall receive license as an attorney at law; or, if licensed, any court of record in which such person may practice shall, on proof of a conviction of any felony, revoke his license and strike his name from the roll of attorneys. [Acts 1846, p. 247; G. L. Vol. 2, p. 1553.]

Art. 312. [324] [262] [227] **Misbehavior or contempt.**—An attorney at law may be fined or imprisoned by any court for misbehavior or for contempt of such court. No attorney shall be suspended or stricken from the rolls for contempt unless it involve fraudulent or dishonorable misconduct or malpractice. [Acts 1860, p. 23; G. L. Vol. 4, p. 1385.]

Art. 313. [325] [331] **Disbarment.**—Any attorney at law who shall be guilty of barratry or any fraudulent or dishonorable conduct or malpractice, may be suspended from practice, or his license may be revoked by the district court of the county in which such attorney resides or where the act complained of occurred, regardless of the fact that such act may constitute an offense under the Penal Code of Texas, and regardless of whether he is being prosecuted or has been convicted for the violation of such penal provision. [Acts 1921, p. 127.]

Art. 314. [326] [327] [229] **Complaint.**—The judge of any court, a practicing attorney, a county commissioner or justice of the peace may file with the clerk of the district court a sworn complaint of fraudulent or dishonorable conduct or malpractice on the part of any attorney at law.

Art. 315. [328] [266] [231] **Citation to issue.**—Upon the filing of such complaint, or upon its own observance of such conduct, such district court shall order the attorney to be cited to show cause why his license shall not be suspended or revoked. If the citation be ordered upon the observation of the court, the charge and the grounds thereof shall be set out distinctly in the order of the court. Such citation shall be served upon defendant at least five days before the trial day.

Art. 316. [329-30] **Trial.**—Upon the return of said citation executed, if the defendant appear and deny the charge, the cause shall be docketed for trial and conducted in the name of the State of Texas against the defendant. The county or district attorney shall represent the State. A jury of twelve men shall be impaneled, unless waived by the defendant. If the attorney be found guilty, or if he fail to appear and deny the charge after being duly cited, the said court, by proper order entered on the minutes, may suspend his license for a time, or revoke it entirely, and may also give proper judgment for costs.

Art. 317. [332] [269] [234] **Retention of client's money.**—Each attorney who receives or collects money for his client and refuses to pay over the same when demanded, may be proceeded against by motion of the party injured or his attorney before the district court of the county in which such attorney usually resides or in which he resided when he collected or received the money; notice of which motion with a copy thereof shall be served on such party at least five days before the trial. In case the motion be sustained, judgment shall be rendered against the defendant for the amount by him collected or received and not less than ten nor more than twenty per cent damages on the principal sum. [Acts 1846, p. 245; G. L. Vol. 2, p. 1551.]

Art. 318. [333] [270] [235] **May inspect papers.**—Each attorney at law practicing in any court, shall be allowed at all reasonable times to inspect the papers and records relating to any suit or other matter in which he may be interested. Any party withdrawing any papers shall leave a descriptive receipt for the same. [Id.]

Art. 319. [334] [271] [236] **Officers not to appear.**—No judge of the Supreme Court, Courts of Civil or Criminal Appeals or district court, or clerk of any court, or deputy, or sheriff or

deputy or constable shall be allowed to appear and plead as an attorney at law in any court of record in this State. No county judge shall be allowed to appear and practice as an attorney at law in any county or justice court, except in cases where the court over which he presides has neither original or appellate jurisdiction. [Acts 1876, p. 216; Acts 1st C. S. 1879, p. 12; G. L. Vol. 8, pp. 1052, 1312.]

Art. 320. [335-6-7] **Attorney to show authority.**—Any defendant in any suit or proceeding pending in any court of this State may, by sworn written motion stating that such defendant believes that such suit or proceeding was instituted against him or is being prosecuted against him without authority on the part of the plaintiff's attorney, cause such attorney to be cited to appear before such court and show his authority for same, notice of which motion shall be served upon such attorney before the trial of such motion. Upon the hearing of such motion, the burden of proof shall be upon the defendant therein to show sufficient authority from the plaintiff in such suit or proceeding to institute or prosecute the same. Upon his failure to show such authority, the court shall refuse to permit such attorney to appear in said cause, and shall dismiss the same if no person who is authorized to prosecute said cause appears. Such motion may be heard and determined at any time before the parties have announced ready for trial, but the trial shall not be unnecessarily continued or delayed for the hearing thereof.

TITLE 15.

ATTORNEYS—DISTRICT AND COUNTY.

I. DISTRICT ATTORNEYS.

| | Article | | Article |
|-------------------------------------|---------|--------------------------------------|---------|
| Term of office..... | 321 | Assistant district attorneys and in- | |
| Districts may elect..... | 322 | vestigators..... | 324b |
| Travis and Williamson Counties..... | 322a | Assistant for Sixth District..... | 325 |
| Bond..... | 323 | Hudspeth and Culberson Counties..... | 326 |
| Assistant in certain counties..... | 324 | Failure to attend court..... | 327 |
| Deputy district and county attor- | | Vacancy in office..... | 328 |
| neys..... | 324a | | |

Art. 321. [338] [275] [240] **Term of Office.**—District attorneys and criminal district attorneys shall hold office for the term of two years. [Const. Art. 5, Sec. 21.]

Art. 322. [339] [276] [241] **Districts may elect.**—At each regular general election a district attorney shall be elected in each judicial district and in each criminal district of this State, except as is or may be otherwise provided by law. [Acts 1901, p. 127; Acts 1915, p. 259.]

Art. 322a. **Travis and Williamson County.**—The office of district attorney of Travis and Williamson Counties from and after the first day of January, 1927, shall cease to exist, and there shall be elected a district attorney for the Fifty-third Judicial District at the next general election after the passage of this Act, and at each general election thereafter. He shall represent the State in all criminal cases in all of the district courts of Travis County, and perform such other duties as are or may be provided by law governing district attorneys; and he shall receive, in addition to the five hundred (\$500.00) dollars per annum allowed by law to district attorneys, the same per diem and compensation provided by law for district attorneys in judicial districts of this State composed of two or more counties.

After the taking effect of this Act it shall be the duty of the county attorney of Williamson County to represent the State of Texas in all courts in Williamson County, in all matters and cases pertaining to the duties of county attorney and district attorney; and his fees and compensation shall be governed by the General Laws now existing, or hereafter enacted, pertaining to such matters and cases. [Acts 1925, p. 355.]

Art. 323. [340] [277] [242] **Bond.**—Each district attorney, before entering on the duties of his office, shall give bond, payable to the Governor in the sum of five thousand dollars, with two or more good and sufficient sureties, to be approved by the district judge of their respective districts, conditioned that such district attorney will faithfully pay over, in the manner prescribed by law, all money which he may collect or which may come to his hands for the State or for any county. Such bond shall be deposited in the office of the Comptroller.

Art. 324. **Assistants in certain counties.**—The district attorney shall appoint one assistant district attorney in districts consisting of more than one county, in which there is situated a city of twenty-eight thousand population or over, according to the last preceding United States census, or any United States census which may hereafter be taken; provided the district attorney shall furnish data to the district judge of his district

that he is in need of an assistant and that the district attorney is himself unable to attend to all the duties required of him by law, and that it is necessary and to the best interests of the State that an assistant district attorney be appointed. Every person so appointed shall be a qualified resident attorney of the district in which said appointment is made and shall give bond and take the oath of office required of district attorneys by this State, and shall have the power and authority to perform all the acts and duties of district attorneys under the law of the State, and said appointment shall be for such time as the district attorney shall deem best in the enforcement of the law, not to be less than one month. [Acts 1925, p. 212.]

Art. 324a. Deputy district and county attorneys.—The provision of this Act relating to the appointment and payment of deputies, or assistants, by the county attorneys and the district attorneys, in counties having a population in excess of one hundred thousand inhabitants, shall also apply to counties where one county composes a judicial district, and the population of the county is more than thirty-seven thousand five hundred, and less than one hundred thousand inhabitants, as shown by the last United States Census, and counties where the county attorney performs the duties of the county attorney and district attorney, as provided by law. [Acts 1925, p. 352.]

Art. 324b. Assistant district attorneys and investigators.—In any judicial district in this State consisting of more than one county in which there may be a county having a population in excess of 70,000 inhabitants, according to the last census of the United States, and according to any United States census which may hereafter be taken, the district attorney of each district in connection with and for the purpose of conducting his office in such county shall be and is hereby authorized, with the approval of the county commissioners court of such county to appoint one assistant district attorney, who shall receive a salary to be fixed by said commissioners court of such county, not to exceed \$2400.00 per annum. Such district attorney shall likewise be authorized, with the approval of such county commissioners court of such county, to appoint one special investigator, at a salary to be fixed by said commissioners court, not to exceed \$2400.00 per annum. The salary of such assistant and special investigator, above provided for, shall be paid by the county having a population of more than 70,000, by warrant drawn on the general funds thereof, all salaries payable monthly.

The assistant district attorney above provided for, when appointed, shall take the oath of office and be authorized to represent the State in any court or proceeding in said county in which such district attorney is, or shall be authorized to represent the State, such authority to be exercised under the direction of said district attorney, and such assistants and special investigators shall be subject to removal at the will of said district attorney. Said assistant district attorney shall be authorized to perform any official act devolving upon or authorized to be performed by such district attorney in said county, this Article is not intended to repeal any other law now existing, but is cumulative thereof.

Art. 325. **Assistant for Sixth District.**—The district attorney of the Sixth Judicial District of Texas is hereby authorized to appoint an assistant district attorney, whose qualifications and authority shall be the same as now required by law for district attorneys, and he shall take the oath and execute the bond required by law. Said assistant shall receive a salary of not exceeding two thousand dollars per year to be paid out of excess fees of said office as the same accrue under the law. [Acts 1917, p. 268.]

Art. 326. **Hudspeth and Culberson Counties.**—The commissioners court of Hudspeth and Culberson Counties are hereby authorized to pay to the district attorney for the Thirty-fourth Judicial District of Texas a sum not to exceed seventy-five dollars each per month as specially provided by law. [Acts 1923, p. 382.]

Art. 327. **Failure to attend court.**—When any district attorney shall fail to attend any term of the district court of any county in his district, the district clerk of such county shall certify the fact of such failure under his official seal to the Comptroller, and unless some satisfactory reason for such failure is shown to the comptroller, such district attorney shall receive no salary for the time that he has so failed to attend. [Acts 1846, p. 295; G. L. Vol. 2, p. 1601.]

Art. 328. **Vacancy in office.**—When a vacancy occurs in the office of district attorney, the Governor shall appoint a qualified person, resident of the district, to fill the same.

2. COUNTY ATTORNEYS.

| | | |
|----------|---------|------------|
| Election | Article | Article |
| Bond | 329 | 331 |
| | 330 | Assistants |

Art. 329. [346] [280] [245] **Election.**—A county attorney for counties in which there is not a resident criminal district attorney, shall be biennially elected for a term of two years by the qualified voters of each county. [Acts 1883, p. 2; G. L., Vol. 9, p. 308; Const., Art. 5, Sec. 21.]

Art. 330. [351] [285] [248] **Bond.**—Each county attorney shall execute a bond payable to the Governor in the sum of twenty-five hundred dollars, with at least two good and sufficient sureties to be approved by the commissioners court of his county, conditioned that he will faithfully pay over in the manner prescribed by law all moneys which he may collect or which may come to his hands for the State or any county. [Acts 1876, p. 86; G. L. Vol. 8, p. 922.]

Art. 331. [347] [281] **Assistants.**—County attorneys, by consent of the commissioners court, shall have power to appoint in writing one or more assistants, not to exceed three, for their respective counties who shall have the same powers, authority and qualifications as their principals, at whose will they shall hold office. Before entering on the duties of their offices, they shall each take the official oath which shall be indorsed upon their appointment, which oaths and appointments shall be recorded and deposited in the county clerk's office. [Acts 1891, p. 91.]

3. GENERAL PROVISIONS.

| | Article | | Article |
|----------------------------------|---------|-----------------------------|---------|
| Qualifications | 332 | Collection reports | 337 |
| Report to Attorney General | 333 | Register | 338 |
| Shall advise officers | 334 | To prosecute officers | 339 |
| Collections and fees | 335 | Admissions | 340 |
| Accepting reward | 336 | Population determined | 341 |

Art. 332. [352] [354] [355] **Qualifications.**—No person who is not a duly licensed attorney at law shall be eligible to the office of district or county attorney. District and county attorneys shall reside in the district and county, respectively, for which they were elected; and they shall, as soon as practicable after their election and qualification, notify the Attorney General and Comptroller of their post-office address. [Acts 1876, p. 85.]

Art. 333. **To report to Attorney General.**—District and County Attorneys shall, when required by the Attorney General, report to him at such times and in such form as he may direct, such information as he may desire in relation to criminal matters and the interests of the State, in their districts and counties.

Art. 334. [356] [290] [253] **Shall advise officers.**—The district and county attorneys, upon request, shall give an opinion or advice in writing to any county or precinct officer of their district or county, touching their official duties. [Acts 1913, p. 48.]

Art. 335. [363] [297] [257] **Collection and fees.**—Whenever a district or county attorney has collected money for the State or for any county, he shall within thirty days after receiving the same, pay it into the treasury of the State or of the county in which it belongs, after deducting therefrom and retaining the commissions allowed him thereon by law. Such district or county attorney shall be entitled to ten per cent commissions on the first thousand dollars collected by him in any one case for the State or county from any individual or company, and five per cent on all sums over one thousand dollars, to be retained out of the money when collected, and he shall also be entitled to retain the same commissions on all collections made for the State or for any county. This article shall also apply to money realized for the State under the escheat law. [Acts 1876, p. 86; G. L. Vol. 8, p. 922.]

Art. 336. [365] [299] [259] **Accepting reward.**—No district or county attorney shall take any fee, article of value, compensation, reward or gift or any promise thereof, from any person whomsoever, to prosecute any case which he is required by law to prosecute, or consideration of or as a testimonial for his services in any case which he is required by law to prosecute, either before or after such case has been tried and finally determined. [Id.]

Art. 337. [361] [362] **Collection reports.**—On or before the last day of August of each year, each district or county attorney shall file in the office of the Comptroller or of the county treasurer, as the case may be, a sworn account of all money received by him by virtue of his office during the preceding year, payable into the State or county treasury. [Id.]

Art. 338. [364] [298] [258] **Register.**—Each district and county attorney shall keep in proper books, to be procured by them for that purpose at their own expense, a register of all their official acts and reports, and all actions or demands prosecuted or defended by them as such attorneys, and of all proceedings had in relation thereto, and shall deliver such books to their successors in office; and the same shall at all times be open to the inspection of any person appointed by the Governor or by the county commissioners court of a county, to examine the same. [Id.]

Art. 339. [366] [300] [260] **To prosecute officers.**—When it shall come to the knowledge of any district or county attorney that any officer in his district or county entrusted with the collection or safe keeping of any public funds is in any manner whatsoever neglecting or abusing the trust confided in him, or in any way failing to discharge his duties under the law, he shall institute such proceedings as are necessary to compel the performance of such duties by such officer and to preserve and protect the public interests. [Id.]

Art. 340. [369] [303] [261] **Admissions.**—No admissions made by the district or county attorney in any suit or action in which the State is a party shall operate to prejudice the rights of the State.

Art. 341. **Population determined.**—The preceding Federal census shall be the basis for determining population under any provisions of this title

TITLE 16.

BANKS AND BANKING.

| Chapter | Page | Chapter | Page |
|---------------------------------------|------|-----------------------------------|------|
| 1 Banking Commissioner of Texas | 150 | 6 Savings Department | 169 |
| 2 Incorporation | 156 | 7 Bank Deposit Guaranty Law | 171 |
| 3 Banks | 159 | Guaranty Fund | 172 |
| 4 Bank and Trust Companies | 160 | Bond Security | 178 |
| 5 Savings Banks | 162 | 8 General Provisions | 183 |
| | | 9 Morris Plan Banks | 198 |

CHAPTER ONE.

BANKING COMMISSIONER OF TEXAS.

| Article | Article | | |
|---------------------------------|---------|------------------------------------|-----|
| Appointment | 342 | Examination of Reserve banks | 359 |
| Vacancy | 343 | Examination of savings banks | 360 |
| Bond | 344 | May take oaths | 361 |
| Qualifications | 345 | Examination fees | 362 |
| Deputy | 346 | Disposition of fees | 363 |
| General powers | 347 | Hindering examination, etc. | 364 |
| Liquidating agent | 348 | Impairment of capital | 365 |
| Special agents, etc. | 349 | Illegal practices | 366 |
| Examiners | 350 | Investigation of fraud | 367 |
| Examiners' salaries | 351 | Unsafe bank | 368 |
| Examiners' bond, etc. | 352 | Shall close bank | 369 |
| Examiners' qualifications | 353 | Inspection | 370 |
| Examiner disqualified | 354 | Liquidating officer | 371 |
| Interest in bank | 355 | Bond of liquidating officer | 372 |
| Commissioner disqualified | 356 | Insolvency of Reserve Bank | 373 |
| To enforce guaranty law | 357 | Liquidation of savings banks | 374 |
| Examinations | 358 | Report to Legislature | 375 |

Art. 342. **Appointment.**—By and with the advice and consent of the Senate, the Governor shall biennially appoint a "Banking Commissioner of Texas" for a term of two years. The term "Commissioner" as used in this title shall mean the Banking Commissioner of Texas. [Acts 2nd C. S. 1923, p. 107.]

Art. 343. **Vacancy.**—Any vacancy in said office shall be filled by the Governor and he shall report the name of the person so appointed to the Senate, if in session, or at the next succeeding session of the Legislature. Should the Senate fail to confirm the appointment made by the Governor within ten days after being advised thereof, then the said office shall be deemed vacant and a new appointment shall be made until the office is filled. [Id.]

Art. 344. **Bond.**—Within fifteen days after the notice of his appointment and before entering upon the duties of his office, said Commissioner shall give bond to the State for ten thousand dollars to be approved by the Governor, and conditioned for the faithful discharge of the duties of his office. [Id.]

Art. 345. **Qualifications.**—The Banking Commissioner shall be a practical banker having had not less than five years actual experience in the banking business holding a position not lower than the grade of cashier. Experience as Deputy Banking Commissioner shall be deemed as that of a practical banker for the purposes of this law. [Id.]

Art. 346. **Deputy.**—The Commissioner may appoint a competent Deputy Commissioner who shall possess all the powers and perform all the duties attached by law to the office of Banking Commissioner during the necessary or unavoidable absence of the Commissioner, or his inability from any cause to act. The Commissioner shall be responsible for the acts of his Deputy,

who shall, before entering upon the duties of his position, take the oath required of the Commissioner; he may also be required by the Commissioner to enter into bond with security payable to the said Commissioner, conditioned for the faithful performance of the duties of his office. [Id.]

Art. 347. **General powers.**—The Commissioner shall be superintendent and Instructor of the State Banking System of Texas and of all corporations incorporated under the provisions of this title.

Art. 348. **Liquidating agent.**—The Commissioner may appoint a general liquidating agent with his office in the State Banking Department. Said agent shall conduct under the direction of the Commissioner, the liquidation of any State bank in process of liquidation. Such agent shall receive a salary of five thousand dollars per year, payable monthly, to be assessed proportionately by the Commissioner against any bank or banks in liquidation, and shall be collected and paid into the State Treasury. The services of the liquidating agent may be dispensed with at any time at the option of the Commissioner. [Id.]

Art. 349. [460-1-2] **Special Agents, etc.**—The Commissioner may, under his hand and official seal, appoint one or more special liquidating agents to assist him to perform his duties, and the certificate of their appointment shall be filed in the office of the commissioner, and a certified copy thereof in the office of the clerk of the county in which the bank in process of liquidation was located. The Commissioner may employ counsel and procure such expert assistance as may be necessary in the liquidating and distribution of the assets of such insolvent bank. The Commissioner shall require from such special agents and assistants such security for the faithful performance of their duties as he may deem proper. [Acts 1909, 2nd C. S. p. 406.]

Art. 350. **Examiners.**—The Commissioner from time to time shall appoint such number of State Bank Examiners as may be necessary to make the examination of banking corporations required by law, which number shall at no time exceed one for each forty banking corporations then subject to examination under the law. One departmental examiner may be appointed by the Commissioner in addition to the field examiners. [Acts 2nd C. S. 1923, p. 107.]

Art. 351. **Examiners' salaries.**—The departmental examiner shall receive an annual salary of five thousand dollars; and the field examiners shall receive twenty-four hundred dollars for the first year's service and for each additional year to and including the fifth year, they shall receive an additional three hundred dollars, after which they shall receive not more nor less than four thousand dollars per year. The examiners shall receive all necessary traveling expenses, a sworn itemized account of which shall be rendered monthly by each examiner and approved by the Commissioner. In determining the years of service, it is not necessary that the number of years shall have been served consecutively. [Id.]

Art. 352. [520] **Examiner's bond, etc.**—Each examiner, before entering upon the duties of his appointment, shall take

and file in the office of the Secretary of State an oath to support the Constitution of this State, to faithfully demean himself in office, to make fair and impartial examinations, and that he will not accept as presents or emoluments any pay, directly or indirectly for the discharge of any act in the line of his duty other than remuneration fixed and accorded him by law, and that he will not reveal the condition of any bank or bank and trust company examined by him, or any information secured in the course of any examination of any bank or bank and trust company to any one except the Commissioner. Every such examiner shall enter into a bond payable to the State in the sum of ten thousand dollars to be approved by the Commissioner and deposited in the office of the State Comptroller, conditioned that he will faithfully perform his duties as such examiner. In case any such examiner shall knowingly report any such financial company in an insolvent condition, or in case he shall report any such financial company to be solvent, knowing the same to be otherwise, and any person be injured thereby, such person shall have a right of action on such bond for his injuries. Such action shall be brought in the name of the State on the relation of the injured party. [Acts 1905, S. S. p. 501.]

Art. 353. [520] **Examiner's qualifications.**—Every examiner appointed by the Banking Commissioner shall be an expert bookkeeper and bank accountant. No such examiner shall be appointed who has not had practical experience in the banking business for at least five years. No such examiner shall be appointed who is an officer or stockholder in any bank organized under the laws of this State. No such examiner shall be appointed receiver of any bank whose books, papers and affairs he shall have examined pursuant to his appointment. [Id.]

Art. 354. **Examiner disqualified.**—Upon indictment of any such examiner for any violation of any provision of chapter seven of this title, he shall be disqualified from further discharging the duties of such office until such indictment is fully disposed of. [Id.]

Art. 355. [572] **Interest in bank.**—Neither the Commissioner nor any regularly appointed clerks or employes of the Banking Department, nor any State bank examiner shall at any time during his incumbency be financially interested directly or indirectly in any State bank or bank and trust company subject to the provisions of this title, or knowingly be or become indebted, either directly or indirectly, to any such bank. A violation of any provision of this article by any officer or employe named herein shall work a forfeiture of his office or position. [Acts 1909, 2nd C. S. p. 423.]

Art. 356. [527] **Commissioner disqualified.**—The Commissioner, not less than twice during any one year or oftener in his discretion, shall call upon each banking corporation organized under or subject to the provisions of this title, for a statement of its assets and liabilities as provided in articles 494 and 495. The Commissioner shall not inform any person of the day on which he will call for such statement. For a violation of this requirement, or of any other duty imposed upon him by this title, he shall be deemed to have committed a misdemeanor in

office, and upon conviction shall be removed from office. [Acts 1905, S. S. p. 502.]

Art. 357. [507] To enforce guaranty law.—If any corporation organized under the general or special laws of Texas to do a banking business or to receive funds on deposit shall fail or refuse to file the bond, policy of insurance or other guaranty of indemnity under the Bond Security System, or shall fail or refuse to avail itself of the Depositors' Guaranty Fund Plan, as provided in chapter seven of this title, the Commissioner shall promptly report such failure to the Attorney General, who shall thereupon institute suit in the district court of Travis County to forfeit the charter of such corporation; and such court shall, upon hearing and proof thereof, enter decree and judgment therein forfeiting and annulling the charter of such corporation. [Acts 1909, 2nd C. S. p. 406.]

Art. 358. Examinations.—The Commissioner shall cause each banking corporation incorporated under the laws of this State, subject by law to examination, to be thoroughly and fully examined at least every four months and at such other times as the Commissioner may deem necessary. [Acts 1923, 2nd C. S. p. 107.]

Art. 359. Examination of Reserve banks.—Such banking corporations as shall become members of a Federal Reserve bank, should the Federal Reserve Board or the Comptroller of the Currency insist upon making examinations of such corporations by National bank examiners, shall be examined by or under the direction of the Commissioner semi-annually or oftener in his discretion. The Commissioner or any State bank examiner, at his discretion, shall be authorized at any time to forward to the Comptroller of the Currency or the Federal Reserve Board, copies or certified copies of a State bank examiner's report of any regular or special examination made of any such member bank. [Acts 1914, 3rd C. S. p. 46.]

Art. 360. [429] Examination of savings banks.—The Commissioner shall examine or cause to be examined every savings bank organized under this title once in every two years, or oftener in his discretion. The expense of every such special examination, if any, shall be paid by the corporation examined in such manner as the Commissioner shall certify to be just and reasonable. Only actual and traveling expenses of the Commissioner or his examiners incident to such examinations shall be paid by such corporation. [Acts 1905, S. S. p. 489.]

Art. 361. May take oaths.—The Commissioner and all State bank examiners shall have the power to administer oaths to any person whose testimony may be desired for the purpose of any such examinations. [Acts 1923, 2nd. C. S., p. 107.]

Art. 362. Examination fees.—Except as to savings banks, the expense of every general and special examination shall be paid by the corporation examined in such amount as the Commissioner shall certify to be just and reasonable, and assessments therefor shall be made by the Commissioner upon the banks examined in proportion to assets or resources held by the banks upon the dates of the examination of the various banks. [Id.]

Art. 363. **Disposition of fees.**—All sums collected as examination fees shall be paid by the Commissioner directly into the State Treasury to the credit of the General Revenue Fund. The expenses of examination and of the Commissioner in enforcing the provisions of this title shall be paid upon the certificate of the Commissioner by warrant of the Comptroller upon the State Treasury. [Id.]

Art. 364. [524] **Hindering examination, etc.**—If any banking corporation subject to the provisions of this title shall refuse to submit to the inspection of the Commissioner or any of his examiners, or if any officer or director thereof shall refuse to submit to be examined on oath touching the affairs of said corporation, or if it shall be found to have violated its charter, or any law of this State binding upon it, the Commissioner shall report the fact to the Attorney General, who shall institute such action or proceedings against such corporation as is authorized in cases of insolvent banks. [Acts 1905, S. S. p. 502.]

Art. 365 [523] **Impairment of capital.**—Whenever the Commissioner shall have reason to believe that the capital stock of any banking corporation subject to the provisions of this title is reduced by impairment or otherwise below the amount required by law or by its certificates or articles of association, he shall require such corporation to make good the deficiency. [Id.]

Art. 366. [523] **Illegal practices.**—Whenever it shall appear to the Commissioner from any examination made by him or any of his examiners that any such banking corporation is conducting its business in an unsafe or unauthorized manner, he shall, by an order under his hand and seal, direct the discontinuance of such illegal, unsafe and unauthorized practices, and require a strict conformity with the provisions of the law, and if wrong entries or unlawful uses of the funds of such corporation have been made, he or they shall require that such entries shall be corrected and such sums unlawfully paid out shall be restored by the person or persons responsible for the wrongful or illegal payment thereof. [Id.]

Art. 367. **Investigation of fraud.**—If it should be brought to the knowledge of the Commissioner that any officer of a bank or bank and trust company organized and doing business under the laws of Texas is engaging in fraudulent business enterprises, or in any line of business reasonably calculated to bring discredit upon such corporation, the Commissioner shall call together the directors of said corporation and lay before them the facts and demand a discontinuance of such practices. [Acts 1923, p. 323.]

Art. 368. [523] **Unsafe bank.**—Should any banking corporation refuse or neglect to make any report as required by law, or to comply with any orders made by any official of the Banking Department, or whenever it shall appear to the Commissioner that it is unsafe or inexpedient for such corporation to continue to transact business, or that extraordinary withdrawals of money are jeopardizing the interest of remaining depositors, or that any director or officer has abused his trust, or been guilty of misconduct or malversation in his official posi-

tion injurious to the institution, or that it has suffered a serious loss by fire, burglary, repudiation or otherwise, he shall communicate the facts to the Attorney General, who shall thereupon institute such proceedings as the nature of the case may require. Such proceedings may be for any character of relief or any remedy suggested by the conditions disclosed. The court, or the judge thereof in vacation, before whom such proceedings shall be instituted, shall have power forthwith to grant such orders, and in its or his discretion, from time to time to modify or revoke the same, and to grant such relief as the evidence, situation of the parties and the interests involved, shall seem to require. [Acts 1905, S. S. p. 502.]

Art. 369. [513-523] **Shall close bank.**—If an examination made by the Commissioner or by one of his examiners shall disclose that any banking corporation organized under the provisions of this title is insolvent, or that its continuance in business will seriously jeopardize the safety of its depositors or other creditors; or if any such corporation shall make or undertake to make a voluntary assignment of its assets; or if the Banking Board shall disapprove any such bank and shall determine that it is not entitled under this title to conduct a banking business unless such bank goes into voluntary liquidation, then the Commissioner, acting himself or by one of his examiners, shall immediately close said banking corporation and take charge of all the property and effects thereof. [Id.]

Art. 370. [523] **Inspection.**—The Commissioner, as soon as practicable after taking charge of such bank, shall ascertain by a thorough examination into the affairs its actual financial condition. If he is satisfied that it cannot resume business or liquidate its indebtedness to the satisfaction of all its creditors, he shall report the fact of its insolvency to the Attorney General. [Id.]

Art. 371. [453-523] **Liquidating officer.**—Immediately upon the receipt of such notice, the Attorney General shall institute proceedings for the appointment of a receiver to take charge of such bank and to wind up the affairs and business thereof for the benefit of its depositors, creditors and stockholders. The court, or the judge thereof in vacation, shall immediately appoint said receiver. Complaint or opposition of the bank or its officers subsequently may be heard in open court. Until a receiver is appointed, the Commissioner may appoint a competent person to take charge of the affairs of such insolvent bank. If a State bank or bank and trust company comes voluntarily into the hands of the Commissioner, no receiver shall be appointed, and the Commissioner shall appoint a competent person in lieu thereof. [Id.; Acts 2nd C. S. 1909, p. 408.]

Art. 372. [453-523] **Bond of liquidating officer.**—Any person appointed by the Commissioner to take charge of the affairs of an insolvent bank shall give bond as required by the Banking Board, payable to said Board and conditioned for the faithful performance of all duties imposed upon him by the laws of this State. If said bank is operating under the Guaranty Fund Plan, said bond may be recovered upon for the benefit of said Guaranty Fund or any party at interest. [Acts 2nd C. S. 1909, p. 408.]

Art. 373. Insolvency of Reserve bank.—If any State bank which is a member of a Federal Reserve bank shall be declared insolvent and a receiver or other agency appointed for the liquidation of its affairs and the payment of its debts, the stock held by it in the said Federal Reserve bank may be cancelled without impairment of its liability and all cash paid subscriptions on said stock with one-half of one per cent per month interest from the period of the last dividend, not to exceed the book value thereof, may be first applied to all the debts of said member bank to the Federal Reserve bank, and the balance, if any, paid to the receiver of the insolvent bank or other agency for its liquidation as provided in section six of the Federal Reserve Act. [Acts 1914, 3rd C. S. p. 46.]

Art. 374. Liquidation of savings banks.—If any savings bank incorporated under the laws of Texas shall become insolvent, its liquidation shall be accomplished by the Commissioner in the manner provided for other State banks.

Art. 375. [430] Report to Legislature.—The Banking Commissioner shall communicate to the Legislature at its regular sessions on or before February first, a statement of the condition of each savings bank from which a report has been received for the past preceding two years; also the name and location of the savings banks and institutions for savings authorized by him during the previous two years with the date of their corporation. [Acts 1905, S. S. p. 489.]

CHAPTER TWO. INCORPORATION.

| | Article | | Article |
|------------------------------|---------|-------------------------------|---------|
| May incorporate..... | 376 | Certificate of authority..... | 382 |
| Articles of association..... | 377 | Form of certificate..... | 383 |
| To be signed, etc..... | 378 | Tax and filing fee..... | 384 |
| Application for charter..... | 379 | Oath of directors..... | 385 |
| Board to investigate..... | 380 | Disqualification..... | 386 |
| Issuance of charter..... | 381 | Election of directors..... | 387 |

Art. 376. [370] May incorporate.—Five or more persons, a majority of whom shall be residents of this State, who have associated themselves by written articles of agreement as provided by the general corporation law, may be incorporated for the purpose of establishing: (a) a bank of deposit or discount, or both of deposit and discount; (b) a banking and trust company; or (c) a savings bank. The name or title designating such business shall not be the name of any corporation heretofore incorporated in this State for similar purposes, or any imitation of such name, and in the case of banks, the word "bank" or "banking" shall be included as a part of the name of such corporation. All titles shall be submitted to the Banking Commissioner for approval. [Acts 1905, S. S., p. 489.]

Art. 377. [371] Articles of association.—The articles of association shall state:

1. The corporate name of the proposed corporation.
2. The purpose for which the corporation is formed.
3. The name of the city or town and county in which the corporation is to be located.

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

5. The name and place of residence of each shareholder, and the number of shares subscribed by each.

6. The number of directors, and the names of those agreed upon for the first year.

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

Art. 378. To be signed, etc.—Such articles of association shall be signed and acknowledged by the parties thereto. No certificate of incorporation under this title shall be valid unless at the time the articles of agreement were acknowledged the capital stock therein mentioned shall have been bona fide subscribed and paid up in lawful money. [Id.]

Art. 379. Application for charter.—The incorporators of any proposed State bank, savings bank or bank and trust company shall make application to the State Banking Board for a charter in such form as said Board may prescribe and submit and present to said Board articles of incorporation or association, as prescribed by law. [Acts 1913, p. 211.]

Art. 380. Board to investigate.—The Board shall carefully examine the articles of association, and each such incorporator shall show to the satisfaction of said Board, by affidavit or otherwise as may be required by said Board, that he is worth over and above exemptions and liabilities at least double the amount of the par value of the stock subscribed by him. The said Board shall also inform itself as to the public necessity of the business of the community in which it is sought to establish the same, and determine whether its capital is commensurate with the requirements of law, and the location of the business, and that the applicants are acting in good faith. [Id.]

Art. 381. Issuance of charter.—If the Board determines any requirement unfavorably to the applicants, the charter shall be refused; but if favorably, then the charter shall be granted, and the articles of incorporation or association shall be filed with the Commissioner who shall deliver a certified copy thereof to the incorporators which shall be filed in the office of the county clerk of the county in which the corporation may be located. [Id.]

Art. 382. [511] Certificate of authority.—All State banks transacting business in Texas shall be required to hold a certificate of authority to transact a banking business issued by the Commissioner as provided in the succeeding article, and to keep same conspicuously posted at all times in the banking house where such business is transacted. [Acts 1909, 2nd C. S., p. 406.]

Art. 383. [512] Form of certificate.—The Commissioner shall issue to each State bank which the State Banking Board shall have approved and certified to him as being entitled to transact a banking business, a certificate of authority in such

form as the Board shall approve, to be signed by him under his official seal, certifying that such bank is authorized under the laws of this State to engage in the banking business. Such certificate, when issued to guaranty fund banks shall contain the following statement on the face thereof in bold type. "The non-interest bearing and unsecured deposits of this bank are protected by the State bank guaranty fund." And, when issued to bond security banks shall contain the following statement on the face thereof in bold type: "All deposits of this bank are protected by security bond under the laws of the State of Texas." When issued to the State banks other than guaranty fund and bond security banks, it shall contain neither of these, nor any similar statement. [Id.]

Art. 384. Tax and filing fee.—At the time the articles of incorporation aforesaid are submitted to the State Banking Board, the applicants for charter shall deposit with the Commissioner the fee required by law for the charter they seek to have granted. If the charter is refused by said Board, then the charter fee shall be returned to the applicants. A certified copy of the articles of incorporation shall not be delivered to the incorporators until they present to the Banking Commissioner a receipt from the Secretary of State showing that they have paid to the latter officer the required franchise tax. [Acts 1913, p. 211.]

Art. 385. Oath of directors.—Each person elected director of a State banking institution shall make oath that he will diligently and honestly administer the affairs of such corporation and will not knowingly violate or willingly permit to be violated any provision of the banking laws of this State; that he is the owner in good faith and in his own right of his legal quota of the stock of such corporation; and that same is not hypothecated or pledged for debt. Such oath when subscribed and duly certified, shall be filed permanently in the minutes of the corporation. [Acts 1917, p. 469.]

Art. 386. Disqualification.—Any director of such corporation who shall hypothecate or pledge his legal quota of the stock of such corporation shall automatically forfeit his position. [Id.]

Art. 387. Election of directors.—The charter of any such corporation need not be amended in order to increase or decrease the number of directors. The stockholders may at any regular annual election of directors elect such number as they may see fit, not less than five nor more than twenty-five, and such number so elected shall be the full number of directors for the ensuing year for which they are elected. When the number of directors is changed under this article, a certified copy of the resolution changing the number shall be forwarded at once to the Commissioner to be filed by him free of charge in the charter file of the corporation. [Id.]

CHAPTER THREE.

BANKS.

| | | | |
|-------------------------|-------------|----------------------------|-------------|
| Board of directors..... | Article 388 | Capital stock | Article 391 |
| Qualification | 389 | Powers of corporation..... | 392 |
| Vacancy | 390 | | |

Art. 388. [374] **Board of directors.**—The business of every banking corporation shall be managed by a board of directors, a majority of whom shall be bona fide resident citizens of this State, and each of whom shall be a bona fide owner of at least five shares of the capital stock thereof, unless the capital stock of the corporation exceeds seventeen thousand five hundred dollars, in which case each director shall be a bonafide owner of at least ten shares of the capital stock. No person shall be a director in any bank against whom such bank holds a judgment. [Acts 1905, S. S., p. 489.]

Art. 389. [374] **Qualification.**—Every person who shall be elected a director of a bank shall within thirty days after said election, qualify as such director by filing with the officers of such bank a written acceptance of the position, a copy of which shall be spread upon the records of the acts of the directors. Failure to comply with this provision within the time specified shall work a forfeiture of the position. [Id.]

Art. 390. [374] **Vacancy.**—When any vacancy occurs by such failure, the board of directors shall at the next regular meeting thereafter enter the fact of such vacancy upon their records and immediately proceed to elect some competent person to fill the unexpired term. A vacancy in the board from any cause, previous to the annual election, may be filled by the remaining members. [Id.]

Art. 391. [375] **Capital stock.**—When a bank is located in a town having less than eight hundred inhabitants. its capital stock shall not be less than seventeen thousand five hundred dollars, nor less than twenty-five thousand dollars for banks located in towns and cities having eight hundred inhabitants and less than ten thousand inhabitants, nor less than fifty thousand dollars for banks located in towns and cities having ten thousand inhabitants and less than twenty thousand inhabitants, nor less than one hundred thousand dollars in towns and cities having twenty thousand inhabitants or more. No bank shall have a capital stock of more than ten million dollars. The population of all towns and cities for the purpose of fixing the minimum capital stock of banks under this title shall be ascertained by reference to the last preceding Federal census. [Acts 1923, p. 93.]

Art. 392. [376] **Powers of corporation.**—Banking corporations shall be authorized to conduct the business of receiving money on deposit, allowing interest thereon, and of buying and selling exchange, gold and silver coins of all kinds; of lending money upon real estate and personal property and upon collateral and personal securities at a rate of interest not exceeding that allowed by law; and of buying, selling and discounting negotiable and non-negotiable commercial paper of all kinds. No

such bank shall lend more than fifty per cent of its securities upon real estate, nor make a loan on real estate to an amount greater than half the reasonable cash value thereof. [Acts 1905, S. S., p. 489.]

CHAPTER FOUR.

BANK AND TRUST COMPANIES.

| | | | |
|-------------------------|-------------|----------------------------|-------------|
| Board of directors..... | Article 393 | Capital stock..... | Article 395 |
| Term of office..... | 394 | Powers of corporation..... | 396 |

Art. 393. [383] **Board of directors.**—Bank and trust companies shall be controlled and managed by directors who shall be stockholders of such corporation, and a majority of whom shall be bona fide citizens of Texas. They shall be elected by the shareholders of such corporation who shall meet at such time and place as shall be directed by the by-laws of such corporation. At least two weeks notice of such time and place shall be published in some daily or weekly newspaper which circulates in the county or city in which the corporation is located. The election shall be by ballot only, and only those shareholders who shall attend the meeting in person or by proxy in writing, shall vote at such election. All directors shall hold office until their successors are elected and qualified. [Acts 1st C. S., 1905, p. 489.]

Art. 394. [383] **Term of office.**—If the board of directors of such corporation shall exceed five in number, they shall as soon as practicable after their organization, divide themselves by ballot into three classes of equal number as near as may be, designated the first, second and third class, of which the first class shall remain in office one year, the second class two years, and the third class three years; and at each annual election directors shall be elected for the term of three years to fill the vacancies created by the retiring class. If one or more directors dies or resigns, the survivors shall fill the vacancy until the next election. [Id.]

Art. 395. [384] **Capital stock.**—The amount of capital stock of a bank and trust company shall not be less than fifty thousand nor more than ten million dollars. No bank and trust company shall be incorporated in a town or city having twenty thousand inhabitants or more with a capital stock of less than one hundred thousand dollars. [Id.; Acts 1913, p. 207.]

Art. 396. [385] **Powers of corporation.**—Bank and trust companies may be created for the purpose of establishing a bank of deposit or discount, or both of deposit and discount, with the powers set out in article 392, and any one or more of the following purposes:

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

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

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

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

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

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

7. To take, accept and execute any and all such legal trusts, duties and powers in regard to the holding, management and disposition of any estate, real or personal, and the rents and profits thereof, or the sale thereof, as may be granted or confided to it by any court of record, or by any person, corporation, municipality or other authority; and it shall be accountable to all parties in interest for the faithful discharge of every such trust, duty or power which it may so accept.

8. To take, accept and execute any and all such trusts and powers of whatever nature or description, as may be conferred upon or intrusted or committed to it by any person or persons, or any body politic, corporation or other authority by grant, assignment, transfer, devise, bequest or otherwise, or which may be intrusted or committed or transferred to it or vested in it by order of any court of record, and to receive, take and hold any property or estate, real or personal, which may be the subject of any such trust.

9. To purchase, invest in, guarantee and sell stocks, bills of exchange, bonds and mortgages and other securities; and when moneys or securities for moneys are borrowed or received on deposit, or for investment, the bonds or obligation of the company may be given therefor, but it shall have no right to issue bills to circulate as money.

10. To act as executor under the last will or as administrator of the estate of any deceased person, or as guardian of any infant, insane person, idiot or habitual drunkard, or trustee for any convict in the penitentiary, under appointment of any court

of record having jurisdiction of the estate of such deceased person, infant, insane person, idiot, habitual drunkard or convict. [Acts 1905, S. S. p. 492.]

CHAPTER FIVE

SAVINGS BANKS.

| | Article | | Article |
|---------------------------------|---------|-------------------------------|---------|
| Board of directors..... | 397 | Powers as to real estate..... | 414 |
| Meetings of board..... | 398 | May limit deposits..... | 415 |
| Compensation of directors..... | 399 | Investment of savings..... | 416 |
| Fees restricted..... | 400 | Cash reserve..... | 417 |
| Application for loans..... | 401 | Guaranty fund..... | 418 |
| Officers not to borrow..... | 402 | Indemnity fund..... | 419 |
| Penalty for borrowing, etc..... | 403 | Valuation of securities..... | 420 |
| Security from officers..... | 404 | Payment of interest..... | 421 |
| Powers of directors..... | 405 | Interest rate..... | 422 |
| Payment of deposits..... | 406 | Dividends..... | 423 |
| Effect of notice..... | 407 | Net profits..... | 424 |
| Pass book..... | 408 | Extra interest..... | 425 |
| Deposit of minor or female..... | 409 | Annual report: assets..... | 426 |
| Deposit in trust..... | 410 | Report: liabilities..... | 427 |
| Safety deposit box rent..... | 411 | Report: verification..... | 428 |
| Capital stock..... | 412 | Penalty..... | 429 |
| Powers of corporation..... | 413 | | |

Art. 397. [390] **Board of directors.**—Savings banks shall be controlled and managed by a board of directors, not less than five nor more than thirteen in number, who shall be stockholders of the corporation, and a majority of whom shall be bona fide citizens of Texas. Their election, term of office and the filling of vacancies on the board shall be governed by the provisions of articles 393 and 394. The directors shall elect from their number a president, one or more vice presidents, a secretary and treasurer, and may appoint such other officers and agents as they may deem necessary for the proper conducting of the business of the corporation, and may allow them reasonable compensation for services rendered. The vote of a majority of the full board shall be requisite for the appointment of any officer receiving a salary therefrom, or to fix or increase the salary of any officer. No person shall be disqualified from being a director by reason of his being a director or officer of a bank or savings institution organized under the laws of this State. [Acts 1905, S. S. p. 489.]

Art. 398. [391] **Meetings of board.**—Regular meetings of the board of directors shall be held at least once in each month for the transaction of the business of the bank, at which meeting all the officers and committees shall report to the board. A quorum at any regular, special or adjourned meeting shall consist of not less than a majority of directors. Less than a quorum may adjourn from time to time, until the next regular meeting. [Id.]

Art. 399. [418-419-422] **Compensation of directors.**—It shall be lawful for directors, acting as officers of savings banks whose duties may require their regular and faithful attendance at the institution, to receive such compensation as the majority of the board of directors shall deem just and reasonable; such majority shall be exclusive of any director to whom such compensation shall be voted. It shall not be lawful to pay the directors, as such, for attendance at the meetings of the board. No

director shall, directly or indirectly receive any payment or emolument for his services as such of any savings bank, except as herein provided. All sums paid for services, fees or otherwise to a member of the board shall be reported in detail at such regular meeting of the directors. [Id.]

Art. 400. [420] **Fees restricted.**—No such corporation, or any person acting in its behalf shall negotiate, take or receive a fee, brokerage, commission or gift or other consideration for or on account of the loan made by and in behalf of such corporation, other than appears on the face of the note or contract by which such loan purports to be made. Nothing herein shall apply to any reasonable charge for services in the examination of title and the preparation of conveyance to such corporation as security for its loan. [Id.]

Art. 401. [405] **Application for loans.**—All applications for loans shall be made in writing to the treasurer of the corporation, who shall keep a record thereof showing the date, name of applicant, amount asked for, and security offered, and shall cause the same to be presented to the board of directors. [Id.]

Art. 402. [421] **Officers not to borrow.**—No director or officer of such corporation shall, directly or indirectly, for himself or as agent or partner of others, borrow any of the funds of the corporation, or funds in its custody, or in any manner use the same, except to make necessary current payments for the corporation, or to make investments, or to deposit for safety under the direction and authority of the board of directors; nor shall any director or officer of such corporation be an indorser or surety or in any way be an obligor for moneys loaned or borrowed of the corporation. [Id.]

Art. 403. [423] **Penalty for borrowing, etc.**—If a director violates any provision of the preceding article; or fails to attend regular meetings of the board, or fails to perform any duty devolved upon him as such director for three successive months without having been excused by the board for such failure, the office of such director shall become vacant. Such director may, in the discretion of the board, be eligible to re-election. [Id.]

Art. 404. [424] **Security from officers.**—The board of directors may, from time to time, require from each officer, employe and agent of such corporation, such security for their fidelity and good conduct as may be necessary. [Id.]

Art. 405. [416] **Powers of directors.**—The board of directors of any such corporations shall have power from time to time to make such laws, rules and regulations as they may think proper for the election of officers, for prescribing their respective powers and duties, and the manner of discharging them; for the appointment of committees, and generally for transacting, managing and directing the affairs of the corporation. Such by-laws, rules and regulations shall not be repugnant to nor inconsistent with the provisions of this title, nor the Constitution of this State, nor of the United States. [Id.]

Art. 406. [397] **Payment of deposits.**—The board of directors may regulate the payment of deposits and require sixty days notice of the withdrawal of any deposit. Such regulations shall

not be retroactive nor in conflict with any provision of this chapter, and shall be printed and conspicuously posted at the place of deposit. Upon notice to the depositor, any account may be closed whereupon it shall cease to draw interest. [Id.]

Art. 407. [417] **Effect of notice.**—Notices and rules posted conspicuously by savings banks in the room where such business is transacted, shall be equivalent to a personal notice to any party interested. [Id.]

Art. 408. [398] **Pass book.**—A pass book containing the rules and regulations adopted by the board of directors governing deposits shall be issued to each depositor, and all payments to and withdrawals by such depositor shall be entered therein. No payment or check against any such savings account shall be made unless accompanied by and entered in the pass book issued therefor, except for good cause and on assurance satisfactory to the officers of the bank. At least once in every three years all pass books shall be called in and verified in such manner as the board of directors shall elect. [Id.]

Art. 409. [399] **Deposit of minor or female.**—Whenever any deposit shall be made by or in the name of any minor, or a female being or thereafter becoming a married woman, the same shall be held for the exclusive right and benefit of such depositor, and shall be paid, together with the interest thereon upon the production of and proper entry in the pass book at the time of such payment, and in accordance with the by-laws of the corporation, to the person in whose name the deposit shall have been made, and the receipt or acquittance of such minor or female shall be a valid and sufficient release and discharge for such deposit or any part thereof to the corporation. [Id.]

Art. 410. [400] **Deposit in trust.**—Whenever any deposit shall be made by any person in trust for another, and no other or further notice of the existence and terms of a legal and valid trust shall have been given in writing to the bank, in the event of the death of the trustee, the same or any part thereof together with the interest thereon may be paid to the person for whom the said deposit was made. [Id.]

Art. 411. [413] **Safety deposit box rent.**—Any corporation which has been authorized or may hereafter be authorized to own or control a safety vault and rent the boxes therein may, if the amount due for the use of any safe or box in the vault of such corporation shall not have been paid for two years, at the expiration thereof cause to be sent to the person in whose name such safe or box stands on its books, a written notice in a securely closed, postpaid registered letter directed to such person at his postoffice address as recorded upon the books of the corporation, notifying such person that if the amount then due for the use of such safe or box is not paid within sixty days from the date of such notice, the corporation will then cause such safe or box to be opened in the presence of its president or vice president, secretary or treasurer, and of a notary public not an officer or in the employ of the corporation, and the contents thereof, if any, to be sealed up by such notary public in a package, upon which such notary public shall distinctly mark

the name and address of the person in whose name such safe or box stands upon the books of the corporation, and the estimated value thereof. And the package so sealed and addressed and marked for identification will be placed by such notary public in one of the general safes or boxes of the corporation and retained by the corporation subject to the payment of all rent that may be unpaid, and of all expenses incurred in opening the safe or box, and also of a reasonable compensation for the safekeeping of the contents after their removal from the safe or box. [Id.]

Art. 412. [392-393] **Capital stock.**—The capital stock of a savings bank shall not be less than ten thousand dollars in cities having a population of fifty thousand inhabitants or under, and not less than fifty thousand dollars in cities having a population of more than fifty thousand. Such corporation may increase its capital stock in the manner provided by law to an amount not greater than five million dollars. Stockholders shall have the first right to subscribe to such increase in proportion to the amount of stock held by each. [Id.]

Art. 413. [395] **Powers of corporation.**—Savings banks shall have authority:

1. To receive, accumulate and safely keep any deposits of money from any persons, corporations or societies, and to invest, hold and repay the same, crediting and paying interest thereon as in this chapter authorized and provided, and not otherwise;

2. To issue certificates of deposit payable on demand or such other time as may be agreed upon by the depositor and the bank;

3. At its option, to take and receive as bailee for safe keeping and storage, any character of acceptable valuable articles, guaranteeing their safety upon such terms and for such compensation as may be agreed upon with the owner, and to let out vaults, safes and other receptacles for the use, benefit and purposes of such corporations. [Id.; Acts 1907, p. 305.]

Art. 414. [414] **Powers as to real estate.**—It shall be lawful for any savings bank to purchase, hold, sell and convey real estate as follows:

1. The house and lot, not to exceed in value twenty per cent of the capital stock of such bank, on which is the domicile of such corporation, and from portions of which not required for its own use any revenue may be derived;

2. Such as shall be purchased by it at sales upon foreclosure of mortgages or deeds of trust owned by such corporations, or upon judgments or decrees rendered for debts due to it or purchased or taken in settlement to secure such debts, and all such interest shall be sold to some person other than some one interested in the bank within five years after same shall be vested in it, unless the Commissioner shall extend the time within which such sale shall be made. [Acts 1905, S. S. p. 489.]

Art. 415. [396] **May limit deposits.**—Every such corporation shall have the right to limit, refuse or return any deposit at its discretion. No individual or corporation may deposit more than four thousand dollars inclusive of dividends. Sums in any amount arising from judicial sales or trust funds or received

pursuant to the order of a court of record may be received for deposit. [Id.]

Art. 416. [403-432] **Investment of savings.**—Such corporations shall invest not more than eighty-five per cent of the total amount of its savings deposits in any of the following classes of securities, and not otherwise:

1. In bonds or interest bearing notes or obligations of the United States or of those for which the faith of the United States is pledged for the payment of principal and interest;

2. In bonds of any city, county, town or school district or other subdivision in this State, now organized or which may hereafter be organized, and which is now or may hereafter be authorized to issue bonds under the Constitution and laws of this State, which has not defaulted in the payment of any part of either principal or interest thereof within five years previous to making such investments;

3. In bonds of this State, or of any State of the Union that has not within the last five years previous to making such investment, defaulted in the payment of any part of either principal or interest thereof;

4. In the first mortgage bonds of any steam or electric railroad, the income of which is sufficient to pay all operating expenses and fixed charges, which has its domicile in this State;

5. In bonds or notes secured by first mortgage, deed of trust or other valid lien on unincumbered, improved real estate in Texas worth at least twice the amount loaned thereon, such bonds or notes to run for a term of not longer than ten years, and to be always accompanied by a complete abstract of title to the property mortgaged and an attorney's certificate or title insurance policy in some company incorporated under the laws of Texas, certifying said bonds or notes to be the first lien on the land mortgaged.

It shall be the duty of the directors of such corporation as soon as practicable, to invest the moneys and funds of such savings accounts by purchase or otherwise, in the securities above described. Such directors, from time to time shall sell and invest the proceeds of such investments, and for the purpose of meeting current demands and expenses in excess of the receipts, any of the securities may be sold or pledged. [Id.; Acts 1909, 2nd C. S. p. 406.]

Art. 417. [406] **Cash reserve.**—There shall be kept an available cash fund of not less than fifteen per cent of the whole amount of its assets, and the same, or any part thereof, may be kept on hand or on deposit payable on demand in any bank or banking association of Texas, or under the laws of the United States approved by the Banking Commissioner, and having a paid up capital stock of fifty thousand dollars or more. The deposits in any one bank or trust company shall not exceed twenty per cent of the total deposits, capital and surplus of such savings bank. [Acts 1905, S. S. p. 489.]

Art. 418. [394-397] **Guarantee fund.**—The capital stock shall be regarded as a guarantee fund for the security of depositors, and shall be invested as provided in article 416. [Id.]

Art. 419. [407] **Indemnity fund.**—When the guarantee fund of any savings bank amounts to a sum equal to the capital stock of the corporation, and after interest on the deposits and dividends on the capital stock have been paid as provided herein, the board of directors shall at the time of making the regular semi-annual dividends, set aside and reserve from the remaining net profits which have accumulated during the preceding six months, a sum not exceeding one-fourth of one per cent of the total deposits on such interest day, to be known as indemnity fund, until such fund amounts to ten per cent of the whole deposits, and such fund shall thereafter be maintained and held to meet any contingency or loss from depreciation of securities or otherwise. [Id.]

Art. 420. [408] **Valuation of securities.**—In determining the per cent of the guarantee and indemnity funds so held by savings banks, the interest-bearing notes and bonds shall not be estimated above their par value, or above their market value if below par; its bonds and mortgages and deeds of trust not in arrears of interest for a period longer than one year, at their face value; its real estate at not above cost. All debts due any savings bank or institution on which the interest is past due for a period of twelve months, unless well secured and in process of collection, shall be considered as bad debts, and shall be charged to profit and loss account at the expiration of that time. [Id.]

Art. 421. [401] **Payment of interest.**—No interest shall be paid or declared by savings banks until its board of directors cause an examination to be made of the assets and securities, and find the amount of such interest and dividend has been actually earned and accrued: No interest or dividend shall be paid or declared unless authorized by a vote of the board of directors and duly entered on the minutes at a regular meeting. [Id.]

Art. 422. [402] **Interest rate.**—The board of directors shall regulate from time to time the rate of interest to be allowed to depositors out of the net profits, and pay or credit the same on semi-annual interest dates to be fixed by the directors. The directors may classify the depositors according to character, amount and duration of their dealings with the corporation and regulate the interest allowed in such manner that each depositor shall receive the ratable portion of interest as all others of the same class. [Id.]

Art. 423. [409] **Dividends.**—No dividend exceeding ten per cent per annum shall be paid on its capital stock in any event, and no dividend shall be paid except as herein provided. Whenever interest at a rate of not less than three per cent per annum shall have been paid or credited by savings banks out of the net profits of the current six months on all savings or trust funds which may be entitled thereto, the board of directors may, out of the remaining net earnings of such six months, if any there be, declare and pay a dividend on the capital stock of the corporation not exceeding ten per cent of its par value. No such dividends shall be declared or paid until at least one-tenth of the profits of the corporation for such period of six months shall be carried to the credit of the guarantee fund until such fund

equals the amount of the capital stock, which sum shall be invested as provided herein for the investment of the capital fund. [Id.]

Art. 424. [411] **Net profits.**—If for any period of six months, the net profits shall not be sufficient to pay a dividend on the capital stock of any savings bank amounting to three per cent for such six months, then, if there are any net profits in any succeeding six months period or periods and the amount required to be carried to the guarantee fund, such excess or net profits shall be applied to the arrears of the dividend on the capital stock, until such arrears of dividend are paid in full; and no part of the net profit shall be credited on the indemnity fund as provided in article 419, nor to the payment of the extra interest to the depositors as provided in the succeeding article. [Id.]

Art. 425. [412] **Extra interest.**—Once in every term of three years, if the net profits of savings banks which have accumulated over and above the guarantee and indemnity funds amount to one per cent of the deposits which have remained with such corporation for at least one year next preceding, such net profits shall be divided among the depositors whose deposits shall have remained therein at least one year next preceding, in proportion to the amount of interest which has been paid on their deposits during the three years then next preceding. Nothing herein shall be construed to require the payment of any interest on money or property received as bailee for safe keeping and storage only. [Id.]

Art. 426. [425] **Annual report: assets.**—Every savings bank organized under the provisions of this title shall, on or before the first day of November in each year make a written report to the Commissioner in such form as he may prescribe, of its condition on the first day of September preceding. Such report shall state the amount loaned on bonds and mortgages, together with a list thereof; the par value and the estimated market value of all bond investments, designating each particular kind, and the amount invested in each; the amount loaned upon pledge of deposits, with a statement of the amount held as collateral for such loans; the amount of cash on hand and on deposit with other banks or institutions, with their names and amount deposited in each; the amount of all assets, including interest accrued and not enumerated above. [Id.]

Art. 427. [426] **Report: liabilities.**—Such reports shall also state all liabilities of such savings bank on the morning of the first day of September, the amount due depositors, which shall include any dividend to be created to them for six months on that day, and any other claims against the corporation which are or may be charged against its assets; the amount of all deposits made during the fiscal year ending that day, and the amount drawn out during the same period; the whole amount of interest received and earned, and the amount of interest paid and credited to depositors, together with the amount of each semi-annual credit of interest; the number of accounts opened and re-opened, the number closed during the year, and the num-

ber of open accounts at the end of such year, and such other information as the Commissioner may require. [Id.]

Art. 428. [427] **Report: verification.**—Such report shall be verified by the oath of the two principal officers of such savings bank; and the statement of the assets shall be verified by the oath of at least three of the board of directors who shall have thoroughly examined the same. On or about the first day of September of each year such directors shall examine the books, vouchers, and assets of such institution, and its affairs generally; and the statement of assets and liabilities reported to the Commissioner on the first day of November of each year shall be based upon such examination. Nothing herein shall prohibit the directors from requiring such examination at such other times as they shall prescribe. [Id.]

Art. 429. [427] **Penalty.**—Any such corporation failing to furnish to the Commissioner any report or statement required in this chapter shall forfeit the sum of one hundred dollars per day for every day such report or statement shall be so withheld; and the Commissioner may maintain an action in his name of his office to recover such penalty, and when collected, the same shall be paid into the State Treasury and be applied to the school fund. The Commissioner may, for sufficient cause, extend the time for making such report, not exceeding thirty days. [Id.]

CHAPTER SIX.

SAVINGS DEPARTMENTS.

| | Article | | Article |
|-----------------------------|---------|-------------------------------|---------|
| Adoption by bank..... | 430 | Payment of interest..... | 434 |
| Rules and regulations..... | 431 | Accumulated earnings..... | 435 |
| Reserve deposits..... | 432 | Statement of assets, etc..... | 436 |
| Depositors' prior lien..... | 433 | | |

Art. 430. [431] **Adoption by bank.**—Any State bank or bank and trust company incorporated under the laws of this State desiring to maintain a savings department or to use or continue to use the word "savings" as part of its corporate name, or in or as part of any sign or advertisement, or in or upon any stationery used or to be used by it, shall establish and maintain a savings department in compliance with the provisions of this chapter, and shall, except as otherwise herein provided, be governed in the conduct of such savings department by the provisions of Chapter Five pertaining to savings banks when such provisions are not in conflict herewith. Such savings department may be established by a resolution to that effect adopted by the board of directors at a regular meeting, and shall contain a copy of this chapter. A certified copy of such resolution shall be filed in the office of the Commissioner, and also recorded in the office of the county clerk of the county in which such bank or bank and trust company is located. The business of such savings department shall be kept entirely separate and distinct from the general business of such bank or bank and trust company, and all moneys received as such savings deposits and the funds and securities in which the same

may be invested shall be kept at all times segregated from and unmingled with the other moneys and funds of the bank or bank and trust company. [Acts 1909, 2nd C. S., p. 406.]

Art. 431. [442] **Rules and regulations.**—The board of directors, at any regular meeting of the stockholders, may adopt reasonable rules and regulations for the control of such savings department, to become effective when approved by the Commissioner. [Id.]

Art. 432. [435] **Reserve deposits.**—There shall be kept on hand at all times not less than fifteen per cent of the whole amount of such deposits in such savings department, one-third of which shall be kept in actual cash in such savings department, and two-thirds of which may be kept with reserve agents designated and approved for such purpose by the Commissioner. [Id.]

Art. 433. [437] **Depositors' prior lien.**—In case of the insolvency or liquidation of any such State bank or bank and trust company, its savings depositors shall have an exclusive prior lien upon all the assets, including cash of such savings department, and after such depositors have been paid in full, the remainder shall be applied to the payment of claims of general creditors. [Id.]

Art. 434. [439] **Payment of interest.**—The directors of any such State bank or bank and trust company may provide that such rate of interest shall be paid on the savings deposits as it may see fit, payable at such periods and upon such terms and conditions as may be reasonable. If the earnings of such savings department are insufficient to pay any interest due upon any savings deposits, such interest or the deficiency therein, shall be paid by the bank or bank and trust company out of its general funds. [Id.]

Art. 435. [440] **Accumulated earnings.**—At the end of any period for which such bank or bank and trust company may lawfully declare a dividend upon its stock, it shall be proper to transfer to the general fund of such bank or bank and trust company all accumulated earnings of said savings department after the payment or credit of all interest due on the accrued savings deposits and the legitimate expenses of such department have been provided for. [Id.]

Art. 436. [438] **Statement of assets, etc.**—The president of each State bank or bank and trust company maintaining a savings department, shall file with the Commissioner, not less than ten days after the first day of each calendar month, a statement of the assets and liabilities of such savings department, upon a form to be prescribed by the Commissioner. It shall be unlawful for any officer of such bank or bank and trust company to receive or assent to the receiving of any savings deposits when the last preceding monthly statement as herein provided for is not conspicuously posted in the office where such business is transacted. [Id.]

CHAPTER SEVEN.

BANK DEPOSIT GUARANTY LAW.

| | | | |
|-------------------------------|-------------|---------------------------------|-------------|
| Protection of depositors..... | Article 437 | State Banking Board..... | Article 439 |
| False advertising..... | 438 | Application for protection..... | 440 |

Art. 437. [445-447] **Protection of depositors.**—Every banking institution except savings banks, incorporated under the banking laws of this State shall protect its depositors either by availing itself of the depositors' guaranty fund, or by the depositors' bond security system. A choice of one of the methods prescribed shall be exercised by the holders of the majority of the stock; and the president or cashier of such bank shall notify the Commissioner by registered mail of such action. No such institution shall be permitted to receive deposits until it shall have complied with the provisions of this chapter. [Acts 1909, 2nd C. S. p. 406.]

Art. 438. [515] **False advertising.**—All banks or bank and trust companies provided for in this chapter are authorized and empowered to use any truthful method of advertising, and in their advertisement to make any truthful statements as to the Guaranty Fund System or the Bond Security System of the State Banks of Texas, but if any State bank or bank and trust company shall advertise any untruthful statement as to either of said systems, the Banking Commissioner is hereby empowered to demand that said bank or bank and trust company immediately discontinue such untruthful advertising. The Commissioner shall be empowered to enforce said demand by removing any officer of such bank or bank and trust company who is found to be responsible for such untruthful advertising. [Acts 1923, p. 92.]

Art. 439. [446-7] **State Banking Board.**—The State Banking Board shall consist of the Attorney General, Banking Commissioner and State Treasurer. Said Board shall have the power of regulation, control and supervision of all State banking corporations and bank and trust companies, as hereinafter provided, and shall also have the power of regulation, control and management of the Depositors' Guaranty Fund and of the Depositors' Bond Security System, and shall adopt all necessary rules and regulations in harmony with this chapter for the management of said systems. [Acts 2nd C. S. 1909, p. 406.]

Art. 440. [451] **Application for protection.**—The State Banking Board shall admit to the benefits and protection of this chapter only such banking corporations as in their opinion are solvent and properly officered and conducted, and shall prescribe the form of application and the statement to be made by each. Such statement shall be sworn to by two of the chief officers of the bank. The Board shall mail applications and statements to each State bank and trust company or State bank in this State, at least ten days before the time required for the initial payment to the Depositors' Guaranty Fund. Such statements shall be filled out, signed and sworn to and returned promptly to said Board. Such applications shall be mailed to any other bank within this State on request. If the Board declines the application of any bank or bank and trust company, it shall state to

such institution its reason therefor and whether and on what condition the objection can be removed. [Id.]

GUARANTY FUND PLAN

| | Article | | Article |
|-------------------------------------|---------|-------------------------------------|---------|
| National banks may apply..... | 441 | Objections to claims..... | 458 |
| Reimbursement by national bank..... | 442 | May reject claim..... | 459 |
| Assessment for fund..... | 443 | Inventory of assets and claims..... | 460 |
| Guaranty Fund..... | 444 | Disposititon of moneys..... | 461 |
| Refund of assessments..... | 445 | Expenses of liquidation..... | 462 |
| Deposits protected..... | 446 | Dividends declared..... | 463 |
| Deposits not protected..... | 447 | Reimbursement of fund..... | 464 |
| Use of fund..... | 448 | Unclaimed deposits..... | 465 |
| First lien on assets..... | 449 | Interest on trust money..... | 466 |
| Voluntary surrender..... | 450 | Payment of trust moneys..... | 467 |
| Notice of insolvency..... | 451 | Rights of stockholders..... | 468 |
| May resume business..... | 452 | Liquidation continued..... | 469 |
| Powers of Commissioner..... | 453 | Commissioners' report..... | 470 |
| May sell property..... | 454 | Stockholders' agent..... | 471 |
| Liability of stockholders..... | 455 | Transfer of assets..... | 472 |
| Notice to creditors..... | 456 | Duties of new agent..... | 473 |
| Delayed claims..... | 457 | Death, etc. of agent..... | 474 |

Art. 441. [452] **National banks may apply.**—Any national bank in this State may voluntarily avail its depositors of the protection of the Depositors' Guaranty Fund upon the same terms, payments, conditions and in the same manner as herein provided for State banks. If such national banks should thereafter be required to pay assessments to a bank guaranty fund of the Federal Government created for the purpose of securing its depositors, then such national banks may have returned to them the unused portion of assessments paid by said banks into said Depositors' Guaranty Fund. [Id.]

Art. 442. [488] **Reimbursement by national bank.**—When the Depositors' Guaranty Fund, or any part thereof, shall be used by the Banking Board to pay depositors of a national bank which has accepted the provisions of this chapter, the Board shall be subrogated to the rights of such depositors and receive from the officer in charge of said bank the pro rata share of the proceeds of the assets and collections which would be due to said depositors to the amount so paid by the Banking Board. [Id.]

Art. 443. [448-450] **Assessments for fund.**—For the purpose of creating a Depositors' Guaranty Fund, any bank or bank and trust company which shall elect to secure its depositors under the Guaranty Fund Plan, if its application is approved by the State Banking Board, shall pay to said Board on January first an initial payment of a sum equal to one per cent of its average daily deposits for the year next preceding November first prior to the date of payment, and annually thereafter, one-fourth of one per cent of its average daily deposits for the preceding year ending on November first. Any bank or bank and trust company which shall not have been in operation for one year at the time of such initial payment, shall pay to the Board a sum equal to three per cent of its capital stock and surplus, which sum shall constitute a credit fund subject to adjustment at the end of one year, on a basis of its average daily deposits for the preceding year ending November first, as provided for other banks. In computing the aggregate amount of such average daily deposits, United States, State or other public funds if otherwise secured, and the deposits of its savings department as provided in Chapter Six of this title, shall not be included. When

the amount available in said guaranty fund shall reach five million dollars, the Commissioner shall notify all banks and bank and trust companies subject to the provisions of this chapter of that fact at least thirty days before the next annual payment; and thereafter the banks and bank and trust companies participating shall not pay any further amount into said guaranty fund until it shall be reduced to a sum below five million dollars or below the amount of the guaranty fund on January first preceding. In the event of necessity to meet an emergency at any time, and not otherwise, the Banking Board shall have authority to require the payment for the current year of not exceeding two per cent of such daily average deposits, or such part thereof as may be necessary to restore said fund to the maximum above named, or to its amount as of January first preceding, or to meet the emergency. The first payment herein provided for by any bank or bank and trust company which shall hereafter elect to secure its deposits under the Depositors' Guaranty Fund, shall be made by said corporation to said Banking Board without reference to said maximum amount in said Depositors' Guaranty Fund. [Id.; Acts 1st C. S. 1921, p. 63.]

Art. 444. [449] **Guaranty Fund.**—The Depositors' Guaranty Fund shall be paid to the State Banking Board as follows: each bank or bank and trust company shall pay twenty-five per cent of the payment required of it in cash. Such sum shall be deposited by the Board for safe keeping only, with the State Treasurer as bailee for the State Banking Board, and paid out by the Treasurer on warrants drawn by the order of said Board. Said fund shall never be diverted from the purpose specified in this chapter, nor shall it ever be considered State funds. The remaining seventy-five per cent of such payments shall be placed to the credit of the State Banking Board by each such bank or bank and trust company upon its books as a demand deposit subject to check upon the order of the Board. [Acts 2nd C. S. 1909, p. 406.]

Art. 445. **Refunding to banks.**—In the event of the voluntary liquidation of any bank or trust company operating under the provisions of the Depositor's Guaranty Fund, when it shall be made to appear to the State Banking Board that all depositors have been paid in full, said board shall return to such bank or trust company the pro rata part paid by it into such fund when unused. Or, in the event any bank or bank and trust company that has been operating as a guaranty fund bank shall have ceased to operate as a guaranty fund bank and adopted the bond security system under this chapter, its bond having been approved by the county judge and filed with the Banking Commissioner of Texas, as provided by law, said board shall return to such bank or trust company the pro rata part paid by it into such fund when unused. [Acts 1925, p. 26.]

Art. 446. [486] **Deposits protected.**—All unsecured non-interest bearing deposits, including Cashier's checks, bank drafts or exchange issued against or arising from bona fide unsecured and non-interest bearing deposits, shall be protected under the Guaranty Fund. [Id., Acts 1923, p. 90.]

Art. 447. [486] **Deposits not protected.**—No deposit upon which interest is being paid or contracted to be paid, either directly or indirectly by a banking institution, its officers or stockholders, and no secured deposit and no certificate of deposit, whether bearing interest or not, or any other kind of interest bearing deposit, that shall have been changed to a non-interest bearing and unsecured deposit within ninety days prior to the closing of a bank, and no deposit of public funds of any character, whether interest bearing or not, deposited in a State banking institution, and no deposit made by a creditor for the purpose of converting a loan held against the debtor bank into a non-interest bearing and unsecured deposit, shall be protected or insured under the Guaranty Fund. By the term “public funds” as used herein is meant funds belonging to the State of Texas, to any county or political subdivision of this State, municipal corporation, road district, school district, drainage district, levee district, or any kind of bonded district; the defining of the term “public funds” shall not be exclusive, and no funds coming fairly under the definition of said terms shall be protected by the Guaranty Fund. The class of deposits enumerated in this article shall only receive the pro rata amount that may be realized from the assets, resources and collections of and from such banks and bank and trust companies and stockholders or directors. [Id.]

Art. 448. [486] **Use of fund.**—If the Commissioner takes possession of any bank or bank and trust company subject to the Depositors’ Guaranty Fund Plan, the depositors of such banking corporation shall be paid in full out of the cash on hand that can be made immediately available if sufficient, and if not sufficient, the remainder shall be paid out of the Depositors’ Guaranty Fund through the Banking Board. [Id.]

Art. 449. [487] **First lien on assets.**—In the event of the closing of a bank and trust company or bank operating under the Depositors’ Guaranty Fund Plan by any method provided by law, or by the voluntary act of such institution, the State shall have a prior lien for the benefit of the Depositors’ Guaranty Fund upon all of the assets and upon all of the liabilities owing or accruing to said bank or bank and trust company. [Acts 2nd C. S. 1909, p. 406.]

Art. 450. [484-485] **Voluntary surrender.**—Any incorporated bank or bank and trust company doing business in this State under the provisions of this title may place its affairs and assets under the control of the Commissioner by posting a notice on its front door as follows: “This institution is in the hands of the Banking Commissioner of Texas.” The posting of this notice or of any notice by the Commissioner that he has taken possession of any banking institution shall be sufficient to place all its assets and property, of whatever nature, in the possession of the Commissioner, and shall operate as a bar to any attachment proceedings whatever. [Id.]

Art. 451. [454] **Notice of insolvency.**—After the Commissioner has taken possession of an insolvent bank or bank and

trust company, he shall give notice thereof to each bank, bank and trust company, corporation and individual holding or in possession of any assets of such insolvent bank or bank and trust company, and no lien or charge for any payment, advance or clearance thereafter made, or liability thereafter incurred shall exist in favor of any person, firm or corporation against any of the assets of such bank. [Id.]

Art. 452. [455] **May resume business.**—Such bank may, with the consent of the State Banking Board, resume business upon such condition as may be approved by the Board. Such consent shall be evidenced by a written statement from the Commissioner. [Id.]

Art. 453. [456] **Powers of Commissioner.**—The Commissioner is authorized to collect moneys, claims and debts due to such insolvent bank and to perform such other acts as are necessary to conserve its assets and business, and to liquidate the affairs of such insolvent bank. [Id.]

Art. 454. [458] **May sell property.**—Upon the order of the district court of the county in which such bank was located, if in session, or the judge thereof if in vacation, the Commissioner may sell or compound all bad or doubtful debts, and may sell the real or personal property of such State bank on such terms as the court shall direct. [Id.]

Art. 455. [459] **Liability of stockholders.**—The Commissioner may, if necessary to pay the debts of such bank, enforce the individual liability of the stockholders. Stockholders who are depositors of an insolvent bank shall be protected by the provisions of this chapter only to that portion of their deposits over and above the liability as stockholders under the law. [Id.]

Art. 456. [463] **Notice to creditors.**—The Commissioner shall cause weekly notice to be given in one or more newspapers for three consecutive months, calling on all persons who may have claims against such bank to present the same to the Commissioner and make legal proof thereof at a designated place within ninety days after the date of the first insertion of such notice. The notice shall, in larger type than that in which the body of the notice is printed, specifically state that no claim of guaranteed depositors presented after such time shall be entitled to payment in whole or in part out of the Depositors' Guaranty Fund. The Commissioner shall mail a similar notice to all persons whose names appear as creditors upon the books of the bank. [Id.; Acts 1917, p. 469.]

Art. 457. [465] **Delayed claims.**—Claims presented after the expiration of the time fixed in the preceding article shall be entitled to share in the distribution only to the extent of the assets remaining in the hands of the Commissioner equitably applicable thereto. [Acts 2nd C. S. 1909, p. 406.]

Art. 458. [471] **Objections to claims.**—Objections to any claim not rejected by the Commissioner may be made by any party interested, by filing such objections with the Commissioner, who shall present the same to the district court, if in ses-

sion, or to the judge thereof, if in vacation, at the time of the next application to declare a dividend. [Id.]

Art. 459. [464] **May reject claim.**—The Commissioner may in his discretion reject any doubtful claim presented for allowance. He shall serve notice of such rejection upon the claimant, either by mail or by written notice personally served. An affidavit of the service of such notice shall be filed with the Commissioner. Action upon a claim so rejected must be brought within six months after service. [Id.]

Art. 460. [466] **Inventory of assets and claims.**—The Commissioner shall make an inventory in duplicate of the assets of such insolvent bank, one to be filed in the office of the Commissioner, and one in the office of the county clerk of the county in which such bank was located. Upon the expiration of the time fixed for the presentation of claims, the Commissioner shall make a full and complete list of all claims presented, specifying such claims as have been rejected by him, and showing all amounts paid to guaranteed depositors out of the Depositors' Guaranty Fund. The statement shall show the amount to which said fund is entitled by reason of its subrogation to the rights of such paid guaranteed depositors, and each amount retained by him on account of rejected claims of guaranteed depositors and those in dispute. One copy shall be filed in the office of the county clerk of the county in which such State bank was located and one in the office of the Commissioner. Such inventory and list of claims shall be open at all reasonable times to inspection. [Id.]

Art. 461. [468] **Disposition of moneys.**—Moneys collected by the Commissioners shall be, from time to time, deposited in one or more State banks, and in case of the suspension or insolvency of the depository, such deposits shall be preferred. [Id.]

Art. 462. [467] **Expenses of liquidation.**—Compensation of counsel, employes and assistants, and all expenses of supervision and liquidation shall be fixed by the Commissioner, subject to the approval of the district court of the county in which said bank was located, if in session, or the judge thereof if in vacation. The compensation of special liquidation agents shall be the same as is provided by law for State bank examiners, and shall, upon the certificate of the Commissioner, be paid out of the fund of such insolvent bank in the hands of the Commissioner. [Id.]

Art. 463. [469] **Dividends declared.**—After the expiration of the date fixed for the presentation of claims, the Commissioner may declare one or more dividends, and after the expiration of one year from the first publication of a notice to creditors, he may declare a final dividend under the direction of the district court of the county in which such bank was located, if in session, or the judge thereof if in vacation. [Id.]

Art. 464. [470] **Reimbursement of fund.**—The Depositors' Guaranty Fund shall be entitled to receive as its dividend such portions of the amounts due and payable to guaranteed depositors as shall have been paid to them out of the Depositors' Guaranty Fund, together with six per cent interest thereon from

the date or dates upon which checks were drawn upon all State banks, as provided for the payment of the guaranteed deposits of such State banks. The Commissioner shall forthwith distribute such dividends to State banks upon which checks were drawn for such payment of guaranteed deposits, in proportion to the amounts of such checks respectively. [Id.]

Art. 465. [480] **Unclaimed deposits.**—Dividends and unclaimed deposits remaining in the hands of the Commissioner for six months after the order for final distribution shall be by him deposited in some State bank to be designated by the Banking Board, to the credit of the Commissioner in his official name, in trust for the bona fide depositors and creditors of the liquidated bank. [Id.]

Art. 466. [483] **Interest on trust money.**—The Banking Board may apply the interest earned by the moneys held by the Commissioner as provided for in the preceding article, or may authorize him to apply the same toward defraying the expenses incurred in the payment and distribution of such unclaimed deposits or dividends to the depositors and creditors entitled to receive the same. The Commissioner shall include in his official report a statement of the amount of interest earned by such unclaimed dividend. [Id.]

Art. 467. [482] **Payment of trust moneys.**—The Commissioner shall pay over the moneys so held by him to the persons respectively entitled thereto upon the order of the Banking Board, which shall direct such payment to such persons upon being furnished satisfactory evidence of their right to the same. In case of doubt or conflicting claims, the Banking Board may require an order of the district court, if in session, or the judge thereof, if in vacation, authorizing and directing the payment thereof. [Id.]

Art. 468. [474] **Rights of stockholders.**—Whenever the Commissioner shall have paid in full each depositor and creditor of such insolvent bank whose claim shall have been duly proved and allowed, and shall have fully reimbursed the Depositors' Guaranty Fund with interest as hereinbefore provided, and shall have made provision for unclaimed and unpaid deposits or dividends, and shall have paid all the expenses of the liquidation, he shall call a meeting of the stockholders of such bank by giving notice thereof for thirty days in one or more newspapers in the county where such bank was located. At such meeting, the stockholders shall determine whether the Commissioner shall be continued as liquidator and shall wind up the affairs of the bank, or whether an agent or agents shall be elected for that purpose. In so determining, the said stockholders shall vote by ballot in person or by proxy, each share of stock entitling the holder to one vote. A majority of the stock shall be necessary to a determination. [Id.]

Art. 469. [475] **Liquidation continued.**—If so decided by the stockholders, the Commissioner shall complete the liquidation of the bank, and after paying the expenses thereof, shall distribute the proceeds among the stockholders in proportion to

the several holdings of stock, in such manner and upon such notice as may be directed by the district court. [Id.]

Art. 470. [481] **Commissioner's report.**—To the list of claims provided for in article 460, the Commissioner shall add the names of the State banks so taken possession of and liquidated, and the amounts of unclaimed and unpaid deposits or dividends with respect to each of them, respectively. [Id.]

Art. 471. [476] **Stockholders' agent.**—In case it is determined to appoint an agent or agents to liquidate, the stockholders shall thereupon select such agent or agents. Such agent or agents shall execute and file with the Commissioner such bond as shall be approved by him, conditioned for the faithful performance of all the duties of his or their trust. [Id.]

Art. 472. [477] **Transfer of assets.**—Upon the filing and approval of such bond, the Commissioner shall transfer and deliver to such agent or agents all the assets of such bank remaining in his hands, whereupon the Commissioner shall be discharged from any further liability to such bank and its creditors and stockholders. [Id.]

Art. 473. [478] **Duties of new agent.**—Such agent or agents shall convert the assets into cash, and shall account for and make distribution of the property of said bank as herein provided in the case of distribution by the Commissioner, subject to the approval of the district court. [Id.]

Art. 474. [479] **Death, etc. of agent.**—In case of the death, or removal of such agent or agents, or their refusal to act, the stockholders may, upon giving notice and proof of such fact to the Commissioner, select a successor in the manner hereinbefore provided. [Id.]

BOND SECURITY SYSTEM.

| Article | Article | | |
|--------------------------------------|---------|----------------------------------|-----|
| Bond, etc. | 475 | Who may execute | 482 |
| New bond | 475a | Other banks protected | 483 |
| Examination for bond | 476 | Default | 484 |
| Form of bond | 477 | Forfeiture of bond | 485 |
| Division of security | 478 | Failure of domestic surety | 486 |
| Additional security (repealed) | 479 | Failure of foreign surety | 487 |
| New security | 480 | Failure of principal | 488 |
| Bond on personal security | 481 | Rights of surety | 489 |

Art. 475. **Changing guaranty to bond system.**—Each and every State bank or trust company now or hereafter incorporated under the laws of this State, which shall elect to come under the provisions of the bond security system of this chapter shall, on January 1, 1910, and annually thereafter, file with the Banking Commissioner of Texas, and his successors in office, for and on behalf of the lawful depositors of such bank, a bond, policy of insurance, or bonds of the United States, or municipal or district bonds approved by the Attorney General's Department, or other guaranty of indemnity in an amount equal to the amount of its capital stock, which said bond, policy of insurance or other guaranty of indemnity shall be for and inure to the benefit of all depositors. Such instrument and the security thereby provided shall be approved by the county judge of the county in which such business is domiciled, and Banking Commissioner of Texas, and

shall take effect and be in force from and after it is approved and filed in the office of the Banking Commissioner of Texas. Every such corporation shall comply with the provisions of this chapter as herein provided, and every such corporation that may hereafter be incorporated shall comply with the provisions of this chapter as to the depositors guaranty fund plan or the bond security system, on filing its charter, before it shall be permitted to receive deposits. Provided that any bank or bank and trust company that may have elected to secure its deposits under the depositors guaranty fund provided for by this Act shall have the right, upon making and filing the bond hereby provided for, to change its system of doing business and its mode of guaranteeing deposits from the guaranty system to the bond security system, as provided by this chapter. Provided, that there shall be placed in all advertising of the bank operating under a bond or other indemnity as hereinabove provided, and on all stationery of said bank, a statement of the amount of the bond or other indemnity which said bank carries to protect its depositors. [Acts 1925, p. 27.]

Art. 475a. [492] **New Bond.**—Every such bond or policy of insurance or other guaranty of indemnity, filed as provided for in this chapter, shall secure depositors at the time said bond is filed and approved and all deposits made during the period of twelve months thereafter; provided, however, that said bond shall become void and of no force and effect upon the making, filing and approval of the next annual bond provided for under Article 491, Revised Civil Statutes of 1911. [Acts 1925, p. 252.]

Art. 476. [503] **Examination for bond.**—The Commissioner may examine a bank in order to determine whether or not it is authorized to make bond under this chapter, or to determine the amount of such bond, and shall charge a fee of not to exceed twenty dollars against a corporation incorporated under the laws of Texas to do a banking business, or to receive funds on deposit, for such examination and for the filing of the bond or other guaranty of indemnity; and shall be authorized to charge an examination fee against any other person, firm or corporation permitted to file such bond or other guaranty of indemnity under the provisions of this chapter, sufficient to cover the actual expense of such examination. [Id.]

Art. 477. **Form of bond.**—The bond, policy of insurance or other guaranty of indemnity herein provided for shall contain the provisions as provided by law and shall be in such form as may be fixed and provided by the State Banking Board of the State of Texas.

Art. 478. [505] **Division of security.**—The security provided for herein may be divided into two or more bonds or other guaranties of indemnity, or any part thereof may be given in either of such forms of guaranty of indemnity. The aggregate of such security shall be equal to the total amount of security required in accordance with the provisions of this chapter. [Id.]

Art. 479. [506] Repealed by Act of Thirty-ninth Legislature, p. 26.

Art. 480. [508] **New security.**—If at any time it shall appear to the Banking Board that any bond, policy of insurance or other guaranty of indemnity filed as provided for herein by any corporation organized under the laws of Texas, is insufficient, they shall have the authority, and it shall be their duty to require such corporation to file new or additional security in an amount sufficient to protect its depositors in accordance with the provisions of this chapter. In the event such corporation shall refuse or fail to comply with such requirements, they shall communicate the facts to the Attorney General, who shall thereupon institute such proceedings and take such steps as the nature of the case may require. The Banking Commissioner and the Attorney General shall, in such event, have and exercise for the protection of depositors, all the authority conferred upon them by articles 368 and 371, and all authority conferred by the provisions of this title. [Id.]

Art. 481. [493] **Bond on personal security.**—If the bond herein provided for shall be executed by personal obligation or security, then it shall be executed by at least three persons of financial responsibility and solvency, satisfactory to the authorities authorized to approve such bond. [Id.]

Art. 482. [494] **Who may execute.**—The bond or other form of guaranty herein provided for may be made by any person, firm or corporation authorized to execute the same. Banking and trust companies incorporated under the provisions of this title are authorized to execute such bonds or guaranties, either singly or collectively, subject to approval as herein provided for. No corporation which is operating under the Guaranty Fund Plan shall be accepted as a surety on any such bond. [Id.]

Art. 483. [495-509] **Other banks protected.**—Any private or national bank lawfully transacting a banking business in this State or lawfully receiving funds on deposit may take advantage of the provisions of the Bond Security System, and file with the Commissioner a bond, policy of insurance or other guaranty of indemnity in like manner as it would be required to file if incorporated under the banking laws of Texas. Any such person or firm transacting the business of a private bank shall, in such event, file a bond, policy of insurance or other guaranty of indemnity in an amount to be fixed by the Banking Commissioner, not less than one-half the amount of the average daily deposits with such person or firm for the preceding period of twelve months. Such private or national bank shall submit to the Commissioner such reports and statements concerning its deposits and concerning the solvency of such bond, policy of insurance or other guaranty of indemnity as he may require, and shall pay all such reasonable expenses as may be incurred by him in the making of an examination thereof. Such bond or other guaranty of indemnity shall be approved by the county judge of the county where such bank is located, and filed with the Commissioner as provided in article 475. Upon the filing of such bond or other

form of guaranty, the Commissioner shall furnish a certificate of such fact. [Id.]

Art. 484. [496] **Default.**—In the event any institution transacting a banking business or receiving deposits shall make default in the payment of a deposit lawfully demanded, such institution having made, executed or filed the guaranty of indemnity provided herein, the Commissioner, when such default shall be made known to him, shall at once make an examination of such bank, and if in his judgment the bank is insolvent, he shall take charge of such bank as provided by law for the liquidation of State banks. Upon taking charge of such bank, the Commissioner shall at once give notice thereof to each and all persons who may be obligated by reason of such default, and by the conditions of such bond or other guaranty of indemnity, and upon such notice, the full amount of the same shall thereby become due and payable within sixty days. [Id.]

Art. 485. [497] **Forfeiture of bond.**—When any bond, policy of insurance or other guaranty of indemnity provided for herein shall become due and payable in accordance with the provisions of this chapter, the makers and signers thereof shall pay over the full amount of the same, or such part thereof as the Commissioner may demand, to be held by him in trust for the depositors of such insolvent institution. All proceeds thus arising shall be payable to the Commissioner, who shall promptly distribute such funds pro rata to unpaid depositors whose claims have been approved by him. [Id.]

Art. 486. [498] **Failure of domestic surety.**—If the surety of any character of guaranty of indemnity shall be a corporation incorporated under the laws of Texas, and shall not pay over, within sixty days after the same has become due and payable, the full amount due by it upon such guaranty of indemnity, its charter shall thereby become subject to forfeiture; and the Attorney General, upon receiving notice thereof from the Commissioner shall bring suit in the district court of Travis County, within thirty days thereafter, to forfeit such charter, and upon proof of such default, judgment may be rendered annulling and forfeiting the charter of such corporation. [Id.]

Art. 487. [499] **Failure of foreign surety.**—If the surety of such guaranty of indemnity shall be a foreign corporation transacting business in this State under permit, and it shall refuse or fail to pay over within sixty days after demand shall have been made therefor by the Commissioner as provided herein, the full amount of its liabilities upon such bond or other guaranty of indemnity, the Commissioner shall notify the Secretary of State of said facts; and it shall be the duty of the Secretary of State, and he is so authorized, to cancel the permit of said corporation to transact business in this State and refuse any further permit until it shall show to the satisfaction of such officers that it has fully discharged its liabilities upon such guaranty of indemnity upon which default was thus made. [Id.]

Art. 488. [500] **Failure of principal.**—If any banking insti-

tution shall default in the payment of a lawful demand and shall so continue for a period of ninety days from the making thereof, and the obligation of such bond or other guaranty of indemnity is not discharged, the Attorney General or any district or county attorney acting at his instance, shall bring suit upon such bond, policy of insurance or other guaranty of indemnity in the name of the Governor and for the benefit of all persons who may be beneficiaries thereof by reason of its terms and conditions. Such action shall be brought within one year from the date of the expiration of such bond or other guaranty of indemnity. Such suit shall be instituted in the district court of the county where such banking institution was located, or in any adjoining county, at the option of the Attorney General. [Id.]

Art. 489. [502] **Rights of surety.**—Whenever any surety of any bond, policy of insurance or other guaranty of indemnity, other than the principal therein, shall be required under any provision of this chapter to pay over for the benefit of the depositors of such defaulting bank, any sum of money, such surety shall thereby become subrogated to the rights of a depositor to the extent of the payments so made, and entitled to assert such right in accordance with the laws of this State, secondary and subject to the rights of all depositors secured by such guaranty of indemnity. [Id.]

CHAPTER EIGHT.
GENERAL PROVISIONS.

| | Article | | Article |
|------------------------------|---------|-------------------------------|---------|
| Foreign corporations | 490 | Reserve bank excepted | 518 |
| Misuse of banking titles | 491 | Requirements of Reserve banks | 519 |
| State control | 492 | Powers of Reserve bank | 520 |
| Inspection of records | 493 | Cash reserve | 521 |
| Directors' statement | 494 | Reserve of non-members | 522 |
| Form of statement | 495 | Definitions | 523 |
| Publication of statement | 496 | Loans on own stock | 524 |
| Change of statements | 497 | Loans on cotton | 525 |
| Bonds of officers | 498 | Loans to officers | 526 |
| Authority of officers | 499 | Approval of loans | 527 |
| Reduction of capital stock | 500 | Bills payable and discounts | 528 |
| Increase of capital stock | 501 | Loans to Commissioner | 529 |
| Change in organization | 502 | Non-interest certificates | 530 |
| Power to vote | 503 | Voluntary assignments | 531 |
| Executor, etc. may vote | 504 | Transfers prohibited | 532 |
| Certificate of approval | 505 | Debts created in insolvency | 533 |
| Ratio of capital to deposits | 506 | Recovery of deposits | 534 |
| Regulation of dividends | 507 | Stockholder's liability | 535 |
| Liability of officers | 508 | Director's liability | 536 |
| Surplus fund | 509 | Liability of executor, etc. | 537 |
| Powers limited | 510 | Branch banks | 538 |
| Investments | 511 | Solvent bank may close | 539 |
| Domicile and fixtures | 512 | Final settlement | 540 |
| Interest in other bank | 513 | Private banks | 541 |
| Real estate | 514 | Advertising | 541a |
| Limitation of indebtedness | 515 | Name | 541b |
| Agricultural obligations | 516 | Exceptions | 541c |
| Pledge of securities | 517 | | |

Art. 490. [557] **Foreign corporations.**—No foreign corporation other than the national banks of the United States shall be permitted to do a business of banking and discount in this State. [Acts 1905, S. S. p. 511.]

Art. 491. [557] **Misuse of banking titles.**—It shall be unlawful for any incorporated bank other than State banking corporations and national banks to advertise or put forth any sign as a bank, bank and trust company or savings bank, or in any way solicit or receive business as such or as any such, or to use as their name or part of their name, or in or upon any sign, advertising, letterhead or envelope the word "bank," "banker," "banking," "trust," "trust company," savings bank," "savings," or any other term which may be confused with the name of corporations organized under this title. Corporations heretofore organized under the general laws of this State, and foreign corporations heretofore or hereafter authorized to do business in this State, authorized by their charters to use such name or parts of names as are hereby prohibited, may continue to use the same by using thereafter the words "without banking privileges." Any corporation violating any provision of this article shall forfeit its charter, or if a foreign corporation, its permit to do business within this State. The Attorney General shall, upon information lodged with him to that effect, bring an action against such corporation to wind up its affairs as now provided by law for insolvent corporations, and in addition thereto, any corporation or officer or agent thereof who shall offend against these provisions, shall forfeit and pay the sum of one hundred dollars per day for every day such offense shall be continued, to be sued for and recovered in the name of the State, by prosecuting attorneys of the several counties for the use of the school fund in any county in which such offense shall be committed. [Id.]

Art. 492. [558] **State control.**—All corporations created

under this title are hereby declared to be charged with the public use, and shall be under State control and be subject to such legislation as the Legislature may enact for the government and regulation of such banking institutions in this State. The rights, privileges and powers conferred by the terms of this title to corporations taking advantage thereof or incorporating hereunder are to be held subject to the right of the Legislature to amend, alter or reform the same. Every corporation operating a banking business in Texas under a charter authorized by this State prior to the adoption of the Constitution of 1876, shall be subject to all the provisions of this title. [Id.; Acts 1923, p. 424.]

Art. 493. [529] **Inspection of records.**—The books and records of the proceedings of all banking corporations shall be kept open for inspection of all persons interested. [Acts 1905, S. S. p. 511.]

Art. 494. [525] **Directors' statement.**—Within ten days from the date of any call issued by the Banking Commissioner requiring a statement of the actual condition of the affairs of any State bank, bank and trust company or savings bank at the close of business on a day prior to such call, the board of directors of such corporation shall furnish such statement sworn to before a notary public by the president and cashier or secretary and attested by three of the directors. Each such corporation which fails to make and transmit any report required in this article within ten days from the date of such call shall be subject to a penalty of not less than five nor more than one hundred dollars for each day after the expiration of said ten days, which penalty may be recovered by the Commissioner in the name of this State in a suit in Travis County against such corporation. Such penalty, when collected, shall be paid into the State Treasury for the benefit of the general school fund. [Id.; Acts 1913, p. 207.]

Art. 495. [526] **Form of statement.**—The statement required by the preceding article shall be in the following form, to wit:

“Official statement of the financial condition of the _____
(here insert name of bank), at _____, State of Texas, at
the close of business on the _____ day of _____, 19____,
published in the _____, a newspaper printed and pub-
lished at _____, State of Texas, on the _____ day
of _____, 19_____.

RESOURCES.

| | |
|---|----------|
| Loans and discounts, undoubtedly good on personal security or collateral _____ | \$ _____ |
| Loans, real estate _____ | _____ |
| Overdrafts _____ | _____ |
| Bonds and stocks _____ | _____ |
| Real estate (banking house) _____ | _____ |
| Other real estate _____ | _____ |
| Furniture and fixtures _____ | _____ |

Due from other banks and bankers, subject to check _____
 Cash items _____
 Currency _____
 Specie _____
 Other resources as follows: _____ \$ _____
 _____ \$ _____
 Total _____ \$ _____

LIABILITIES.

Capital stock paid in _____ \$ _____
 Surplus fund _____
 Undivided profits, net _____
 Due to banks and bankers, subject to check _____
 Individual deposits subject to check _____
 Time certificates of deposit _____
 Demand certificates of deposit _____
 Cashiers checks _____
 Bills payable and rediscounts _____
 Other liabilities as follows: _____ \$ _____
 _____ \$ _____
 Total _____ \$ _____

State of Texas, County of _____
 We _____ as president, and _____ as cashier of
 said bank, each of us do solemnly swear that the above state-
 ment is true to the best of our knowledge and belief.

 _____ President.
 _____ Cashier.

Subscribed and sworn to before me this _____ day of
 _____ A. D. nineteen hundred and _____.
 Witness my hand and seal on the date last aforesaid.
 [Seal]

 Notary Public.

Correct—attest:

Directors.
 [Id.]

Art. 496. [528] **Publication of statement.**—Publication of the foregoing statement shall be made by banking institutions in one or more newspapers published in the town, city or county where it is located, if there is one so published. If said town or city has a population exceeding ten thousand inhabitants, then such publication must be in a daily newspaper, if such is published, otherwise it shall be made in a weekly newspaper. If such town or city has a population of ten thousand inhabitants or less, then said publication may be in either a daily or weekly

newspaper published in said city or town as aforesaid. In all cases, a copy of the said statement shall be posted in the banking house, accessible to all. [Id.]

Art. 497. [573] **Change of statements.**—The State Banking Board shall have the power, from time to time to make such changes in the form of the statements required of each banking corporation as it may deem advisable, and to require any additional statements which it may deem necessary as to average daily deposits, capital stock, surplus, character of deposits and such other matters as it may deem necessary to the enforcement of this title. [Acts 1909, 2nd C. S., p. 423.]

Art. 498. [574] **Bonds of officers.**—All active or salaried officers and employes of State banking institutions whose duties permit or require the handling of any of the funds of the bank shall, before entering upon the discharge of their duties, give a good and sufficient bond in such sum as may be fixed by the board of directors of any such institution, conditioned for the faithful performance of their duties and such pecuniary loss as the bank may sustain for money or other valuable securities embezzled, wrongfully abstracted or wilfully misapplied by any such officer or employe in the course of his employment as such or in the course of his employment in any other position in such bank, whether he be assigned, appointed, elected, re-elected or temporarily assigned to said position. The amount of such bond and the solvency of the sureties shall be subject to the approval of the Banking Commissioner, and such bonds shall be upon forms prepared by the Commissioner. All such bonds shall immediately after their execution be forwarded to the Commissioner and be filed by him as an archive in his office and a certified copy thereof shall be returned to the board of directors of such bank and be kept in their custody. The board of directors may require any other bond or bonds in addition to that herein required, at their discretion. Officers of banks who do not handle bank's money or draw a salary, shall not be required to give bond. [Id.; Acts 1917, p. 469.]

Art. 499. [530] **Authority of officers.**—The directors of any banking corporation organized under this title may appoint and remove any officer or other employe at pleasure. No officer or employe shall have power to endorse, sell, pledge or hypothecate any note, bond or other obligation received by such corporation for money loaned, until such power and authority shall have been given such officer or employe by the board of directors in a regular meeting of the board, a written record of which proceeding shall have first been made upon the minutes of the corporation; and all such acts done by any officer or employe without such authority shall be null and void. [Acts 1905, S. S. p. 502; Acts 1909, 2nd C. S. p. 425.]

Art. 500. [531] **Reduction of capital stock.**—Any banking corporation doing business in this State may at any time reduce its capital stock to any sum not less than the minimum sum provided by law. No reduction of such stock shall be made except upon the written consent of the owners of not less than

two-thirds of the stock of such corporation. Notice of the intention to reduce the capital stock shall be published for thirty days in some daily newspaper in the city or county where such bank is located, or in a weekly paper for four insertions before the time when such reduction shall be effected, and the last insertion of such notice shall be at least ten days before the date of the reduction. A statement of such reduction of the capital stock duly acknowledged by the officers of the corporation shall be recorded and filed in the same manner as provided for the original articles of agreement. [Acts 1905, S. S. p. 508.]

Art. 501. [532] **Increase of capital stock.**—Any banking corporation doing business in this State may at any time increase its capital stock to any amount not exceeding the maximum provided by law, with the consent of the persons holding a majority of the stock of such corporation which shall be obtained at a meeting of the shareholders called for that purpose. Upon the presentation of a petition signed by the owners of a majority of the stock, asking for such increase, the board of directors shall call a meeting for the purpose of voting on such proposition, at least sixty days notice of which meeting shall be published by eight consecutive insertions in some daily or weekly newspaper printed and published in the city or town in which the corporation is located, the last insertion to be not less than five days before the day fixed for such meeting, giving the time and place of said meeting, and the amount of the proposed increase. If upon a canvass of the votes at such meeting it is ascertained that the proposition has carried, it shall be so declared by the chairman of the meeting, and the proceedings entered of record. When the full amount of said proposed increase has been bona fide subscribed and paid in cash to the board of directors of said corporation, then a statement of the proceedings, showing a compliance with the provisions of this chapter, and the increase of capital actually subscribed and paid up, shall be made out, signed and verified by the affidavit of the president and countersigned by the secretary, and such statement shall be acknowledged by the president and recorded and filed as provided for the original articles of agreement. [Id.]

Art. 502. **Change in organization.**—If any bank or bank and trust company organized under the general laws of this State wishes to convert such corporation into any other system of banking, its officers shall give notice of said change by publishing its intention to make the same by four insertions in some daily or weekly newspaper published in the town where it is domiciled or adjacent thereto, for at least thirty days before making such change. Such notice shall state under what system of banking said corporation shall be operated after its conversion. Said corporation shall notify the Banking Commissioner of such proposed change under the seal of said bank at least thirty days before said conversion shall be consummated. Such conversion shall be effected by the written consent or a vote of the owners of not less than a majority of the stock of such corporation, and a statement of such conversion duly acknowledged

by the officers of the corporation shall be recorded and filed in the same manner as provided for the original articles of agreement. No fund or deposits of any kind that shall have been deposited in a State bank or bank and trust company, shall be protected by the Guaranty Fund Law or Bond Security Law of this State, after such corporation shall have converted to some other system of banking. [Acts 1923, p. 322.]

Art. 503. **Power to vote.**—In the elections of directors, and in deciding all questions at meetings of shareholders of any Texas banking institution, each shareholder shall be entitled to one vote on each share of stock held by him. Shareholders may vote by proxy duly authorized in writing. [Acts 1905, S. S. p. 502.]

Art. 504. [537] **Executor, etc., may vote.**—Every executor, administrator, guardian or trustee shall represent the shares of stock in his hands at all meetings of the corporation, and may vote as a shareholder; and every person who shall pledge his stock in such corporation, may nevertheless represent the same at all such meetings and may vote accordingly as a shareholder.

Art. 505. [536] **Certificate of approval.**—Upon filing in the office of the Commissioner a statement of the proceedings duly executed by the officers of such corporation which has increased or diminished its capital stock or converted its organization as provided in the preceding articles, the Commissioner shall issue a certificate that such corporation has complied with the law provided in such cases, and the amount to which said capital stock is increased or decreased, or the system of banking to which such corporation has converted; and thereupon the capital stock of such corporation shall be increased or diminished to the amount specified in such certificate, or the system of banking converted. Such certificate shall be taken in all courts of this State as evidence of such increase or decrease of stock or conversion of system. [Id.]

Art. 506. [564] **Ratio of capital to deposits.**—Each State bank and bank and trust company shall file with the Banking Commissioner on January first an annual statement of its average daily deposits for the preceding year ending November first. If, from such report, it shall appear that such deposits are more than five times the capital stock and surplus of such bank if its capital is not more than ten thousand dollars, or more than six times such capital stock and surplus if the capital stock is more than ten thousand and less than twenty thousand dollars, or seven times its capital stock and surplus if the capital stock is twenty thousand dollars or more, and less than forty thousand dollars, or eight times such capital stock and surplus if the stock is forty thousand or more, and less than seventy-five thousand dollars, or nine times such capital and surplus if the capital stock is seventy-five thousand dollars or more, and less than one hundred thousand dollars, or ten times such capital and surplus if the capital stock is one hundred thousand dollars or more; then, in any such case the State Banking Board shall require such bank to increase its capital by twenty-five per cent of such

capital stock; provided that the Banking Board may relieve or refuse to relieve any such bank from such order on showing to said Board of conditions applying to and relating to the increase of the average daily deposits in such bank, which said Board may find to justify such relief. The Commissioner shall immediately furnish such State bank or banking corporation with a certified copy of the order making such requirement, as well as any order granting or refusing to grant relief from such requirement; and upon receipt of the order making such requirement, the directors of such State banking institution shall, within sixty days thereafter, cause such increase to be made in the capital stock; and if the same is not done within such time, it shall be unlawful for such bank to thereafter receive any deposits at any time when its total demand and time deposits and savings accounts shall in the aggregate amount to more than the limitation herein placed upon deposits. [Acts 1921, p. 114.]

Art. 507. [548] **Regulation of dividends.**—No bank or bank and trust company or any member of either, during the time it shall continue its operations, shall withdraw or permit to be withdrawn any part of its capital, either in the form of dividends or otherwise. If losses have at any time been sustained by any such bank equal to or exceeding its undivided profits then on hand, no dividend shall be made; and no dividend shall ever be made by such bank while it continues its operations, to an amount greater than its net profits then on hand, deducting therefrom its losses and bad debts. All debts due to any State bank, on which interest is past due and unpaid for a period of six months, unless the same are well secured or in process of collection, shall be considered bad debts within the meaning of this article. The board of directors of any such bank may declare a semi-annual or quarterly dividend if such dividend has been earned, if the corporation be fully solvent without such earnings proposed to be divided. But they shall not declare a dividend at any time when the capital of such corporation shall have become impaired to such an extent that it is not worth in good resources the full amount paid in after the payment of all liabilities. [Acts 1905, S. S. p. 507; Acts 1909, 2nd C. S. p. 425.]

Art. 508. [548-549] **Liability of officers.**—Any officer or director of such corporation who shall assent to declaring and paying dividends when the capital stock is so impaired shall be personally liable to the creditors of the corporation to the amount of his proportion of the proposed dividend, if any loss occur by reason of the payment of such dividend. If any of the directors shall object to the declaring of such dividend, or to the payment of the same, and shall at any time before the time fixed for the payment thereof, file a certificate of his objections in writing with the clerk of the corporation and with the county clerk of the county, he shall be exempt from the said liability. [Id.]

Art. 509. [550] **Surplus fund.**—When the board of directors shall declare a dividend, they shall first set apart to the surplus fund ten per cent of the net profits of the bank for the

period covered by the dividend until the same shall amount to fifty per cent of its capital stock; and said surplus shall not be diminished except for the payment of losses which may occur. If there are undivided profits, these shall first be used in payment of such losses. [Acts 1905, S. S. p. 511.]

Art. 510. [546] **Powers limited.**—No corporation organized under this title shall employ its moneys, directly or indirectly, in trade or commerce, by buying and selling ordinary goods, chattels, wares and merchandise, or by owning or operating industrial plants, but may sell all kinds of property which may come into its possession as security for loans, or in the ordinary collection of debts. [Acts 1909, 2nd C. S. p. 425.]

Art. 511. [538] **Investments.**—The directors of banks and bank and trust companies created under this title shall have power to invest the moneys placed in their charge in loans secured by real estate or other sufficient collateral, in public bonds of the United States or of this State, or in the bonds of any incorporated city, county or independent school district in this State. [Acts 1905, S. S. p. 508.]

Art. 512. **Domicile and fixtures.**—No State bank or bank and trust company shall invest more than fifty per cent of its capital stock and permanent surplus in its banking house, nor more than fifteen per cent of its capital stock and permanent surplus in the furniture and fixtures to be used in its said banking house, unless said corporation shall have first applied to the State Banking Board and received written permission to make a larger investment than is allowed hereunder, which written permission shall be entered upon the minutes of a regular meeting of said banking corporation. [Acts 1923, p. 322.]

Art. 513. [565-567] **Interest in other bank.**—Any State bank or bank and trust company which purchases the assets of any other bank shall, before the purchase of the assets of such other bank, increase its capital to such an amount that the same will have the ratio to the total deposits of the bank, the assets of which it has purchased, as defined and required in Article 506. It shall be unlawful for any State bank or bank and trust company to own more than ten per cent of the capital stock of any other banking corporation, or to make a loan secured by the stock of any other banking corporation, if by the making of such loan the total stock of such other banking corporation held by it as collateral will exceed, in the aggregate, ten per cent of the capital stock of such other banking corporation, unless the ownership or the taking of a greater percentage of such capital stock as collateral shall be necessary to prevent loss upon a debt previously contracted in good faith; and any such excess so taken as collateral or owned by such bank shall not be held as collateral nor owned by it for a longer period than six months. [Acts 1909, 2nd C. S. 423.]

Art. 514. [547] **Real estate.**—Banks and bank and trust companies created under this title shall own only such real estate as may be required for the transaction of their business, and such as they may acquire in the enforcement and collection of

debts or liabilities due to them, which lands so acquired by any such corporation shall be alienated by it within five years after its acquisition to some one not interested, directly or indirectly, in said company. [Id.]

Art. 515. Limitation of Indebtedness.—No State banking corporation shall at any time be indebted or in any way liable to an amount exceeding the amount of its capital stock at such time actually paid in and remaining undiminished by losses or otherwise, except on account of demands of the nature following:

1. Moneys deposited with or collected by it;
2. Bills of exchange or drafts drawn against money actually on deposit to the credit of the corporation or due thereto;
3. Liabilities to the stockholders of the association for dividends and reserve profits;
4. Liabilities incurred under the provisions of the Federal Reserve Act;
5. Liabilities incurred under the provisions of the Federal "Agricultural Credits Act of 1923."
6. This article shall not apply to any guaranty executed by any bank and trust company whose demand deposits are not in excess of its interest bearing deposits, provided such company is not a member of a Federal Reserve bank.
7. Upon a written permit obtained from the Commissioner, any bank may borrow a sum not in excess of its unimpaired surplus in addition to its capital stock. [Id.; Acts 1923, 2nd C. S. p. 86.]

Art. 516. Agricultural obligations.—State banks and bank and trust companies, with the permission and under the direction and control of the Banking Commissioner, may borrow or make discounts individually or collectively, or enter into any agreement or association for the purpose of obtaining funds to finance the movement of agricultural and farm products only; and when so doing, paper endorsed by them for such purpose shall not be considered as within the limitation prescribed in the preceding article. [Acts 1914, 3rd C. S. p. 46.]

Art. 517. [570] Pledge of securities.—It shall be unlawful for any bank or bank and trust company to hypothecate or pledge as collateral its securities to an amount greater than fifty per cent of the amount borrowed upon bills payable, certificates of deposit or otherwise, or for any banking corporation to issue and execute any notes, bills or other evidences of indebtedness secured, or to be secured by the pledge or hypothecation of any of its securities, which shall not contain a provision that in the event such banking corporation shall for any cause have its property and business taken possession of by the Commissioner at any time before such pledge or hypothecation shall have been actually foreclosed, a grace of thirty days after date of such taking possession shall be allowed in which such bank or the Commissioner shall be permitted to redeem such securities so hypothecated or pledged by the payment of the amount due

as principal and interest on such indebtedness. [Acts 1909, 2nd C. S. p. 423; Id.]

Art. 518. [570] **Reserve bank excepted.**—Banking corporations incorporated under the laws of this State, upon becoming members of a Federal Reserve Bank, shall not be required to insert the thirty days grace clause in their notes, bills or certificates of deposit made to a Federal Reserve bank, should a Federal Reserve bank decline to permit the insertion thereof. Collateral in excess of fifty per cent of the amount borrowed thereon may be hypothecated or pledged to secure money borrowed from a Federal Reserve bank, should it so require, in which case it shall be the duty of the officers of such member bank to immediately notify the Commissioner, giving the amount of money borrowed, and amount of securities hypothecated or pledged to secure same. [Id.]

Art. 519. **Requirements of Reserve banks.**—All banks or bank and trust companies incorporated under the laws of Texas shall have authority to become members of Federal Reserve Banks under such terms and limitations as may be prescribed by the laws of the United States and such rules and regulations relative thereto as may be promulgated by lawful authority. Such member bank shall be required to conform to the provisions of law imposed upon national banks respecting the limitations of liability which may be incurred by any person, firm or corporation to such banks, the prohibition against making purchases of or loans on stock of such bank, and the withdrawal or impairment of capital, and the payment of unearned dividends. [Acts 1914, 3rd C. S. p. 46.]

Art. 520. **Powers of Reserve bank.**—Such member bank shall have the right to discount to a Federal Reserve bank, notes, drafts, and bills of exchange arising out of actual commercial transactions and to endorse the same with a waiver of demand, notice and protest and to do any other thing necessary under the Federal Reserve Act or rules and regulations relative thereto promulgated by lawful authority, in order to obtain all the benefits and privileges of membership in a Federal Reserve bank. The lien and rights obtained by a Federal Reserve bank upon the discount to it of any such notes, drafts and bills of exchange shall be a first and preference lien. [Id.]

Art. 521. **Cash reserve.**—All banks and bank and trust companies chartered by the laws of this State which become members of a Federal Reserve bank under the Federal Reserve Act shall as to their reserves, be governed as follows:

1. A bank not in a reserve or central reserve city shall hold and maintain reserves equal to twelve per cent of the aggregate amount of its demand deposits and five per cent of its time deposits, as follows:

In its vaults for a period of thirty-six months after the Secretary of the Treasury of the United States has officially announced the establishment of a Federal Reserve bank in the district of which is located the subscribing bank, five-twelfths thereof and permanently thereafter four-twelfths;

In the Federal Reserve bank of its district for a period of

twelve months after said date, two-twelfths, and for each succeeding six months an additional one-twelfth until five-twelfths have been so deposited, which shall be the amount permanently required;

For a period of thirty-six months after said date, the balance of the reserve may be held in its own vaults or in the Federal Reserve bank or in national banks in reserve or central reserve cities.

After said thirty-six months period, said reserve other than those hereinbefore required to be held in the vaults of the member bank and in the Federal Reserve bank, shall be held in the vaults of the member bank or in the Federal Reserve bank, or in both, at the option of the member bank.

2. A bank in a reserve city shall hold and maintain reserves equal to fifteen per cent of the aggregate amount of its demand deposits, and five per cent of its time deposits, as follows:

In its vaults for a period of thirty-six months after the date of the establishment of the Federal Reserve bank of which any bank chartered under the laws of this State may become a member, six-fifteenths thereof and permanently thereafter five-fifteenths;

In the Federal Reserve bank of its district for a period of twelve months after the date aforesaid, at least three-fifteenths, and for each succeeding six months an additional one-fifteenth until six-fifteenths have been so deposited, which shall be the amount permanently required;

For a period of thirty-six months after said date, the balance of the reserve may be held in its own vaults, or in the Federal Reserve bank, or in national banks in reserve or central reserve cities;

After said thirty-six months period all of said reserves, except those hereinbefore required to be held permanently in the vaults of the member bank and in the Federal Reserve bank, shall be held in its vaults or in the Federal Reserve bank, or in both, at the option of the member bank.

3. Notwithstanding the limitations in the two preceding paragraphs, State banks becoming members of a Federal Reserve bank shall have all the rights permitted them under the Federal Reserve Act as to reserve deposits with State banks and bank and trust companies.

4. The kind of money which may be held as reserve by such member banks shall be the same as that required of national banks under the laws of the United States. [Id.]

Art. 522. [377] **Reserve of non-members.**—Every banking corporation chartered under the laws of this State with a capital stock of less than twenty-five thousand dollars, and which does not become a member of a Federal Reserve bank, shall at all times have an amount of cash on hand and cash due from other banks equal to at least twenty per cent of the aggregate amount of its demand deposits; and all banks not located in a Central Reserve City, having a capital stock of twenty-five thousand dollars or more, and which do not become members of a Federal Reserve bank, shall at all times have an amount of cash

on hand and cash due from other banks equal to at least fifteen per cent of the aggregate amount of its demand deposits. Such reserve fund, or any part thereof, together with the current receipts, may be kept on hand or on deposit payable on demand in any bank or banking association of this State, or any bank, banking association or trust company regularly chartered and operating under the laws of any State or under the laws of the United States approved by the Banking Commissioner, having a paid up capital stock of fifty thousand dollars or more; but the deposit in any one bank or trust company shall not exceed twenty per cent of the total deposits, capital and surplus of the bank making the deposit. Whenever the reserve herein required shall fall below the amount specified for its class, such bank shall not make any new loans or discounts until it shall by collection restore its lawful reserve. [Acts 1907, p. 60; Id.; Acts 3rd C. S. 1920, p. 70.]

Art. 523. Definitions.—Demand deposits, within the meaning of this title, shall comprise all deposits payable within thirty days; and time deposits shall comprise all deposits payable after thirty days, and all savings accounts and certificates of deposit which are subject to not less than thirty days notice before payment; and a reserve or central reserve city is one defined by the laws of the United States or designated by the Comptroller of the Currency of the United States. [Acts 1914, 3rd C. S., p. 46.]

Art. 524. [569] Loans on own stock.—No State bank or bank and trust company shall make any loan or discount on the security of the shares of its own capital stock, nor be the purchaser or holder of any such shares, unless such security or purchase shall be necessary to prevent a loss upon a debt previously contracted in good faith; and stock so purchased or acquired shall, within six months after its purchase, be sold or disposed of at public or private sale; or, in default thereof, such bank shall be considered to have its capital stock impaired to the extent of the par value of such shares. [Acts 1909, 2nd. C. S., p. 423.]

Art. 525. [568] Loans on cotton.—All State banks and bank and trust companies shall be permitted to loan upon or discount commercial or business paper secured by lien upon cotton and cotton seed products to the same extent and upon the same conditions as is now or may be provided for national banks under the laws of the United States. [Id.]

Art. 526. Loans to officers.—No director of a bank in this State shall be permitted to borrow any of the money of the bank of which he is a director, in excess of ten per cent of the capital and surplus, without the consent of a majority of the directors of the bank (other than the borrower) first having been obtained at a regular meeting of the board; said consent to be made a matter of record before the loan is made. No officer, whether a director or not, shall be indebted to such bank in any sum whatever without the consent of the board, obtained and recorded in like manner. [Acts 1905, p. 491.]

Art. 527. [378] Approval of loans.—The board of directors of each bank organized under this title shall meet at least once per month and pass upon the business of the bank back to their previous meeting, and shall keep a written record of its approval or disapproval of each loan. At each monthly meeting the rec-

ords shall show the aggregate of the then existing indebtedness and liability of each of the directors and officers of the bank. [Id.]

Art. 528. [378] **Bills payable and discounts.**—No bank organized under the laws of this State shall ever make any bills payable, and no bills shall ever be rediscounted by such bank, except with the consent of the board of directors, said consent to be a matter of record. [Id.]

Art. 529. [571] **Loans to Commissioner.**—No State bank or bank and trust company shall directly or indirectly make a loan to the Banking Commissioner or any other person interested in or employed by the Banking Department, and a violation of this article shall render such corporation liable to a penalty of not less than one hundred nor more than one thousand dollars to be recovered for the benefit of this State. [Acts 1909, 2nd. C. S., p. 428.]

Art. 530. **Non-interest certificates.**—No State bank or bank and trust company organized and doing business under the provisions of this title shall be allowed to issue any non-interest bearing certificates of deposit. Such certificates, if issued, shall not be protected under Chapter 7 of this title. [Acts 1923, p. 322.]

Art. 531. [551] **Voluntary assignments.**—It shall be unlawful for any banking corporation organized under this title to make a voluntary general assignment. [Acts 1905, S. S., p. 511.]

Art. 532. [551] **Transfers prohibited.**—All transfers of the notes, bonds, bills of exchange or other evidence of debt owing to any bank or bank and trust company organized under this title, or of deposits to its credit, all assignments of mortgages, securities on real estate or of judgment or decrees in its favor, all deposits of money, bullion or other valuable thing for its use, or for the use of any of its shareholders or creditors, and all payments of money to it made after the commission of an act of insolvency, or in contemplation thereof, made with a view to prevent the application of its assets in the manner prescribed by this title, or with a view to the preference of one creditor to another, shall be null and void. No attachment, injunction or execution shall be issued against such bank or its property before final judgment in any suit, action or proceedings in any court. [Id.]

Art. 533. [554] **Debts created in insolvency.**—No president, director, manager, cashier or other officer or agent of any bank or banking institution organized and doing business under the provisions of this article shall receive or assent to the reception of deposits, or create or assent to the creation of any debts by such bank after he shall have knowledge of the fact that it is insolvent or in failing circumstances. Every person violating the provisions of this article shall be individually responsible for such deposits so received and all debts so contracted. Any director who may have paid more than his share of the liabilities mentioned in this article may have the proper remedy at law against such other persons as shall not have paid their full share of such liabilities. In case of the insolvency of one or more of such officers, agents or managers, the same shall be paid for

the time being by those who are solvent, in equal proportion. [Id.]

Art. 534. [555] **Recovery of deposits.**—In all suits brought for the recovery of the amount of any deposits received or debts created, all officers, agents or managers of any bank, savings bank or bank and trust company charged with having so assented to the reception of such deposits or the creation of such debt, may be joined as defendants or proceeded against severally; and the fact that such banking institution was so insolvent or in failing circumstances at the time of the reception of the deposit charged to have been received, or the creation of the debt charged to have been created, shall be prima facie evidence of such knowledge and assent to such deposit, or creation of such debt on the part of such officer, agent or manager so charged therewith. [Id.]

Art. 535. [552] **Stockholder's liability.**—If default shall be made in the payment of any debt or liability contracted by any bank, savings bank or bank and trust company, each stockholder of such corporation, as long as he owns shares therein, and for twelve months after the date of a transfer thereof, shall be personally liable for all debts of such corporation existing at the date of such transfer, or at the date of such default, to an amount double the par value of such shares. [Id.]

Art. 536. [553] **Director's liability.**—For any losses of money which the capital stock shall not be sufficient to satisfy, the directors of such corporations shall be responsible in the same manner and to the same extent that directors are now responsible in law or equity. [Id.]

Art. 537. [556] **Liability of executor, etc.**—No person holding stock in such corporation as executor, administrator, guardian or trustee, and no person holding such stock as collateral security, shall be personally subject to any liability as stockholder in such corporation; but the person pledging such stock shall be considered as holding the same, and shall be liable as stockholder accordingly. The estate and funds in the hands of such executors, administrators, guardians or trustees shall be liable in like manner and to the same extent as the testator or intestate or the ward or person interested in such trust fund would have been if he had been living and competent to act and hold the same stock in his own name. [Id.]

Art. 538. [379] **Branch banks.**—No banking corporation organized under the laws of this State shall ever engage in business at more than one place, which shall be designated in its charter. No such corporation shall maintain a branch bank, receive deposits or pay checks except in its own banking house. County or State depositories or county depositories not located at the county seat, and ordinary clearing house transactions between banks, are not affected by this article. [Acts 1905, p. 491.]

Art. 539. [561] **Solvent bank may close.**—Whenever the board of directors of any solvent banking corporation organized under or subject to the provisions of this title shall deem it necessary, expedient or desirable to close the business of the corporation, they shall call a meeting of the stockholders to vote upon such proposition by giving sixty days notice thereof by publication once every week in a newspaper published in the

county or city in which such corporation is located, and by mailing notices at least sixty days prior to the day fixed for such meeting, addressed to the stockholders at their usual place of business or residence. The vote upon such proposition shall be taken by ballot, and the resolution and vote thereon shall be recorded in the minutes of the board of directors. If at such meeting at least two-thirds of the shares of the corporation are voted in favor of such proposition, the board of directors shall proceed to wind up the business of such corporation as in the succeeding article provided; and a copy of such proceedings shall be certified by the president and secretary of such corporation and filed with the Banking Commissioner. [Acts 1905, S. S., p. 511.]

Art. 540. [561] **Final settlement.**—The board of directors shall thereupon give notice to all depositors, creditors and stockholders of the adoption of such resolution by publication thereof once a week in a daily or weekly newspaper for three months thereafter, and by a written or printed notice personally served upon or mailed to every depositor, creditor or stockholder of such corporation at his last known residence, postage fully paid. Within six months after the filing of such certificate, the corporation shall pay all sums due depositors and creditors whom they can discover and who claim the moneys due them; and upon the expiration of said six months, it shall be the duty of the corporation to make a statement from the books of said corporation, certified by the president and secretary, of the names of all depositors and creditors who have not claimed or have not received the balances to their credit or due them respectively, and to file the same with the State Treasurer and to pay the said State Treasurer all such unclaimed deposits, moneys and credits for the use and benefit of such depositors and creditors. The board of directors shall then divide the capital stock, guaranty and indemnity fund and all other assets or the proceeds thereof among the stockholders ratably; and the board of directors shall thereupon file in the office of the Banking Commissioner a certificate surrendering the corporate franchise. [Id.]

Art. 541. [558] **Private banks.**—It is hereby declared to be the public policy of this State that no additional private banking institution or business shall be organized or established, and it shall be unlawful for any person, association of persons, partnerships or trustees acting under any common law declaration of trust to hereafter organize or establish, begin or resume the operation of any banking institution or business within this State. It shall be the duty of private individuals or firms engaging in the banking business to use after the name under which the business is conducted, the word in parenthesis “unincorporated,” and failure to do so shall subject the offender to a penalty of one hundred dollars to be collected in the manner provided in Article 491. [Acts 1905, S. S., p. 11; Acts 1923, p. 422.]

Art. 541a. **Advertising.**—It shall be unlawful for any person, association of persons, partnerships or any trustee or trustees acting under any common law declaration of trust, to hereafter use, advertise or put forth any sign as a bank, trust company, bank and trust company or savings bank, or to in any way solicit or receive business as such, or to use as their name or part of their name on any sign, advertising or letter head or en-

velope the word bank, banker, banking, banking company, trust, trust company, bank and trust company, savings bank, savings, or any other term which may or might be confused with the name of a corporation organized under the general provisions of the banking laws of this State.

Art. 541b. Name.—It shall be unlawful for any such person, association of persons, partnership or any trustee or trustees acting under any common law declaration of trust to adopt or use any artificial name or business title or to use any other than the name of the person or one or more of the persons, or a member or one or more of the members of the association of persons or partnership, or a member or one or more of the members of such common law trust association, in the management, conduct or operation of any private banking institution or bank of deposit within the State of Texas; provided, however, that the provisions of this Act shall not apply to any person, association of persons, partnerships or trustees, or trustees acting under any common law declaration of trust, who, at the time this Act becomes effective, are actively engaged in the operation of any bank, trust company, bank and trust company or savings bank within this State, nor to any bank which may have been in successful operation in this State for twenty years and shall have suspended operation prior to the passage of this Act, but which shall resume operation within twelve months after the passage of this Act. The right to continue such business of such bank, trust company, bank and trust company or savings bank so engaged, or which shall resume business as provided in this Act, or by their heirs, legal representatives, assigns and successors, is hereby expressly recognized, confirmed and fixed.

Art. 541c. Exception.—The provisions of the private bank law shall not apply to any person, association of persons, partnerships or trustee, or trustees acting under any common law declaration of trust, who has for a period of one year next preceding the date that this Act becomes effective, and who, as such, in the course of the liquidation of any bank or trust company or bank and trust company within this State, has acquired the assets, or any part thereof, including the real estate used as its banking house or place of business and has assumed the liabilities, or a part thereof, of such liquidation bank or trust company or bank and trust company." [Acts 1925, p. 356.]

CHAPTER NINE.

MORRIS PLAN BANKS.

| | Article | | Article |
|--------------------|---------|------------------------------|---------|
| Term defined..... | 542 | Acts prohibited..... | 546 |
| How organized..... | 543 | Borrowed money..... | 547 |
| Capital stock..... | 544 | Provisions not to apply..... | 548 |
| Powers..... | 545 | | |

Art. 542. Term defined.—The term "loan and investment company" as used in this chapter means any corporation formed under the provisions of this law. [Acts 1st C. S., 1917, p. 59.]

Art. 543. How organized.—Corporations may be organized under and by virtue of this chapter in the same manner as corporations for profit under the laws of this State, except as otherwise herein provided. [Id.]

Art. 544. Capital stock.—The aggregate amount of the capital stock of a loan and investment company shall not be less

than \$25,000 in any city having a population of less than 50,000 inhabitants, and shall not be less than \$50,000 in any city having 50,000 or more inhabitants, and shall not be less than \$100,000 in any city having 150,000 inhabitants or more, according to the preceding Federal census. The capital stock of any such corporation shall be divided into shares of the par value of \$100 each. No corporation organized hereunder shall create more than one class of stock. [Id.]

Art. 545. **Powers.**—Every loan and investment company, in addition to the powers conferred upon corporations by the general corporation law, shall have the following powers:

1. To lend money and to deduct interest therefor in advance at a rate not to exceed six per cent per annum, and in addition to require and receive uniform weekly or monthly installments on its certificates of indebtedness purchased by the borrower simultaneously with the said loan transaction, or otherwise, and pledged with the corporation as security for the said loan, with or without an allowance of interest on such installments.

2. To sell or negotiate bonds, notes, certificates of investment and choses in action for the payment of money at the time, either fixed or uncertain, and to receive payments therefor in installments or otherwise, with or without an allowance of interest upon such installments.

3. To charge for a loan made pursuant to this article one dollar for each fifty dollars or fraction thereof loaned, for expenses, including any examination or investigation of the character and circumstances of the borrower, co-maker or surety, and the drawing and taking acknowledgement of necessary papers or other expenses incurred in making the loan; no charge shall be collected unless a loan shall have been made as a result of such examination or investigation. [Id.]

Art. 546. **Acts prohibited.**—No loan and investment company shall:

1. Hold at any one time the obligation of any one person, firm or corporation for more than two and one-half per cent of the amount of capital and surplus of such loan and investment company.

2. Make any loan under the provisions of this law for a longer period than one year from the date thereof.

3. Deposit any of its funds with any bank or trust company, unless such bank or trust company has been designated as such depository by a vote of the majority of the directors or of the executive committee, exclusive of any director who is an officer, director or trustee of the depository so designated. [Id.]

Art. 547. **Borrowed money.**—Issuing certificates of investment and the like in the transaction of the business of corporations organized hereunder, shall not be construed to be borrowed money. [Id.]

Art. 548. **Provisions applicable.**—The provisions of this title relating to the examination, supervision and liquidation of State banks by the Banking Commissioner, and statement of assets and liabilities required of such banks, so far as applicable, shall apply to corporations organized under this law. The provisions of law relating to bond investment companies shall not apply to corporations organized hereunder. [Id.]

TITLE 17.

BEES.

| | Article | | Article |
|---|---------|-----------------------------------|---------|
| State Entomologist..... | 549 | Sale and shipment..... | 557 |
| Power and authority..... | 550 | Legal remedies..... | 558 |
| Certificate of inspection..... | 551 | Bulletins..... | 559 |
| Common carrier accepting ship- ment..... | 552 | Duty to report diseased bees..... | 560 |
| Seizure..... | 553 | Transfer of bees..... | 561 |
| May enter premises..... | 554 | Inspection and eradication..... | 562 |
| Protective quarantine..... | 555 | Cost of destruction..... | 563 |
| Restrictive quarantine..... | 556 | No bond required..... | 564 |
| | | Experimental apiary..... | 565 |

Art. 549. State Entomologist.—The entomologist of the Agricultural Experiment Station of the Agricultural and Mechanical College of Texas, shall be the State Entomologist of this State, and as such it shall be his duty to enforce the provisions of this title. As State Entomologist he shall receive no fees or remuneration other than his regular salary as Entomologist of such Experiment Station, provided, that he may be reimbursed for the necessary expenses incurred in discharge of his duties as State Entomologist. He shall employ such assistants and inspectors as may be necessary, subject to the approval of the Director and Governing Board of the Texas Agricultural Experiment Station. He shall make an annual report to such Director and Governing Board giving a detailed account of all funds received and disbursed, and for what purpose, as well as a full report upon all prosecutions, etc., made under the provisions of this title. [Acts 1913, p. 96.]

Art. 550. Power and authority.—The State Entomologist shall have power to deal with all contagious or infectious diseases of honey bees, which in his opinion, may be prevented, controlled or eradicated, and to do and perform such acts as, in his judgment, may be necessary to control, eradicate or prevent the introduction, spread or dissemination of any and all contagious diseases of honey bees as far as may be possible, and to make such rules and regulations, not inconsistent with law, as may be necessary to enforce this law. The State Entomologist shall have authority to prohibit the shipment or bringing into this State of any honey bees, honey, honey-comb, or articles or things capable of transmitting contagious or infectious diseases of bees from any State, territory or foreign country except under such rules and regulations as may be adopted and promulgated by said State Entomologist. [Id.]

Art. 551. Certificate of inspection.—All honey bees shipped or moved into this State shall be accompanied by a certificate of inspection signed by the State Entomologist or State Foul Brood Inspector of the State or county from which shipped. Such certificate shall certify to the apparent freedom of the bees, and their combs and hives, from contagious and infectious diseases and must be based upon an actual inspection of the bees themselves within a period of sixty days preceding date of shipment. The shipper of such bees is hereby required to file with the State Entomologist at College Station, at least ten days in advance of such shipment, a certified copy of said certificate, together with the names and addresses of both consignor and consignee. When honey bees are to be shipped into this State from

other States or countries wherein no official apiary inspector or State entomologist is available, the State Entomologist of Texas may issue a permit for such shipment upon presentation of suitable evidence showing such bees to be free from diseases. Shipments of bees arriving at points within this State, not accompanied by the certificate herein described, shall be subject to confiscation and destruction by the State Entomologist or his assistants. This requirement shall not apply to shipments of live bees in wire cages, when without combs or honey. [Id.]

Art. 552. **Common carrier accepting shipment.**—No railroad company, express company, or other common carrier shall accept for intra-state shipment, any honey bees, used honey combs, used bee hives or fixtures, except under such regulations as the State Entomologist shall prescribe. [Id.]

Art. 553. **Seizure.**—The State Entomologist, through himself, assistants or inspectors, shall have authority to seize and confiscate any shipment of diseased bees found in transit in this State, or found in any depot, express office, store room, car, warehouse or premises awaiting transportation or delivery, and the State Entomologist, through himself or assistants, shall have authority to enter, during ordinary business hours, any depot, express office, store room, car, warehouse, or premises for the purpose of inspecting any shipment of honey bees therein which he may have reason to believe are or may be infected with a contagious or infectious disease or which he may have reason to believe are being transported or have been or are about to be transported in violation of any provision of this title. [Id.]

Art. 554. **May enter premises.**—The State Entomologist, and his assistants and inspectors, shall have authority to enter, during ordinary business hours, any premises, public or private, wherein may be located any honey bees, or wherein he or they may have reason to believe any honey bees are kept or located, for the purpose of examining said bees and determining whether or not they are infected with any contagious or infectious disease. [Id.]

Art. 555. **Protective quarantine.**—The State Entomologist shall have authority to declare a protective quarantine in any district, county, precinct or other defined area wherein foul brood or other contagious disease of bees is not known to exist, or wherein any disease of bees is being eradicated in accordance with the provisions of this chapter, said quarantine to prohibit the movement or shipment, into said district, county, precinct or other area, of any bees, honey, appliances or other things capable of transmitting the disease or infection, except under such rules and regulations as he shall prescribe. [Id.]

Art. 556. **Restrictive quarantine.**—The State Entomologist shall have authority when, in his opinion, public welfare and necessity require it, to place a restrictive quarantine upon any district, county, precinct or other defined area wherein are located any honey bees infected with contagious or infectious disease, said quarantine to prohibit the movement or shipment therefrom of any bees, honey, appliances or other things capable of transmitting the infection, except under such rules and regulations as he shall prescribe. [Id.]

Art. 557. Sale and shipment.—Queen bees and their attendant bees shall not be sold or offered for sale in this State unless accompanied by a copy of a certificate from a State or Government entomologist or apiary inspector to the effect that the apiary from which said queen bees are shipped have been inspected within the preceding twelve months and found apparently free from contagious or infectious diseases, or by a copy of an affidavit made by the bee-keeper that the bees are not diseased, to the best belief of affiant, and that the honey used in making the candy contained in the queen cage has been diluted and boiled for at least thirty minutes in a closed vessel. [Id.]

Art. 558. Legal remedies.—All prosecutions under this title shall be begun and carried on in any county affected by the violation of said orders, quarantines, rules or regulations. The State Entomologist may enjoin any threatened or attempted violation of his orders, quarantines, rules or regulations in any court of competent jurisdiction, or take any other civil proceedings necessary to carry out and enforce the provisions of this title. It shall be the duty of the Attorney General and the various county and district attorneys to represent said State Entomologist whenever called on to do so. The State Entomologist, in the discharge and enforcement of the duties and powers herein delegated, shall have the authority to compel the production for examination by said State Entomologist, or any one designated by him, of all books, papers and documents in the possession of any person; to take testimony and compel the attendance and examination under oath of witnesses; the various sheriffs and constables throughout the State shall serve all papers, orders, summons and writs that may be delivered to them by said State Entomologist and protect the State Entomologist or his assistants or inspectors in the discharge of their duties, as herein defined, whenever called upon to do so. [Id.]

Art. 559. Bulletins.—The State Entomologist shall publish methods and directions for treating, eradicating or suppressing contagious or infectious diseases of honey bees, including the rules and regulations above provided for, and such other information as he shall deem of value or necessity to the bee-keeping interests of the State. [Id.]

Art. 560. Duty to report diseased bees.—If the owner of, or any person having control or possession of, any honey bees in this State, knows that any bees so owned or controlled are affected with American foul brood, or any other contagious or infectious disease, or knows of any other bees so diseased, it shall be his duty to at once report such fact to the State Entomologist at College Station, setting out in his said report all the facts known with reference to said infection. [Id.]

Art. 561. Transfer of bees.—The State Entomologist may order any owner or possessor of bees dwelling in hives without movable frames, or not permitting of ready examination, to transfer such bees to a movable frame hive within a specified time. In default of such transfer such Entomologist may destroy, or order destroyed, such hives, together with the honey, frames, combs and bees contained therein, without recompense to the owner, lessee or agent thereof. [Id.]

Art. 562. Inspection and eradication.—If the State Entomologist finds, or has reason to believe, that the owner or keeper of any bees or the owner of any apiary has refused or is refusing to comply with any rule or regulation hereinbefore provided for, then in that event such entomologist is hereby authorized to inspect or cause to be inspected said bees, and, if necessary, burn diseased colonies, appliances and honey and do any and all things necessary to eradicate foul brood or any other contagious or infectious disease of bees. [Id.]

Art. 563. Cost of destruction.—When any owner or possessor of bees shall fail to carry out the instructions of the State Entomologist as hereinbefore set forth, such entomologist or his assistants or inspectors shall carry out such destruction or treatment and shall present to the owner or possessor of said bees a bill for the actual cost of such destruction or treatment, including the cost of such hives, foundation, etc., as may be necessary for the proper treatment of the disease. On the failure of the owner or possessor of such bees to pay said bill within thirty days after the delivery of same to himself, tenant, or agent, or within thirty days after mailing same to his usual post-office address, such Entomologist shall certify to the county attorney of the county where such bees were located the amount and items of such bill; and the county attorney shall file suit for the recovery of said account. All moneys recovered by the county attorney for such destruction or treatment shall be paid to the State Treasurer. [Id.]

Art. 564. No bond required.—The State Entomologist, his assistants and inspectors, shall not be required to give any bond or security in any legal proceedings which he or they may institute or defend in any court in this State. [Id.]

Art. 565. Experimental apiary.—The Director of the Texas Agricultural Experiment Stations of the Agricultural and Mechanical College shall have power to establish and maintain experimental apiaries for the purpose of experimenting with the culture of honey, and studying honey yield conditions, and other bee-keeping problems confronting the bee-keepers and the bee-keeping industry of this State; such experimental apiaries to be under the care, control, management and direction of the director of the experimental stations, and to be maintained and operated at such places in Texas as said director may direct. In the location of such experimental apiaries, said director may take into consideration any donation of money or other property to be used in the operation and management of such apiaries and may accept any lease of lands upon which to locate such apiaries. The director shall have authority to employ such assistants as may be needed, and to purchase from time to time, such supplies, equipment and bees as may be necessary in the successful management thereof. The receipts from the sales of any products or old equipment, shall be deposited in the experimental station treasury, in a fund to be known as the "Experimental Apiaries Sales Fund," to be expended by said director for the purpose of said experimental apiaries. [Acts 1919, p. 102.]

TITLE 18.

BILLS AND NOTES.

| | Article | | Article |
|---------------------------------------|---------|---------------------------------|---------|
| Fixing liability..... | 566 | Plea of forgery..... | 573 |
| Drawer of bills liable..... | 567 | Failure of consideration..... | 574 |
| Assignee may sue..... | 568 | Liability fixed by protest..... | 575 |
| Instrument may be assigned..... | 569 | Protest, how made..... | 576 |
| Assignee may sue in his own name..... | 570 | Damages on protested bill..... | 577 |
| Assignor liable to assignee..... | 571 | Patent rights..... | 578 |
| Parties to suit..... | 572 | | |

Art. 566. [579] [580] **Fixing liability.**—The holder of any bill of exchange or promissory note, assignable or negotiable by law, may secure and fix the liability of any drawer or endorser of such bill of exchange and every endorser of such note, without protest or notice, by bringing suit against the acceptor of such bill of exchange, or against the maker of such note, before the first term of the district or county court to which suit can be brought after the right of action accrues, or before the second term with a showing of good cause for the delay; or when the justice court has jurisdiction by bringing such suit within sixty days after the right of action accrues. [Acts 1848, p. 187; G. L. vol. 3, p. 187.]

Art. 567. [581] [306] [264] **Drawer of bill liable.**—The drawer of any bill of exchange not accepted when presented for acceptance, shall be immediately liable for the payment thereof. The holders of such bill may secure and fix the liability of any endorser thereof by bringing suit against such drawer, within the time and in the manner prescribed by this title. [Id.]

Art. 568. [582] [307] [265] **Assignee may sue.**—The assignee of any negotiable instrument may maintain any suit in his own name which the original obligee or payee might have brought. He shall allow all just discounts against himself, and if he obtained the same after it became due, he shall also allow all just discounts against the assignor before notice of the assignment was given to the defendant. If he obtains such instrument before its maturity by giving for it a valuable consideration without notice of any discount or defense against it, he shall be compelled to allow only the just discounts against himself. [Acts 1840, p. 144; G. L. vol. 2, p. 318.]

Art. 569. [583] [308] [266] **Instruments may be assigned.**—The obligee or assignee of any written instrument not negotiable by the law merchant, may by assignment transfer all his interest therein to another. [Id.]

Art. 570. [584] [585] **Assignee may sue in his own name.** The assignee of any instrument mentioned in the preceding article may sue thereon in his own name. He shall allow every discount and defense against the same which it would have been subject to in the hands of any previous owner before notice of the assignment was given to the defendant. In order to hold the assignor, drawer or endorser as surety for the payment of the instrument, the assignee shall use due diligence to collect the same. Such diligence can only be waived in writing. [Id.]

Art. 571. [586] [311] [269] **Assignor liable to assignee.**—The assignee of any instrument not negotiable by the law merchant, shall be entitled to recover from any previous assignor

thereof. In any suit against a remote assignor of such instrument, he shall be subject only to such recovery and shall have the benefit of all defenses which he would have been entitled to had the suit been instituted by any intermediate assignee. [Id.]

Art. 572. [587] [312] [270] **Parties to suit.**—Assignors, indorsers and other parties not primarily liable upon any instrument named in this title, may be jointly sued with their principal obligors, or may be sued alone in the cases provided for in the laws relating to parties to suits. [Id.]

Art. 573. [588] [313] [271] **Plea of forgery.**—When suit is brought by an assignee or indorsee of a written instrument, the assignment or endorsement thereof shall be held as fully proved, unless the defendant shall file with the papers in the cause an affidavit stating that he has good cause to believe, and does believe that such assignment or endorsement is forged. [Id.]

Art. 574. [589] [314] [272] **Failure of consideration.**—The defendant in any suit upon a written instrument may plead want or failure, or partial failure of consideration, where such written instrument shall remain in the possession of the original payee or obligee or when it has been transferred or assigned after the maturity thereof, or when the defendant proves a knowledge of such want or failure of consideration on the part of the holder prior to such transfer. [Id.]

Art. 575. [590] [315] [273] **Liability fixed by protest.**—The holder of any bill of exchange or promissory note assignable or negotiable by the law merchant may also secure and fix the liability of any drawer or indorser of such bill of exchange or promissory note for the payment thereof, without suit against the acceptor, drawer or maker, by procuring such bill or note to be regularly protested by a notary public for non-acceptance or non-payment, and giving notice of such protest to such drawer or indorser, according to the usage and custom of merchants. [Acts 1848, p. 187; G. L. vol. 3, p. 187.]

Art. 576. [591] [316] [274] **Protest, how made.**—It shall be the duty of any notary public who shall protest any bill of exchange or promissory note for non-acceptance or non-payment, to set forth in his protest and in his notarial record a full and true statement of what was done by him in relation thereto by specifying therein whether demand was made of the sum of money in such bill or note specified, of whom, and when and where such demand was made, and to make the requisite notices of protest for the drawers and indorsers who are sought to be made liable. When such notice shall be served by him, he shall note in his protest and notarial record on whom and when such notice was served. If such notice is mailed by him, he shall specify when and where mailed, and to whom and where directed. Such protest, or a copy of such notarial record, certified under the hand and seal of such notary public, shall be admitted in any court of this State as evidence of the facts therein set forth. [Id.]

Art. 577. [592] [317] [275] **Damages on protested bill.**—The holder of any protested draft or bill of exchange, drawn by a merchant within the limits of this State upon his agent or factor living beyond the limits of this State shall, after having fixed

the liability of the drawer or indorser of any such draft or bill of exchange, be entitled to recover and receive ten per cent on the amount of such draft or bill of exchange as damages, together with interests and costs of suit thereon accruing. [Acts 1851, p. 23; G. L. vol. 3, p. 901.]

Art. 578. **Patent rights.**—All notes and liens given for a patent right consideration or patent right territory shall state on their face that the same were given for a patent right. Such statement shall be notice to all subsequent purchasers of said notes or liens of all equities existing between the parties to the original transaction, and the same shall be subject to all defenses against subsequent owners and holders that they would if the same had remained in the hands of the original owner. [Acts 1915, p. 138.]

TITLE 19.
BLUE SKY LAW.

| | Article | | Article |
|--------------------------------|---------|--------------------------------------|---------|
| Definitions | 579 | Suit to issue permit..... | 590 |
| Prerequisites of sale..... | 580 | Using mail, etc., without permit.... | 591 |
| Affidavit | 581 | Violations of Federal laws..... | 592 |
| Value of securities..... | 582 | Merger | 593 |
| Permit | 583 | Unlawfully paying dividends..... | 594 |
| Foreign permit..... | 584 | Publication of records..... | 595 |
| Escrow permit..... | 585 | Powers of Secretary of State..... | 596 |
| Escrow bond..... | 586 | Disbursements | 597 |
| Escrow fund: release..... | 587 | State officers to assist..... | 598 |
| Stock of solvent concerns..... | 588 | Exemptions | 599 |
| Changing documents..... | 589 | Name of law..... | 600 |

Art. 579. **Definitions.**—The term “stock” as used in this title shall include the certificates of stock of every corporation, as well as the certificates of any other written instruments evidencing ownership or membership in any joint stock association, common law trust, or any other organization, association or concern of whatsoever nature, which is organized, formed or created, or intended to be organized, formed or created, which may, or which is designed to own property of any character.

The terms “person”, “company”, or “concern”, shall refer to and include any such concern, or individual, or person who may issue such stock, and whose stock or certificate shall represent or evidence ownership or membership therein, which ownership or membership may be designed to be transferred, assigned or negotiated by the transfer, assignment or negotiation of such instrument. [Acts 2d. C. S. 1923, p. 114.]

Art. 580. **Prerequisites of sale.**—Every concern which shall hereafter be formed or created or which shall hereafter attempt to increase its capital stock or commence the transaction of business in this State, shall before offering for sale, directly or indirectly, through itself, its agents or employes, or through any holding company, sales company or any character of person or association, whether herein defined or not, any stock as defined in the preceding article, and before transacting any business in this State, except the preparation of instruments hereinafter mentioned and other instruments relative to the organization and transaction of business thereof, file in the office of the Secretary of State, together with a fee equal in amount to the filing fee of a private corporation having capital and surplus of like amount, the following: (This requirement as to fees shall not apply to corporations, by reason of the existing requirement as to the payment of filing fees upon obtaining charters and permits from the Secretary of State.)

1. An application for a permit to sell any of the securities mentioned herein, or any other securities offered, or to be offered for sale, and for the transaction of any and all other business in this State. Said application must show the name under which such business is to be conducted, its location and general purpose, the age, occupation and general qualifications of such trustees or managing officers, and also fully the business in which each has been engaged for the last five years immediately preceding the filing of such application.

2. A copy of its articles of association, partnership agreement, constitution, by-laws, or any other contract, agreement or

other form of organization under which business is to be transacted, and all amendments thereto, showing the county or counties in which such instruments are filed, or to be filed for record.

3. Copies of stock certificates, bonds, debentures, or other securities offered, or to be offered for sale, or other disposition, together with copies of application blank for such securities. Such application must show the capital stock, par value of such stock, the price at which the same is to be sold, the commissions to be paid for the sale thereof, the amount of such stock or other interest therein issued, or to be issued for promotion, compensation, or other purposes.

4. A detailed statement showing the assets and liabilities of such issuer, together with a profit and loss statement. [Id.]

Art. 581. **Affidavit.**—Before being filed with the Secretary of State, all documents mentioned in the preceding article must be subscribed and sworn to by a managing officer or other executive of the issuer. [Id.]

Art. 582. **Value of securities.**—In any case wherein the values of the securities hereinbefore mentioned are in any way dependent upon the present, or proposed development of the land or mines, oil or gas wells, the Secretary of State may cause such investigation thereof, as he may desire, to be made at the expense of the applicant. [Id.]

Art. 583. **Permit.**—The Secretary of State, upon receipt and proper investigation of the information herein provided for, shall grant or refuse such permit. If he decides that values warrant and that the sale of stock, or other securities, and the business of the issuer will be conducted honestly and fairly in compliance with this law and the general laws of Texas, such permit shall be granted. Commissions for the sale of stock and other securities, promotion, and all other incidental expenses shall not, in the aggregate, exceed twenty per cent of the price at which the stock or other securities are to be sold, as shown by the application or amended application. Stock issued for property or other things of its equivalent value shall not be classed as promotion stock, the value at which such property is accepted to be approved by the Secretary of State. [Id.]

Art. 584. **Foreign permit.**—No permit hereunder shall be granted to a non-resident or foreign concern until it shall file in the office of the Secretary of State, an instrument constituting and appointing him its true and lawful attorney, upon whom process may be served in any action that may be brought against it. [Id.]

Art. 585. **Escrow permit.**—Where the promoter or promoters of any development proposition, or the originator or originators of any patent process, own no assets but a meritorious proposition, he or they, upon the presentation of the proper facts to the Secretary of State and securing his approval, and filing a bond as herein required may, in the discretion of said officer, secure a permit, conditioned that all moneys received for the sale of stock or units of interest shall be placed in escrow with the Secretary of State until the proposed amount of stock necessary to finance such undertaking has been sold and the money paid in therefor. [Id.]

Art. 586. **Escrow bond.**—Such bond shall be executed by such promoter or promoters for the use and benefit of all prospective holders of stock or units. It shall be in amount equal to the amount of stock or units whose sale is permitted, and shall be conditioned that all moneys paid for such stock or units shall be deposited in escrow as herein required, and thereafter faithfully applied. Such bond may be sued upon successively and severally in any county in Texas where plaintiff may reside, and if the whereabouts of any defendant be out of the State or unknown, such suit may be instituted against the sureties only upon such bond. A certified copy of such bond made by the Secretary of State shall be admissible in evidence in all courts in like manner as the original. [Id.]

Art. 587. **Escrow fund; release.**—On failure to dispose of sufficient stock or units to raise the proposed and necessary amount of money, all money so raised shall be returned by the Secretary of State to the investors, less the actual lawful expenses of selling such stock or units. All expenses incident to selling such stock or units, whether all or part thereof have been sold, shall be submitted to the Secretary of State by an itemized affidavit of the duly authorized agent of such concern, who shall be personally cognizant of the facts therein set forth. Such affidavit shall be accompanied by vouchers showing all such expenditures. [Id.]

Art. 588. **Stock of solvent concerns.**—Any concern which has been a solvent going concern for a period of two years next preceding the date of any application named in this article, may submit to the Secretary of State satisfactory evidence of such fact and of its present sound solvent condition; whereupon the Secretary of State shall consider the same and shall require such further evidence, and may make such independent investigation as he may deem proper, concerning such matter. If upon full consideration thereof he shall conclude that such concern has been a solvent going concern for a period of two years and is at present solvent, he shall enter such finding upon his record, whereupon the proposed issue and sale of such stock, debentures or other securities, as defined in this title, of such concern, shall be exempt from the general requirements of this title. [Id.]

Art. 589. **Changing documents.**—Any original document under which a permit has been granted shall not be changed or amended without permission to do so being granted by the Secretary of State. [Id.]

Art. 590. **Suit to issue permit.**—If a permit be refused by the Secretary of State, the parties applying therefor may bring suit in the district court of Travis County to determine the right of the applicant to have said officer to issue such permit. [Id.]

Art. 591. **Using mail, etc., without permit.**—Any person, broker, agent, joint stock company, co-partnership or other company, individual or organization, domestic or foreign, sending advertising matter through the mails, by express, telegram or otherwise wholly within this State, offering for sale or selling any of the securities enumerated in the second article of this title, without first having been issued a permit as provided here-

in, shall be deemed guilty of having violated the provisions of this title. It shall be the duty of the Secretary of State, immediately after discovering such violation, to seek to have a fraud order issued as provided by the laws of the United States affecting the postal service, covering all letters or other matter sent by mail by any such offender. [Id.]

Art. 592. Violations of Federal Laws.—It shall be the duty of the Secretary of State to cooperate with the United States District Attorney, and the United States Department of Justice, and the United States postal authorities, in furnishing them with such information, data and evidence as may come to his knowledge of violations of the Federal laws by any of the persons, brokers, agents, joint stock companies, co-partnerships or other companies, individuals or organizations mentioned in the preceding article. [Id.]

Art. 593. Merger.—The merger, absorption or transfer of property of any company, association, joint stock company, co-partnership or other company, individual or organization by another coming under the provisions of the first article of this title, is declared to be unlawful, unless same is approved by the Secretary of State, after notice to all stockholders of the interested companies, mailed thirty days in advance of said merger, and approved by the holders of a majority in amount of the outstanding and issued stock. [Id.]

Art. 594. Unlawfully paying dividends.—It shall be unlawful for any concern included in this title to declare, issue, or pay a cash dividend to its stockholders or any of them, out of any funds other than the actual earnings of such company in the course of its operations, except upon the lawful liquidation thereof. [Id.]

Art. 595. Publication of records.—All papers, documents, instruments and affidavits of any and every nature, whatsoever, which may be filed with the Secretary of State by any person or concern in connection with matters provided in this title, shall be deemed public records of this State, and the Secretary of State is required to give out any information applied for concerning any such matter, or any such instrument, and to give certified copies of any and all such instruments. The Secretary of State shall at least as often as quarterly, publish bulletins summarizing the applications for permits to sell stock under this title and the conclusions of the Secretary of State in respect thereto as to whether such concern was solvent and whether or not it was or is fraudulent, and whether or not such permit was granted. No action at law for damages shall lie against the Secretary of State or any employe thereof or any periodical on account of any publication or information herein permitted or required to be given. [Id.]

Art. 596. Powers of Secretary of State.—The power and authority is hereby vested in the Secretary of State, and it is hereby made his duty to perform the powers and authority granted herein, and he shall in all things carry out the provisions of this title. He shall have power and authority to appoint such employes and clerks as may be necessary to perform the duties herein imposed upon him. [Id.]

Art. 597. **Disbursements.**—Expenses incident to the enforcement of this law shall be paid by warrants drawn by the Comptroller upon the State Treasurer, issued upon a verified statement of the persons entitled thereto, and with the approval of the Secretary of State indorsed thereon. [Id.]

Art. 598. **State officers to assist.**—Upon the request of the Secretary of State, the Attorney General, or any district or county attorney shall aid in any investigation, trial or proceeding provided for in this title, and shall institute and prosecute all such actions or proceedings for the enforcement thereof. The Attorney General shall act as the attorney for the Secretary of State in all actions and proceedings brought by or against them under or pursuant to any provision of this title. [Id.]

Art. 599. **Exemptions.**—This title shall not apply to banking corporations or private banks, railroad, or building and loan corporations, nor to the stock thereof, nor be construed to in any manner affect the existing laws of this State, relating to the regulation of any corporation or concern, whatsoever, but in all respects shall be cumulative thereof. [Id.]

Art. 600. **Name of law.**—This law shall be known and cited as the “Blue Sky Law of Texas.” [Id.]

TITLE 20.

BOARD OF CONTROL.

| | Chapter | | Chapter |
|-----------------------------------|---------|---------------------------------|---------|
| General Provisions | 1 | Division of Design and Con- | |
| Division of Public Printing | 2 | struction | 5 |
| Purchasing Division | 3 | Estimates and Appropriations .. | 6 |
| Public Buildings and Grounds .. | 4 | Eleemosynary Institutions | 7 |

CHAPTER ONE.

GENERAL PROVISIONS.

| | Article | | Article |
|-----------------------------|---------|---------------------------------|---------|
| Appointment | 601 | New divisions | 604 |
| Organization of Board | 602 | Qualifications and salary | 605 |
| General duties | 603 | Suits and injunctions | 606 |

Art. 601. Appointment.—The State Board of Control shall consist of three citizens of this State, one to be biennially appointed for a term of six years by the Governor with the advice of the Senate, the classification to remain as now constituted by law. Any member of the Board may at any time be dismissed by the Governor for good cause, the reasons for such dismissal to be specified and filed with the Secretary of State. The members of the Board shall be public officers and shall take the official oath, and each shall give bond in form prescribed by the Attorney General in the sum of fifty thousand dollars payable to and to be approved by the Governor, conditioned for the faithful performance of his duties. [Acts 1919, p. 323.]

Art. 602. Organization of Board.—The Board shall elect one of its number Chairman, and two members shall always be necessary for the consideration of any question. They shall keep minutes of their proceedings recorded in a book provided for that purpose. They may employ a secretary and such other clerks, stenographers, auditors, book-keepers and clerical help as may be necessary in the administration of their department, within the limits of the appropriations that may be made for the work of the Board, which shall in no case be exceeded. They shall occupy appropriate rooms in the Capitol, and may purchase such equipment and stationery as may be necessary. The Board shall be entitled to traveling expenses when absent from Austin on official business. [Id.]

Art. 603. General duties.—The Board shall administer the laws relating to the various departments, boards, institutions and public officers of the government herein named, and perform the additional duties and exercise the additional functions provided for in this title, and may combine under it the following subdivisions of its work:

1. Division of Public Printing.
2. Division of Purchasing.
3. Division of Auditing.
4. Division of Design, Construction and Maintenance.
5. Division of Estimates and Appropriations.
6. Division of Eleemosynary Institutions.
7. And such other divisions of its work as it may find necessary in the administration of its duties. [Id.]

Art. 604. New divisions.—The Board may from time to time

create such other divisions of its work as may be necessary, and appoint chiefs of such divisions, but no person shall be appointed chief of any division who has had less than five years actual experience immediately preceding his appointment in the work or a profession similar to that to which he is assigned by the Board. [Id.]

Art. 605. **Qualifications and salary.**—Wherever certain qualifications are prescribed for an office or any employment or appointment by the Board, and certain years of experience are required, the existence of such years of experience and such qualifications as a fact shall be a prerequisite to the assignment of such officer, appointee or employe to occupy such position, and the payment of his compensation by the accounting officers of this State and the State Treasurer. The Comptroller may refuse to issue his warrant to any person occupying any office or position of employment with the Board, where he shall find that such person is disqualified as provided in this article, and the State Treasurer may refuse to pay any warrant issued to such person. The party claiming the right to the issuance of such warrants and the payment thereof, may bring a mandamus suit against either of such officers in the Supreme Court as in other cases. [Id.]

Art. 606. **Suits and injunctions.**—Mandamus suits may be brought in the Supreme Court against the Board, but no other suit shall be brought against the Board of any other character, except in the District Court of Travis County. No temporary injunction shall ever issue against the Board except upon notice and hearing. [Id.]

CHAPTER TWO.

DIVISION OF PUBLIC PRINTING.

| | Article | | Article |
|-----------------------------------|---------|---------------------------------|---------|
| Chief | 607 | Reporters' stationery | 619 |
| Contracts | 608 | Judicial reports | 620 |
| Printing at School for Deaf | 609 | Printing of reports | 621 |
| Rules for bids | 610 | Specifications of reports | 622 |
| Separate contracts | 611 | Bids: advertisements | 623 |
| Quantity of reports, etc. | 612 | Contracts: terms | 624 |
| Bidder's bond | 613 | Renewal contracts | 625 |
| Contractor's bond | 614 | Price of reports | 626 |
| Accounts: regular | 615 | Extra copies | 627 |
| Accounts: Legislative | 616 | Printing plates | 628 |
| Abrogation of contracts | 617 | Interest in contracts | 629 |
| New contracts | 618 | Approval of contracts | 630 |

Art. 607. **Chief of Division.**—The Board shall appoint a chief of the Division of Public Printing who shall be a practical competent printer, who has had not less than five years experience in a commercial printing office, including the duties of estimator. [Acts 1919, p. 323.]

Art. 608. **Contracts.**—The Board shall contract for a term of not exceeding two years with responsible persons, firms, corporations or associations of persons, who shall be residents of Texas, for supplying to the State all printing, binding, stationery and supplies of like character for all departments, institutions and boards, save and except such work as may be done at the various educational and eleemosynary institutions. Said contract shall be let to the lowest and best responsible bidder after public advertising of such proposed letting for once a week for

four consecutive weeks in at least six newspapers of general circulation in this State. No two of such papers shall be published in the same county. The Board may reject any and all bids; the reason therefor shall be entered in full in the minutes of the Board and shall be open to the inspection of the public at all times. New contracts shall be made in the same manner as hereinbefore provided. [Id.]

Art. 609. **Printing at School for Deaf.**—Any public printing and binding for the State may be executed by the Texas School for the deaf without regard to any contract with an individual to do the public printing thereof. [Id.]

Art. 610. **Rules for bids.**—The Board may establish rules and regulations in advertising for bids for printing and stationery supplies in such manner as in its judgment will best serve the State.

Any bidder shall be allowed to bid on either any or all of the items to be contracted for. The Board may define, itemize and group any class in advertising for bids and awarding contracts, in such manner as shall give the State the most efficient service. [Id.]

Art. 611. **Separate contracts.**—The Board shall have authority to determine to which bidder the several classes of work shall be awarded. It may let the contract for the several classes of printing to separate bidders, and in calling for proposals, it shall be specified that bids for stationery and office supplies shall be separate and distinct from the bids for printing. [Id.]

Art. 612. **Quantity of reports, etc.**—The Board shall order such quantity of all reports, documents, messages, journals and laws to be published as it may deem necessary, not more than five thousand of such reports. [Id.]

Art. 613. **Bidder's bond.**—All bids or proposals shall be accompanied by a bond or certified check in such sum as the Board may require, and such requirement shall be stated in the advertisement calling for bids. [Id.]

Art. 614. **Contractor's bond.**—When any bid shall have been accepted, the Board shall require of the successful bidder a bond in an amount to be fixed by the Board, conditioned that the contractor will comply with all the terms and conditions of contract. Said bond shall have two or more good and sufficient sureties, or shall be made by a surety company authorized to do business in Texas. The Attorney General shall, when requested by the Board, file suit against any contractor for breach of contract. [Id.]

Art. 615. **Accounts: regular.**—All accounts for printing done, or stationery furnished, except for the Legislature when in session, shall be audited in the following manner: The accounts shall be verified by the affidavit of the contractor that it is true and correct, that the amount of work charged for has actually been performed, or the actual amount of stationery and supplies have been delivered, and that the prices charged in the account are in accordance with the stipulations of the contract. The account shall be accompanied by a sample of the work done, and a receipt from the department to which the goods were delivered. The account shall be examined by the Chief of

the Division of Public Printing, and, when certified by him as correct, approved by the department to which delivery was made. After having been thus examined and approved, the Comptroller shall issue his warrant for payment of account out of funds appropriated for that purpose. [Acts 2nd C. S. 1919, p. 303.]

Art. 616. Accounts: Legislative.—All accounts for printing done, or stationery used, in either house of the Legislature, shall before being approved by the Legislature, be presented to the Chief of Division of Public Printing for his certificate that the printing or binding for stationery is charged for at the rate of the current contract, and such account when approved by the committee on public printing of either house of the Legislature, shall authorize the Comptroller to draw his warrant to pay such account out of the contingent fund. [Id.]

Art. 617. Abrogation of contracts.—The contracts for printing and for stationery herein provided for may be abrogated by the Legislature when in session, or by the Board of Control with the consent of the Governor or Comptroller when the Legislature is not in session, if the contractor shall fail to perform the work or furnish the supplies in accordance with the law and with his contract as promptly as the exigencies of the public service demand. [Id.]

Art. 618. New contracts.—Should all bids on any contract be rejected, or the successful bidder fail to execute bond as provided herein, or should the contract be abrogated, the Board shall let a new contract in the manner provided herein. The Board may in its discretion make such temporary arrangement to meet the emergency as the public interest may demand. [Id.]

Art. 619. Reporters' stationery.—The Board shall furnish the reporters for the Supreme Court and the Court of Criminal Appeals with the necessary stationery for the performance of their duties. [Id.]

Art. 620. Judicial reports.—The Board shall from time to time cause the decisions of the Supreme Court and the Court of Criminal Appeals to be printed and bound in the manner provided by law. [Id.]

Art. 621. [1575-1579] Printing of reports.—As fast as the Chief of the Printing Division shall receive the manuscript copy of reported cases from the court reporter, he shall cause the same to be printed at the printing office of the Deaf and Dumb Asylum of Texas, with proper index tables of cases cited and of cases reported; or should the Board find that the work of printing and binding the reports can be done more speedily and more economically by contract, or that ample material and means to carry out the provisions hereof are not readily obtainable, it shall at once let the printing and binding of the reports out by contract, require security for the performance of the work, and delivery to the State of electrotype plates. [Acts 1882, p. 71; Acts 1919, p. 60.]

Art. 622. [1577] [964] Specifications or reports.—The Board shall have one thousand copies of each volume of the decisions of said Courts printed and bound. Each volume shall contain not less than seven nor more than eight hundred pages;

and pages shall be twenty-six ems pica wide and forty-six ems pica long. The type used shall be long prima and minion of the same size used in Volume 23, Wallace's United States Supreme Court Reports; the lines shall be leaded with not thicker than eight to pica leads. The paper, press work and binding shall be the same style and at least equal in quality in every respect with the volumes of Moore & Walker's Reports heretofore published. The volumes containing the Supreme Court decisions shall be styled "The Texas Reports," and shall be so styled on the title page and back, and the volumes shall be numbered. The name of the reporter may be printed on the back of each volume. [Id.]

Art. 623. **Bids: advertisements.**—The Board shall invite bids upon proposals advertised by the Board in the manner provided by the Board, and it shall not be confined to the residents of this State. The lowest responsible bidder shall be awarded the contract. The Board may reject any and all bids. [Acts 1919, p. 60.]

Art. 624. **Contracts: terms.**—The Board may fix all conditions, provisions and details of such contracts concerning the printing, binding, publication and sale of such reports, and demand such security from the contractor as will secure the performance of such contract. Such contracts shall be for a term of six years' duration at a time; and may provide for the printing and binding of delayed manuscripts of said reports. [Id.]

Art. 625. **Renewal contracts.**—The Board may provide from time to time by separate contracts under similar conditions, for renewal contracts in the event of forfeiture or for other reasons, and in order to facilitate the prompt printing and binding of said reports. [Id.]

Art. 626. **Price of reports.**—The price of such reports furnished by the contractor to the legal profession and to the public of this State shall not exceed the contract price fixed by said contract. The number of volumes delivered to the State for its use shall not exceed three hundred of each volume of said reports. [Id.]

Art. 627. **Extra copies.**—The contract shall also provide that the contractor shall keep on hand a sufficient number of volumes of said reports, or make such arrangements as to enable the legal profession and the public in this State to obtain from the contractor such reports at the price fixed in the contract. [Id.]

Art. 628. **Printing plates.**—The Board shall determine whether electrotype or stereotype plates of said reports are to be made, and shall regulate the use thereof. The ownership of such plates, together with the copyright of the reports, shall remain in this State. [Id.]

Art. 629. **Interest in contracts.**—No member or officer of any department of the State Government shall be in any way interested in any contract which shall be let under the provisions of this law. [Id.]

Art. 630. **Contracts: approval.**—All contracts made under the provisions of this law shall be subject to the approval of the Governor, the Secretary of State and the Comptroller, as required by Article 16, Section 21, of the Constitution. [Id.]

CHAPTER THREE.

PURCHASING DIVISION.

| | Article | | Article |
|------------------------------------|---------|--------------------------------|---------|
| Chief of Division..... | 631 | Equipment..... | 648 |
| Term of Office, etc..... | 632 | Bond or security..... | 649 |
| Interest in contracts..... | 633 | Separate bids..... | 650 |
| Departmental supplies..... | 634 | Opening of bids..... | 651 |
| Bidder's affidavit..... | 635 | Quality of goods..... | 652 |
| Storekeepers..... | 636 | Misrepresentation..... | 653 |
| Bonds..... | 637 | Estimates..... | 654 |
| Acts prohibited..... | 638 | Invoice: affidavit..... | 655 |
| Reports..... | 639 | Invoice: delivery..... | 656 |
| Surplus supplies..... | 640 | Invoice: check of goods..... | 657 |
| May dispense with storekeeper..... | 641 | Invoice: payment..... | 658 |
| Supply contracts..... | 642 | Contract bond..... | 659 |
| Notice and limits..... | 643 | Purchase without contract..... | 660 |
| Requisites of bids..... | 644 | Equipment: specifications..... | 661 |
| Short term contracts..... | 645 | Local dealers..... | 662 |
| May reject bids..... | 646 | Appropriations..... | 663 |
| Equal bids..... | 647 | Rules..... | 664 |

Art. 631. Chief of division.—The Board may appoint a Chief of its Division of Purchasing, who shall have had not less than five years experience immediately preceding his appointment, as a purchaser for a department store or wholesale establishment of recognized standard and successful experience, and no other person shall be eligible for such position. [Acts 1919, p. 323.]

Art. 632. Term of office, etc.—Said chief shall hold his office for a term of two years from the date of his qualification, and until his successor is appointed and qualified. He shall not receive, directly or indirectly, any extra compensation in the way of commission or otherwise, nor shall he collect or be paid his salary or any part thereof while he is in any manner indebted to the State, or in arrears in his accounts and reports as such agent. [Acts 1899, p. 138; Acts 1915, p. 193.]

Art. 633. Interest in contracts.—Neither said chief nor any member of the Board nor any employe or appointee of the Board shall be interested in, or in any manner connected with, any contract or bid for furnishing supplies or articles of any kind to any of the institutions or departments of this State, or with any person, firm or corporation who is interested in or in any manner connected with any kind of contract with this State or any of its institutions and departments. Neither shall said agent accept or receive from any person, firm or corporation to whom any contract may be awarded, directly or indirectly, by rebate, gift or otherwise, any money or other thing of value whatever, nor shall he receive any promise, obligation or contract for future reward or compensation from any such party. [Id.]

Art. 634. Departmental supplies.—The Board shall purchase all the supplies used by each department of the State government and each eleemosynary institution, normal school, Agricultural and Mechanical College, University of Texas, and each other State, school heretofore or hereafter created, such supplies including furniture and fixtures, and all other things except strictly perishable goods, technical instruments and books. [Acts 1919, p. 323.]

Art. 635. Bidder's affidavit.—The bidder for the contract for such supplies shall be required to file with his respective bids an affidavit stating that neither the affiant nor the firm, corpor-

ation, partnership nor institution represented by the affiant, or anyone acting for such firm, corporation or institution, has within twelve months past violated any law of this State relating to trusts or monopolies. The Attorney General shall prepare the form of such affidavit which shall embrace each phase of the statutes of Texas forbidding trusts and monopolies, and shall also provide that neither the affiant nor the firm, corporation or partnership represented by him has communicated directly or indirectly the bid made by such person, firm or corporation bidding, to any competitor bidding on said contract, or any person engaged in such line of business or any other person. [Id.]

Art. 636. **Storekeepers.**—The superintendent of each educational and eleemosynary institution placed by law under the management and control of the Board of Control, shall, with the consent of the Board, appoint one storekeeper and accountant for each of said institutions, who shall hold office for two years from the date of qualification, or until their successors shall have qualified, unless sooner removed by the Board. Where the magnitude of an institution is not sufficient to employ a storekeeper and accountant, the superintendent shall perform that service. [Acts 1899, p. 138; Acts 1915, p. 193.]

Art. 637. **Bond.**—Each storekeeper or accountant shall, before entering upon the performance of his duties, make and file with the Comptroller a bond in the sum of ten thousand dollars, payable to the State, conditioned for the full, faithful, accurate and honest performance of his duties, and approved by the Governor. [Id.]

Art. 638. **Acts prohibited.**—No such storekeeper or accountant shall sell or in anyway be concerned in the sale of any merchandise, supplies or other articles to any such institution, or have any interest in any contract therewith, or with any other institution or department of the State government. [Id.]

Art. 639. **Reports.**—Such storekeeper or accountant shall keep the Board constantly informed as to the amount and character of supplies on hand and the amount and character required in order to keep the institution provided for. They shall make reports to the Board on or before the tenth day of each month, showing the total amount of the appropriation, the total amount expended, and the balance unexpended on the first day of each month. They shall also furnish any other information respecting such matters as the Board may request. [Id.]

Art. 640. **Surplus supplies.**—When any institution accumulates an amount of supplies on hand in excess of its needs, and another institution is in need of such supplies, the Board shall be authorized to transfer any of such supplies from the institution having such excess to such institution in need of such supplies, and the debit and credit shall be made on the basis that such supplies can be purchased in the open market at the time of the transfer, when it is less than the cost under the general contract for such supplies for the fiscal year, otherwise the

debit and credit shall be made on the basis of the general contract price for that year. [Id.]

Art. 641. **May dispense with storekeeper.**—Any educational institution may dispense with the position of storekeeper and appoint some person at such institution to receive such supplies, and make the reports required of storekeepers. [Id.]

Art. 642. **Supply contracts.**—The Board shall contract for all supplies, merchandise and articles of every description needed for the maintenance and operation of such institutions, except those supplies designated as perishable, and supplies of a special character, as books for libraries and supplies for the laboratories and laboratory work and instruction, and any special supplies for instruction, demonstration and research for educational institutions, to be designated as "Special Supplies for Educational Institutions." The Board shall base its contracts upon estimates to be furnished the Board by the superintendents, by the first day of April of each year, for the entire year. [Id.]

Art. 643. **Notice and limits.**—All such contracts shall be made after full notice by advertisement once a week for not less than four weeks in at least four of the leading papers of this State, to be selected by the Board. Such contracts shall be made within the limits of the appropriations made by the Legislature for such purposes, regard being had to the appropriations for each institution. [Id.]

Art. 644. **Requisites of bids.**—The Board shall advertise for sealed bids or proposals to furnish the aggregate of the articles and supplies as estimated by such institutions, naming the articles and supplies and the quantities and character required. All such bids and proposals shall, when required by the Board, be accompanied by samples or designs furnished by the bidder, and shall be for the entire period of one year. Such supplies, articles and merchandise shall be delivered at such times and in such quantities to such institutions, as the Board may designate. [Id.]

Art. 645. **Short term contracts.**—If the Board at any time discovers that they can purchase the same supplies for less money than for any one year by buying the same for a less length of time, they shall make such purchases for a shorter length of time, not less than for three months. [Id.]

Art. 646. **May reject bids.**—The Board shall in all cases reserve the right to reject or accept any or all bids, or reject in part if it prefers, and in such case they may buy in the open market until a satisfactory bid is offered. [Id.]

Art. 647. **Equal bids.**—The terms and conditions, and the period for which such bids or proposals are invited shall be clearly stated in the advertisement. When the same article is estimated for by two or more institutions, but of different brands or grades, such articles shall be purchased so as to produce uniformity in use by each institution, and other things being equal, supplies offered by bidders who have an established local business, shall have preference. [Id.]

Art. 648. **Equipment.**—Furniture or equipment for educa-

tional institutions shall be such as is especially adapted or designed for such institutions. [Id.]

Art. 649. **Bond or security.**—All bids or proposals shall be accompanied by a bond or certified check in such sum as the Board may require. Such requirement shall be stated in the advertisements calling for bids. [Id.]

Art. 650. **Separate bids.**—The Board may advertise for the various articles and supplies needed either separately or all together, and may accept a bid for the same to be furnished either separately or all by one bidder. Preference shall be given, all things being equal, to State products. [Id.]

Art. 651. **Opening of bids.**—All bids shall be opened on the date and at the place specified in the advertisement. The opening and inspection of bids shall be made by the Board in the presence of the Governor and the Comptroller. [Id.]

Art. 652. **Quality of goods.**—The supplies and articles furnished under all bids and contracts shall be such as called for by requisition of the superintendents of the several institutions. Each article shall be equal to the sample which is required with the accompanying bid. [Id.]

Art. 653. **Misrepresentation.**—If supplies delivered under contract are not equal to the sample, the superintendent shall refuse to accept them. [Id.]

Art. 654. **Estimates.**—The estimates upon which advertisements and contracts are made shall as near as practicable state the quantity and quality of the articles and supplies needed. [Id.]

Art. 655. **Invoice: affidavit.**—The contractor or seller shall in all cases append an affidavit stating that the invoice is correct and that it corresponds in every particular to the supplies furnished and shipped. [Id.]

Art. 656. **Invoice: delivery.**—Invoices of all supplies shall be furnished in triplicate by the contractor or seller at the time of delivery of said supplies, one of which shall be sent to the storekeeper of the institution to which the supplies are sent. [Id.]

Art. 657. **Invoice: check of goods.**—As soon as supplies are received and examined by the storekeeper of the institution to which the same were shipped, if they check with the invoices transmitted and the samples by which the supplies were sold, he shall transmit to the Board of Control the original invoices and duplicate with his certificate thereon that the supplies received correspond in every particular with the invoice and with the samples by which they were sold. If the Board finds such invoice to be correct, it shall approve and transmit the same to the Comptroller. [Id.]

Art. 658. **Invoice: payment.**—When such invoice so approved by such storekeeper and by the Board of Control, shall be approved by the Comptroller, he shall draw his warrant upon the State Treasury for the amount due on the invoice or for so much thereof as has been allowed, and it shall be charged against the institution. [Id.]

Art. 659. **Contract bond.**—When any bid has been accepted, the Board shall require of the successful bidder a bond payable to the State with good and sufficient sureties in a sum not less than one-third the amount of the bid, conditioned that the bidder

will faithfully and accurately execute the terms of the contract into which he has entered. Said bond shall be filed in the office of the Comptroller, and recoveries may be had thereon until exhausted. [Id.]

Art. 660. **Purchase without contract.**—In case of emergency, and where articles are necessary and needed by any institution, and it is impracticable to include them in the annual contract, the superintendent shall make a requisition for same to the Board of Control; and the Board may forthwith purchase such article in the open market. [Id.]

Art. 661. **Equipment: specifications.**—Furniture or equipment for educational institutions shall be of the particular kind and make as requisitioned by such institution and approved by the Board. [Id.]

Art. 662. **Local dealers.**—Preference shall be given to dealers in cities or towns in the county in which said institution is located, conditioned that the articles purchased shall be equal in price and quality to articles which can be purchased elsewhere. [Id.]

Art. 663. **Appropriations.**—All purchases by contract or otherwise, as herein authorized, shall be in accordance with such appropriations as shall be made by the Legislature for the support of the several institutions respectively. [Id.]

Art. 664. **Rules.**—The Board shall frame and transmit to each institution a system of rules and regulations for the purchase of such supplies as have been designated by them as perishable and as special supplies for educational institutions, and to which, conformity by all institutions is hereby required. [Id.]

CHAPTER FOUR.

PUBLIC BUILDINGS AND GROUNDS DIVISION.

| Article | Article | | |
|--------------------------------------|---------|-------------------------------------|-----|
| Custodianship of State property..... | 665 | Inspection of material and work- | 672 |
| Shall sell property not needed..... | 666 | manship | 673 |
| Charge of Capitol..... | 667 | Shall make needed improvements..... | 674 |
| Use of rooms in Capital as bed- | 668 | Maintenance of sewers..... | 675 |
| rooms | 669 | Copy of plans..... | 676 |
| Shall inspect public buildings..... | 670 | Shall report to Governor..... | 677 |
| Improvements and repairs..... | 671 | State parks..... | 678 |
| Inspection of plans and specifica- | | State cemetery..... | |
| tions | | | |

Art. 665. **Custodianship of State property.**—The State Board of Control shall have charge and control of all public buildings, grounds and property of the State which may not be used by the different officers of the State government, and is the custodian of all public personal property, and is charged with the responsibility to properly care for and protect such property from damage, intrusion, or improper usage. [Acts 1884, p. 60; Acts 1919, p. 326; G. L. Vol. 9, p. 592.]

Art. 666. **Shall sell property not needed.**—All property belonging to the State, situated in the City of Austin, in any department, board or office of the State, when it shall become unfit for use or shall be no longer needed, shall be placed in the hands of the Board of Control, and the Board shall sell such property at public auction after advertising it for not less than five days in two newspapers, published in the City of Austin.

The money from the sale of such property, less the expense of advertising and selling, shall be deposited in the State Treasury to the credit of the general revenue fund. The Board shall make a written report to the Comptroller after each sale, showing the articles received, each article sold, to whom sold and the price received. [Id.]

Art. 667. Charge of Capitol.—The Board, during the recess of the Legislature, shall have charge and control of the halls, chambers, and committee rooms of the State Capitol Building except as hereinafter provided. Before the assembling of each session of the Legislature, the Board shall prepare the different rooms for the use of the Legislature. [Id.]

Art. 668. Use of rooms in Capitol as bedrooms.—No room, apartment or office in the State Capitol Building shall be used at any time by any person as a bed room or for any private purposes whatever. This article shall not apply to the rooms occupied by the judges of the Supreme Court and the Courts of Civil and Criminal Appeals on the third and fourth floors of the Capitol. [Id.]

Art. 669. Shall inspect Public Buildings, etc.—The Board shall frequently inspect all the public buildings and property of the State at the Capitol, and all other buildings and property of the State at such regular intervals as may be necessary for the Board to keep constantly informed of the condition of the same. [Id.]

Art. 670. Improvements and repairs.—The Board shall prepare plans and specifications for improvement and repairs to public buildings or property of the State, and shall superintend through its division of public buildings and grounds, the construction of said work when such supervision is not otherwise especially provided for by law. [Id.]

Art. 671. Inspection of plans and specifications.—The Board shall inspect all plans and specifications for the public buildings and the additions thereto to be constructed for the State before such plans and specifications are adopted. The Board may reject any and all such plans and specifications, and it shall have full and final superintendence over all buildings, structures or additions thereto that may be constructed for the State. [Id.]

Art. 672. Inspection of material and workmanship.—The Board shall carefully examine and inspect the material and workmanship of each building, structure and addition thereto built for the State out of brick or stone or substitutes therefor, and shall see that the same are constructed in accordance with the contract plans and specifications therefor. The work, workmanship and the material thereof shall be subject to the approval of the Board. [Id.]

Art. 673. Shall make needed improvements.—When needed improvements or repairs for respective buildings and offices are called to the attention of the Board by the heads of such departments or offices, the Board shall provide for such repairs or improvements, and they shall be made under its direction. [Id.]

Art. 674. Maintenance of sewers.—The Board shall give special attention to the effective maintenance of the State sewers

and their connections in the use of the public buildings, and shall see that such sewerage and connections at all times be kept in a sanitary condition, and that the gas and water pipes with their connections and appliances are maintained in working order, ready at any time for immediate use. [Id.]

Art. 675. **Copy of plans.**—The Board shall prepare and keep in its offices a copy of the plans of all public buildings and improvements thereto under its charge showing the exact location of all water, gas and sewerage pipes. [Id.]

Art. 676. **Shall report to Governor.**—The Board shall biennially on December 1st make a report to the Governor showing all improvements and repairs that have been made with an itemized account of receipts and expenditures, and showing the condition of all property under its control with an estimate of needed improvements and repairs. [Id.]

Art. 677. **State parks.**—All State parks shall be under the control and custody of the Board, and all laws relating to the same shall be executed and administered by the Board. [Id.]

Art. 678. **State cemetery.**—The Board shall control, superintend and beautify the grounds of the State Cemetery. They shall preserve the grounds and everything pertaining thereto and protect the property from depreciation and injury. They shall procure and erect, at the head of each grave which has no permanent monument, an obelisk of marble upon which shall be engraved the name of the dead therein buried. [Id.]

CHAPTER FIVE.

DIVISION OF DESIGN AND CONSTRUCTION.

| | Article | | Article |
|---------------------------------------|---------|--------------------------------|---------|
| Chief of division..... | 679 | Shall inspect plans, etc..... | 684 |
| May employ experts..... | 680 | Assistants appointed..... | 685 |
| Shall design public buildings..... | 681 | Salaries of assistants..... | 686 |
| Shall design parks, etc..... | 682 | One per cent to Treasurer..... | 687 |
| Shall furnish school expert, etc..... | 683 | | |

Art. 679. **Chief of division.**—The Board may select a chief of its division of design, construction and maintenance who shall be an architect of not less than five years experience next preceding his selection in the actual design, superintendency and construction of buildings. [Acts 1919, p. 326.]

Art. 680. **May employ experts.**—The Board may employ experts of masonry, plumbing, electrical construction, landscape gardening, and such other experts as may be necessary, as assistants to the chief of this division. [Id.]

Art. 681. **Shall design public buildings.**—The Board, through the chief of such division, shall design all public buildings erected at the expense of the State where designing is not otherwise provided for by law or by the appropriation bill, but in no instance shall plans or designs be adopted by the head of any department, board, institution, school or prison system of the State unless such design and plans have been approved by the Board.

Art. 682. **Shall design parks, etc.**—The Board acting through such division shall design appropriate parks for each institution, school of the State, or prison system, which design

shall be carried out by the head of such institution, school or prison system unless otherwise provided by law. [Id.]

Art. 683. **Shall furnish schools expert, etc.**—The Board through such division shall furnish any school, institution, department of the State, or prison system, on request, an expert to design and superintend any construction for landscape gardening provided for. [Id.]

Art. 684. **Shall inspect plans, etc.**—Where the contract price is twenty-five thousand dollars or more, the board shall inspect all plans and specifications for public buildings and structures and additions thereto that are to be constructed for and by the counties, municipalities and other political subdivisions of the State, and shall aid the commissioners court, city commission, board of aldermen, city manager, school board, committee board or other person or persons having in charge the preparation for construction of such public buildings, or structures or additions for such counties, cities, municipalities or other superintendence over all such buildings, structures or addition for such counties, cities, municipalities, and other political subdivisions, according to the terms of the contract. [Acts 1915, p. 253.]

Art. 685. **Assistants appointed.**—When the conditions require it, the Board may appoint not more than three assistants to the Chief of the Division of Design, Construction and Maintenance. Such assistants shall be skilled practical mechanics in the respective trades which enter into the construction of public buildings, and must have had at least ten years practical experience in their respective trade next prior to their appointment. [Id.]

Art. 686. **Salaries of assistants.**—The salary of each assistant shall not exceed eighteen hundred dollars per year, payable in equal monthly installments. They shall also receive their actual necessary travelling expenses while engaged in the actual performance of their duties. The Board shall not employ at any time more assistants than the fees which shall be collected under the provisions of this law shall be sufficient to pay. Expenses shall only be paid upon itemized sworn accounts, approved by the Board. The Board may discontinue the service of any assistant at its pleasure. [Id.]

Art. 687. **One per cent to Treasurer.**—The governing body of a city, county or political subdivision shall pay into the State Treasury one per cent of the estimated cost or contract price of each building or addition thereto to be constructed by such county, city or other political subdivision, immediately before beginning the work on such building, and the State Treasurer shall hold such sum for the purpose of defraying the salaries and other necessary expenses which may be incurred by the Board of Control in the performance of its duties as required by this Act, and such sum shall be paid out by the State Treasurer upon warrants issued by the Comptroller. [Id.]

CHAPTER SIX.

DIVISION OF ESTIMATES AND APPROPRIATIONS.

Art. 688. **Estimates submitted.**—The head of each department, school, institution, and of the prison system, and the head of any of the divisions or departments of government for which appropriations are made by the Legislature, shall submit to the State Board of Control, not later than January 1st. of each year preceding the regular biennial session of the Legislature, an itemized account of all items of expenses for the preceding two years, and an estimate of the appropriations required by such department, school or institution or by the prison system for the regular biennial appropriation made by the Legislature which estimate shall be submitted, itemized in such manner as the Board of Control may require. [Acts 1919, p. 327.]

Art. 689. **Shall investigate estimates, etc.**—Upon receipt of such estimates, the Board shall investigate and consider the same and give hearings to those who have submitted the same, and shall obtain information from every available source including the reports from its auditors and examiners. After such hearings, the Board shall make up an appropriation budget for the Legislature which shall be submitted not later than December 1st. of the year immediately preceding the meeting of the regular biennial session of the Legislature. Such budget shall be made at the expense of the Board of Control, and a copy thereof shall be mailed to each person who will be a member of the next Legislature, to the Governor and to the heads of each department, institution, and school of the State, and to the prison commission. A sufficient number of copies for the use of all the members of the House and Senate during the session of the Legislature shall be delivered to the Speaker of the House and the President of the Senate. The Board shall also cause to be printed such extra copies for public distribution as they may deem necessary to be given to any person who calls or writes for same. [Id.]

CHAPTER SEVEN.

DIVISION OF ELEEMOSYNARY INSTITUTIONS.

| | | | |
|------------------------------|---------|--------------------------------|---------|
| | Article | | Article |
| Division Chief..... | 690 | General powers and duties..... | 693 |
| Superintendents elected..... | 691 | Requisitions by Board..... | 694 |
| Oath of office..... | 692 | Rules and regulations..... | 695 |

Art. 690. **Division chief.**—The Board may employ a chief in the division of eleemosynary institutions who shall be an acting practicing surgeon, and who shall have been actively engaged in the practice of the profession for not less than ten years immediately preceding his appointment. Such physician shall be one of generally recognized eminence in his profession. [Acts 1919, p. 328.]

Art. 691. **Superintendents elected.**—The Board shall elect a superintendent for each institution under its control. Each superintendent shall have had special advantages and practical ex-

perience in the management of the class of persons committed to his charge. The term of office shall be two years, subject to removal by the Board for good cause. [Id.]

Art. 692. Oath of office.—Each superintendent shall take the official oath and within twenty days after receiving notice of appointment, enter into bond in the sum of ten thousand dollars, payable to the State of Texas, to be approved by the Governor, and conditioned for the faithful performance of all the duties of said office. Such bond and oath shall be filed in the office of the Comptroller, and shall not become void on first recovery thereon, but may be sued upon until the full penalty is recovered.

Art. 693. General powers and duties.—The Board of Control shall have power:

1. To make rules and regulations for the government of the State eleemosynary institutions, not inconsistent with the constitution and laws.

2. To appoint all officers and employes of such institutions and fix their salaries and wages.

3. To discharge, upon the recommendation of the superintendent, any officer, employe or inmate.

4. To appoint assistant physicians, stewards, matrons and apothecaries.

5. To make all contracts and necessary arrangements for the erection of buildings or improvements upon the grounds of the institutions.

6. To examine and approve or reject any vouchers or accounts of the superintendents.

7. It shall exercise a careful supervision over the general operations of such institutions and control the expenditures, and direct the manner in which their revenue shall be disbursed.

8. It may take and hold in trust any gift or devise of real or personal estate for the benefit of such institution and apply the same as the donor or devisor may direct.

9. The Board shall maintain an effective inspection of each institution placed under its control and management, for which purpose a representative of the Board shall visit each institution once every month, and members of the Board shall visit each of such institutions at least once a year, at the time and in the manner as the board may prescribe by its rules or by-laws.

10. The general result of such inspection, with suitable suggestions, shall be inserted in a report detailing the past year's operations and the actual state of the institutions, which the Board shall make to the Legislature in January of each alternate year, accompanied by the report of the medical superintendents and stewards.

11. The Board shall keep a book in which shall be noted by the member making the visit to the institution, the date of his visit, the condition of the house, patients, and premises with such remarks of commendation or censure as may be considered by the member as pertinent, and each member shall sign the same. [Acts 1883, p. 103; Acts 1919, p. 326-7: G. L. vol. 9. p. 49.]

Art. 694. Requisitions by the Board.—All moneys appropriated by the Legislature for the erection of buildings or the making of improvements upon the grounds of an institution shall be subject to requisition by the Board of Control for the amount actually necessary to pay for such building or improvements; but no money shall be paid except it be upon estimate of completed work furnished by the contractor and approved by the architect. In no case shall more than three-fourths of the actual cost of building or improvements be paid until the work is completed and accepted. [Acts 1899, p. 318; Acts 1919, p. 326-7.]

Art. 695. Rules and regulations.—The Board may adopt such regulations as it deems proper and necessary for the payment of expenses other than salaries of officers, the purchase of supplies and such other expenditures as may be regulated by law; but under such regulations no money appropriated shall be drawn from the Treasury except upon vouchers specifying in detail the exact purpose for which the same is needed, certified as true and correct by the superintendent and approved by the Board. [Acts 1883, p. 103; G. L. vol. 9, p. 49.]

TITLE 21.

BOND INVESTMENT COMPANIES.

| | | | |
|--------------------|-------------|------------------------|-------------|
| Deposit | Article 696 | Interchange of deposit | Article 699 |
| Default of deposit | 697 | Return of deposit | 700 |
| Receiver | 698 | | |

Art. 696. [1309] **Deposit.**—Each corporation, company or individual, doing business in this State as a bond investment company, or company to place or sell bonds, certificates or debentures on the partial payment or installment plan, shall deposit with the State Treasurer, in cash or securities approved by said Treasurer, the sum of five thousand dollars, and shall deposit semi-annually with said Treasurer, in cash or securities, to be approved by said officer, ten per cent of all net premiums received until the sum deposited amounts to one hundred thousand dollars. [Acts 1897, p. 118; G. L. vol. 10, p. 1172.]

Art. 697. [1310] **Default of deposit.**—If any such domestic corporation, shall fail, for sixty days after its organization, to make with the State Treasurer the deposit required by this title, it shall be considered to have forfeited its charter; and the Attorney General shall upon information thereof, bring suit in the name of the State to have such charter or certificate of incorporation declared forfeited, and the court, upon so finding, shall declare such charter forfeited and appoint a receiver for such company, whose duty it shall be, under the order of the court, to distribute to the shareholders the assets of the company. The court shall out of such assets make equitable compensation for the receiver. [Id.]

Art. 698. [1311] **Receiver.**—In case of the failure of any such company, the district court of the county in which the principal office is located, upon the application of one or more shareholders, shall appoint a receiver for such company, whose duty it shall be to wind up its affairs, liquidate its debts, and distribute its assets, using therefor, upon the order of the court, the deposit previously made with the State Treasurer to secure the shareholders. Said Treasurer is authorized to pay out such deposit upon the warrant of the Comptroller in accordance with requisitions made upon the Comptroller by said receiver, approved by the court. [Id.]

Art. 699. [1312] **Interchange of deposit.**—On request of any such company, the State Treasurer is authorized to permit such company to interchange cash for the securities or securities for the cash deposited by such company under the provisions of this title with said Treasurer, such securities always to be approved by said Treasurer on the written advice of the Attorney General. [Acts 1901, p. 282.]

Art. 700. [1313] **Return of deposit.**—If any such company shall cease to do business in this State and satisfy the Comptroller and the Attorney General that it has no liabilities in this State, the Comptroller shall issue his warrant to the State Treasurer; and said Treasurer upon such warrant of the Comptroller, shall return to such company the cash or securities deposited by it under the provisions of this title. [Id.]

TITLE 22.

BONDS—COUNTY, MUNICIPAL, ETC.

| Chapter | Page | Chapter | Page |
|--|------|--|------|
| 1 General Provisions and Regulations | 229 | 5 Funding, Refunding and Compromises | 245 |
| 2 Courthouse, Jail and Other Bonds | 231 | 6 Reclamation and Irrigation Bonds | 247 |
| 3 Public Roads | 233 | 7 Municipal Bonds | 251 |
| 4 Viaducts, Bridges, Etc. | 244 | 8 Sinking Funds—Investments, Etc. | 254 |

CHAPTER ONE.

GENERAL PROVISIONS AND REGULATIONS.

| | Article | | Article |
|---------------------------------|---------|----------------------------------|---------|
| Shall hold election | 701 | Registration | 710 |
| Question submitted | 702 | Special registration | 711 |
| Submission of proposition | 703 | Certificate of approval | 712 |
| Time of election, etc. | 704 | Shall cancel old bonds | 713 |
| Form of ballot | 705 | Requisites of cancellation | 714 |
| Maturity dates | 706 | Evidence of validity | 715 |
| Interest and sinking fund | 707 | Validity of certain bonds | 716 |
| Sale price | 708 | Exceptions | 717 |
| Examination of bonds, etc. | 709 | | |

Art. 701. [605] **Shall hold election.**—The bonds of a county or an incorporated city or town shall never be issued for any purpose unless a proposition for the issuance of such bonds shall have been first submitted to the qualified voters who are property tax payers of such county, city or town. [Acts 1899, pp. 103 and 258.]

Art. 702. **Question submitted.**—In all cases when the governing body of a county, city or town shall order an election for the issuance of the bonds of the county, city or town or of any political subdivision or defined district of a county, such body shall at the same time submit the question of whether or not a tax shall be levied upon the property of such county, city or town, political subdivision or defined district for the purpose of paying the interest on the bonds and to create a sinking fund for the redemption of the bonds.

Art. 703. [606] **Submission of proposition.**— The proposition to be submitted shall distinctly specify:

1. The purpose for which the bonds are to be issued;
2. The amount thereof;
3. The rate of interest;
4. The levy of taxes sufficient to pay the annual interest and provide a sinking fund to pay the bonds at maturity;
5. The maturity date, or that the bonds may be issued to mature serially within any given number of years not to exceed forty. [Id. Acts 1899, p. 258; Acts 1st C. S. 1921, p. 37.]

Art. 704. [607] **Time of election, etc.**—The time and place or places of holding said election shall be designated in the election order. The manner of holding the same shall be governed by the laws regulating general elections. [Acts 1899, p. 258.]

Art. 705. [606] **Form of ballot.**— All voters desiring to support the proposition shall have written or printed upon their ballots the words "For the issuance of bonds," and those opposed, the words "Against the issuance of bonds." [Id.]

Art. 706. [611] [878] **Maturity dates.**—Bonds may be issued to mature serially within any given number of years not to exceed forty, within the discretion of the governing body issuing the same. [Acts 1893, p. 112; G. L. vol. 10, p. 542.]

Art. 707. [616] [918a] **Interest and sinking fund.**—When the issuance of bonds has been authorized, the governing body of a county or town shall provide for the levy and collection of a tax annually sufficient to pay the annual interest and provide a sinking fund for the payment of the bonds at maturity. Such bonds shall bear a rate of interest not exceeding six per cent. [Acts 1893, p. 84; G. L. vol. 10, p. 514.]

Art. 708. [617] [918b] **Sale price.**—Bonds shall never be sold at less than their par value and accumulated interest, exclusive of commissions. [Id.]

Art. 709. [619] [918d] **Examination of bonds, etc.**—Before any bonds shall be offered for sale, the county judge or the mayor, as the case may be, shall forward the bonds to the Attorney General, together with a certified copy of the order or ordinance levying the tax to pay the interest and provide a sinking fund, and a statement of the total bonded indebtedness of the county, city or town, including the series of bonds proposed, together with the amount of the assessed value of the property of the county, city or town for purposes of taxation as shown by the last official assessment of such county, city or town. Such county judge or mayor shall also furnish the Attorney General with any additional information he may require. [Id.]

Art. 710. [620] [918e] **Registration.**—When said bonds have been examined and certified by the Attorney General, they shall be registered by the Comptroller in a book kept for that purpose. [Id.; Acts 1901, p. 16.]

Art. 711. [621] [469] [423] **Special registration.**—The Comptroller shall indorse his certificate of registration on each city bond so registered, and at the request of the mayor, give his certificate to the amount of bonds so registered to date. [Acts 1875, p. 113; G. L. vol. 8, p. 506.]

Art. 712. [622] [918e] **Certificate of approval.**—The certificate of the Attorney General to the validity of such bonds shall be preserved of record. [Acts 1893, p. 84; Acts 1901, p. 16; G. L. vol. 10, p. 542.]

Art. 713. [623] [918e] **Shall cancel old bonds.**—In the case of funding or refunding bonds, the Comptroller shall not register the same until the original bonds are presented to him for cancellation. [Id.]

Art. 714. [624] [918e] **Requisites of cancellation.**—After registration of the new bonds, the Comptroller shall cancel the old, and deliver the new bonds to the proper party or parties. The old bonds may be presented for cancellation in installments, and a like amount of the new bonds registered and delivered as herein provided. [Id.]

Art. 715. [625] [918f] **Evidence of validity.**—Such bonds, after receiving the certificate of the Attorney General, and having been registered in the Comptroller's office, shall be held in

every action, suit or proceeding in which their validity is or may be brought into question, prima facie valid and binding obligations. In every action brought to enforce collection of such bonds, the certificate of the Attorney General, or a duly certified copy thereof, shall be admitted and received in evidence of its validity, together with the coupons attached thereto. The only defense which can be offered against the validity of such bonds shall be forgery or fraud. This article shall not be construed to give validity to any such bonds as may be issued in excess of the limit fixed by the Constitution, or contrary to its provisions. [Id.]

Art. 716. **Validity of certain bonds.**—No bonds or coupons legally and lawfully issued and signed by the duly authorized officers of any county, city, town, political subdivision, defined district or school district of this State shall ever be held invalid by reason of the fact that at the time of the actual delivery of such bonds to a purchaser, the respective persons who had signed such bonds or coupons may have been replaced in their respective offices by other persons after the signing of such bonds or coupons but before the delivery thereof. [Acts 2nd C. S. 1923, p. 60.]

Art. 717. [608] **Exceptions.**—The first three articles of this chapter shall not apply to funding bonds issued, or to be issued, for the funding of any valid outstanding bonds of a county, town or city; nor to any bond issue for a sum less than two thousand dollars, when issued for the purpose of repairing buildings or structures for the building of which bonds are allowed to be issued. [Acts 1899, p. 258.]

CHAPTER TWO.

COURTHOUSE, JAIL AND OTHER BONDS.

| | | | |
|-------------------------------|---------|--------------------------------|---------|
| | Article | | Article |
| County issues authorized..... | 718 | Limit of issue..... | 722 |
| Requisite vote..... | 719 | Interest and sinking fund..... | 723 |
| Term of bonds..... | 720 | Bonds to be signed, etc..... | 724 |
| Interest on bonds..... | 721 | Substitution of bonds..... | 725 |

Art. 718. [610] [877] **County issues authorized.**— After having been authorized as provided in Chapter One of this title, the commissioners court of a county may lawfully issue the bonds of said county for the following purposes:

1. To erect the county courthouse and jail, or either;
2. To purchase suitable sites within the county and construct buildings thereon to provide homes or schools for dependent and delinquent boys and girls or for either;
3. To establish county poor houses and farms in the county;
4. To purchase and construct bridges for public purposes within the county or across a stream that constitutes a boundary line of the county;
5. To improve and maintain the public roads in the county.

When the commissioners court shall deem it advisable to issue bonds for both the purchase or construction of bridges and improvement and maintenance of the public roads, both questions may be submitted and voted on as one proposition. [Acts 1903,

C. S. p. 9; Acts 1893, p. 112; Acts 1911, p. 204; Acts 1921, p. 98; G. L. Vol. 10, p. 542.]

Art. 719. [605] **Requisite vote.**—If a majority of the property tax paying voters voting at such election shall vote in favor of the proposition, then such bonds shall be thereby authorized and shall be issued by the commissioners court. [Acts 1899, pp. 103 and 258.]

Art. 720. [611] [878] **Term of bonds.**—All bonds issued under this chapter shall run not exceeding forty years, and may be redeemable at the pleasure of the county at any time after five years after the issuance of the bonds, or after any period not exceeding ten years, which may be fixed by the commissioners court. [Acts 1893, p. 112; G. L. Vol. 10, p. 542.]

Art. 721. [612] [879] **Interest on bonds.**—Such bonds shall draw interest at a rate not exceeding six per cent per annum, payable annually or semi-annually within the discretion of the governing body. Interest shall be evidenced by attached coupons. [Id.]

Art. 722. [613] [880] **Limit of issue.**—The issue of bonds under this chapter shall be based upon the taxable values of the county according to the last approved assessment, and shall be limited as follows: courthouse and jail bonds shall be limited to an amount not exceeding two per cent of said taxable values; bridge bonds, to an amount not exceeding one and one-half per cent of said taxable values. In determining the amount of the bonds of the respective kinds to be issued, previous indebtedness for said several purposes shall be considered. The total indebtedness of any county for the purposes provided in this chapter, shall not be increased by any issue of bonds to a sum exceeding five per cent of its said taxable values. [Id.; Acts 3rd C. S. 1920, p. 97.]

Art. 723. [614] [881] **Interest and sinking fund.**—The commissioners court shall levy annual ad valorem taxes sufficient to pay the interest on said bonds and create a sinking fund for their redemption; which shall not exceed for courthouse and jail bonds, one-fourth of one per cent; for bridge or road and bridge bonds, fifteen cents on each one hundred dollars. [Acts 1893, p. 112; G. L. Vol. 10, p. 542.]

Art. 724. [615] [882] **Bonds to be signed, etc.**—The bonds shall be signed by the county judge and countersigned by the county clerk and registered by the county treasurer before delivery. The county treasurer shall keep an account of the amount of principal and interest paid on each, and no bond shall be sold at less than its par value and accrued interest, exclusive of commissions. [Id.]

Art. 725. [657] **Substitution of bonds.**—Where bonds have been legally issued, or may be hereafter issued for any purpose authorized in this chapter, new bonds in lieu thereof bearing the same or a lower rate of interest may be issued, in conformity with existing law, and the commissioners court may issue such bonds to mature serially or otherwise, not to exceed forty years from their date. [Acts 1901, p. 16; Acts 1893, p. 112; G. L. Vol. 10, p. 542.]

CHAPTER THREE.

PUBLIC ROAD BONDS.

1. COUNTY AND DISTRICT BONDS.

| Article | Article |
|------------------------------------|---------------------------------|
| Power to issue bonds, etc. | District assessments..... |
| Election, prerequisites, etc. | Duty of assessor, etc. |
| Order of election..... | Duty of treasurer..... |
| Order for district election..... | County disbursements..... |
| Notice of county election..... | District disbursements..... |
| Notice of district election..... | Expenses..... |
| Time and place of election..... | Body corporate..... |
| Manner of holding election..... | Liability of district..... |
| If two-thirds vote for bonds..... | District classification..... |
| Maturity dates, etc. | County classification..... |
| Requisites of sale..... | Powers of commissioner..... |
| General laws applicable..... | Award of contracts..... |
| Tax levy..... | Certain counties may avail..... |
| County assessments..... | |

Art. 726. [627] **Power to issue bonds, etc.**—For the purpose of constructing, maintaining and operating macadamized, graveled or paved roads and turnpikes or in aid thereof, any county, political subdivision or defined district of a county is authorized to issue its bonds, or otherwise lend its credit in an amount not to exceed one-fourth of the assessed valuation of the real property of such county or political subdivision or defined district and to levy and collect taxes to pay the interest upon such bonds and provide a sinking fund for their redemption. Such political subdivisions or defined district may include towns, villages or municipal corporations of the county. [Acts 1907, p. 251; Acts 1909, S. S. p. 271.]

Art. 727. [628] **Election, prerequisites, etc.**—Upon the petition of fifty resident property tax paying voters of any county or fifty or a majority of the property tax paying voters of a political subdivision or defined district of a county, the commissioners court of such county at any regular or special session thereof, shall order an election to be held in such county, or in such political subdivision or defined district thereof, to determine whether or not the bonds of such county, political subdivision or defined district thereof, shall be issued for the purpose of constructing, maintaining or operating macadamized, graveled or paved roads and turnpikes or in aid thereof. [Id; Acts 1917, p. 462.]

Art. 728. [628] **Order of election.**—The election order and notice of election shall state the amount of bonds proposed to be issued, and shall either state the rate of interest thereon and the date of maturity thereof, or that the bonds may bear interest at a rate, and mature at such time, as may be fixed by the commissioners court. [Id.]

Art. 729. [628] **Order for district election.**—Where such election is ordered for a political subdivision or defined district of a county, such order and notice of election shall describe such political subdivision or defined district by its name and number, and shall describe the boundaries thereof as such boundaries are described and defined in the order of the court establishing such subdivision or district. [Id.]

Art. 730. [629] **Notice of county election.**—If the proposed issue of bonds and levy of taxes is for the entire county, notice

of the election shall be given by publication in a newspaper published in such county, for four successive weeks. In addition thereto, for three weeks prior to said election, notice shall be posted at three public places in the county, one of which shall be the courthouse door. [Acts 1909, S. S. p. 271.]

Art. 731. [629] **Notice of district election.**—If the proposed issue of bonds and levy of taxes is for a political subdivision or defined district of a county, notice of such election shall be given by publishing in a newspaper in the political subdivision or defined district for four successive weeks, and by posting notices in at least three public places in such subdivision or district and at the courthouse door of the county. If no newspaper is published therein, then such published notice shall be given in some newspaper published in the county. [Id.]

Art. 732. [630] **Time and place of election.**—The commissioners court shall determine the time and place or places of holding such election, not less than thirty days from the date of making the order of election. [Id.]

Art. 733. [630] **Manner of holding election.**—The manner of holding such election and canvassing and making returns thereof, shall be governed by the general laws of this State when not in conflict with the provisions of this subdivision of this chapter. [Id.]

Art. 734. [631] **If two-thirds vote for bonds.**—If at such election two-thirds of the property tax paying voters cast their ballots in favor of the issuance of bonds, the commissioners court shall, as soon thereafter as practicable, issue said bonds on the faith and credit of said county, political subdivision or defined district, as the case may be. [Id.]

Art. 735. [632] **Maturity dates, etc.**—Such bonds shall mature not later than thirty years from their date, except as otherwise provided, with such options of redemption as may be fixed by the commissioners court, or may be issued to mature serially in approximately equal portions every year for not exceeding thirty years. Such bonds shall bear not more than five and one-half per cent interest per annum. [Id.; Acts 1917, p. 463.]

Art. 736. [632] **Requisites of sale.**—When so issued, after being certified and registered as provided by law, such bonds shall continue in the custody of the commissioners court of the county in which they were issued, and shall be by said court sold to the highest and best bidder for cash, either in whole or in parcels, at not less than their par value, and the purchase money therefor shall be placed in the county treasury of such county to the credit of the available road fund of such county, or of such political subdivision or defined district of such county, as the case may be. [Id.]

Art. 737. [633] **General laws applicable.**—The general laws of Texas relative to county bonds, not in conflict with the provisions of this subdivision of this chapter, shall apply to the issuance, approval, certification, registration, sale and payment of the bonds provided for in said provisions. [Acts 1909, S. S. p. 271.]

Art. 738. [634] **Tax levy.**—Before such road bonds shall be put on the market, the county commissioners court of the county in which such election was held, shall levy a tax sufficient to pay the interest on such bonds and to provide a sinking fund to pay the bonds at maturity. [Id.]

Art. 739. [634] **County assessments.**—When for a whole county, the taxes herein authorized shall be assessed and collected in the same manner as now provided by law for the assessment and collection of other taxes. [Id.]

Art. 740. [634] **District assessments.**—When for a political subdivision or other defined district of a county, such taxes shall be assessed and collected as is now provided by law for the assessment and collection of common school district special local taxes. [Id.]

Art. 741. [634] **Duty of assessor, etc.**—The tax assessor and tax collector of the county wherein such taxes have been levied, shall assess and collect the same in the manner and at the time as other taxes; and when so collected, the tax collector shall pay them to the county treasurer as other taxes are paid. [Id.]

Art. 742. [634] [635] **Duty of treasurer.**—The county treasurer is custodian of funds collected by virtue of this law, and shall deposit them with the county depository as county funds, and pay the interest and principal as it becomes due on such bonds out of the funds so collected. [Id.]

Art. 743. [632] **County disbursements.**—When such funds belong to the entire county, they shall be paid out by the county treasurer upon warrants drawn on such funds, issued by the county clerk of the county, countersigned by the county judge, upon certified accounts approved by the commissioners court of the county. [Acts 1909, S. S. p. 271; Acts 1917, p. 463.]

Art. 744. [632] **District disbursements.**—When such funds belong to a political subdivision or defined district of the county, they shall be paid out by the county treasurer upon warrants issued by the county clerk, upon certified accounts of the road superintendent of such road district and approved by the commissioners court of the county. [Id.]

Art. 745. [632] **Expenses.**—The expense incurred in surveying the boundaries of a political subdivision or defined district of a county, and other expenses incident to the issuance of bonds of a political subdivision or defined district, shall be paid from the proceeds of the sale of the bonds of the district or subdivision. [Id.]

Art. 746. [637] **Body corporate.**—For the purpose of this subdivision of this chapter, any political subdivision of a county, or defined district, now or hereafter to be described and defined, accepting the provisions of this title and chapter, by voting such tax, is hereby made and created a body corporate which may sue and be sued in like manner as counties, and if cast in such suits, shall pay such judgments by the levy of taxes. [Acts 1925, p. 334.]

Art. 747. [638] **Liability of district.**—No road district

created under the provisions of this subdivision of this chapter shall ever be held liable for torts. [Id.]

Art. 748. [636] **District classification.**—When road bonds have been issued for a political subdivision or defined district of a county, such subdivision or defined district shall be designated by the commissioners court by a "Road District Number," and its bonds shall be designated as "Road Bonds of District Number _____ of _____ County, Texas." [Id.]

Art. 749. [636] **County classification.**—When the road bonds have been issued by a county as a whole, such bonds shall be known and designated as "_____ County Special Road Bonds," taking the name of the county issuing the same. [Id.]

Art. 750. [639] **Powers of commissioner.**—The county commissioner in whose commissioners' precinct such political subdivision or defined district is located, shall be ex officio road superintendent of said road district with power to contract in behalf of such road district in an amount not to exceed fifty dollars, which shall be approved by the commissioners court. All contracts exceeding the sum of fifty dollars shall be awarded by the entire court. [Id.]

Art. 751. [640] **Award of contracts.**—Before the commissioners court shall let a contract for work in a county or road district, bids shall be invited by publishing an advertisement in a newspaper or newspapers published in such county, and outside of the county, if the commissioners court deem it advisable to do so. All contracts shall be awarded to the lowest and best bidder. Any or all bids may be rejected. [Id.]

Art. 752. [641] **Certain counties may avail.**—Any county operating under a special road tax law may take advantage of any provision of this subdivision. [Id.]

2. COMPENSATION BONDS.

| | Article | | Article |
|--------------------------------------|---------|-------------------------------------|---------|
| Compensation bond issue..... | 753 | District taxes..... | 761 |
| Shall order election..... | 754 | Exchange of bonds..... | 762 |
| Construction bonds..... | 755 | Redemption of bonds..... | 763 |
| Substitution of bonds..... | 756 | Accrued sinking fund..... | 764 |
| May exchange bonds..... | 757 | Maturity of compensation bonds..... | 765 |
| County purchase bonds..... | 758 | Maturity of county bonds..... | 766 |
| Retirement of district bonds..... | 759 | Proceeds of sale..... | 767 |
| Purchase and construction bonds..... | 760 | | |

Art. 753. **Compensation bond issue.**—Where any, political subdivision or defined district of a county has voted a bond issue under the authority of this chapter or any special county road law, the bonds of the entire county, including such subdivisions or districts, may thereafter be voted, and such political subdivisions or defined districts first voting bonds may be fully compensated by the county in an amount equal to the amount of the previously authorized district bonds. [Acts 2nd C. S. 1919, p. 90.]

Art. 754. **Shall order election.**—The commissioners court, upon the petition of two hundred and fifty resident property tax-paying voters of the county, shall order an election for the purpose of determining whether or not the bonds of the county shall be issued. Such petition and the order of election shall state the amount of bonds proposed to be issued. [Id.]

Art. 755. **Construction bonds.**—Where district bonds have

been voted, and the bonds have not been issued before the date of the county election, should the county election authorize the issuance of county bonds, then the district bonds shall not be issued, or should the district bonds have been issued and not sold, or have been sold and the proceeds of such sale not have been expended at the time of the county election, then the proposition for county bonds shall be for the following purpose:

“The construction of district roads and the further construction, maintenance and operation of macadamized, graveled or paved roads and turnpikes, or in aid thereof, throughout such county.” [Id.]

Art. 756. Substitution of bonds.—Should the county election be favorable to the issuance of such bonds, then so much of the bonds so issued by the county as may be necessary to fairly and fully compensate such road district or districts shall be set aside by the commissioners court for that purpose. The same shall be sold and the proceeds applied to the construction, maintenance and operation of roads within such road district or districts as contemplated by the election or elections theretofore held within such district or districts, and any unsold district bonds shall thereupon be totally void. [Id.]

Art. 757. May exchange bonds.—If such district bonds have been sold, then an exchange of a like amount of county bonds may be made with the holder or holders of said district bonds, but if such exchange cannot be made, then so much of the county bonds as may be necessary, shall be transferred and placed to the credit of the interest and sinking fund account of such road district or districts. [Id.]

Art. 758. County purchase bonds.—Where a road district or districts have issued bonds and such bonds have been sold and the proceeds derived therefrom have been applied to the construction of roads within the district or districts, then such district roads may be merged into and become part of the general county system of public roads, and such road districts or district shall be fully and fairly compensated by the county in an amount equal to the value of the bonds outstanding against such road district or districts at the time the county bonds were issued, and the proposition for county bonds shall be for the following purpose:

“The purchase of district roads and the further construction, maintenance and operation of macadamized, graveled or paved roads and turnpikes, or in aid thereof, throughout such county.” [Id.]

Art. 759. Retirement of district bonds.—In such case, so much of the county bonds as may be necessary for that purpose shall be set aside and exchanged for a like amount of outstanding district bonds, or may be transferred to the credit of such road district or districts for the purpose of paying and retiring such district bonds as they mature. [Id.]

Art. 760. Purchase and Construction bonds.—If one or more road districts of a county have voted a bond issue, and the proceeds thereof, if any, have not been applied to the construction of roads within such district, and one or more other districts in

such county have voted a bond issue and applied the proceeds of the sale of their bonds to the construction of roads, then the proposition for county bonds shall be for the following purpose:

“The construction and purchase of district roads, and the further construction, maintenance and operation of macadamized, graveled or paved roads and turnpikes, or in aid thereof, throughout such county.”

Art. 761. **District taxes.**—All district taxes levied and collected for the payment of interest and redemption of such district bonds shall cease and be dispensed with on the date of the county election authorizing the issuance of such county bonds. [Id.]

Art. 762. **Exchange of bonds.**—The exchange of county bonds for district bonds shall be made by duly acknowledged written agreement with the holder or holders of the district bonds, and upon an order of the commissioners court authorizing such exchange. Such county bonds, order and agreement shall be approved and certified by the Attorney General, whereupon such exchange shall be consummated, and such district bonds shall be destroyed. [Id.]

Art. 763. **Redemption of bonds.**—If such exchange cannot be effected, the commissioners court, as soon as practicable, shall deposit to the credit of the interest and sinking fund account of such road district or districts an amount of county bonds equal in value to the amount of outstanding district bonds. Such action shall be by an order duly entered upon the minutes of such court, and the order, together with the county bonds so to be deposited, shall be first approved and certified by the Attorney General. Such county bonds, together with all taxes accruing thereunder, shall be used by the commissioners court to pay the interest annually on such outstanding district bonds, and to provide for the retirement of such district bonds at maturity. [Id.]

Art. 764. **Accrued sinking fund.**—After such county bonds shall have been deposited or exchanged as provided in the two preceding articles, the sinking fund then on hand to the credit of such road district or districts shall be passed to the credit of the sinking fund of the county. [Id.]

Art. 765. **Maturity of compensation bonds, etc.**—So much of the county bonds as shall be used to compensate such road district or districts, shall be issued in the same denominations, bear the same rate of interest, have the same date or dates of maturity, and with similar options of payment, as the outstanding district bonds. [Id.]

Art. 766. **Maturity of county bonds, etc.**—The county bonds issued in excess of the amount required to compensate such road district or districts, shall be issued and sold and taxes collected therefor in the manner now provided by law, and may mature serially or otherwise, at the discretion of the commissioners court, and may run for a term not to exceed forty years, and shall bear not more than five and one-half per cent interest per annum. [Id.]

Art. 767. Proceeds of sale.—The proceeds of the sale of the county bonds provided for in the preceding article shall be expended by the commissioners court in constructing, maintaining and operating macadamized, graveled or paved roads and turnpikes, or in aid thereof, throughout such county. The necessary expense incident to the issuance of said bonds may be paid out of the proceeds from the sale thereof. [Id.]

3. CONSOLIDATED DISTRICTS.

| Article | Article | | |
|--|---------|---------------------------------|------|
| Overlapping districts..... | 768 | Notice of election..... | 775a |
| Establishment of consolidated districts..... | 769 | Description of district..... | 775b |
| Outstanding bonds..... | 770 | Ballot..... | 775c |
| Exclusion of districts..... | 771 | Declaring result..... | 775d |
| Powers of district..... | 772 | Taxation..... | 775e |
| Authorized indebtedness..... | 773 | Validating..... | 775f |
| Petition for election..... | 774 | Tax levy..... | 776 |
| Election..... | 775 | Maintenance warrants..... | 777 |
| | | Certain counties may avail..... | 778 |

Art. 768. Overlapping districts.—Where a political subdivision or defined district of a county has been established and has issued bonds, no political subdivision or defined district shall thereafter be created or established overlapping the same territory or embracing any part thereof while any of the bonds of such subdivision or district are outstanding and unpaid, unless the bonds of such existing subdivision or district are compensated for as provided in the succeeding articles of this subdivision. If the boundaries of any road district overlap or embrace any part of the territory of another road district or road districts theretofore established, such new district shall be invalid only as to that portion which overlaps part of the territory of the district or districts theretofore established, and the commissioners court shall pass an order accurately defining the boundaries of the subsequently created road district, in conformity to the boundaries of such contiguous road district or districts. [Acts 1917, p. 464; Acts 4th C. S. 1918, p. 30.]

Art. 769. Consolidation of road districts.—The commissioners' courts of the several counties of this State may create within their counties road districts for the purpose of constructing, maintaining and operating macadamized, paved and graveled roads and turnpikes, or in aid thereof, which may include one or more, or parts of one or more previously created road districts, and other territory, if deemed judicious, and which may exclude territory, as hereinafter permitted. Such districts when created shall be governed and controlled by the provisions and limitations of law applicable to other road districts, except as herein otherwise provided.

Art. 770. Outstanding bonds.—Any one or more political subdivisions or defined road districts included within the limits of a road district created under the provisions of this subdivision shall be fully and fairly compensated by the new district in an amount equal to the amount of district bonds outstanding against such subdivisions or districts and which shall be done in the form and manner prescribed for the issuance of county road bonds under subdivision 2 of this chapter, except the petition shall be signed by fifty or a majority of the resident property taxpaying voters of the new district, and the bonds proposed

to be issued shall be for the purchase or construction of roads in the included district or districts, and the further construction, maintenance and operation of macadamized, graveled or paved roads and turnpikes, or in aid thereof, within and for the new district. [Id.]

Art. 771. **Excluded from district.**—If any road district, a portion of which is proposed to be incorporated into a new district, should embrace the whole, or any part of any levee improvement district, drainage district, or any other improvement district created under any law passed pursuant to Section 52, Article 3, of the Constitution of this State, the territory covered by such other district may be excluded from the district sought to be created, but except as herein specifically permitted, no fractional part of a previously created road district shall be included within the limits of a road district created under the provisions of this Act.

Art. 772. **Powers of district.**—Each road district created hereunder shall bear the name of the county in which it is located, and shall be definitely numbered, which number may be that of the road district incorporated therein which was first created, and a district so established shall become and be a body corporate with all the powers, rights and privileges conferred by this chapter. [Id.]

Art. 773. **Authorized indebtedness.**—Any county in this State, or any political subdivision or defined district thereof, heretofore or hereafter created, acting under the provisions of section 52 of article 3 of the Constitution, may upon a vote of two-thirds of the qualified voters who are resident property taxpayers thereof at an election held to determine the matter, create indebtedness for the purpose of maintaining the roads of such county or political subdivision or defined district to an amount which, in addition to other indebtedness incurred under the provisions of this law, or any other statute passed pursuant to said section of the Constitution, will not exceed one-fourth of the last assessed valuation of the real property situated in such county or political subdivision or defined district. [Id.]

Art. 774. **Ordering election.**—Upon the presentation to the commissioners' court of a petition of fifty, or a majority of property taxpaying voters, residing within the territory therein described, situated in such county, and including a previously created road district, and other territory; or two or more such districts, with or without additional territory; or one or more such districts or portions of districts as herein permitted, with or without additional territory, praying that a road district be created of such territory for the purpose of constructing, maintaining and operating macadamized, graveled or paved roads and turnpikes, or in aid thereof, it shall be the duty of such commissioners' court, at a regular or special session to order an election within and for such territory to determine whether a road district, for the purposes specified, shall be formed as prayed for.

Art. 775. **Fixing time and place.** The commissioners' court shall, in its order, fix the time and place, or places, for holding such election, which shall not be held within less than thirty days from the time of making such order. At least one place

shall be designated for the election in each road district proposed to be incorporated into the district to be formed, and the court shall name a manager and two clerks for each polling place. The manner of holding such election, except as above, and hereinafter otherwise directed, shall be governed by the General Laws of this State, and returns of said election shall be made as is provided by law for the making of returns of elections to determine whether or not county bonds shall be issued.

Art. 775a. Notice of election.—Notice of such election shall be given by publication in a newspaper published within the territory described in the petition, if there be one, and if not, then in a newspaper published in the county in which the territory to be affected is situated, for four weeks prior to said election, and posting notices thereof in at least three public places within the territory to be affected, such posting to be for three successive weeks prior to such election. The notices herein provided may be posted by any adult person, and the affidavit of the newspaper publisher, or his agent, with copy of publication attached showing publication, and the affidavit of the person or persons posting notices of election showing posting, shall be conclusive of the facts stated in such affidavits.

Art. 775b. Description of district.—In the petition and notice of election, it shall be sufficient to describe previously formed districts by reference to their number and the dates of their creation, and the number of the volume and its pages of the minutes of the commissioners' court in which is recorded the orders creating the same, and to describe other territory, if any, in a manner which will reasonably identify the same.

Art. 775c. Ballot.—Those desiring to vote at an election ordered under this Act shall have written or printed on their ballots, "For the proposed new district," and those opposed shall have written or printed on their ballots, "Against the proposed new district," and no person shall be permitted to vote at such election who is not a resident property tax paying voter of the territory sought to be incorporated in the proposed new district.

Art. 775d. Declaring result.—The commissioners' court of the county shall, as soon as practicable after an election is held under this Act canvass the returns thereof, and declare the result of such election, and if it shall appear to such court that a two-thirds majority of the votes cast at such election were in favor of the creation of the proposed new district, it shall be the duty of said court to declare such result and by its order establish a road district as prayed for, and to give to the same its proper name, which shall include the name of the county, and a number, which may be the number of the road district incorporated therein which was first created, and a district so established shall become and be a body corporate with all the powers, rights and privileges conferred by this Act, or any other law, upon districts created for the purpose of constructing, maintaining and operating macadamized, graveled or paved roads and turn pikes, or in aid thereof, and shall be governed in matters not herein provided for, by the general road law.

Art. 775e. **Taxation.**—The creation, or reformation, of road districts under this Act shall not impair the outstanding obligations of any district affected, nor shall it release any liability of territory excluded in the formation of a district under this Act, but it shall be the duty of the commissioners' court wherein is situated any such excluded territory to levy taxes, and cause to be assessed and collected, upon the taxable property within such new district and such excluded territory, at rates sufficient annually to raise the necessary funds to meet and discharge said outstanding indebtedness, and all taxes assessed and collected for such purposes shall be applied to the payment of such indebtedness.

Art. 775f. **Validating.**—All districts heretofore created under the Act hereby amended, whether by consolidation of one or more districts, with or without additional territory, or by the exclusion from an existing district of territory permitted by said Act or this Act to be excluded, are hereby validated, as well as all bonds voted in such districts and such bonds, if not already issued, may be issued as if voted under this Act. [Acts 1925, p. 335.]

Art. 776. **Tax levy.**—If such election results in favor of the proposition submitted, the commissioners court may incur indebtedness for or on behalf of such county, political subdivision or defined district for the maintenance of the roads thereof to the amount voted, until authority so to do is revoked, modified or increased by another election, which may not be held until the expiration of five years from the date of the election authorizing such maintenance tax, and which shall be held in accordance with the provisions of this subdivision governing the election authorizing such tax. The commissioners court, while such authority exists, shall annually levy, and cause to be assessed and collected, taxes upon the taxable property of such county, political subdivision or defined district at rates sufficient to produce the specific annual sum voted, or at the specific rate voted, or so much, or at such rate, as will raise funds sufficient to satisfy the maintenance indebtedness created, or intended to be created, for the current year, the proceeds of which taxes shall be used for the purposes named. [Id.]

Art. 777. **Maintenance warrants.**—The amount to be raised by taxation for maintenance purposes may be anticipated during any current year by the issuance of warrants against the same, which may bear interest at a rate not to exceed eight per cent per annum from their date and be payable on or before the tenth day of April of the year next succeeding the year of issuance, which warrants may be disposed of to raise maintenance funds, or the same may be used in payment of maintenance work, but the amount of warrants to be issued in any one year, in anticipation of maintenance funds, shall never exceed ninety per cent of the amount of such funds as would be raised by taxation levied during such year. [Id.]

Art. 778. **Certain counties may avail.**—Any county operating under a special road law may avail itself of all the provisions of this law. [Id.]

4. GENERAL PROVISIONS.

| | Article | Article |
|---------------------------------|---------|--------------------------------------|
| Investment of sinking fund..... | 779 | Duty of commissioners court..... 782 |
| Interest on investments..... | 780 | Readjustment of taxes..... 783 |
| Cancellation of bonds..... | 781 | Refund of taxes..... 784 |

Art. 779. **Investment of sinking fund.**—The commissioners courts may invest sinking funds accumulated for the redemption and payment of any bonds issued by such county, political subdivision or defined district thereof, in bonds of the United States, of Texas, or any county in this State; or in bonds of the Federal Farm Loan Bank System. No such bonds shall be purchased which, according to their terms, mature at a date subsequent to the time of maturity of the bonds for the payment of which such sinking fund was created. [Acts 1917, p. 464.]

Art. 780. **Interest on investments.**—All interest on such investments shall be applied to the sinking fund to which it belongs, and the use of such funds for any other purpose shall be considered a diversion thereof and punished as provided by article 94 of the Penal Code. [Id.]

Art. 781. **Cancellation of bonds.**—Should any bonds issued by a county or political subdivision or defined district of a county not be sold, then the commissioners court may upon its own motion, or upon petition of two-thirds of the qualified property tax paying voters thereof as shown by the records of the county tax collector, shall order an election to determine whether or not such bonds shall be cancelled. Such election shall be ordered, held and conducted in the same form and manner as that at which such bonds were originally authorized. [Id.]

Art. 782. **Duty of commissioners court.**—The result of such election, whether favorable or not, shall be duly declared by the commissioners court, and the returns thereof and the result duly entered of record in the minutes of such court. If a two-thirds majority vote has been given in favor of such cancellation, the commissioners court shall cancel and burn all such bonds, and forward to the Comptroller a certified copy of the minutes showing such destruction and cancellation. The Comptroller shall thereupon cancel the registration of said bonds on the records of his office. [Id.]

Art. 783. **Readjustment of taxes.**—When said bonds have been destroyed, the commissioners court shall readjust the existing tax levies in such county, subdivision or district by an amount equal to that levied or proposed to be levied for the interest and sinking fund accounts of such bonds, so as to conform to the conditions resulting from the cancellation of said bonds. [Id.]

Art. 784. **Refund of taxes.**—After deducting the compensation of the tax assessor, tax collector and county treasurer, and any other claims properly chargeable against such taxes, the unexpended part of all taxes that have been collected with a view to the sale of such bonds so destroyed shall be refunded to the taxpayers ratably on the order of the commissioners court. The county treasurer shall take and file proper receipts for all sums so refunded. [Id.]

CHAPTER FOUR.

VIADUCTS, BRIDGES, ETC.

| | Article | | Article |
|-------------------------------|---------|----------------------------|---------|
| May order election..... | 785 | Limit of issue..... | 791 |
| Survey and estimate..... | 786 | Tax levy..... | 792 |
| Submission of resolution..... | 787 | Court may contract..... | 793 |
| Conduct of election..... | 788 | Maintenance fund..... | 794 |
| Ballot..... | 789 | Rules and regulations..... | 795 |
| Issue of bonds..... | 790 | | |

Art. 785. [642] **May order election.**—The county commissioners court of any county having a population in excess of fifty thousand inhabitants according to the last United States census, may in their discretion, order an election to determine the propriety of a bond issue to provide for the construction and maintenance of causeways, viaducts, bridges and approaches across any river and bottoms within the limits of such county, irrespective of any municipal boundaries. [Acts 1909, p. 46.]

Art. 786. [643] **Survey and estimate.**—The commissioners court of such county shall, prior to ordering any such election, provide for preliminary surveys and estimates for such work, and shall prescribe in the election order the amount and terms of such bond issue. [Id.]

Art. 787. [644] **Submission of resolution.**—The resolution providing for such election shall be recorded in the minutes of the commissioners court and shall be submitted to the property owning qualified voters of said county as a proposition at a regular or special election which may be ordered by said court for that purpose. If a majority of the votes cast shall be for such resolution, the same shall be deemed to be adopted. [Id.]

Art. 788. [645] **Conduct of election.**—Such election shall be governed in all respects by the laws governing elections in this State, and the returns made and canvassed in the same manner, and the results declared by proclamation of the county judge of said county. Such proclamation shall be posted in at least three public places in said county, and at the option of the county judge, published in some newspaper in said county. [Id.]

Art. 789. [647] **Ballot.**—Those desiring to vote for the resolution shall have written or printed on their ballots the words "For the Resolution to Issue Bonds to....." (here insert purpose of the proposed bond issue as set forth in said resolution), and those desiring to vote against the resolution shall have written or printed on their ballots the words "Against the Resolution to Issue Bonds to....." (here insert such purpose of the proposed bond issue, as set forth in said resolution). Such ballots shall be written or printed on plain white paper, with black ink or pencil, and shall contain no distinguishing mark or device, except as above provided. [Id.]

Art. 790. [648] **Issue of bonds.**—If the resolution be voted, the commissioners court, under the supervision and direction of the Comptroller, shall prepare and execute the bonds of the county accordingly. They shall bear interest not exceeding five per cent payable annually, and be redeemable in not less than five nor more than forty years from the date thereof. The time of maturity shall be expressed on the face of the bonds. Such

bonds shall be registered or enrolled as other county bonds, and shall not be sold or negotiated at less than their par value. [Id.]

Art. 791. [648] **Limit of issue.**—In no case shall bonds be issued under this chapter for a greater sum than that a levy of five cents of the one hundred dollars property valuation of said county will yield sufficient revenue to pay the interest as it accrues, and create a sinking fund sufficient to pay the principal of such bonds at maturity. [Id.]

Art. 792. [649] **Tax levy.**—When bonds are issued under the provisions of this chapter, the commissioners court shall levy an annual ad valorem tax on all property of the county, which shall be used only for the purpose of paying interest on said bonds and creating a sinking fund to pay the principal. [Id.]

Art. 793. [650] **Court may contract.**—The commissioners court may contract with individuals, firms or corporations for the use of such causeways, viaducts, bridges and approaches, or constructing and maintaining and using tracks, telegraph lines or other such privileges, but shall make no exclusive nor preferential contracts, and before executing any such contracts, shall give notice by posting at the courthouse door and in three other public places in said county the full terms and nature of such proposed contracts. [Id.]

Art. 794. [651] **Maintenance fund.**—Revenues that may accrue from any contract or contracts so made may be applied to the maintenance and repair of such structure or structures; and such court may make adequate provision for such maintenance and repair. In the event the revenues accruing from the use of any such structure shall exceed the expenditures for its maintenance and repair, such excess shall be applied to the road and bridge fund of the county. [Id.]

Art. 795. [652] **Rules and regulations.**—The commissioners court may make rules for the use of any structure erected under the provisions of this chapter, and provide for the enforcement thereof. [Id.]

CHAPTER FIVE.

FUNDING, REFUNDING AND COMPROMISES.

| | | | |
|-----------------------------------|-------------|-----------------------------|-------------|
| In case of storms, etc..... | Article 796 | Apportionment of taxes..... | Article 800 |
| Regulation of bonds..... | 797 | Requisites of bonds..... | 801 |
| Order of commissioners court..... | 798 | Registration and sale..... | 802 |
| Classification of issues..... | 799 | | |

Art. 796. [660] **In case of storms, etc.**—Any county or any city incorporated under the general laws which may suffer great destruction or damage of property or depreciation of the value of taxable property from storms, floods or other disasters, may fund, refund, compromise or settle its valid outstanding bonded and floating indebtedness. [Acts 1901, S. S. p. 18.]

Art. 797. [661] **Regulation of bonds.**—For such purpose, the bonds of the county or city may be issued by the governing body without a vote of the tax payers in denominations of not less than one hundred, nor more than one thousand dollars each, for an amount sufficient to consummate such compromise or

settlement, not to exceed the amount unpaid on the outstanding indebtedness. Such bonds may be exchanged for bonds or other evidences of outstanding indebtedness of such county or city, or may be sold and the proceeds applied in the purchase of outstanding bonds or the payment of outstanding floating indebtedness, and may be exchanged or sold from time to time in such amounts as may be required for refunding said outstanding bonds and funding or settling said floating debts. [Id.]

Art. 798. [662] **Order of commissioners court.**—Before issuing such bonds, and not later than two years after the disaster, the governing body of the county or city shall, by an order or ordinance, entered on the minutes, recite the nature and date of such disaster, the taxable value of the remaining property subject to taxation in said city or county as shown by the first approved assessment roll of such county or city made after such disaster, and the amount of bonds that will be sufficient to fund, refund or settle the outstanding bonded and floating indebtedness of such county or city, stating also, the amount of new bonds that will be required for refunding or settling each outstanding issue of bonds, and the amount of new bonds necessary to fund or settle the outstanding indebtedness charged against each particular fund. [Id.]

Art. 799. [663] **Classification of issues.**—Separate classes of bonds shall be issued to refund or settle, respectively, each separate issue of outstanding bonds, and to fund or settle, respectively, the indebtedness against each particular fund. [Id.]

Art. 800. [664-5-6] **Apportionment of taxes.**—The court or council shall determine and record in the minutes the proportion of the several annual ad valorem taxes authorized by law that can be applied, respectively, in payment of the interest and sinking funds of the several classes of bonds without depriving the city or county of the funds which will be required to meet the necessary current annual expenses of such county or city. A levy in proportion to such excess or excesses beyond the amount required for current annual expenses may be made to pay the interest and sinking fund, respectively, of the said several classes of bonds. The constitutional limitation as to the rates and purposes of the several taxes shall not be exceeded nor disregarded. [Id.]

Art. 801. [667 to 672] **Requisites of bonds.**—The court, or city council, shall also by order or ordinance, prescribe the form and the classes of said bonds, and provide for the issuance thereof, at such dates as may be expedient. Such bonds may be made payable at any date deemed expedient by the commissioners court or city council, not later than forty years from the date of the execution, and provision may be made for their redemption after five years, or after such longer period as may be deemed expedient. Said bonds shall bear interest as stipulated and specified in coupons attached thereto, not to exceed four per cent per annum. Said bonds shall be issued under and subject to all requirements of chapter one of this title, which are not in conflict with the requirements and provisions of this chapter,

and shall be signed by the county judge or mayor, and attested by the county or city clerk, as the case may be. [Id.]

Art. 802. [673-4-5-6-7] **Registration and sale.**—When examined and certified by the Attorney General, said bonds shall be registered by the Comptroller without requiring the old bonds, warrants or other evidence of indebtedness to be presented to him for cancellation. Said bonds shall be delivered to the county or city treasurer, and said officer shall register said bonds in a book kept for that purpose, and said bonds may thereafter be sold or exchanged for not less than their face value and accrued interest. Before delivery of the bonds, the date of the sale or exchange thereof shall be indorsed and certified on the bonds by the county judge or mayor, whose signature shall be attested by the county or city clerk. [Id.]

CHAPTER SIX.

RECLAMATION AND IRRIGATION BONDS.

| | Article | | Article |
|----------------------------|---------|----------------------------------|---------|
| Power to issue..... | 803 | Requisites of issuance..... | 813 |
| Order for election..... | 804 | Issuance of bonds and notes..... | 814 |
| Amount of bonds, etc..... | 805 | May exchange bonds..... | 815 |
| Limit of indebtedness..... | 806 | Sale of bonds and notes..... | 816 |
| Election..... | 807 | Other counties may avail..... | 817 |
| Order of issuance..... | 808 | Special powers..... | 818 |
| Additional bond issue..... | 809 | Special fund..... | 819 |
| May issue notes..... | 810 | Control of system..... | 820 |
| Shall order election..... | 811 | Other improvements..... | 821 |
| Ballot, etc..... | 812 | What counties may avail..... | 822 |

Art. 803. **Power to issue.**—For the purpose of constructing and maintaining pools, lakes, reservoirs, dams, canals and waterways for irrigation purposes or in aid thereof, or purchasing any such improvements already existing and adding thereto and paying incidental expenses connected therewith, counties may issue bonds not to exceed one fourth of the assessed valuation of its real property and levy and collect necessary taxes to pay the interest and provide a sinking fund for the redemption thereof. [Acts 1923, p. 264.]

Art. 804. **Order for election.**—Upon the petition of fifty or more resident property taxpaying voters of a county for an election upon the question of issuing bonds under the provisions of Section 52, Article 3, or Section 59 of Article 16 of the State Constitution, the commissioners court shall at a regular or special session thereof, order an election to determine whether or not the bonds of such county shall be issued in an amount not to exceed one fourth of the assessed valuation of the real property of such county for the purposes stated in the preceding article, and whether or not a tax shall be levied upon the property of said county for the purpose of paying the interest on such bonds and providing a sinking fund for the redemption thereof. [Id.]

Art. 805. **Amount of bonds, etc.**—The amount of bonds proposed to be issued, with the rate of interest thereon not to exceed six per cent per annum, payable annually or semi-annually, and the date of maturity, shall be stated in the petition, in the order for the election, and in the notice therefor; or such order and notice may provide that the bonds may bear interest at a rate to be fixed by the commissioners court, not to exceed six per cent

per annum, payable annually or semi-annually, and that the bonds may mature at such times as may be fixed by the commissioners court, serially or otherwise, not to exceed forty years from their date. [Id.]

Art. 806. Limit of indebtedness.—Where such county contains any district or districts organized under Section 52 of Article 3, or Section 59 of Article 16 of the State Constitution, the percentage of indebtedness of any such district based upon its assessed valuation of real property in the district, together with the percentage of the proposed county indebtedness based upon the assessed valuation of the real property of the county as shown by the last approved assessment rolls of such district and of the county, shall never exceed in any one or more of such districts, or in the county, twenty-five per cent of the assessed valuation of real property of such district or districts, or of such county. [Id.]

Art. 807.—Election.—These rules shall govern the conduct and holding of such election:

1. Only resident property taxpayers who are qualified electors of the county shall be allowed to vote in such election, and a two-thirds vote shall be necessary to carry the proposition submitted thereat.

2. The ballots to be used at such election shall have written or printed thereon the words "For the issuance of the bonds and levy of tax in payment thereof," and "Against the issuance of the bonds and levy of tax in payment thereof." The commissioners court shall furnish the ballots for each of the polling places.

3. The election order shall fix the time of holding said election and shall designate the polling place or places in each voting precinct in the county where said election shall be held, and shall name a presiding judge, a judge and two clerks for each polling place, or may name more election officers for any polling place if the court considers it necessary.

4. A copy of the election order signed by the county judge shall serve as proper notice of said election, and one copy shall be posted at each polling place and one at the courthouse door for at least full twenty days prior to the date of the election, and shall also be published in a newspaper published in said county for three consecutive weeks prior to the date of said election, the first publication to be full twenty-one days before the date of the election.

5. The manner of conducting said election shall be governed by the election laws of this State, except as otherwise herein provided.

6. Immediately after the election the presiding judge at each polling place shall make returns of the result of the election showing the total number of votes cast, the number cast for and against the proposition, and he shall deliver such returns to the county clerk who shall keep them in a safe place and deliver them to the commissioners court, who shall at a regular or special session, canvass said returns and declare the result of

said election by order entered upon the minutes of the court. [Id.]

Art. 808. **Order of issuance.**—If the issuance of the bonds and levy of the tax have been so adopted, the commissioners court, at a regular term thereof, shall make and enter an order directing the issuance of the bonds authorized, and in said order shall provide for the levy and collection of a tax annually sufficient to pay the annual interest thereon, payable at such place or places as provided in said order, and to redeem such bonds at maturity. [Id.]

Art. 809. **Additional bond issue.**—If bonds have been authorized to be issued, or have been issued as herein provided, and if the commissioners court of such county shall consider it necessary to make any modifications in any of the proposed improvements, or shall determine to purchase or construct further or additional improvements and issue additional bonds, or purchase additional property in order to carry out the purposes of the project, or to best serve the interests of the county, such findings shall be entered of record, and an order for an election shall be entered and notice thereof given, and such election shall be held and the result thereof declared, in accordance with the provisions of this chapter, and if the result of such election be in favor of the issuance of such additional bonds, the commissioners court may order such additional bonds to be issued in the manner herein provided. [Id.]

Art. 810. **May issue notes.**—Whenever a county shall have constructed or purchased improvements and the same shall be damaged so that it may be necessary to raise funds to repair such damage, the county may issue bonds to raise such funds in the manner provided in this chapter, or may issue its notes therefor. Such notes shall run not to exceed twenty years and bear interest not to exceed six per cent per annum payable annually or semi-annually. [Id.]

Art. 811. **Shall order election.**—Before such notes are issued, the commissioners court shall order an election and give notice thereof, as required for elections upon bond issues, stating the purpose for which they are to be issued, the time they are to run, the rate of interest, and the time and place or places of election. [Id.]

Art. 812. **Ballot, etc.**—The ballots for such election shall have written or printed thereon "For the issuance of notes," and "Against the issuance of notes." Such election shall be held and returns made and canvassed as provided herein for bond elections. If a two-thirds majority of those voting at such election voted in favor of the issuance of such notes, the commissioners court may issue and sell same for the benefit of said county and the purpose or purposes for which authorized. [Id.]

Art. 813. **Requisites of issuance.**—The commissioners court shall pass and enter an order directing and authorizing the issuance of the notes, and in said order provisions shall be made for the levy and collection of a tax annually sufficient to pay the current interest and provide a sinking fund for the payment of the principal at maturity. Said notes may be issued to mature

serially or otherwise, as may be provided in the election order and notice of election. The limitation of indebtedness hereinbefore provided shall also apply to the issuance of such additional bonds and such notes. [Id.]

Art. 814. **Issuance of bonds and notes.**—All bonds and notes issued under the provisions of this chapter shall be issued in the name of the county, and such bonds shall be designated “_____County Water Improvement Bonds,” and such notes shall be designated “_____County Water Improvement Notes,” and shall be signed by the county judge, countersigned by the county clerk and registered by the county treasurer, and the seal of the commissioners court shall be impressed thereon, and may be in such denominations as may be fixed by the commissioners court. [Id.]

Art. 815. **May exchange bonds.**—The commissioners court may exchange bonds for property or in payment of the contract price for work to be done in the construction of said improvements. [Id.]

Art. 816. **Sale of bonds and notes.**—The commissioners court shall sell or exchange such bonds and notes on the best terms and for the best obtainable price, not less than their par value. When the bonds or notes are sold, the proceeds shall immediately be delivered to the county treasurer. [Id.]

Art. 817. **Other counties may avail.**—Any county desiring to issue bonds in accordance with the provisions of this chapter, shall bring an action in the district court of such county, or in the district court of Travis County, to determine the validity of such bonds in the manner provided for the validation of Water Improvement District Bonds in Chapter 2 of the Title “Water” and each provision of said chapter relative to such suit, the duties of the Attorney General and Comptroller, the judgment to be rendered, the effect of such judgment, and other matters connected therewith, shall apply to the validation of such county bonds. [Id.]

Art. 818. **Special powers.**—Counties operating under the provisions of this chapter are hereby empowered to own and construct reservoirs, dams, levees, wells, canals and other improvements, and to acquire the necessary rights-of-way and other lands by purchase or by condemnation in the manner provided for the condemnation of right-of-way by railroad companies, and to do, construct, purchase and acquire all other works and improvements required for the proper and efficient irrigation of the lands in such county. [Id.]

Art. 819. **Special fund.**—The commissioners court shall annually levy a tax sufficient to pay the current interest on such bonds and to pay the principal thereof as the same becomes due, and said tax shall be assessed and collected as other county taxes, and when collected shall constitute a special fund and shall not be diverted or used for any other purpose than in this article provided. [Id.]

Art. 820. **Control of system.**—The commissioners court shall

have and exercise the control and management of the affairs and operation of the irrigation system of such county to the same extent and in the manner provided in Chapter 2 of the Title "Water," as conferred upon the directors of Water Improvement Districts, and said court shall exercise all of the powers relative to the control, management, affairs and operation of such county irrigation system as such directors have under the provisions of said chapter, and all the provisions of said chapter relative to the control, management, affairs and operation of Water Improvement Districts shall apply to the control, management, affairs and operation of such county irrigation system. [Id.]

Art. 821. **Other improvements.**—Any county authorized under the provisions of this chapter, may issue bonds for the improvement of rivers, creeks and streams to prevent overflow and for all necessary drainage purposes in connection therewith, and bonds proposed to be issued for the combined purposes stated in this chapter, or for any two of said purposes, shall be treated and deemed as for one purpose and may be voted upon as one proposition. [Id.]

Art. 822. **What counties may avail.**—The terms of this chapter shall apply to such counties as may have been relieved from the payment of taxes for a term of years by act of the Legislature under and by virtue of the provisions of Section 10, Article 8, of the State Constitution. [Id.]

CHAPTER SEVEN.

MUNICIPAL BONDS.

| | | | |
|----------------------------|-------------|----------------------------------|-------------|
| May issue bonds..... | Article 823 | Liquidation board..... | Article 830 |
| Limitations..... | 824 | Liquidation..... | 831 |
| Signature..... | 825 | State tax laws..... | 832 |
| Shall provide for tax..... | 826 | Payment of taxes with bonds..... | 833 |
| Funding of debt..... | 827 | Further compromise..... | 834 |
| May compromise debts..... | 828 | Harbor bonds..... | 835 |
| Exceptions..... | 829 | | |

Art. 823. **May issue bonds.**—Any city or town may issue its coupon bonds for such sum as it may deem expedient for the purpose of the construction or purchase of public buildings, waterworks, sewers, and other permanent improvements within the city limits, and for the construction and improvement of the roads, bridges and streets of such city or town. This article includes building sites and buildings for the public free schools and institutions of learning within such cities and towns which assume the exclusive control of their public free schools and institutions of learning. Such bonds shall bear interest not to exceed six per cent per annum and shall become due and payable serially or otherwise not to exceed forty years from their date and may be payable at such place as may be fixed by ordinance. [Acts 1921, p. 13.]

Art. 824. **Limitations.**—The limitations now provided by law upon the bonds that such cities may issue shall not apply to bonds issued under this law. [Id.]

Art. 825. **Signature.**—All bonds issued by a city or town shall be signed by the mayor and countersigned by the city secretary. [Id.]

Art. 826. **Shall provide for tax.**—The governing body, when the issuance of bonds has been authorized, shall provide for the levy and collection of a tax annually sufficient to pay the annual interest and provide a sinking fund for the payment of such bonds and all other outstanding bonds of such city or town issued since September 25, 1883. [Id.]

Art. 827. [890] [465] [419] **Funding of debt.**—The governing body shall pass all necessary ordinances to provide for funding the whole or any part of the existing debt of the city or any future debt by cancelling the evidences thereof, and issuing to the holders or creditors, notes, bonds or treasury warrants, with or without coupons, bearing interest at any annual rate not to exceed six per cent. [Acts 1875, p. 113; G. L. vol. 8, p. 485.]

Art. 828. [891] [471] **May compromise debts.**—The governing body, by their resolution or ordinance, by referring to this law and adopting the same, are authorized to compromise and fund any existing valid indebtedness issued by the city or town, whether bonded or floating, and the coupons due upon the bonded debt. For such purpose, they are authorized to issue new bonds in denominations of not less than fifty nor more than one thousand dollars, in their discretion, with interest coupons payable annually, to become due and payable in not exceeding thirty years, and to bear interest not to exceed six per cent per annum. [Acts 1887, p. 50; G. L. vol. 9, p. 848.]

Art. 829. [892] [472] **Exceptions.**—No compromise shall be made by which any debt shall be funded when such debt is barred by the statutes of limitations. [Id.]

Art. 830. [896] [479] **Liquidation board.**—Whenever a compromise of the debt of any city or town shall be so affected, and the bonds are delivered to the creditors, a board of liquidation consisting of five reputable citizens of such city or town shall forthwith be appointed and organized in the manner following:

1. One each shall be appointed by the mayor of the city or town, the city council, the Governor, any district judge of the district in which such city or town is situated, and the holders of said indebtedness or a majority of them, and each shall fill vacancies in the office of their respective appointee in said board.

2. In case of failure, neglect or refusal of any or all of said officers to appoint a member of said board or to fill vacancies therein, then the holders of said bonds or any one or more of them may apply to any district court of the district in which such town or city is situated, or to the judge thereof in vacation, for the appointment of the members necessary to complete said board, and said court or judge shall make such appointment.

3. The members of said board shall serve without compensation, and shall hold office for four years. Each member of said board shall take an oath to faithfully perform the duties of his office. A majority of said board shall be a quorum to transact business. [Id.]

Art. 831. [896] [479] **Liquidation.**—These rules shall govern the handling and disposition of all moneys coming under the control of the board as herein provided:

1. Said board shall select some solvent depository for such moneys, for whose acts they shall be responsible, and shall, in writing, signed by them, notify the tax collector of said city or town, of said selection.

2. Said collector shall thereupon deposit at the close of business of each day one-half of all moneys collected by him for the twenty-four hours next preceding, on account of all the taxes of whatever nature levied by said city or town, with the said depository, whose receipt therefor shall be an acquittance of said collector.

3. The collector shall be liable on his official bond for any failure to promptly make such deposits and for ten per cent per month of such amounts in addition thereto as penalty, which sums may be recovered by said board in a suit therefor, which they shall promptly institute.

4. Whenever the total of said deposits shall equal the annual interest on said bonds, it shall be lawful for the collector to discontinue said deposits until he shall be notified in writing by said board that said deposits are reduced below that sum.

5. Said funds shall be subject to said board and shall be applied by it to the payment, first of the interest on the said bonds as they mature, secondly, to the payment of the principal thereof, and thirdly, to the payment of interest of any valid bonds issued by such city and not embraced in any issue of bonds issued under the provisions of this law, and fourthly, to the payment of the principal of bonds of the character last referred to on the maturity of the same.

6. The members of said board shall be liable for the prompt payment of interest out of said funds, and in case of failure or refusal, they shall in addition be liable to ten per cent of the amount of such interest as damages to be recovered by any person aggrieved thereby.

7. Whenever there shall be in the hands of such depository a sufficient sum to pay two per cent of the principal of said bonds in addition to one year's interest, said board shall use the same in the purchase of outstanding bonds as provided by law, and such bonds when so purchased shall be returned to the city council together with all coupons which have been paid.

8. Expenses incurred by the board in advertising for purchasers of bonds shall be paid out of said funds.

9. Said board shall make semi-annual reports to the city council of its acts and of all receipts and disbursements of money coming under their control. [Id.]

Art. 832. [897] [477] **State tax laws.**—Whenever such compromise shall be entered into and accepted in good faith, either by the holders of the present bonds or by any persons purchasing new bonds, as herein provided, all laws now or hereafter in force for the assessment and collection of State taxes shall also be in force and apply to the assessment and collection of taxes levied to meet the interest and sinking fund of said new bonds; and in any suit instituted to enforce the payment of said bonds or coupons against any such city or town, no defense either in law or equity, shall be admitted in any court of this State, except such as originated upon, or subsequent to, the issuance of such new bonds. [Id.]

Art. 833. [900] [473] **Payment of taxes with bonds.**—The new bonds thus issued by a city or town shall be exempt from the payment of all taxes levied by such city or town. The taxes levied to pay such new bonds may be paid with the bonds or coupons thereof if matured. Said coupons and bonds shall only be received in payment of taxes which have been levied for the purpose of paying such bonds and coupons. [Id.]

Art. 834. [901] [481] **Further compromise.**—Cities and towns may compromise and liquidate their indebtedness and issue bonds therefor under such conditions as are prescribed in this title conferring such authority on counties, cities and towns, and as may be otherwise provided by law. [Id.]

Art. 835. [883] [482] **Harbor bonds.**—When necessary therefor, cities which border on the Gulf of Mexico may issue the coupon bonds of such cities to bear interest at not exceeding five per cent per annum for the purpose of improving or aiding the improvement of their harbors and the bars at the entrance thereof in such amounts as may be deemed necessary not to exceed the limit of indebtedness fixed by their respective charters, and may appropriate for such purpose money out of any surplus fund which may be on hand at any time, and when any bonds may be on hand, the issuance of which has been made for other purposes and may not be needed for such purpose. Such surplus bonds may be sold and the proceeds used for such improvements. [Acts 1883, p. 48; G. L. Vol. 9, p. 354.]

CHAPTER EIGHT.

SINKING FUNDS—INVESTMENTS, ETC.

| | | | |
|-----------------------------|---------|-------------------------------|---------|
| | Article | | Article |
| Investments | 836 | Penalties | 840 |
| Secondary investments | 837 | Recovery | 841 |
| Annual report | 838 | Federal Farm Loan Bonds | 842 |
| Disbursements | 839 | | |

Art. 836. [698] **Investments.**—The legally authorized governing body of any county, city or town, or the trustees of any school district or school community, may invest their respective sinking funds for the redemption and payment of the outstanding bonds of such county, city or town, or community, in bonds of the United States, war-savings certificates, and certificates of indebtedness issued by the Secretary of the Treasury of the United States, and in bonds of Texas, or any county of this

State, or of any incorporated city or town. No such bonds shall be purchased which, according to their terms, mature at a date subsequent to the time of maturity of the bonds for the payment of which such sinking fund was created. [Acts 1905, p. 25; Acts 1918, 4th C. S., p. 164.]

Art. 837. [698] **Secondary investments.**—In the event a governing body is unable to purchase securities of the character mentioned in the preceding article, which mature at a date prior to the time of maturity of the bonds for the payment of which such sinking fund was created, then they may invest such funds in the bonds of any school district or school community authorized to issue bonds, under the same restrictions as provided in the preceding article. [Id.]

Art. 838. [699] **Annual report.**—The county treasurer of each county and the treasurer of each city shall make an annual report to the State Comptroller on the first day of August, showing the condition of the interest and sinking fund for each set of bonds of said county or city outstanding on the thirtieth day of June of each year, which said report shall be made under oath, and shall show:

1. The outstanding bonded indebtedness of said city or county, giving date when issued, the amount of each set of bonds, the rate of interest they bear, and when they mature;
2. The tax levy in force to provide for the interest and sinking fund on each set of said bonds;
3. The amount on hand to the credit of the interest and sinking fund of each set of said bonds, showing whether in cash or securities;
4. The amount received by the said fund since last report, and from what source;
5. The disbursements from said fund since last report, and for what purpose;
6. The amount of said bonds redeemed since last report, and the amount still outstanding. [Acts 1899, p. 45.]

Art. 839. [700] **Disbursements.**—No city or county treasurer shall honor any draft upon the interest and sinking fund provided for any of the bonds of such city or county, nor pay out nor divert any of the same, except for the purpose of paying the interest on such bonds or for redeeming the same, or for investment in such securities as may be provided by law. [Id.]

Art. 840. [701] **Penalties.**—Any treasurer who shall fail to make the reports provided for in the third article of this chapter, or who shall divert said fund or apply said fund for any other purpose than as permitted by the preceding article, shall be subject to a penalty of not less than five hundred nor more than one thousand dollars, to be recovered by the State, and in addition thereto, shall be liable for the amount of such fund so diverted. [Id.]

Art. 841. [702] **Recovery.**—The Comptroller, whenever the reports of any treasurer show that he has diverted said funds, or when he shall fail to make such reports, shall notify

the Attorney General or the district attorney of the district in which such treasurer resides, or county attorney in counties in which there is no district attorney provided for by law, of the fact, who shall thereupon institute suit against such treasurer and his official bondsmen for the amount of such penalty and of said fund so diverted. The amount of such penalty so recovered shall be paid into the State Treasury, and the amount of the diverted fund so recovered shall be paid into the county or city treasury to the credit of the fund from which it was so diverted. [Id.]

Art. 842. **Federal Farm Loan bonds.**—All bonds issued under and by virtue of the Federal Farm Loan Act, approved by the President of the United States, July 17, 1916, shall be a lawful investment for all fiduciary and trust funds in this State, and may be accepted as security for all public deposits where deposits of bonds or mortgages are authorized by law to be accepted. Such bonds shall be lawful investments for all funds which may be lawfully invested by guardians, administrators, trustees and receivers, for saving departments of banks incorporated under the laws of Texas, for banks, savings banks and trust companies chartered under the laws of Texas, and for all insurance companies chartered or transacting business under the laws of Texas, where investments are required or permitted by the laws of this State. [Acts 1917, p. 122.]

TITLE 23.

BRANDS AND TRADE MARKS.

| | | | |
|--|---------|----------------------------|---------|
| | Article | | Article |
| Trade mark of another..... | 843 | Record for dairymen..... | 848 |
| Trade mark for dairymen..... | 844 | May assign..... | 849 |
| Marks not to be similar..... | 845 | Infringement enjoined..... | 850 |
| Injunction..... | 846 | Trade mark filed, etc..... | 851 |
| Prima facie evidence of ownership..... | 847 | | |

Article 843. [1392] [918a] **Trade mark of another.**—All manufacturers or dealers in carbonated goods, mineral waters, soda water, or other beverage, or manufacturers of medicine or other compound requiring the use of kegs, casks, barrels, boxes, syphons, bottles, or any other vessels for containers, upon which the names, brands, marks, or trade marks, or other designation of ownership or proprietorship, is stamped, engraved, etched, blown in, impressed, or otherwise produced upon such boxes, syphons, bottles, or any other vessels for containers, may file in the office of the county clerk of the county in which the principal place or office of business is situated, a fac simile or description of the name or names, marks or devices, so used by such manufacturer or dealer in such wares herein enumerated, and cause such description to be published in a public newspaper published in such county for three successive weeks; and the act of so filing and causing to be recorded by the county clerk, and publishing, shall operate as a trade mark, securing to the said manufacturer the full protection of the law as a trade mark, entitling the said manufacturer to the sole and exclusive use in Texas of said mark, name or device; for which service the clerk shall be allowed the sum of one dollar, to be paid by the party having such brands, etc., recorded. It is hereby declared to be unlawful for any person or persons, corporate or otherwise, other than the proprietor, or by his written consent, to fill, for the purpose of traffic, or for sale, with any compound whatever, any box, syphon, bottle or other container so marked, recorded in the office of the county clerk, and published as provided in this article, or to deface, erase, obliterate, cover up or otherwise remove or cancel any such mark or device. [Acts 1893, p. 125; Acts 1901, p. 288; G. L. Vol. 10, p. 555.]

Art. 844. **Trade mark for dairymen.**—Any person, firm or corporation engaged in the dairying business, or in the distribution or sale of milk requiring the use of bottles, may file in the office of the county clerk of the county in which it is expected such person, firm or corporation will sell or distribute milk, a fac simile or description of the name or names, trade name, mark or design used by such person, firm or corporation for advertising purposes, and cause such fac simile or description to be published in a public newspaper published in such county for three successive weeks, and the act of filing and publication shall operate to secure to such dairyman, milk distributor or milk dealer, sole and exclusive right to use in said county or

counties said name or names, trade name, mark or design. [Acts 1921, p. 161.]

Art. 845. **Marks not to be similar.**—No name or names, trade name, mark or design shall be filed by the county clerk as aforesaid that could probably be mistaken for a name or names, trade name, mark or design already of record. [Id.]

Art. 846. **Injunction.**—Any person, firm or corporation having adopted a name or names, trade name, mark or design, as provided herein, may proceed by suit to enjoin the use of said name, or names, trade name, mark or design by any other person, firm or corporation, and all courts having jurisdiction thereof shall grant injunction to restrain the unlawful use thereof. [Id.]

Art. 847. **Prima facie evidence of ownership.**—Any person, firm or corporation engaged in the dairying business or the sale or distribution of milk, who shall have filed with the county clerk of the county in which they may be engaged in the distribution or sale of milk, a name or names, trade name, mark or design as herein provided, may cause to be engraved, etched, blown in or impressed or otherwise produced upon the bottles owned by said person, firm or corporation such name or names, trade name, mark or design, and when such name or names, trade name, mark or design is so impressed upon a bottle, such bottle shall be prima facie the property of the person, firm or corporation which may appear upon the record of the office of the county clerk of such county to be the owner of such name or names, trade name, mark or design either as the original owner or transferee, as herein provided. [Id.]

Art. 848. **Record for dairymen.**—Upon the filing with the county clerk of such fac simile or description, as herein provided, the county clerk shall record the same in a well-bound book and index the same under the name of each owner and also under the trade name, and shall furnish to such owner a certificate containing a description of same, which said certificate shall be prima facie evidence that the person or persons therein named is the owner of said name or names, trade name, mark or design. The clerk shall be paid a fee of one dollar for recording such trade mark or name. [Id.]

Art. 849. **May assign.**—Any owner of a name or names, trade name, mark or design recorded as herein provided who desires to convey or assign same shall do so by written assignment duly acknowledged, and filed with said county clerk, which said assignment shall refer to the book and page where said original is recorded, and the clerk shall upon the filing of said assignment, record and index same as an original and note on the margin the fact of the assignment and refer to the book and page where such assignment is recorded, and furnish to such assignee a certificate of ownership. The clerk shall receive for recording such transfer, such fees as are now provided by law for similar services. [Id.]

Art. 850. [705] [318c] **Infringement enjoined.**—Every

person, association or union of workmen, incorporated or unincorporated, having adopted a label, trade mark, design, device, imprint or form of advertisement, as aforesaid, may proceed by suit to enjoin the wrongful manufacture, use, display or sale of any such label, trade mark, design, device, imprint or form of advertisement, and the manufacture, use, display or sale of any such counterfeit or imitation; any court having jurisdiction thereof may grant an injunction to restrain such manufacture, use, display or sale, and shall award the plaintiff in such suit such damages resulting from such wrongful manufacture, use, display or sale as by him may have been sustained. Where such association or union is not incorporated, suits under this law may be commenced and prosecuted by any officer or member of such association or union in his own name, for himself and for the use and benefit of such association or union. [Act 1895, p. 108; G. L. Vol. 10, p. 838.]

Art. 851. [706] [318d] **Trade mark filed, etc.**—Every person, association or union of workmen, incorporated or unincorporated, that has heretofore or shall hereafter adopt a label, trade mark, design, device, imprint or form of advertisement, shall file the same in the office of the Secretary of State by leaving two fac simile copies, with the Secretary of State, and said Secretary shall return to such person, association or union so filing the same, one of said fac simile copies along with and attached to a duly attested certificate of the filing of same, for which he shall receive a fee of one dollar. Such certificate of filing shall in all suits and prosecutions under this chapter be sufficient proof of the adoption of such label, trade mark, design, device, imprint or form of advertisement, and of the right of such person, association or union to adopt the same. No label, trade mark, design, device, imprint or form of advertisement shall be filed as aforesaid that would probably be mistaken for a label, trade mark, design, device, imprint or form of advertisement already of record. No person, or association shall be permitted to register as a label, trade mark, design, device, imprint or form of advertisement any emblem, design or resemblance thereto that has been adopted or used by any charitable, benevolent or religious society or association, without their consent. [Id.]

TITLE 24.

BUILDING AND LOAN ASSOCIATIONS.

| | Article | | Article |
|----------------------------------|---------|--------------------------------------|---------|
| Articles of association | 852 | Injunction | 868 |
| Organization | 853 | Forfeiture of shares | 869 |
| Directors | 854 | Expense and reserve fund | 870 |
| Bond of officers | 855 | Consolidation | 871 |
| Capital stock and shares | 856 | Dissolution | 872 |
| Loans and security | 857 | Report of commissioner | 873 |
| Right to loan forfeited | 858 | Foreign associations | 874 |
| Repayment of loan | 859 | Certificate of authority | 875 |
| Withdrawal value | 860 | Custody of securities | 876 |
| Lienholder may purchase | 861 | Statement of foreign association | 877 |
| Extension of time of corporation | 862 | Judgment against foreign association | 878 |
| Financial statement | 863 | Examination of same | 879 |
| Commissioner to supervise | 864 | Revoking certificate | 880 |
| Statement to commissioner | 865 | Penalty | 881 |
| Examination by commissioner | 866 | | |
| Liquidation | 867 | | |

Art. 852. Articles of Association.—Any number of persons, not less than five, who are residents of this State, desiring to organize a building and loan association for the purpose of building and improving homesteads, removing incumbrances therefrom, and loaning money to the members thereof, may, by complying with the provisions of this title, and entering into articles of association, become a corporate body. Said articles of association shall be signed by persons associating and acknowledged before some person authorized by the laws of this State to take acknowledgments to deeds, and shall set forth:

1. The name assumed by the association, which shall not be the name assumed by any other association incorporated under this law, nor so similar as to be likely to mislead.

2. The purpose for which the association is formed.

3. The amount of its authorized capital stock; and the number of shares into which it is divided; the par value of each share; and the number of shares subscribed for, which shall not be less than fifty in number.

4. The names of the incorporators; their respective residences and the number of shares subscribed by each.

5. The term of its corporate existence, which shall not exceed fifty years.

6. The name of the town, city or village in which such association is to be located. [Acts 1st. C. S. 1913, p. 72.]

Art. 853. Organization.—When executed as aforesaid, said articles of association shall be approved by, and filed with the Secretary of State, and a copy thereof, duly authenticated under the hand and seal of State, shall be delivered to the Commissioner of Insurance, who shall file the same in his office, and a like copy thereof shall be recorded in the office of the clerk of the county court of the county in which the principal office of such association is located, whereupon the persons named in the article of association, their associates and successors, shall become a corporate body for the period for which they were organized, and shall exercise such powers as are herein granted, and such other powers as are necessary to enable such association to carry out the purpose of its organization, not inconsis-

ent with the provisions of this law. Before such association shall proceed to business it shall adopt by-laws for the regulation and management of its business. Said by-laws shall not become operative until a copy thereof, duly certified by the president and secretary of the association shall have been approved by and filed with the Commissioner, and when so approved and filed the said Commissioner shall issue his certificate of such approval and filing and thereupon said association may proceed to do business. The provisions of this law shall not apply to loan corporations heretofore incorporated under the laws of Texas loaning money on real estate, or improvements thereon, in cities of this State of more than thirty thousand inhabitants and not requiring the borrowers to be members thereof, or holders of such shares in such corporations, and which have been doing business for as long as ten years prior to the passage of this Act. [Id. sec. 2.]

Art. 854. **Directors.**—The corporate powers of every building and loan association heretofore organized under the laws of this State, or which may be incorporated under this title, shall be exercised by a board of directors of not less than five members, who shall elect from their own number the officers of the association. The mode of electing members of said board of directors and officers and their respective terms of office shall be prescribed in the by-laws. [Id. sec. 3.]

Art. 855. **Bond of Officers.**—The secretary and treasurer of such association, and all other officers who sign and endorse checks, or who have charge of money or securities of such association, shall, before entering upon the duties of their office, each give such bond for the faithful performance of the same as shall be required and approved by the board of directors. Additional sureties or such increase of said bond as they may deem necessary, may be required at any time by the board of directors. Directors shall not be accepted as sureties on such bonds, and shall be individually liable for any loss sustained through their negligence or failure to comply with any provision of this article. [Id. sec. 4.]

Art. 856. **Capital stock and shares.**—The authorized capital stock of such association shall be divided into shares having a par value of not less than twenty-five dollars, nor more than two hundred dollars each, payable in periodical installments, called dues, not exceeding two dollars per month on each share; provided, that the by-laws may provide for the advance payment of installment dues and for which there may be issued an advance payment certificate. The shares may be issued in series, or at any time as the by-laws shall determine and subscriptions therefor shall be made payable to the association. Said shares shall be deemed personal property, transferable on the books of the association in the manner prescribed in the by-laws, and shall be paid off and retired as the by-laws shall direct. Every share shall be subject to a lien for the payment of unpaid dues and such other charges as may be lawfully incurred thereon under

the provisions of this title. The by-laws may prescribe the manner of enforcing such lien. New shares may be issued in lieu of shares matured, withdrawn, retired or forfeited. At no time shall the shares issued and in force exceed the aggregate number of shares into which the authorized capital stock is divided as designated in the articles of the association. Any building and loan association heretofore or hereafter incorporated under the laws of this State, may, by a resolution adopted by a two-thirds vote of shares represented and voted at any annual meeting, or at any meeting called for that purpose, increase its authorized capital stock and shares, or amend its articles of association or by-laws, in any manner not inconsistent with the provisions of this title. No such increase of capital stock nor amendments shall have effect until a copy of such resolution, certified by the president and secretary of such association, shall be filed, approved and recorded in the same manner as is provided in the second article of this title for the filing and recording of original articles of association or by-laws, in any manner not inconsistent with the provisions of this title. [Id. sec. 5.]

Art. 857. Loans and security.—At such times as the by-laws shall designate, not less frequently than once a month, the board of directors shall hold meetings, at which the funds in the treasury applicable for loans shall be loaned to the members who, in open competition, shall bid the highest premium for priority of right to a loan; or in lieu thereof, such funds may be loaned, either with or without premium, as the borrower may, in writing agree to pay, in which case the priority of right to a loan shall be decided by the priority of the application therefor. The manner in which said premium may be paid shall be prescribed in the by-laws. No loans shall be made by such association to any one not a member thereof, except as hereinafter provided, nor to any member for an amount greater than the par value of the shares held by such member. Borrowers shall be required to give real estate security, unincumbered except by the prior liens held by such association, accompanied by a transfer and pledge to the association of the shares borrowed upon as collateral security for the payment of the loan. No loan made upon real estate security shall exceed in amount two-thirds of the appraised valuation of such real estate. The shares of such association may be received as security for the loan of an amount not to exceed ninety per cent of the withdrawal value of such shares. Subject to the approval of the Commissioner, the number of payment of dues, interest and premium required from the borrowing stockholder to pay off his loan and secure a release of his incumbrance may be limited to such a definite number as the by-laws may provide. When the funds in the treasury applicable for loans shall accumulate and be in excess of the amount required for loans to members, they may be loaned to non-members upon real estate securities unincumbered by prior liens in an amount not to exceed fifty per cent of the appraised value of such securities, or may be invested in such

securities as are authorized to be accepted by saving banks in this State, but at no time shall such loans and investments exceed twenty per cent of the assets. [Id. sec. 6.]

Art. 858. **Right to loan forfeited.**—If the borrower neglects to offer security satisfactory to the board of directors within the time prescribed by the by-laws, his or her right to the loan shall be forfeited, and he or she shall be charged with interest or premium, if any, for one month, together with any expense incurred and the money appropriated for such loan may be re-loaned at the next or any subsequent meeting. Whenever a borrowing shareholder shall be in arrears in the payment of dues, interest or premium for more than four months, the board of directors may, at their discretion, declare the pledged shares forfeited, and the whole amount of the loan due and payable, and its collection, together with the arrears of interest, premium and fines, may be enforced by proceedings upon the security held by the association, in accordance with law. The withdrawal value of the pledged shares, at the time of the commencement of the foreclosure proceedings shall be credited upon the loan. [Id. sec. 7.]

Art. 859. **Repayment of loan.**—Any borrowing shareholder desiring to repay his loan shall have the privilege of doing so at any time, by giving the association thirty days written notice of such intention. The borrower shall be charged with the amount of the original loan, together with all the arrearages of interest, premium and fines and other legal charges, and shall be given credit for the withdrawal value of his shares pledged as security; and the balance shall be received by the association in full satisfaction of said loan. In cases where the premium is deducted from the loan in a gross sum, and the borrower repays the loan before the expiration of the tenth year from the date upon which said loan was made, such borrower shall be given credit for one-tenth of the premium paid for every year of the said ten years then unexpired. Any borrower desiring to retain his or her shares and membership may repay his loan without claiming credit for the withdrawal value of said shares whereupon said shares shall be retransferred to him or her, and shall be free from any claim by reason of said loan. [Id. Sec. 8.]

Art. 860. **Withdrawal value.**—By the term "withdrawal value" as used herein is meant: The then value of the stock at the time indicated in the connection in which the words are used, less the lawful charges against such shares in favor of the corporation. [Id. Sec. 9.]

Art. 861. **Lienholder may purchase.**—Any loan or building association incorporated by or under this title is hereby authorized and empowered to purchase at any sheriff's or other judicial sale, or at any other sale, public or private, any real estate upon which such association may have or hold any mortgage, lien or other incumbrance, or in which said association may have an interest for the purpose of collecting any debt due it, or for the protection of its interest in such real estate, and may sell, convey, lease or mortgage, at pleasure to any person or persons

whomsoever the real estate so purchased to the highest bidder after advertising same in some local paper for four consecutive weeks. [Id. Sec. 11.]

Art. 862. Extension of time of corporation.—Any loan or building association incorporated under this or any prior law, may extend the duration of time for which said association was organized by a vote of two-thirds of the capital stock of such association represented and voting at any annual meeting of the stockholders of such association, or at any special meeting called for that purpose; thereupon the board of directors shall transmit a copy of the proceedings of such annual meeting or of such special meeting, duly attested, to the Secretary of State, who shall make a duly authenticated copy thereof, as provided in the third article of this title, certifying to the extension of time of such corporation, and the same shall be filed with the Commissioner and recorded as provided in said third article. Any building and loan association incorporated under any prior law, and extending the duration of the time for which it was incorporated, in the manner herein provided, shall be deemed as incorporated under and be invested with all the power given in this title, the same as though such corporation had been originally incorporated under it. [Id. Sec. 12.]

Art. 863. Financial statement.—Each association formed under the provisions of this title shall, at the close of its first year's operations, and annually at the same period in each year thereafter publish in at least one newspaper published in the place where its principal office may be located, or if no newspaper be published in such place, then in a newspaper published nearest such place, a concise statement, verified by the oaths of its president and secretary, showing the actual financial condition of the association, and the amount of its property and liabilities, specifying the same particularly. [Id. Sec. 13.]

Art. 864. Commissioner to supervise.—The Commissioner of Insurance shall have supervision of all building and loan associations doing business in this State, and shall be charged with the execution of the laws of this State relating to such association. During the absence or disability of the Commissioner his chief clerk or deputy shall be authorized to perform all the duties relating to the control and supervision of such association and the execution of the laws above described. [Id. Sec. 14.]

Art. 865. Statement to commissioner.—Every building and loan association doing business in this State shall, on the first day of January of each year, or within sixty days thereafter, file with the Commissioner a full and detailed statement of its financial condition on the 31st day of the preceding December, and the business transacted during the preceding year within this State. Said statement shall set forth the amount and character of its assets, liabilities, receipts and disbursements, and shall contain such other information, and be in such form as said Commissioner may prescribe, and shall be subscribed and sworn to by the secretary and treasurer of such association. Any such association refusing or neglecting to file the annual

statement herein required within the period hereinbefore prescribed shall forfeit five dollars per day for each and every day such statement shall be withheld, and the Commissioner may maintain an action in the name of the State to recover such penalty, which, upon its collection, shall be paid into the State Treasury. The Commissioner shall within thirty days after such neglect or refusal to file such annual statement investigate the affairs of the association, and if found in a failing condition, take charge of its affairs. [Id. Sec. 15.]

Art. 866. **Examination by commissioner.**—Once in each year, or oftener, if in the opinion of the Commissioner it shall be necessary, the Commissioner shall make or cause to be made, an examination into the affairs of all building and loan associations doing business in this State. Such examination shall be full and complete, and in making the same the examiner shall have access to, and may compel the production of all books, papers and moneys, etc., of the association under examination, and may examine any officer of such association or any other person connected therewith, as to its business and affairs. The Commissioner may appoint such special examiners as may be necessary to carry out the provisions of this title. Such examiner shall be paid at the rate of eight dollars per day; they shall also receive necessary traveling expenses connected with the duties of their office, which shall be paid by the State Treasurer on the warrant of the Commissioner and the approval of the Governor. The expense incurred and services, other than examinations, performed especially for such associations shall be paid in full by such associations. [Id. Secs. 16, 25.]

Art. 867. **Liquidation.**—Whenever it shall appear to the Commissioner that the affairs of any such association are in an unsound condition, or that it is conducting its business in an unsafe or unlawful manner, such Commissioner shall at once notify the board of directors of such association, giving them twenty days in which to restore its affairs to a safe and sound condition, or to discontinue its illegal practices. If after twenty days such restoration shall not have been made, or such illegal practices shall have not been discontinued, said Commissioner may order one of the examiners appointed to examine such association, or a special examiner appointed for that purpose, to take possession of all books, records and assets of every description of such association and hold and retain possession of the same pending the further proceedings hereinafter specified. Should the board of directors, secretary or person in charge of such association refuse to permit the said examiner to take possession aforesaid, said Commissioner shall communicate such fact to the Attorney General, whereupon the Attorney General shall at once institute such proceedings as may be necessary to place such examiner in immediate possession of the property of such association. Upon taking possession of the effects of the association as aforesaid, said examiner shall prepare a full and true statement of the affairs and conditions of such association, including an itemized statement of its assets and liabilities, and

shall receive and collect all debts, dues and claims belonging to it, and may pay the immediate and reasonable expense of his trust. Said examiner shall be required to execute to the Commissioner a good and sufficient bond to be approved by such Commissioner, conditioned for the faithful discharge of his duties as custodian of such association. The Commissioner shall, within fifteen days next after said examiner has acquired possession of the property of such association, convene a special meeting of the shareholders for the purpose of considering and acting upon the examiner's report of the affairs and conditions of such association as found by him from his examination thereof. The shareholders may, at said special meeting, by votes of those owning two-thirds of the shares in force, resolve to go into liquidation and for that purpose may, by a majority vote of those present elect from their number a receiver and fix his compensation. The compensation to be allowed a receiver under this title shall be an amount reasonable in proportion to the value of the property of the association, and in no event shall exceed \$2500.00 per annum. A copy of said resolution duly certified by the presiding officer and secretary of said special meeting, together with the name and address of the receiver thus elected, shall be filed with the Commissioner. Said receiver shall be charged with a proper distribution of the assets, the discharge of all liabilities and final closing up of the business of such association. Before he shall enter upon the duties of his office, he shall be required to execute to the association a good and sufficient bond, conditioned for the faithful discharge of his duties, which shall be approved by and filed with said Commissioner. Upon the election and qualification of said receiver as aforesaid, the examiner shall, when so ordered by the Commissioner, turn over and deliver to said receiver all the books, papers and effects of every description in his hands belonging to such association. Said receiver shall, upon the completion of said duties intrusted to him, prepare a statement to that effect, reciting therein that all of the liabilities of such association have been completely discharged as far as its assets will permit and its assets and property distributed among all the persons entitled thereto. Said statement shall be subscribed and sworn to by said receiver and filed with the Commissioner, and a notice of such dissolution shall be published for three successive weeks in a newspaper published in the county wherein the principal office of such association is located. Upon the filing of said statement and making publication as aforesaid, such association shall be deemed dissolved. [Id. Sec. 17.]

Art. 868. Injunction.—If after having called a meeting of the stockholders as herein provided, the Commissioner shall find that liquidation by the shareholders cannot be had or consummated, he shall communicate such fact, together with a statement of the condition of the association to the Attorney General, who shall thereupon institute the necessary proceedings to enjoin such association from doing any further business, and for the appointment of a receiver therefor. [Id. Sec. 18.]

Art. 869. **Forfeiture of shares.**—If a shareholder be in arrears in the payment of dues upon unpledged shares, the board of directors may, if the shareholder fails to pay the amount of arrears within thirty days after notice, declare said shares forfeited. The withdrawal value of said shares at the time of forfeiture shall be ascertained and paid to such stockholder upon such notice as the by-laws may prescribe. Fines for the non-payment of dues, interest or premium shall not exceed one per cent per month on each dollar in arrears. [Id. Sec. 19.]

Art. 870. **Expense and reserve fund.**—The gross earnings of every building and loan association shall be ascertained at least once in each year, from which shall be deducted a sufficient amount to meet the operating expenses of such association, and from said earnings only shall such expenses be paid. From the balance of the earnings there shall be set aside at least one per cent annually as a reserve fund, until such fund reaches five percent of the outstanding loans, at which rate it shall thereafter be maintained and held by annual appropriations from the earnings. From said reserve fund shall be paid all losses sustained by said association from depreciation of securities or otherwise. After providing for expenses of the association, and the reserve fund as aforesaid, the residue of such earnings shall be transferred and apportioned to the credit of the shareholders as the association by its by-laws shall provide. [Id. Sec. 20.]

Art. 871. **Consolidation.**—At the annual meeting, or at any meeting called for that purpose, any two or more building and loan associations organized under the laws of this State may by two-thirds of the vote of all shareholders of each of the different associations resolve to consolidate into one upon such terms as shall be mutually agreed upon by the directors of such associations. Any shareholder not consenting to such consolidation shall be entitled to receive the withdrawal value of his stock in settlement, or, if a borrower, to have such value applied in part settlement of his loan. Such consolidation shall not take effect until a copy of said resolution, certified by a majority of the board of directors of each association, shall be filed with the Secretary of State and with the Commissioner and recorded in the manner hereinbefore provided. [Id. Sec. 21.]

Art. 872. **Dissolution.**—At the annual meeting, or at any meeting called for that purpose, any building and loan association of this State may, by a vote of shareholders owning two-thirds of the shares in force, resolve to liquidate and dissolve the corporation. In order to facilitate such dissolution, the board of directors may, if they deem desirable, sell and transfer the mortgage securities and other property of such association to another corporation, person or persons, subject, however, to the vested and accrued rights of the mortgagors. Before said resolution shall have effect, a copy thereof, certified by the president and secretary of such association, together with an itemized statement of its assets and liabilities, sworn to by a majority of the directors, shall be filed with the Commissioner. After filing a

copy of the resolution as aforesaid, it shall be unlawful for such association to issue stock or make any loans, but all of its income and receipts in excess of actual expense of management shall be applied to the discharge of liabilities. [Id. Sec. 22.]

Art. 873. Report of Commissioner.—The Commissioner shall annually, at the earliest possible date after the statements of such associations are received, make a report to the Governor of the general conduct and condition of all building and loan associations doing business in this State, including the information contained in such statements, arranged in tabular form together with such suggestions as he may deem expedient. There shall be printed of said report as many copies as the Commissioner shall deem necessary. [Id. Sec. 24.]

Art. 874. Foreign association.—Foreign building and loan associations doing business in this State shall conduct the same in accordance with the laws of this State governing domestic building and loan associations, and shall comply with all requirements of said laws except as herein provided. [Id. Sec. 26.]

Art. 875. Certificate of authority.—No foreign building and loan association shall do any business in this State until it shall procure from the Secretary of State a certificate of authority to do so. To procure such certificate of authority such foreign association shall comply with the following provisions:

1. It shall file with the Secretary of State a certified copy of its articles of incorporation, a copy of its by-laws and rules governing it, and its certificates and all printed matter issued by it, together with a statement of its financial condition such as is required annually from all building and loan associations organized under the laws of this State.

2. It shall file with the Secretary of State a written instrument, properly executed, agreeing that any summons or process of any court in this State may issue against it from any county in this State, and when served upon the Secretary of State, shall be accepted irrevocably as a valid service upon such foreign association. The Secretary of State shall mail a copy of such legal process served upon him to the home office of such foreign association, and the Secretary of State shall, within six days, certify to the court from which such summons or process issued, the fact of such mailing. The plaintiff shall for each process so served pay to the Secretary of State, at the time of such service, a fee of two dollars, which shall be recovered by the plaintiff as a part of the taxable costs if he prevail in the suit.

3. It shall deposit with the Secretary of State one hundred thousand dollars, either in cash or bonds of the United States, or bonds of any State in the United States, or bonds of any county or municipal corporation in the State of Texas, or mortgages, being first liens on improved and productive real estate located within this State, and worth at least twice the amount of the liens, or furnish surety company bond in said sum of one hundred thousand dollars; which securities or surety company bond

shall be approved by the Secretary of State. Said deposit shall be held as security for all claims of residents of this State against such foreign associations, and shall be liable for all judgments or decrees thereon; and said securities shall not be released until all shares of such foreign associations held by residents of this State shall have been fully redeemed and paid off, and its contracts and obligations to residents of this State shall have been fully performed and discharged. Such foreign associations may collect and use the interest on any securities so deposited, so long as it fulfills its obligations and complies with the provisions of this title. It may also exchange them for other securities of equal value, if satisfactory to the Secretary of State. If the business of such associations be solely that of lending money in this State, and it sells none of its stock except where loans are actually made on real estate in this State for the full amount of the stock so sold, and made at the time of the sale of such stock, then in such event the provisions of this title requiring a deposit or bond of one hundred thousand dollars shall not apply. [Id. Sec. 27.]

Article 876. Custody of securities.—All such securities deposited with the Secretary of State shall be immediately deposited by him with the State Treasurer, who, with his sureties, shall be responsible for the safe keeping thereof. The State Treasurer shall deliver such certificates only upon the written order of the Secretary of State. [Id. Sec 28.]

Art. 877. Statement of foreign association.—Whenever such foreign association has complied with the provisions of this title, the Secretary of State shall so certify to the Commissioner, and thereupon such foreign association, shall also furnish to said Commissioner a full and complete financial statement of its affairs duly sworn to by its president and secretary, together with such other information as said Commissioner may require, which said report shall be filed annually thereafter. If the Commissioner is satisfied that such association is in sound financial condition and shall be satisfied that such foreign association is conducting its business in accordance with the laws of this State, and shall regard it safe, reliable and entitled to public confidence, he shall so certify to the Secretary of State, who shall issue certificate of authority and renewals of such certificate of authority upon the payment of the fees as herein provided. [Id. Sec. 29.]

Art. 878. Judgment against foreign association.—If at any time any shareholder of such foreign association residing in this State, shall recover judgment against such foreign association, which after thirty days shall not have been satisfied, the State Treasurer, upon an order from the Secretary of State, shall appropriate from the cash deposited with him by such association as herein provided, if any, or shall proceed to sell at the current market value, sufficient of the the bonds, or collect sufficient of the mortgage securities deposited with him to satisfy the amount of such judgment, together with five per cent for his

services and expense. Before ordering the State Treasurer to so proceed, the Secretary of State shall be served with an affidavit by the plaintiff or his attorney, setting forth the recovery of judgment, and that same has remained unpaid for thirty days, and that no proceedings are pending for appeal or reversal of the same. Such foreign association after notice of the service of such affidavits, shall not transact any new business in this State until any deficiency of securities caused by the necessity of satisfying such judgments shall have been made good by further deposit of similar securities with the Secretary of State. [Id. Sec. 31.]

Art. 879. **Examination of same.**—Every foreign building and loan association doing business in this State shall be subject to the same examinations as are building and loan associations organized under the laws of this State. The expense of all examinations of such foreign associations shall be paid by the association examined, and the money so received shall be paid into the State Treasury. It shall not be necessary for such examination to be made but once in each year. Such expense shall only include the necessary traveling expenses of such examiner and the sum of eight dollars per day, for each day actually required in making such examinations. [Id. Sec. 32.]

Art. 880. **Revoking certificate.**—Should the Secretary of State find, upon examination, that such foreign association does not conduct its business in accordance with law, or that the affairs of such foreign associations are in an unsound condition, or if such foreign association refuses to permit examination to be made, he may revoke the certificate of authority granted such foreign association to do business in this State. Upon the revocation of such certificate of authority, the Secretary of State shall mail a notice thereof to the home office of such foreign association, and cause a similar notice to be published in at least one newspaper published in the city of Austin. After publication of said notice it shall be unlawful for any agent of such foreign association to receive any further payments on shares from stockholders residing in this State, except payment on shares on which a loan has been made. [Id. Sec. 33.]

Art. 881. **Penalty.**—No foreign building and loan association shall be permitted to do business in this State unless the provisions of this title are fully complied with. All contracts made by such foreign associations while in default shall be absolutely void. Any such association violating any provision of this title, or failing to comply with any of its provisions, shall be subject to a penalty of not less than one hundred nor more than five hundred dollars, such penalty to be recovered by an action in the name of the State of Texas, and upon the collection thereof, the same shall be paid into the State Treasury. [Id. Sec. 34.]

TITLE 25.

CARRIERS.

1. DUTIES AND LIABILITIES.

| | Article | | Article |
|-------------------------------|---------|-------------------------------------|---------|
| At common law..... | 882 | Liability as warehouseman, etc..... | 886 |
| Liability fixed..... | 883 | Diligence in delivery..... | 887 |
| Must carry goods..... | 884 | Shall ship in order..... | 888 |
| Must give bill of lading..... | 885 | Care of animals..... | 889 |

Art. 882. [707] [319] [277] **At common law.**—The duties and liabilities of carriers in this State and the remedies against them, shall be the same as are prescribed by the common law except where otherwise provided by this title.

Art. 883. [708] [320] [278] **Liability fixed.**—Railroad companies and other common carriers of goods, wares and merchandise, for hire, within this State, on land, or in boats or vessels on the waters entirely within this State, shall not limit or restrict their liability as it exists at common law, by any general or special notice, or by inserting exceptions in the bill of lading or memorandum given upon the receipt of the goods for transportation, or in any other manner whatever. No special agreement made in contravention of this article shall be valid. [Act Dec. 4, 1863, p. 7; G. L. Vol. 5, p. 661.]

Art. 884. [709] [321] [279] **Must carry goods.**—Upon the tender of the legal or customary rates of freight on goods offered for transportation, to a common carrier other than a railroad, such carrier shall receive and transport such goods, provided his vehicle or vessel has capacity safely to carry the goods so offered on the trip or voyage then pending, and such goods are of the kind usually carried upon such vehicle or vessel, and are offered at a reasonable time. Any common carrier refusing to transport goods as above provided or to take the same in the order presented, shall be liable in damages to the party injured, by reason of such refusal, and shall also be liable to a penalty of not less than five nor more than five hundred dollars, to be recovered in each case by the owner of the goods in the county where the wrong is done or where the common carrier resides. [Acts 1860, p. 39; G. L. Vol. 4, p. 1401; 1895, Sen. Jour. p. 478.]

Art. 885. [710] [322] [280] **Must give bill of lading.**—Common carriers, when they receive goods for transportation, shall give to the shipper, when it is demanded, a bill of lading, or written receipt stating the quantity, character, order and condition of the goods; and such goods shall be delivered in like order and condition to the consignee, the unavoidable wear and tare and deterioration in due course of transportation only, excepted. Any such common carrier failing to deliver goods as herein required shall be liable to the party injured for his damages, as at common law; and on refusal to execute and deliver a bill of lading or written receipt shall be liable to a penalty of not less than five nor more than five hundred dollars, to be recovered as in the preceding article. [Id.]

Art. 886. [711] [323] [281] **Liability as a warehouseman,**

etc.—Railroad companies and other common carriers having depots and warehouses for storing goods shall be liable as warehousemen are at common law for goods and the care of the same stored at such depots or warehouses before the commencement of the trip or voyage on which said goods are to be transported. They shall be liable as common carriers from the commencement of the trip or voyage until the goods are delivered to the consignee at the point of destination. The trip or voyage shall be considered as having commenced from the time of the signing of the bill of lading, and the liability of the common carrier shall attach, as at common law, from and after such signing. [Id.]

Art. 887. [712] [324] [282] **Diligence in delivery.**—If the carrier at the point of destination shall use due diligence to notify the consignee, and the goods are not taken by the consignee, and have in consequence to be stored in the depots or warehouses of the common carriers, they shall thereafter only be liable as warehousemen. [Id.]

Art. 888. [713] [325] [283] **Shall ship in order.**—Where common carriers receive goods for transportation into their warehouses or depots, they shall forward them in the order in which they are received, the first received to be first forwarded, without giving the preference to one over another. For failure to do so, they shall be liable for all losses occurring while the goods remain, and for all damages occasioned or in any wise resulting from the delay. [Id.]

Art. 889. [714] [326] [284] **Care of animals.**—A common carrier who conveys live stock of any kind shall feed and water the same during the time of conveyance and until the same is delivered to the consignee or disposed of as provided in this title, unless otherwise provided by special contract. Any carrier who shall fail to so feed and water said live stock sufficiently shall be liable to the party injured for his damages, and shall be liable also to a penalty of not less than five nor more than five hundred dollars, to be recovered by the owner of such live stock in any county where the wrong is done or where the common carrier resides.

2. BILLS OF LADING.

| | Article | | Article |
|---------------------------|---------|-----------------------------------|---------|
| Who shall issue | 890 | Failure to deliver on order | 895 |
| Requisites | 891 | Partial delivery | 896 |
| Definitions | 892 | Loss of order bill | 897 |
| Agent's certificate | 893 | Not liable when | 898 |
| Validity of bills | 894 | Railroad Commission | 899 |

Art. 890. [715] **Who shall issue.**—All railroad companies, steamship companies and other common carriers, or receivers thereof, except express companies and pipe line companies, upon the receipt of freight for transportation shall issue bills of lading therefor, and authenticate, validate or certify such bills of lading, when the same shall be demanded by the shipper, in accordance with the provisions of this title. [Acts 1910, 4th C. S. p. 138.]

Art. 891. [716] **Requisites.**—Each bill of lading issued by a common carrier to which the provisions of this law apply for an intrastate shipment shall contain, and each bill of lading

issued by such carrier for interstate or foreign shipment may contain, within the written or printed terms in addition to the other requirements of this law, the following:

1. The date of its issuance;
2. The name of the person from whom the goods have been received;
3. The place where the goods have been received;
4. The place to which the goods are to be transported;
5. A statement of whether the goods will be delivered to a specific person or the order of a specific person;
6. A description of the goods or the package containing them, which may, however, be in terms such as the Railroad Commission may approve;
7. The signature of the carrier or the duly authorized agent of the carrier; said bill of lading shall be so signed with pen and ink, and the person signing the same shall attach his signature below all written, printed or stamped matter contained in said bill of lading, except the words, "Authorized Agent of....." (stating the name of his principal), which shall appear below his signature.

8. The carrier may insert in a bill of lading any other terms and conditions; provided such terms and conditions shall not be contrary to law or public policy or the orders promulgated by the Railroad Commission. No language shall be inserted in any bill of lading having the effect of limiting or avoiding any provision of this law. When any form of bill of lading has been approved by the Interstate Commerce Commission and has been adopted by any carrier and made a part of its tariff, then said bill of lading, as to interstate and foreign shipments, shall be a sufficient compliance with this article. [Id.]

Art. 892. [717] **Definitions.**—A bill of lading in which it is stated that the goods are consigned or destined to a specific person is a "straight" bill of lading. A bill of lading in which it is stated that the goods are consigned to the order of any person named in such bill of lading, is an "order" bill of lading. Order bills of lading shall not be issued in sets or in duplicate, but copies thereof may be issued. Such copies shall have written or printed across the face thereof: "Copy—Not Negotiable." [Id.]

Art. 893. [718] **Agent's certificate.**—The carriers affected by this law shall keep posted for public inspection in some conspicuous place in the station or place where freight is received, an instrument of writing authorizing the agent of such carrier, or person authorized to act for such carrier selected for such purpose, to execute, sign and issue bills of lading; and the agent or person so authorized to act for said carrier, so selected, shall attach his signature to such instrument in the same manner that he signs bills of lading. [Id.]

Art. 894. [719] **Validity of bills.**—Each bill of lading issued by the authorized agent of any carrier or receiver thereof, affected by this law, shall be held to be the act and deed of such carrier or receiver thereof, and the principal shall be liable thereon in accordance with the terms thereof. When any such

bill of lading shall be validated, authenticated or certified in accordance with the rules and regulations herein provided for, and as the Railroad Commission may prescribe in accordance with the provisions of this law, and in the hands of an innocent holder for value, it shall be incontestable as to the matters and things therein set forth. [Id.]

Art. 895. [720] **Failure to deliver on order.**—A carrier which delivers goods for which an “order” bill of lading has been issued, the negotiation of which would transfer the right to the possession of the goods, and fails to take up and cancel said bill of lading shall be liable for the failure to deliver the goods to any one who, for value, in good faith, purchases such bill of lading, whether the purchaser acquired title to the bill of lading before or after the delivery of the goods by the carrier, notwithstanding such delivery was made to the person entitled thereto, except when goods are sold to satisfy the carrier’s lien, and except when compelled to do so by legal process. [Id.]

Art. 896. [721] **Partial delivery.**—A carrier which delivers part of the goods for which an “order” bill of lading has been issued, and fails to take up and cancel the bill of lading, or to place plainly upon the bill of lading a statement that a portion of the goods had been delivered, with a description which may be in general terms, either of the goods or packages that had been so delivered, or of the goods or packages which still remain in the carrier’s possession, shall be liable for the failure to deliver all of the goods specified in the bill of lading to any one who for value and in good faith purchases it, whether such purchaser acquires title to the bill of lading before or after the delivery of any portion of the goods by the carrier, and notwithstanding such delivery was made to the person entitled thereto, except when goods are sold to satisfy the carrier’s lien, and except when compelled to do so by legal process. [Id.]

Art. 897. [722] **Loss of order bill.**—When an “order” bill of lading shall have been lost or destroyed, a court of competent jurisdiction, in term time or vacation, may order the delivery of the goods upon satisfactory proof of such loss or destruction, and upon the giving of a bond with good and sufficient sureties approved by the court, to protect the carrier or any person injured by such delivery from any liability or loss incurred by reason of the original bill of lading remaining outstanding. The court in its discretion may also order the payment of the carrier’s reasonable costs and counsel fees. The delivery of the goods under an order of court as provided in this article, shall not relieve the carrier from liability to a person to whom the order bill of lading has been or shall be negotiated for value, and without notice of the proceedings or the delivery of the goods. Nothing herein shall prevent the carrier from delivering the property covered by such lost bill of lading to any party claiming the same, on such terms as such party and the carrier may agree upon. [Id.]

Art. 898. [723] **Not liable when.**—The carrier shall not be liable under this law where the property has been replevied or

levied upon or taken from the possession of the carrier by other legal process, or has been lawfully sold to satisfy the carrier's lien, or in case of the sale or disposition of perishable, hazardous or unclaimed goods, in accordance with law. [Id.]

Art. 899. [724] **Railroad Commission.**—The Railroad Commission shall adopt and prescribe forms, terms and conditions for the authentication, certification or validation of bills of lading issued by common carriers referred to in the first article of this subdivision, and regulate the manner and method of their issuance, and take such steps as it may deem necessary to carry this law into effect. It shall have authority to amend, alter and modify, from time to time, as it may deem expedient, any regulation which may be adopted by it in accordance with the provisions of this subdivision, after giving due notice thereof to all carriers interested and to the public. [Id.]

3. DISPOSITION OF UNCLAIMED GOODS.

| | Article | | Article |
|-------------------------|---------|--------------------------|---------|
| Unclaimed freight..... | 900 | Perishable property..... | 903 |
| Sale | 901 | Data kept..... | 904 |
| Sale of live stock..... | 902 | | |

Art. 900. [725] [327] [285] **Unclaimed freight.**—When any freight or baggage has been conveyed by a common carrier to any point in this State, and shall remain unclaimed for the space of three months at the office or depot nearest or most convenient to destination, and the owner, whether known or not, fails within that time to claim such freight or baggage, or to pay the proper charges if there be any against it, it shall be lawful for such common carrier to sell such freight or baggage at public auction, offering each article separately as consigned or checked. [Acts 1874, p. 203; G. L. Vol. 8, p. 205.]

Art. 901. [726] [328] [286] **Sale.**—Thirty days' notice of the time and place of sale, and a descriptive list of the packages to be sold, with names and numbers or marks found thereon, shall be posted in three public places in the county where the sale is to be made and on the door of the depot or warehouse if any, where the goods are, and notice shall also be given in at least one newspaper in the county, if any be published therein, for thirty days before sale. Out of the proceeds of such sale, the carrier shall deduct the proper charges on such freight or baggage, including costs of storing and costs of sale, and hold the overplus, if any, to the order of the owner any time within five years, on proof of ownership made by the claimant or his duly authorized agent or attorney. [Id.]

Art. 902. [728] [330] [288] **Sale of live stock.**—If any live stock remains unclaimed for the space of forty-eight hours after its arrival at the place of its destination, the carrier may sell the same at public auction after giving five days' notice of the time and place of such sale, as prescribed in the preceding article and apply the proceeds as prescribed in said article, after deducting reasonable expenses for keeping, feeding and watering said live stock from the time of its arrival at the place of its destination until disposed of as herein provided. [Id.]

Art. 903. [729] [331] [289] **Perishable property.**—If any

perishable property remains unclaimed after arrival of its place of destination until in danger of depreciation the carrier shall sell the same at public auction, after giving five days' notice of the time and place of sale, as prescribed in the second preceding article and apply the proceeds as prescribed in said article. [Id.]

Art. 904. **Data kept.**—In each sale under the three preceding articles the carrier shall keep an account of such sale and the expense thereof proportioned to each article sold, a copy of the notice and a copy of the sale bill. [Id.]

4. CONNECTING LINES OF COMMON CARRIERS.

| | | | |
|-------------------------|----------------|--------------------------|----------------|
| "Connecting lines"..... | Article 905 | Recovery by shipper..... | Article 906 |
|-------------------------|----------------|--------------------------|----------------|

Art. 905. [731] **"Connecting lines."**—All common carriers in this State over whose transportation lines, or parts thereof, is transported any freight, baggage or other property received by either of such carriers for shipment or transportation between points in this State, on a contract for carriage recognized, acquiesced in, or acted upon by such carriers shall, with respect to the undertaking and matter of such transportation be considered and construed to be connecting lines. Such lines shall be deemed and held to be agents of each other, each the agent of the others, and all the others the agents of each, and shall be deemed and held to be under a contract with each other and with the shipper, owner and consignee of such property for the safe and speedy transportation of such property from point of shipment to destination; and such contract as to the shipper, owner and consignee of such property shall be deemed and held to be the contract of each of such common carriers. The provisions of this law shall apply whether the route of such freight, baggage or other property be chosen by the owner or his agents, or by the initial carrier to whom such property is delivered. In any suit brought hereunder, the rights, duties and liabilities of the parties shall be determined by the initial contract executed by and between the owner, shipper or his or her duly authorized agents and the initial carrier, unless it be proved that a subsequent contract supported by a valuable consideration moving to the owner or shipper, in addition to that of the initial contract, was executed by such owner, shipper or his or their duly authorized agents with a subsequent connecting carrier handling the shipment, and the transportation of a caretaker shall not be deemed to be such valuable consideration. In any court of this State, any bill of lading, waybill, receipt, check or other instrument issued by either of such carriers, or other proof showing that either of them has received such freight, baggage or other property for shipment or transportation, shall constitute prima facie evidence of the subsistence of the relations, duties and liabilities of such carrier as herein provided, notwithstanding any stipulation or attempted stipulation to the contrary by such carrier, or either of them, and any stipulation contained in any contract contrary to any provision of this law shall be void. [Acts 1895, p. 186; Acts 1919, p. 320.]

Art. 906. [732] Recovery by shipper.—For any damage or injury to, or loss or delay of, any freight, baggage or other property, sustained anywhere during the transportation over connecting lines or either of them, as contemplated and defined in the preceding article, either or all of such connecting carriers, as the person or persons sustaining such damage may elect to sue therefor in this State, shall be held liable to such person or persons. The provisions of law allowing an apportionment of damage shall not be applicable to suits brought by such person or persons under the provisions of this subdivision except upon the plaintiff's request. Any carrier or carriers held liable under the provisions hereof shall be entitled in a subsequent action to recover the amount of any loss, damage or injury it has been required to pay hereunder, from the carrier or carriers through whose negligence the loss, damage or injury was sustained, together with all costs of suit; and for the purpose of such recovery, it shall only be necessary that the carrier against whom judgment was had, show which carrier or carriers caused the loss or damage and produce satisfactory evidence that the judgment rendered against it has been paid, and in such action between the carriers, the provisions of law allowing an apportionment of damage shall be applicable. [Id.]

5. PROTECTING MOVEMENT OF COMMERCE.

| | | | |
|------------------------------|-------------|-------------------|-------------|
| Protecting commerce..... | Article 907 | Rangers used..... | Article 910 |
| Governor's jurisdiction..... | 908 | Scope of law..... | 911 |
| Arrests..... | 909 | | |

Art. 907. Protecting commerce.—If at any time the movement of commerce by common carriers of this State or any of them is interferred with in violation of the provisions of Chapter 10, Title 14 of the Penal Code, and the Governor, after investigation, becomes convinced that the local authorities were failing to enforce the law, either because they were unable or unwilling to do so, the Governor shall, in order that the movement of commerce may not be interferred with, forthwith issue his proclamations declaring such conditions to exist and describing the area thus affected. Each article of said Title of the Penal Code is made a part hereof. [Acts 4th C. S. 1920, p. 8.]

Art. 908. Governor's jurisdiction.—Upon the issuance of the proclamation provided for in the preceding article, the Governor shall exercise full and complete police jurisdiction of the area described in the proclamation whether the same be all within or partly within, or partly without the limits of any incorporated city or county; the exercise of said police jurisdiction by the Governor as above set out, shall supersede all police authority by any and all local authority, provided that the Governor shall not disturb the local authorities in the exercise of police jurisdiction, at any place outside the district described in his proclamation. [Id.]

Art. 909. Arrests.—No peace officer of this State shall be permitted to make arrests after the Governor's proclamation has become effective, in the territory embraced by such procla-

mation, except officers acting under the authority of the Governor under the provisions of this law. Persons arrested within the district shall be delivered forthwith to the proper authorities for trial. [Id.]

Art. 910. Rangers used.—The provisions of this law shall be effective without a declaration of martial law. The State Rangers may be used in the enforcement of the provisions of this law. If a sufficient number of Rangers are not available, the Governor is authorized to employ any number of men to be designated as special Rangers and such men shall have all the power and authority of the regular Rangers, and shall be paid the same salary as the Rangers are paid, and such salaries shall be paid out of the appropriation made to the executive office for the payment of rewards and the enforcement of the law.

Art. 911. Scope of law.—Nothing in this law shall be construed as limiting the power and authority of the Governor to declare martial law and to call forth the militia for the purpose of executing the law, when in the judgment of the chief executive it is deemed necessary so to do. This law shall be construed as cumulative of the existing laws of this State, and shall not be held to repeal any of the same except where in direct conflict herewith. [Id.]

TITLE 26.

CEMETERIES.

| | Article | | Article |
|--------------------------------|---------|-------------------------------|---------|
| Trust fund..... | 912 | Former owners..... | 923 |
| Who may be trustees..... | 913 | Preserving rights..... | 924 |
| Substitute trustees..... | 914 | Plat and survey..... | 925 |
| Construction of trust..... | 915 | May make by-laws..... | 926 |
| Powers of corporation..... | 916 | Rules for care of lot..... | 927 |
| May convey lots..... | 917 | Meeting to receive title..... | 928 |
| Lot owners may vote..... | 918 | Reports not required..... | 929 |
| Cemetery corporations..... | 919 | Authority of city..... | 930 |
| Rights of lot owners..... | 920 | Authority of county..... | 931 |
| May acquire land..... | 921 | Location..... | 921a |
| Purchase and condemnation..... | 922 | | |

Art. 912. Trust fund.—Persons desiring to provide a fund for maintaining and keeping up and beautifying of private blocks or lots in any cemetery in this State may do so by setting aside for such purposes a reasonable sum of money and by providing by written instrument which shall recite the terms of the trust for a trustee or trustees to handle and invest said sum and spend the resources therefrom as follows: Not exceeding seventy-five per cent of the net income therefrom shall be devoted to keeping up and beautifying the private blocks and lots designated in the instrument. The portion of such income not expended annually as set out in the preceding paragraph, the amount not to be less than twenty-five per cent of such income, shall be devoted to the general up-keep and beautifying of the cemetery in which such blocks or lots are located. [Acts 1917, p. 364.]

Art. 913. Who may be trustees.—The trustees provided for may be natural persons designated by name and their successors, or persons holding designated positions and indicated as holders of such positions and their successors, or corporations whose charters authorize them to act in such capacity. [Id.]

Art. 914. Substitute trustees.—The founder of said fund may designate therein the number of trustees and the manner of renewing same. If no method of perpetuating the trustees shall be set out in the instrument or if the trustees therein provided or their successors shall fail to effect such perpetuity, then any court having equity jurisdiction located within the county wherein such cemetery is maintained shall be authorized, upon application of any person interested, or of the court's own motion, if facts come within its cognizance, to appoint suitable trustees to the number specified in such instrument to execute such trust. [Id.]

Art. 915. Construction of trust.—Such trust and the administration thereof shall not be regarded and held to be a perpetuity, but as a provision for the discharge of a duty due from the party founding such trust to the persons interred upon such blocks or lots and to the public. [Id.]

Art. 916. [1300] [715] [639] Powers of corporation.—Cemetery corporations shall have power to divide the land of the cemetery into lots and subdivisions for the purposes of the cemetery, and to tax the property for the purpose of its general improvement. [P. D. 6002.]

Art. 917. [1301] [716] [640] **May convey lots.**—Such corporation shall have power to convey by deed or otherwise, any lot or lots of the cemetery for purpose of sepulture. When such lots shall have been surveyed and platted, the survey and plat shall be recorded in the office of the county clerk of the county wherein same are situated, and shall not afterward be changed or altered. No lots shall be sold or disposed of until such plat shall have been recorded. [P. D. 6003.]

Art. 918. [1302] [717] [641] **Lot owners may vote.**—All owners of lots purchased of any such corporation shall become members thereof, and be entitled to vote in the election of its officers and upon any other matters to the same extent as stockholders in other corporations. [P. D. 6004.]

Art. 919. [1286] **Cemetery corporations.**—Corporations for the purpose of owning and maintaining public or private cemeteries, or for the purpose only of maintaining and caring for cemeteries, may be formed under and in accordance with the provisions of this title, and when so organized, shall have and exercise all the powers conferred by this title. In framing a charter for such corporation, if desired to confer upon it the powers specified in this title, the charter shall state that the corporation is organized in pursuance of this title. [Acts 1907, p. 37.]

Art. 920. [1287] **Rights of lot owners.**—Each owner of a lot or lots embraced in any cemetery subject to the provisions of this title shall be a shareholder in any corporation to which the land may belong, and shall be entitled to all rights and privileges of a shareholder whether the title to the lot or lots was acquired from the corporation, or was owned before its organization. [Id. Sec. 2.]

Art. 921. [1289] **May acquire land.**—Every corporation organized under this title shall have the power to acquire, own, and hold all lands and other property which may be necessary or suitable to the accomplishment of its purposes, and may acquire lands which have been previously dedicated to burial purposes, by conveyance from the person or persons in whom title may be, or from any person who may hold such land in trust, with the power to transfer it to preserve the trust. [Id. Sec. 4.]

Art. 921a. **Location of cemeteries.**—It shall be unlawful for any person, company, corporation or association to establish or use for burial purposes any graveyard or cemetery located less than one mile from the incorporated line of any city of not less than five thousand (5,000) inhabitants within the State of Texas; provided, that where cemeteries have heretofore been used and maintained within less than one mile from any incorporated city or town, and additional lands are required for cemetery purposes, any person owning lands adjacent to said cemetery may lay out and use or sell the same to be used as an addition to such cemetery, and the use of the said additional lands for such purposes shall be exempt from the provisions of this Section.

The maintenance or location and use of any graveyard or

cemetery in violation of the provisions of this Act are declared to be a nuisance, and any person owning a residence in or near said town or city may maintain an action in the courts to abate such nuisance and to enjoin its continuance, and if it appears that said nuisance exists or is threatened in violation of this Act, a perpetual injunction shall be granted against parties guilty of such nuisance. [Id. 327.]

Art. 922. **Purchase and condemnation.**—Cemetery associations, whether incorporated or unincorporated, shall have the power to purchase, lease, or otherwise acquire, such land as may be needed by them in the communities in which their cemeteries may be located for the purpose of the proper burial of the dead, and such power shall extend to the acquisition of such land as may reasonably be needed therefor in the future as well as such land as may be immediately needed. Such land may be acquired also by condemnation proceedings. The acquisition of such lands is hereby declared to be for a public purpose. [Acts 1917, p. 323.]

Art. 923. [1290] **Former owners.**—In case the land purchased as herein specified, or any portion of it, has been used as a cemetery, then the owners of lots therein shall have the right to participate in the organization of the corporation and shall be shareholders therein after the company has been organized. [Id. Sec. 4.]

Art. 924. [1291] **Preserving rights.**—Whenever any corporations organizing under this title shall acquire lands already used for burial purposes, the division of the said ground into lots, streets, etc., existing at the time of the acquisition, shall be preserved so far as is necessary to protect the rights of those who have already acquired lots therein. [Id. Sec. 5.]

Art. 925. [1292] **Plat and survey.**—Any such corporation, after its organization, shall cause the ground which it may acquire for cemetery purposes to be laid out in proper avenues and alleys, blocks and lots, as may be found convenient and necessary for the proper use thereof; and the corporation shall cause a plat to be made of said cemetery ground, which shall be approved by the board of directors, and shall be attested by the president and secretary of the corporation, after which it shall be recorded in the county clerk's office of the county. [Id. Sec. 5.]

Art. 926. [1293] **May make by-laws.**—Every corporation organized under this title shall have the power to make all necessary by-laws as prescribed by this title, and also to make all rules and regulations necessary to govern in the sale of lots and the use of the same by the purchasers thereof. [Id. Sec. 6.]

Art. 927. [1294] **Rules for care of lot.**—The board of directors shall have authority to make reasonable rules, requiring the lot owners to keep their lots clean from improper growth, so as to preserve the good order and proper appearance of the grounds, but shall not have the power to require of any lot owner a particular character of improvement therein. [Id. Sec. 6.]

Art. 928. [1295] **Meeting to receive title.**—When it is de-

sired to create a corporation under this title to receive the title to lands theretofore dedicated to the purpose of a cemetery, notice of the time and place of a meeting of the lot owners shall be published in a newspaper in the county, if there be one, for thirty days; and printed notices shall be posted at, and upon, such cemetery for thirty days prior to the time fixed for the meeting. When the lot owners and other persons uniting in the formation of the corporation shall assemble, the majority of those present and voting shall decide upon the question of incorporation, and the conveyance of the land to it. Such meeting shall select the board of directors to be named in the charter, which may consist of lot owners alone, or persons may be chosen as directors who are not owners of lots in the cemetery. [Id. Sec. 7.]

Art. 929. [1297] **Reports not required.** — Corporations formed under this title shall be exempt from any provision of law requiring periodical reports to be made to any department of the State government. [Id. Sec. 8.]

Art. 930. [1298] **Authority of city.**—The governing body of any city in which the cemetery is to be located shall have the power to control the location of any such cemetery, and to prescribe the maximum price at which lots therein shall be sold to the public. [Id. Sec. 8.]

Art. 931. [1299] **Authority of county.**—When any such cemetery is located without the limits of any city, the commissioners court of such county shall have the power to prescribe the maximum at which lots therein shall be sold. [Id. Sec. 8.]

TITLE 27.

CERTIORARI.

1. Certiorari to the County Court.

| | Article | | Article |
|------------------------------------|---------|------------------------------------|---------|
| Certiorari to county court..... | 932 | When supersedeas granted..... | 937 |
| Application for..... | 933 | Citation as in ordinary cases..... | 938 |
| Granted on execution of bond..... | 934 | Trial de novo..... | 939 |
| Not to operate as supersedeas..... | 935 | Appeals and writs of error..... | 940 |
| Writ..... | 936 | | |

Art. 932. [733] [332] [290] Certiorari to county court.—Any person interested in the estate of a decedent or ward may have the proceedings of the county court therein revised and corrected at any time within two years after such proceedings were had, and not afterward. Persons non compos mentis, infants and femes covert shall have two years after the removal of their respective disabilities within which to apply for such revision and correction. [Acts March 16, 1848, p. 106; G. L. Vol. 3, p. 106.]

Art. 933. [734] [333] [291] Application for.—An application for writ of certiorari to the county court shall be made to the district court, or a judge thereof. It shall state the name and residence of each party adversely interested, and shall distinctly set forth the error in the proceeding sought to be revised.

Art. 934. [735] [334] [292] Granted on execution of bond.—The writ of certiorari shall in all cases be granted upon the application of a party therefor upon the applicant entering into bond in such sum as shall be required by the judge, sufficient to secure the costs of the proceeding.

Art. 935. [736] [335] [293] Not to operate as supersedeas.—A writ of certiorari shall not operate as a supersedeas of the judgment of the county court, unless the applicant therefor shall enter into bond with two or more good and sufficient sureties, in such sum as shall be fixed by the order of the district judge, payable to the adverse party, and conditioned for the performance of the judgment of the district court, in case such judgment shall be against the applicant.

Art. 936. [737] [336] [294] Writ.—The writ of certiorari shall be issued by the district clerk upon the compliance of the party with the order of the district court or the judge thereof. It shall be directed to the sheriff or any constable of the proper county, and shall command him to cite the county clerk to make out a certified transcript of the proceedings designated in the writ, and transmit the same to the district court to which the writ is returnable, on or before the return day of the next succeeding term thereof.

Art. 937. [738] [337] [295] When supersedeas granted.—When an order for a supersedeas has been made, it shall also require the clerk and all officers of said court to stay further proceedings on the judgment specified in said writ.

Art. 938. [739] [338] [296] Citation as in ordinary cases.—Whenever a writ of certiorari has been issued, the clerk shall forthwith issue a citation for the party named in the applica-

tion as being adversely interested in the proceedings sought to be revised.

Art. 939. [740] [339] [297] **Trial de novo.**—The cause shall be tried de novo in the district court, but the issues shall be confined to the grounds of error specified in the application for the writ. The judgment shall be certified to the county court for observance. [Act May 13, 1846, p. 363; G. L. Vol. 2, p. 1669.]

Art. 940. [741] [340] [298] **Appeals and writs of error.**—Appeals and writs of error to the supreme court, from the judgments of the district courts in cases of certiorari, shall be allowed and governed by the rules as in other cases.

2. Certiorari to Justices' Courts.

| | Article | | Article |
|-------------------------------------|---------|-----------------------------------|---------|
| Certiorari to justices' court..... | 941 | Citation as in other cases..... | 951 |
| On order of the court or judge..... | 942 | Cause docketed..... | 952 |
| Requisites of the writ..... | 943 | Motion to dismiss..... | 953 |
| Affidavit of sufficient cause..... | 944 | No amendment of bond or oath..... | 954 |
| Application for certiorari..... | 945 | Judgment of dismissal..... | 955 |
| Within what time granted..... | 946 | Pleading..... | 956 |
| Bond with sureties required..... | 947 | Issues made up..... | 957 |
| Bond, affidavit and order..... | 948 | New matter may be pleaded..... | 958 |
| Writ to issue instantor..... | 949 | Trial de novo..... | 959 |
| Justice shall stay proceedings..... | 950 | Appeals and writs of error..... | 960 |

Art. 941. [742] [341] [299] **Certiorari to justices' court.**—After final judgment in a justice court in any cause except in cases of forcible entry and detainer, the cause may be removed to the county court by writ of certiorari (or if the civil jurisdiction has been transferred from the county to the district court, then to the district court,) in the manner hereinafter directed. [Acts 1879, p. 125; G. L. Vol. 8, p. 1425.]

Art. 942. [743] [342] [300] **On order of the court or judge.**—The writ of certiorari shall be issued by order of the county court or the judge thereof, if jurisdiction is transferred to said district court as provided in the preceding article.

Art. 943. [744] [343] [301] **Requisites of the writ.**—The writ shall command the justice to make and certify a copy of the entries in the cause on his docket, and transmit the same, with the papers in his possession, to the proper court on or before the first day of the next term thereof. If there is not time for such transcript and papers to be filed at such term, then they shall be so filed at the next succeeding term of said court. [Act March 20, 1848, p. 163; G. L. Vol. 3, p. 163.]

Art. 944. [745] [344] [302] **Affidavit of sufficient cause.**—The writ shall not be granted unless the applicant or some person for him having knowledge of the facts, shall make affidavit setting forth sufficient cause to entitle him thereto. [Id.]

Art. 945. [746] [345] [303] **Application for certiorari.**—To constitute a sufficient cause, the facts stated must show that either the justice of the peace had not jurisdiction, or that injustice was done to the applicant by the final determination of the suit or proceeding, and that such injustice was not caused by his own inexcusable neglect. [Id.]

Art. 946. [747] [346] [304] **Within what time granted.**—Such writ shall not be granted after ninety days from the final judgment of the justice. [Id.]

Art. 947. [748] [347] [305] **Bond with sureties required.**—The writ shall not be issued unless the applicant shall first cause to be filed a bond with two or more good and sufficient sureties, to be approved by the clerk, payable to the adverse party, in such sum as the judge shall direct, to the effect that the party applying therefor will perform the judgment of the county or district court, if the same shall be against him. [Id.]

Art. 948. [749] [348] [306] **Bond, affidavit and order.**—The bond and affidavit, with the order of the judge, when made in vacation, shall be filed with the clerk of the court to which the same is returnable.

Art. 949. [750] [349] [307] **Writ to issue instanter.**—As soon as such affidavit, order of the judge, and bond, shall have been filed, the clerk shall issue a writ of certiorari. [Act May 10, 1850, p. 60.]

Art. 950. [751] [350] [308] **Justice shall stay proceedings.**—Upon service of such writ of certiorari being made upon the justice of the peace, he shall stay further proceedings on the judgment and forthwith comply with said writ. [Id.]

Art. 951. [752] [351] [309] **Citation as in other cases.**—Whenever a writ of certiorari has been issued, the clerk shall forthwith issue a citation for the party adversely interested.

Art. 952. [753] [352] [310] **Cause docketed.**—The action shall be docketed in the name of the original plaintiff, as plaintiff, and of the original defendant, as defendant.

Art. 953. [754] [353] [311] **Motion to dismiss.**—At the first term of the court to which the certiorari is returnable, the adverse party may move to dismiss the certiorari for want of sufficient cause appearing in the affidavit, or for want of sufficient bond.

Art. 954. [755] [354] [312] **No amendment of bond or oath.**—No amendment of the affidavit shall be made in the county or district court, nor shall a new affidavit be filed.

Art. 955. [756] [355] [313] **Judgment of dismissal.**—If the certiorari be dismissed, the judgment shall direct the justice to proceed with the execution of the judgment below.

Art. 956. [757] [356] [314] **Pleading.**—No pleading other than that required by law in the justice court shall be necessary, except in cases of amendment, as hereinafter provided.

Art. 957. [758] [357] [315] **Issues made up.**—When no pleadings were filed in the justice court, and none were necessary the issues shall be made up under the direction of the court.

Art. 958. [759] [358] [316] **New matter may be pleaded.**—Either party may plead any new matter in the county or district court which was not presented in the court below; but no new cause of action shall be set up by the plaintiff, nor shall any set-off or counter claim be set up by the defendant which was not pleaded in the court below. In all such cases the pleadings shall be in writing, and filed in the cause before the parties have announced ready for trial.

Art. 959. [760] [359] [317] **Trial de novo.**—The cause

shall be tried de novo, in the county or district court; and judgment shall be rendered as in cases appealed from justice courts.

Art. 960. [761] [360] [318] **Appeals and writs of error.**— Appeals and writs of error from the judgments of the county or district court, in cases of certiorari from justice courts, shall be allowed, subject to such rules and limitations as apply in cases appealed from justices' courts.

TITLE 28.

CITIES, TOWNS AND VILLAGES.

| Chapter | Page | Chapter | Page |
|---------------------------------|------|--|------|
| 1 Cities and Towns..... | 287 | 12 Commission Form of Gov- ernment | 344 |
| 2 Officers and Their Election.. | 292 | 13 Home Rule | 347 |
| 3 Duties and Powers of Officers | 295 | 14 Cities on Navigable Streams | 358 |
| 4 The City Council..... | 299 | 15 Consolidation of Cities..... | 359 |
| 5 Taxation | 309 | 16 Corporation Court | 360 |
| 6 Fire Prevention | 317 | 17 Condemnation for Highways | 362 |
| 7 Sanitary Department | 320 | 18 Artificial Lighting System.... | 366 |
| 8 Streets and Alleys..... | 322 | 19 Abolition of Corporate Exist- ence | 373 |
| 9 Street Improvements | 323 | 20 Miscellaneous Provisions.... | 378 |
| 10 Public Utilities | 328 | | |
| 11 Towns and Villages..... | 339 | | |

CHAPTER ONE.

CITIES AND TOWNS.

| | Article | | Article |
|---------------------------------|---------|------------------------------|---------|
| May adopt this title..... | 961 | Property rights..... | 969 |
| General powers..... | 962 | To adjust boundaries..... | 970 |
| Not affected by this title..... | 963 | Territorial boundaries..... | 971 |
| Cemetery lots exempt..... | 964 | Territory relinquished..... | 972 |
| City limits..... | 965 | Discontinuing territory..... | 973 |
| May incorporate..... | 966 | Adjoining inhabitants..... | 974 |
| Cities of Republic..... | 967 | Segregating territory..... | 975 |
| Effect of acceptance..... | 968 | Liable for debts..... | 976 |

Art. 961. [762-3] **May adopt this title.**—Any incorporated city, town or village in this State containing six hundred inhabitants or over, however legally incorporated, and any incorporated city, town or village of whatever population containing one or more manufacturing establishments within the corporate limits, may accept the provisions of this title relating to cities and towns, in lieu of any existing charter, by a two-thirds vote of the council of such city, town or village, had at a regular meeting thereof, and entered upon the journal of their proceedings, and a copy of the same signed by the mayor and attested by the clerk or secretary under the corporate seal, filed and recorded in the office of the county clerk in which such city, town or village is situated, and the provisions of this title shall be in force, and all acts theretofore passed incorporating said city, town or village which may be in force by virtue of any existing charter, shall be repealed from and after the filing of said copy of their proceedings, as aforesaid. When such city, town or village is so incorporated as herein provided, the same shall be known as a city or town, subject to the provisions of this title relating to cities and towns, and vested with all the rights, powers, privileges and immunities and franchises therein conferred. The provisions of this title shall not apply to any city, town or village until such provisions have been accepted by the council in accordance with this article. [Acts 1875, p. 113; G. L. Vol. 8, p. 485; Acts 1881, p. 115; G. L. Vol. 9, p. 207; Acts 1885, p. 57; G. L. Vol. 9, p. 667; Acts 1915, p. 64; Acts 1919, p. 110.]

Art. 962. [764] [383] [342] **General powers.**—All the inhabitants of each city, town or village so accepting the provisions of this title shall continue to be a body corporate, with

perpetual succession, by the name and style by which such city, town or village was known before such acceptance, and as such they and their successors by that name shall have, exercise and enjoy all the rights, immunities, powers, privileges and franchises possessed and enjoyed by the same at the time of said acceptance, and those hereinafter granted and conferred, and shall be subject to all the duties and obligations pertaining to or incumbent on the same as a corporation at the time of said acceptance, and may ordain and establish such acts, laws, regulations and ordinances, not inconsistent with the Constitution and laws of this State, as shall be needful for the government, interest, welfare and good order of said body politic and under the same name shall be known in law, and be capable of contracting and being contracted with, suing and being sued, impleading and being impleaded, answering and being answered unto, in all courts and places, and in all matters whatever, may take, hold and purchase, lease, grant and convey such real and personal or mixed property or estate as the purposes of the corporation may require, within or without the limits thereof; and may make, have and use a corporate seal and change and renew the same at pleasure. [Acts 1875, p. 113; G. L. Vol. 8, p. 485.]

Art. 963. [765-6] **Not affected by this title.**—All property, real, personal or mixed, belonging to any city accepting the provisions of this title, is hereby vested in the corporation created by this title, and the officers of said corporation, in office at the date of its acceptance, shall continue in the same, until superseded in conformity with the provisions of this title. All rights, actions, fines, penalties and forfeitures in suits or otherwise, which have accrued under the laws heretofore in force, shall be vested in and prosecuted by the corporation hereby created. No suit pending shall be affected by the passage and acceptance of this title, but the same shall be prosecuted or defended as the case may be, by the corporation hereby created. [Id.]

Art. 964. [767] [571] [500] **Cemetery lots exempt.**—The cemetery lots which have, and may hereafter be laid out and sold for said city for private places of burial shall, with their appurtenances, be forever exempt from taxes, executions, attachments or forced sales. [Id.]

Art. 965. [773] [384] [343] **City limits.**—The bounds and limits of said municipality shall be and remain the same as fixed and defined by the provisions of the act of incorporation, substituted by the provisions of this title; provided, that said limits of said corporation may be hereafter extended by adding additional territory to the same, whenever the majority of the qualified electors of said territory shall indicate a desire to be included within the limits of said corporation in the manner provided in Article 974 of this title. [Id.]

Art. 966. [774] [385] **May incorporate.**—Any city or town containing six hundred inhabitants or over may be incorporated as such, with all the powers, rights, immunities and privileges mentioned and described in the provisions of this title relating to cities and towns, in the manner described in Chapter 11 of

this title for incorporating towns and villages, except that the application to become incorporated shall be signed by at least fifty electors, residents of such city or town, and except that when an election is held according to the provisions of such chapter the words "towns and villages" shall be construed to mean "cities and towns." When the entry by the county judge, provided in article 1139 is made with reference to a city or town of six hundred inhabitants and over, such city or town shall be vested with all the rights and privileges of such cities conferred by this title. [Acts 1881, p. 63; G. L. Vol. 9, p. 155; Acts 1881, p. 115; G. L. Vol. 9, p. 207; Acts 1915, p. 64.]

Art. 967. Cities of the Republic.—Any city, town or village, within this State, incorporated under any law, general or special, of the Republic of Texas, regardless of the extent of the boundaries thereof, or the number of its population, may accept the provisions of Chapters 1 to 10, both inclusive, of this title, in lieu of any existing charter created by any such law of the Republic of Texas, by a two-thirds vote of the council of such city, town or village; which action by the council shall be held at a regular meeting thereof and entered upon the journal of their proceedings, and a copy of the same signed by the mayor and attested by the clerk or secretary under the corporate seal, filed and recorded in the office of the clerk of the county court of the county in which such city, town or village is situated, and the provisions of said Chapters 1 to 10 both inclusive, of this title shall be in force, and all acts theretofore passed incorporating said city, town or village, which may be in force by virtue of any existing charter shall be repealed from and after the filing of said copy of their proceedings as aforesaid, when such city, town or village is so incorporated as herein provided, the same shall be known as a city or town, subject to the provisions of this title, vested with all the rights, powers, privileges, immunities and franchises therein conferred. [Acts 1917, p. 85.]

Art. 968. Effect of acceptance.—All the inhabitants of each city, town or village so accepting the provisions of chapters 1 to 10 of this title, shall continue to be a body corporate, with perpetual succession, by the name and style by which such city, town or village was known before the acceptance of the provisions of such law, and as such they and their successors by that name shall have, exercise and enjoy all the rights, immunities, powers, privileges and franchises possessed and enjoyed by the same at the time of the acceptance of the provisions of such title and those herein granted and conferred, and shall be subject to all the duties and obligations pertaining to or incumbent on the same as a corporation at the time of the acceptance of the provisions of such title, and may ordain and establish such acts, laws, regulations and ordinances not inconsistent with the Constitution and laws of this State, as shall be needful for the government, interest, welfare and good order of said body politic, and, under the same name, shall be known in law, and be capable of contracting and being contracted with, suing and being

sued, impleading and being impleaded, answering and being answered unto, in all courts and places, and in all matters whatever, may take, hold and purchase, lease, grant and convey such real and personal or mixed property or estate as the purposes of the corporation may require, within or without the limits thereof; and may make, have and use a corporate seal and change and renew the same at pleasure. [Id.]

Art. 969. Property rights.—All property, real, personal or mixed, belonging to any such city, town, or village so incorporated under and by virtue of any law of the Republic of Texas, general or special, accepting said title, is hereby vested in the corporation thus created, and the council of such city, town or village is hereby authorized and empowered to sell and alienate such property and to appropriate the proceeds of such sale to the acquisition or construction, maintenance or operation of a water, sewer, gas and electric light and power system, or any one or more of such systems, within or without the limits of such city or town, or for any other public improvement within said city or town, as the council thereof may determine. [Id.]

Art. 970. To adjust boundaries.—Whenever there shall exist within the boundaries of any such city, town or village accepting said provisions, territory to the extent of at least ten acres contiguous, uninhabited and adjoining the lines of such city or town, the mayor and council of such city or town shall, within one year from the filing in the office of the county clerk of the action of the council accepting the provisions of this law, or as soon thereafter as practicable, and before they shall levy any taxes for said city or town by ordinance duly passed, discontinue said territory as a part of said city or town and shall redefine the bounds and limits of such city or town so that they shall conform as nearly as practicable to the requirements of article 971, and when said ordinance has been duly passed, the clerk shall enter an order to that effect on the minutes or records of the city or town council; and from and after the entry of such order, said territory shall cease to be a part of said city or town; provided that should there be situated within the said territory, so discontinued, any property of any description belonging to said city or town, the title to said property, so situated, shall remain in such city or town and may be sold, alienated and disposed of by such city or town, the same as if it were situated within the bounds and limits of such city or town. [Id.]

Art. 971. [777] Territorial boundaries.—No city or town in this State shall be hereafter incorporated under the provisions of the general charter for cities and towns contained in this title with a superficial area of more than two square miles, when such town or city has less than two thousand inhabitants, nor more than four square miles when such city or town has more than two thousand and less than five thousand inhabitants, nor more than nine square miles, when such city or town has more than five and less than ten thousand inhabitants. The mayor and board of aldermen, immediately after they qualify as such officers, shall pass an ordinance causing an actual survey

of the boundaries of such town to be made according to the boundaries designated in the petition for incorporation, and the field notes thereof recorded in the minute book of such town or city, and also in the record books of deeds in the county in which such city or town is situated. [Acts 1895, p. 17; G. L. Vol. 10, p. 747.]

Art. 972. [778] **Territory relinquished.**—The mayor and the board of aldermen of any town or city in this State heretofore incorporated under Title 18 of the Revised Civil Statutes of 1895 of this State, and whose boundaries have been established so as to include more territory than is specified in the preceding article, shall immediately cause a resurvey of the boundaries of such city or town to be made, so as not to include more territory than is provided for in the preceding article; such resurvey to be made and the field notes thereof to be recorded as provided in said article. [Id.]

Art. 973. [780] **Discontinuing territory.**—Whenever there exists within the corporate limits of any city or town organized under the general laws within this State territory to the extent of at least ten acres, contiguous, uninhabited and adjoining the lines of any such city or town, the mayor and city or town council may by ordinance duly passed, discontinue said territory as a part of said city or town; and when said ordinance has been duly passed, the mayor shall enter an order to that effect on the minutes or records of the city or town council; and, from and after the entry of such order, said territory shall cease to be a part of said city or town. [Acts 1895, p. 178; G. L. Vol. 10, p. 909.]

Art. 974. [781] [574] **Adjoining inhabitants.**—When a majority of the inhabitants qualified to vote for members of the State legislature of any territory adjoining the limits of any city incorporated under, or accepting the provisions of, this title, to the extent of one-half mile in width, shall vote in favor of becoming a part of said city, any three of them may make affidavit to the fact to be filed before the mayor, who shall certify the same to the city council of said city. The said city council may, by ordinance, receive them as part of said city; from thenceforth the territory so received shall be a part of said city; and the inhabitants thereof shall be entitled to all the rights and privileges of other citizens, and bound by the acts and ordinances made in conformity thereto and passed in pursuance of this title. [Acts 1875, p. 156; G. L. Vol. 8, p. 528.]

Art. 975. [782] [575] **Segregating territory.**—Whenever fifty qualified voters of any territory within the limits of any incorporated town shall sign and present a petition to the mayor of such city, praying that such territory, setting the same out by metes and bounds, be declared no longer a part of such town, the mayor thereof shall order an election within thirty days thereafter to be held at the different voting precincts of said town; and if a majority of the legal voters of said town voting at such election cast their votes in favor of discontinuing said territory as a part of said town, the mayor of said city shall declare such

territory no longer a part of said city, and shall enter an order to that effect on the minutes or records of the city council; and from and after the date of such order, said territory shall cease to be a part of said town; provided, no city or town shall thus be reduced to a less area than one square mile or one mile in diameter around the center of the original corporate limits. [Acts 1883, p. 99; G. L. Vol. 9, p. 405.]

Art. 976. [783] [576] **Liabie for debts.**—Whenever any territory shall withdraw as above provided, and such city or town shall at the time of such withdrawal owe any debts by bond or otherwise, such withdrawing territory shall not be released from the payment of its pro rata of such indebtedness; but it shall be the duty of said city council to continue to levy an ad valorem tax each year on the property of such territory of the same rate as is levied upon other property of such city, until the taxes collected from said territory shall equal its pro rata share of the indebtedness of said city or town at the time of the withdrawal. The taxes so collected shall be charged only with the cost of levying and collecting the same, and the same shall be applied exclusively to the payment of said pro rata share of indebtedness. Nothing herein shall be construed to prevent the inhabitants of said territory from paying in full, at any time, their pro rata share of the indebtedness of said city. [Id.]

CHAPTER TWO.

OFFICERS AND THEIR ELECTION.

| | Article | | Article |
|----------------------------------|---------|---------------------------------|---------|
| City officials..... | 977 | Rejection of votes..... | 985 |
| Election..... | 978 | Tie vote..... | 986 |
| Ward election of councilmen..... | 979 | Qualifications of officers..... | 987 |
| Hours of election..... | 980 | Limitation of councilmen..... | 988 |
| Returns..... | 981 | Vacancy..... | 989 |
| Shall declare result..... | 982 | Special election..... | 990 |
| Installation of officers..... | 983 | Mayor pro tempore..... | 991 |
| Election managers..... | 984 | Change of wards..... | 992 |

Art. 977. [784] [387] [344] **City officials.**—The municipal government of the city shall consist of a city council composed of the mayor and two aldermen from each ward, a majority of whom shall constitute a quorum for the transaction of business, except at called meetings, or meetings for the imposition of taxes, when two-thirds of a full board shall be required, unless otherwise specified, provided that where the city or town is not divided into wards, the city council shall be composed of the mayor and five aldermen, and the provisions of this title relating to proceedings in a ward shall apply to a whole city or town. Other officers of the corporation shall be a treasurer, an assessor and collector, a secretary, a city attorney, a marshal, city engineer, and such other officers and agents as the city council may from time to time direct. The office of treasurer, assessor and collector, city attorney, and city engineer may be dispensed with by an ordinance to that effect, and the powers and duties herein prescribed for such officers may be conferred by the council upon other officers. The above named officers shall be

elected by the qualified electors of the city for a term of two years. [Acts 1881, p. 115; G. L. Vol. 9, p. 208.]

Art. 978. [785] [388] [345] **Election.**—An election shall be held annually in each ward of said city on the first Tuesday in April, at such places as the city council may direct, and of which thirty days notice shall be given. Such election shall be ordered and notice thereof shall be given, and the election officers and supervisors appointed, as provided by article 2951. The presiding officers and judges must be qualified voters in the city. The city council shall provide for their compensation, and by ordinance, regulate and define their powers and duties. [Id; Acts 1st C. S. 1905, p. 533.]

Art. 979. [786] [389] [346] **Ward Election of Councilmen.**—At the first election under this title there shall be elected a mayor, and two aldermen from each ward, one of whom shall hold office for one year, and the other for two years from the date of their election, to be determined by lot at the first regular meeting after said election. At each annual election thereafter there shall be elected one alderman from each ward, who shall hold office for two years. If the city or town is not divided into wards, the city council may determine by ordinance what number of aldermen shall go out of office in one year, and the manner of deciding which shall hold for the long term and which for the short term. [Acts 1895, p. 8, G. L. Vol. 10, p. 783.]

Art. 980. [787] [390] [347] **Hours of election.**—The ballots of each ward shall be taken separately, the polls being opened in each ward for one day only, from eight o'clock a. m. until six o'clock p. m., with the privilege of a recess from 12 o'clock to one o'clock. If the polls are not promptly opened for the reception of votes at eight o'clock a. m., the time thus lost shall be extended beyond the hour of six p. m. so as to secure the full period of nine hours to vote. [Id.]

Art. 981. [787] [390] [347] **Returns.**—On closing the polls, the managers of the election shall immediately proceed to count and cast up the votes for each candidate and certify and sign the returns in duplicate, one of which shall be sealed and returned by the presiding officer for future use as a reference in the case of a contested election; the other shall be sealed with the name of the presiding officer written across the seals, and by the presiding officer, or in his absence or inability by one of the judges or clerks, delivered in open session to the city council as soon as practicable. The officer delivering the same shall make oath before the mayor or one of the aldermen that the returns by him delivered have not been altered or opened since being signed and sealed as aforesaid. [Id.]

Art. 982. [787] [390] [347] **Shall declare result.**—The city council shall immediately open the returns from each ward, casting up the votes of the wards, and the persons receiving the highest number of votes for the respective offices shall be declared elected. In the first election held hereunder, the two persons from the same ward receiving the highest number of votes in the city for aldermen of the wards for which they are

candidates shall be declared elected aldermen of such wards. If the city council fails to meet and declare the results of such election, the mayor shall discharge that duty. [Acts 1875, p. 113; Id.; G. L. Vol. 8, p. 485.]

Art. 983. [787] [390] [347] **Installation of officers.**—The newly elected officers may enter upon their duties on the fifth day thereafter, Sundays excepted. If any such officer fails to qualify within thirty days after his election, his office shall be deemed vacant, and a new election held to fill the same. The city council-elect shall meet at the usual place of meeting on the fifth day, Sundays excepted, after their election or as soon thereafter as possible, and be installed under the provisions of this title. [Id.]

Art. 984. [789] [392] [349] **Election managers.**—The election managers shall be sworn well and truly to conduct the election, without partiality or prejudice, and agreeably to law, and according to the best of their skill and understanding. Such oath shall be administered by the mayor or any justice of the peace. The presiding officers and judges thus qualified shall have power to administer oaths necessary to the performance of their official duties. [Id.]

Art. 985. [789] [392] [349] **Rejection of votes.**—When any person offering a vote shall be objected to by any one qualified to vote at such election, the managers shall examine him on oath touching the points objected to; and, if he fails to establish his qualification to their satisfaction his vote shall be rejected. [Id.]

Art. 986. [791] [394] [350] **Tie vote.**—If in any election there is a tie between two or more candidates for the same office, all of whom cannot be elected, the city council shall declare such election void as between such candidates only, and immediately order a new election for the office, giving not less than five days notice thereof. [Id.]

Art. 987. [792] [395] [351] **Qualifications of officers.**—No person shall be eligible to the office of mayor unless he is a qualified elector and has resided twelve months next preceding the election within the city limits. To be eligible for aldermen, one must reside in the ward from which he may be elected at the time of his election. If any alderman removes from the ward in which he was elected, his office shall be deemed vacant. [Id.]

Art. 988. [793] [566] [495] **Limitations of councilmen.**—No member of the city council shall hold any other employment or office under the city government until he is a member of said council, unless herein otherwise provided. No member of the city council, or any other officer of the corporation, shall be directly or indirectly interested in any work, business or contract, the expense, price or consideration of which is paid from the city treasury, or by an assessment levied by an ordinance or resolution of the city council, nor be the surety of any person having a contract, work or business with said city, for the performance of which security may be required, nor be the surety

on the official bond of any city officer. [Acts 1875, p. 154; G. L. Vol. 8, p. 526.]

Art. 989. [797] [396] [352] **Vacancy.**—In case of a vacancy from any cause in the office of mayor or alderman, the city council shall order a new election to fill such vacancy. All special elections shall be conducted as is herein provided for in the annual election. In all special elections to fill vacancies, ten days notice shall be sufficient. In case of a vacancy in any other office in the city, the mayor or acting mayor shall fill such vacancy by appointment, to be confirmed by the city council. [Acts 1887, p. 41; G. L. Vol. 9, p. 839.]

Art. 990. [798-9] **Special election.**—Whenever a vacancy occurs by resignation or otherwise, in the municipal offices of any incorporated city or town in this State, so that the vacancy cannot be filled under the charter of said city or town, or under the laws of this State now in force, then the commissioners court of said county in which said town or city is situated, upon a petition of not less than twenty-six tax paying voters living in such city, shall order an election to be held to fill such vacancy, giving notice of not less than ten days in the usual manner provided for such elections, which shall be held in like manner as similar elections and the officers so elected shall in like manner be qualified and installed. [Acts 1875, p. 159; G. L. Vol. 8, p. 485; G. L. Vol. 10, p. 1213.]

Art. 991. [801] [399] [355] **Mayor pro tempore.**—At the first meeting of each new council, or as soon thereafter as practicable, one of the aldermen shall be elected president pro tempore, who shall hold his office for one year. In case of the failure, inability or refusal of the mayor to act, the president pro tempore shall perform the duties and receive the fees and compensation of the mayor. [Acts 1875, p. 113; G. L. Vol. 8, p. 485.]

Art. 992. [802] [553] [482] **Change of wards.**—The wards of each city accepting the provisions of this title shall be and remain unchanged by its acceptance. The city council shall have power from time to time to cause a division of said city to be made into as many wards as they may deem necessary, and for the good of the inhabitants of said city, and may change the boundaries of the same. No such division or change shall be made unless it be done at least three months preceding the city election next ensuing; and said wards so established shall contain as far as practicable an equal number of voters. [Acts 1875, p. 151; G. L. Vol. 8, p. 523.]

CHAPTER THREE.

DUTIES AND POWERS OF OFFICERS.

| | Article | | Article |
|----------------------------------|---------|-----------------------------------|---------|
| Oath | 993 | Secretary, duties, etc. | 1000 |
| Duties of Mayor | 994 | Treasurer, duties etc. | 1001 |
| Special police force | 995 | Control of officers | 1002 |
| Powers of the mayor | 996 | Qualifications of appointee | 1003 |
| Ordinances and resolutions | 997 | Officer disqualified | 1004 |
| Police officers | 998 | Resignation of officers | 1005 |
| Marshal, duties, etc. | 999 | Removal of officers | 1006 |

Art. 993. [803] [400] [356] **Oath.**—Every person elected

or appointed to fill an office under this title shall, before entering upon the duties of his office, take and subscribe the official oath. The city council by ordinance may require such additional oath as it may deem best calculated to secure faithfulness in the performance of their duties by such officers. [Acts 1875, p. 118; G. L. Vol. 8, p. 490.]

Art. 994. [804] [401] [357] **Duties of mayor.**—The mayor shall be the chief executive officer of said corporation, and shall be active at all times in causing the laws and ordinances of said city to be duly executed and put in force. He shall inspect the conduct of all subordinate officers in the government thereof, and, shall cause all negligence, carelessness and other violations of duty to be prosecuted and punished. He shall have power, if in his judgment the good of the city may require it, to summon meetings of the city council; and he shall communicate to that body such information and recommend such measures as may tend to the improvement of the finances, the police, health security, cleanliness, comfort, ornament and good government of said city. [Acts 1881, p. 115; G. L. Vol. 9, p. 207.]

Art. 995. [805] [402] [358] **Special police force.**—Whenever the mayor deems it necessary, in order to enforce the laws of the city, or to avert danger, or to protect life or property, in case of riot or any outbreak or calamity or public disturbance, or when he has reason to fear any serious violation of law or order, or any outbreak or any other danger to said city, or the inhabitants thereof, he shall summon into service as a special police force, all or as many of the citizens as in his judgment may be necessary. Such summons may be by proclamation or other order addressed to the citizens generally, or those of any ward of the city, or subdivision thereof, or may be by personal notification. Such special police force while in service, shall be subject to the orders of the mayor, shall perform such duties as he may require, and shall have the same power while on duty as the regular police force of said city. [Acts 1875, p. 119; G. L. Vol. 8, p. 491.]

Art. 996. [806] [403] [359] **Powers of the mayor.**—The mayor shall have power to administer oaths of office. He shall have authority in case of a riot or any unlawful assemblage, or with a view to preserve peace and good order in said city, to order and enforce the closing of any theatre, ball room, or other place of resort, or public room or building, and may order the arrest of any person violating in his presence, the laws of this State, or any ordinance of the city. He shall perform such other duties and possess and exercise such other power and authority as may be prescribed and conferred by the city council. [Id.]

Art. 997. [807] [404] [360] **Ordinances and resolutions.**—All ordinances and resolutions adopted by the council shall, before they take effect, be placed in the office of the city secretary; and the mayor shall sign those he approves. Such as he shall not sign, he shall return to the city council with his objections thereto. Upon the return of any ordinance or resolution by the mayor, the vote by which the same was passed shall be recon-

sidered. If, after such reconsideration, a majority of the whole number of aldermen agree to pass the same, and enter their votes on the journal of their proceedings, it shall be in force. If the mayor shall neglect to approve or object to any such proceedings for a longer period than three days after the same shall be placed in the secretary's office as aforesaid, the same shall go into effect. [Id.]

Art. 998. [808] **Police Officers.**—The city or town council in any city or town in this State, incorporated under the provisions of this title may, by ordinance, provide for the appointment, term of office and qualifications of such police officers as may be deemed necessary. Such police officers so appointed shall receive a salary or fees of office, or both, as shall be fixed by the city council. Such council may, by ordinance, provide that such police officers shall hold their office at the pleasure of the city council, and for such term as the city council directs. Such police officers shall give bond for the faithful performance of their duties, as the city council may require. Such officers shall have like powers, rights and authority as are by said title vested in city marshals. [Acts 1907, p. 299.]

Art. 999. [809] [407] [363] **Marshal, duties, etc.**—The marshal of the city shall be ex-officio chief of police, and may appoint one or more deputies which appointment shall only be valid upon the approval of the city council. Said marshal shall, in person or by deputy, attend upon the corporation court while in session, and shall promptly and faithfully execute all writs and process issued from said court. He shall have like power, with the sheriff of the county, to execute warrants; he shall be active in quelling riots, disorder and disturbance of the peace within the city limits and shall take into custody all persons so offending against the peace of the city and shall have authority to take suitable and sufficient bail for the appearance before the corporation court of any person charged with an offense against the ordinance or laws of the city. It shall be his duty to arrest, without warrant, all violators of the public peace, and all who obstruct or interfere with him in the execution of the duties of his office or who shall be guilty of any disorderly conduct or disturbance whatever; to prevent a breach of the peace or preserve quiet and good order, he shall have authority to close any theatre, ball room or other place or building of public resort. In the prevention and suppression of crime and arrest of offenders, he shall have, possess and execute like power, authority, and jurisdiction as the sheriff. He shall perform such other duties and possess such other powers and authority as the city council may by ordinance require and confer, not inconsistent with the Constitution and laws of this State. The marshal shall give such bond for the faithful performance of his duties as the city council may require. He shall receive a salary or fees of office, or both, to be fixed by the city council. The governing body of any city or town having less than three thousand inhabitants according to the preceding Federal census, may by an ordinance, dispense with the office of marshal, and at the same time by such

ordinance confer the duties of said office upon any peace officer of the county, but no marshal elected by the people shall be removed from his office under the provisions of this article. [Acts 1875, p. 122; G. L. Vol. 8, p. 494; Acts 1901, p. 114.]

Art. 1000. [810] [408] [364] **Secretary, duties, etc.**—The city secretary shall attend every meeting of the city council, and keep accurate minutes of the proceedings thereof in a book to be provided for that purpose, and engross and enroll all laws, resolutions and ordinances of the city council, keep the corporate seal, take charge of and preserve and keep in order all the books, records, papers, documents and files of said council, countersign all commissions issued to city officers, and licenses issued by the mayor, and keep a record or register thereof, and make out all notices required under any regulation or ordinance of the city. He shall draw all the warrants on the treasurer and countersign the same and keep an accurate account thereof in a book provided for the purpose. He shall be the general accountant of the corporation, and shall keep in books regular accounts of the receipts and disbursements for the city, and separately, under proper heads, each cause of receipt and disbursement, and also accounts with each person including officers who have money transactions with the city, crediting accounts allowed by proper authority and specifying the particular transaction to which such entries apply. He shall keep a register of bonds and bills issued by the city, and all evidence of debt due and payable to it, noting the particulars thereof, and all facts connected therewith, as they occur. He shall carefully keep all contracts made by the city council; and he shall perform all such other duties as may be required of him by law, ordinance, resolution or order of the city council. He shall receive for his services an annual salary payable at stated periods, and such additional fees as the city council may allow. [Id.]

Art. 1001. [811] [409] [365] **Treasurer, duties, etc.**—The treasurer shall give bond in favor of the city in such amount, and in such form as the city council may require, with sufficient security to be approved by the city council, conditioned for the faithful discharge of his duties. He shall receive and securely keep all moneys belonging to the city, and make all payments for the same upon the order of the mayor, attested by the secretary under the seal of the corporation. No order shall be paid unless the said order shall show upon its face that the city council has directed its issuance, and for what purpose. He shall render a full and correct statement of his receipts and payments to the city council, at their first regular meeting in every quarter and whensoever, at other times, he may be required by them so to do. At the end of every half year he shall cause to be published, at the expense of the city, a statement showing the amount of receipts and expenditures for the six months next preceding, and the general condition of the treasury. He shall do and perform such other acts and duties as the city council may require. He shall receive such compensation as the city council shall fix. [Id.]

Art. 1002. [812] [411] [367] **Control of officers.**—The city council shall have power from time to time to require other and further duties of all officers whose duties are herein prescribed, and to define and prescribe the powers and duties of all officers appointed or elected to any office under this title whose duties are not herein specially mentioned, and fix their compensation. They may also require bonds to be given to the said corporation by all officers for the faithful performance of their duties. The city council shall provide for filling vacancies in all offices, not herein provided for. In all cases of vacancy, the same shall be filled only for the unexpired term. [Id.]

Art. 1003. [794] [562] [491] **Qualifications of appointee.**—No person other than an elector resident of the city shall be appointed to any office by the city council. [Id.]

Art. 1004. [800] [565] [494] **Officer disqualified.**—Any officer who has been intrusted with the collection or custody of funds belonging to a city who shall be in default to said city, shall thereafter be incapable of holding any office under said city, until the amount of his defalcation shall have been fully paid to said city, with ten per cent interest. [Id.]

Art. 1005. [795] [563] [492] **Resignation of officers.**—Resignation by any officer authorized by this title to be elected or appointed shall be made to the city council in writing, subject to their approval and acceptance. Any appointee of the mayor may present his written resignation to that officer for his action. [Id.]

Art. 1006. [796] [564] [493] **Removal of officers.**—The city council shall have power to remove any officer for incompetency, corruption, misconduct or malfeasance in office, after due notice and an opportunity to be heard in his defense. The city council shall also have power at any time to remove any officer of the corporation elected by them, by resolution declaratory of its want of confidence in said officer; provided, that two-thirds of the aldermen elected vote in favor of said resolution. [Id.]

CHAPTER FOUR.

THE CITY COUNCIL.

| | Article | | Article |
|--------------------------------|---------|----------------------------------|---------|
| Presiding officer..... | 1007 | Sale of parks, streets, etc..... | 1017 |
| Meetings..... | 1008 | Use by railway..... | 1018 |
| Attendance of officers..... | 1009 | Special election..... | 1019 |
| Salary of officers..... | 1010 | Towns so empowered..... | 1020 |
| Powers..... | 1011 | Interest on indebtedness..... | 1021 |
| Style of ordinances..... | 1012 | Audit board..... | 1022 |
| Publication of ordinances..... | 1013 | Financial statement..... | 1023 |
| May remit fines..... | 1014 | Receiver appointed..... | 1024 |
| Other powers..... | 1015 | Official paper..... | 1025 |
| Streets and alleys, etc..... | 1016 | | |

Art. 1007. [813] [412] [368] **Presiding officer.**—The mayor shall preside at all meetings of the city council, and shall have a casting vote, except in elections. If he and the president pro tem are absent, any alderman may be appointed to preside. [Acts 1875, p. 113; G. L. Vol. 8, p. 485.]

Art. 1008. [814] [413] [369] **Meetings.**—Petitions and remonstrances may be presented to the council in writing only.

The city council shall hold stated meetings at such times and places as they shall by resolution direct. The mayor, of his own motion, or on the application of three aldermen, may call special meetings, by notice to each member of said council, the secretary and city attorney, served personally or left at their usual place of abode. The council shall determine the rules of its proceedings and be the judge of the election and qualification of its own members, and may compel the attendance of absent members and punish them for disorderly conduct. [Id.]

Art. 1009. [815] [567] [496] **Attendance of officers.**—Each alderman shall be fined three dollars for each meeting which he fails to attend, unless on account of his own sickness or that of his family. Any member of the city council remaining absent for three regular consecutive meetings of the board, unless prevented by sickness, without first having obtained leave of absence at a regular meeting, shall be deemed to have vacated his office, and the mayor shall proceed to fill the vacancy in accordance with the charter. [Id.]

Art. 1010. [816] [569] [498] **Salary of officers.**—The city council shall, on or before the first day of January next preceding each election, fix the salary and fees of office of the mayor to be elected at the next regular election, and fix the compensation to be paid to the officers elected or appointed by the city council. The compensation so fixed shall not be changed during the term for which said officers shall be elected or appointed. [Id.]

Art. 1011. [817] [464] [418] **Powers.**—The city council shall have power to pass, publish, amend or repeal all ordinances, rules and police regulations, not contrary to the Constitution of this State, for the good government, peace and order of the city and the trade and commerce thereof, that may be necessary or proper to carry into effect the powers vested by this title in the corporation, the city government or in any department or office thereof; to enforce the observance of all such rules, ordinances and police regulations, and to punish violations thereof. No fine or penalty shall exceed one hundred dollars. [Id.]

Art. 1012. [818] [559] [488] **Style of ordinances.**—The style of all ordinances shall be “Be it ordained by the city council of the city of _____” (inserting the name of the city); but it may be omitted when published in the form of a book or pamphlet. [Id.]

Art. 1013. [819-821] **Publication of ordinances.**—Every ordinance imposing any penalty, fine or forfeiture shall, after the passage thereof, be published in every issue of the official paper for ten days. If the official paper be published weekly, the publication shall be made in one issue thereof. Proof of such publication shall be made by the printer or publisher of such paper by affidavit filed with the city secretary, and shall be prima facie evidence of such publication and promulgation of such ordinances in all courts of the State. Such ordinances

shall take effect and be in force from and after the publication thereof, unless otherwise expressly provided. Ordinances not required to be published shall take effect from their passage, unless otherwise provided. Any town or city desiring to publish its ordinances in pamphlets, or book form need not republish such ordinances as have been previously published. All such ordinances, where printed and published by authority of the city council, shall be admitted and received in all courts without further proof. [Id; Acts 1889, p. 4; G. L. vol. 9, p. 1032.]

Art. 1014. [823] [568] **May remit fines.**—The city or town council shall have power to remit in whole or in part by a vote of two-thirds of the members present, any fine or penalty belonging to the city, which may be imposed or incurred under this title, or under any ordinance or resolution passed in pursuance thereof. [Id.]

Art. 1015. **Other powers.**—The governing body shall also have power:

1. **Promotion of health.**—To do all acts and make all regulations which may be necessary or expedient for the promotion of health or the suppression of disease.

2. **Quarantine regulations.**—To make regulations to prevent the introduction of contagious disease into the city; to make quarantine laws for that purpose, and to enforce them within the city and within ten miles thereof.

3. **Joint sanitary regulations.**—To cooperate with the commissioners' court of the county in which the municipality is situated in making such improvements as may, by it and said court, be deemed necessary to improve the public health and promote efficient sanitary regulations, and to arrange for the construction of, and payment for, said improvements.

4. **Hospitals.**—To erect or establish one or more hospitals, and control and regulate the same, and to prohibit or to permit and regulate the establishment of private hospitals.

5. **Food inspection, etc.**—To regulate the inspection of beef, pork, flour, meal, salt and other provisions; to appoint weighers, gaugers and inspectors, and to prescribe their duties and regulate their fees.

6. **Sale of bread.**—To regulate the weight and quality of the bread to be sold or used within the city.

7. **Butchers.**—To make such rules and regulations in relation to butchers as they may deem necessary and proper.

8. **Unclean establishments.**—To compel the owner or occupant of any grocery, soap, tallow, or chandler establishment, or blacksmith shop, tannery, stable, slaughterhouse, sewers, privy, hide house or other unwholesome or nauseous house or place, to cleanse, remove or abate the same, as may be necessary for the health, comfort and convenience of the inhabitants.

9. **Location of establishment.**—To direct the location of business, tanneries, blacksmith shops, foundries, livery stables and any manufacturing establishments; to direct the location and regulate the management and construction of, restrain, abate and prohibit within the city limits, slaughtering establishments

and hide houses or establishments for making soap, for steaming or rendering lard, tallow, offal and such other substances as may be rendered; and all other establishments or places where any nauseous, offensive or unwholesome business may be carried on.

10. Drains, sinks, etc.—To require the owner of private drains, sinks and privies to fill up, cleanse, drain, alter, relay, repair, fix or improve the same as may be ordered by any resolution or ordinance of said city; and in the event of any failure, neglect or refusal to comply with any such order, the party so failing shall be liable to fine. In the event of there being no person in the city on whom such order can be served, the city may have such work done and such improvements made on account of the owner thereof. All costs, charges and expenses shall be a lien on the property, on the filing of a memorandum by the mayor, under the seal of the corporation thereof, and recording the same with the clerk of the district court. The city may enforce said lien and institute suit in the corporate name and obtain judgment against said party for the amount so due as aforesaid in any court having jurisdiction.

11. Nuisances.—To abate and remove nuisances and to punish the authors thereof by fine, and to define and declare what shall be nuisances and authorize and direct the summary abatement thereof; and to abate all nuisances which may injure or affect the public health or comfort in any manner they may deem expedient.

12. Dead animals, etc.—To prevent any person from bringing, depositing or having within the limits of said city any dead carcass, or other offensive or unwholesome substance or matter, and to require the removal or destruction by any person who shall have placed or caused to be placed upon or near his premises, or elsewhere, of any substance or matter, filth, or any putrid or unsound beef, pork or fish, hides or skins of any kind; and, on his default, to authorize the removal or destruction thereof by some officer of the city, and to require the owner of any dead animal to remove the same to such place as may be designated.

13. Burial of dead, etc.—To regulate the burial of the dead; to purchase, establish and regulate one or more cemeteries; to regulate the registration of marriages; and to direct the returning and keeping of bills of mortality.

14. Driving animals in city.—To prevent, regulate and control the driving of cattle, horses and other animals into or through the city.

15. Dogs.—To tax, regulate or restrain and prohibit the running at large of dogs and to authorize their destruction when at large contrary to ordinances, and to impose penalties for violation of such ordinances.

16. Pounds.—To establish and regulate public pounds, and to regulate, restrain and prohibit the running at large of horses, mules, cattle, sheep, swine, and goats, and to authorize the distraining, impounding and sale of the same for the costs of the

proceedings and the penalty incurred, and to order their destruction when they cannot be sold, and to impose penalties on the owners thereof for the violation of any ordinance.

17. Breeding animals.—To pass necessary ordinances to prevent any person, corporation or association of individuals from keeping for breeding purposes a jack, bull or stallion within the corporate limits of such city or town.

18. Control of police.—To create, establish and regulate the police of the city; to appoint watchmen and policemen, and to prescribe their duties and powers and compensation.

19. Workhouses.—To erect and establish one or more workhouses or houses of correction, within or without the city limits, make all necessary rules and regulations therefor, and appoint all necessary keepers or assistants. In such workhouse or house of correction may be confined all vagrants and disorderly persons, who may be committed by the mayor or recorder, and any person who shall fail or refuse to pay the fine or costs imposed for any offense may, instead of being committed to jail, be kept therein.

20. Breach of peace, etc.—To prevent all trespasses, breaches of the peace and good order, assaults and batteries, fighting, quarreling, using abusive, obscene, profane or insulting language and all disorderly conduct, and punish all persons thus offending.

21. Public disturbances.—To suppress and prevent any riot, affray, noise, disturbance or disorderly assembly in any public or private place within the city.

22. Noises and annoyances.—To prohibit and restrain the firing of firecrackers, guns and pistols, use of velocipedes, or use of any pyrotechnic or any other amusements or practices tending to annoy persons passing in the streets or sidewalks, or to frighten horses or teams; to restrain and prohibit the ringing of bells, blowing of horns and bugles, crying of goods, and all other noises, practices and performances tending to the collection of persons on the streets and sidewalks, by auctioneers and others, for the purpose of business, amusement or otherwise.

23. Obstructions on public ways, etc.—To prevent the encumbering of the streets, alleys, sidewalks, and public grounds, with any vehicle whatsoever, boxes, lumber, posts, awnings, signs, or any other substance or material whatever, to compel persons to keep all weeds, filth or any kind of rubbish from the sidewalks and streets and gutters in front of their premises, and to compel the owners of property to fill up, grade, gravel and otherwise improve the sidewalks in front of same.

24. Dangerous buildings, etc.—To order, whenever in the opinion of the city council, any building, fence, shed, awning or any erection of any kind or any part thereof is liable to fall down and endanger persons or property, any owner or agent of the same, or any owner or occupant of the premises on which such building, shed, awning or other erection stands or to which it is attached, to take down and remove the same, or any part thereof, within such time as they may direct; and to punish by fine

and imprisonment, or either, any neglect, failure or refusal to comply therewith. The city council shall have power to remove the same at the expense of the city, on account of the owner of the property or premises, and assess the expenses on the land on which it stood or to which it was attached, and shall, by ordinance, provide for such assessment, the mode and manner of giving notice and the means of recovering any such expenses.

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

26. Street railways.—To compel street railway companies to keep their roads in repair, and to make them conform to the grades of the streets upon which their tracks may be laid, whenever said streets shall have been graded by the city, and to restrain the rate of speed and to compel such railroads to supply ample accommodation for the safe and convenient travel of the people on the street where their track may run. The city council may enforce these regulations by proper ordinances with suitable penalties.

27. Railway companies.—To direct and control the laying and constructing of railroad tracks, turnouts and switches, or prohibit the same in the streets, avenues and alleys, unless the same have been authorized by law, and the location of depots within the city; to require that railroad tracks, turnouts and switches shall be so constructed as to interfere as little as possible with the ordinary travel and use of streets, avenues and alleys and that sufficient space shall be left on either side of a track for the safe and convenient passage of teams, carriages and other vehicles, and persons; to require railroad companies to keep in repair the streets, avenues or alleys through which their track may run, and, if ordered by the city council, to construct and keep in repair, suitable crossings at the intersection of streets, avenues and alleys, and ditches, sewers and culverts, when the city council shall deem it necessary; to direct the use and regulate the speed of locomotive engines in said city, or to prevent and prohibit the use or running of the same within the city.

28. Unsafe driving.—To prevent, prohibit and suppress horse-racing, immoderate riding or driving in the streets; to compel persons to fasten their horses or other animals attached

to vehicles, or otherwise, while standing or remaining in the streets.

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

30. Water system.—To provide, or cause to be provided, the city with water; to make, regulate and establish public wells, pumps and cisterns, hydrants and reservoirs in the streets or elsewhere within said city or beyond the limits thereof, for the extinguishment of fires and the convenience of the inhabitants, and to prevent the unnecessary waste of water. Any city or town owning, or that may hereafter own, its water system and plant, shall not lease or sell the same without first submitting the question of such proposed lease or sale to a vote of the qualified voters who are property taxpayers of such town or city as shown by the last preceding tax rolls, at a general election, or at one held for that especial purpose, nor unless a majority of those voting shall vote in favor thereof. Before submitting such question to a vote as aforesaid, the proposed contract of lease or sale shall be distinctly set forth in the form of an ordinance or contract, and shall be filed with the city or town secretary or clerk at least twenty days prior to the day of the election, and shall at all times be subject to inspection by the people of such city.

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

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

33. Libraries.—To establish a free library in such city or town; to adopt rules and regulations for the proper management thereof, and to appropriate such part of the revenues of such city or town for the management and increase of such free library as the municipal government of such city or town may determine.

34. Street car taxes.—To assess and collect the ordinary municipal taxes upon street railways.

35. Trade taxes.—To tax all trades, professions, occupations and callings, the taxing of which is not prohibited by the Constitution of this State; which tax shall not be construed to be a tax on property.

36. Chauffeurs, porters, etc.—To license, tax and regulate hackmen, draymen, omnibus drivers and drivers of baggage wagons, porters, and all others pursuing like occupations, with

or without vehicles, and prescribe their compensation, and provide for their protection and make it a misdemeanor to attempt to defraud them of any legal charge for services rendered, and to regulate, license and restrain runners for railroads, stages and public houses.

37. Peddlers, theaters, etc.—To license, tax and regulate or suppress and prevent hawkers, peddlers, pawnbrokers and keepers or other exhibitions, shows and amusements.

38. Circuses, etc.—To license, tax or regulate theaters, circuses, the exhibitions of common showmen, shows of any kind, and the exhibition of natural and artificial curiosities, caravans, menageries and musical exhibitions and performances.

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

40. Finances and property.—To manage and control the finances and all property, real and personal and mixed, belonging to the corporation.

41. Appropriations.—To appropriate money, and provide for the payment of debts and expenses of the city.

42. Special funds.—To provide by ordinance special funds for special purposes, and to make the same disbursable only for the purpose for which the fund was created. Any officer of the city misappropriating said special fund shall be deemed guilty of malfeasance in office, and shall, on complaint of any one interested in said funds misappropriated, be removed from office, and be incapable thereafter to hold any office in said city.

43. Improvements.—To appropriate so much of the revenues of the city emanating from whatever source, for the purpose of retiring and discharging the accrued indebtedness of the city, and for the purpose of improving the public markets and streets, erecting and conducting city hospitals, city hall, waterworks, and so forth, as they may from time to time deem expedient; and in furtherance of these objects, to borrow money upon the credit of the city.

Art. 1016. [854] [419] [375] **Streets and alleys, etc.**—Any incorporated city or town containing not more than five thousand population in this State shall have the exclusive control and power over the streets, alleys, and public grounds and highways of the city, and to abate and remove encroachments or obstructions thereon; to open, alter, widen, extend, establish, regulate, grade, clean and otherwise improve said streets; to put drains or sewers therein, and prevent incumbering thereof in any manner, and to protect same from encroachment or injury; and to regulate and alter the grade of premises; to require the filling up and raising of same; and such city council shall also have power to alter or vacate the alley in any block of ground in the city upon written application of the owner of the block, or if there be more than one owner of such block, then upon the

written application of all owners thereof uniting in such application; such alley so vacated shall thereupon revert to and become the property of the owner of the block of which it was a part, or if more than one, then to the owners of the adjoining lots therein, each extending to the center of the alley so vacated. [Acts 1889, p. 1; Acts 1913, p. 326; Acts 1917, p. 351; G. L. Vol. 9, p. 1029.]

Art. 1017. Sale of parks, streets, etc.—The charter or any amendment thereof, may authorize the governing body to sell and cause to be conveyed any land held or claimed for or as a public square or park, and the parts of streets and alleys within the limits of the city. The proceeds of any such sale shall be used only for the purpose of acquiring public squares, streets, or alleys. [Acts 1913, p. 326.]

Art. 1018. Use by railway, etc.—The charter, or any amendment thereto, may authorize the governing body to close for the exclusive use temporarily or perpetually by any railroad company or other corporation having power of eminent domain, any part or parts, of any street or streets, alley or alleys, and to ratify and confirm any prior ordinances closing any street or streets, alley or alleys, or any part or parts thereof, for the use of any railroad company or any such other corporation. [Id.]

Art. 1019. Special election.—No public square or park shall be sold, and no street or alley, nor part or parts of any street or alley closed, until the question of such sale or closing has been submitted to a vote of the qualified voters of the city or town, and approved by a majority of the votes cast at such election. [Id.]

Art. 1020. Towns so empowered.—The provisions of the three preceding articles shall be enforced in towns or cities under five thousand population, or cities over five thousand population which have no special charter, and in towns or cities incorporated under this title, and in cities or towns incorporated under any special law. The power authorized by this article may be conferred upon the governing body by vote of the qualified voters as provided in the preceding article. [Id.]

Art. 1021. [876] [577] [504] Interest on indebtedness.—No indebtedness of any character whatever, hereafter incurred by said corporation shall draw a higher rate of interest than six per cent per annum. [Acts 1875, p. 113; G. L. Vol. 8, p. 485.]

Art. 1022. [885 to 888] Audit board.—With the consent of the governing body, the mayor of each city or town incorporated under the general laws, shall at the first meeting of said body in January of each year appoint three resident citizens of said city or town who shall constitute a board of examiners of the finances of said city or town. Such examiners shall proceed to examine the books and accounts of each officer of said city or town, and make a sworn true report of the financial condition thereof to said governing body as soon as practicable and not later than the first meeting of said body in March of each year. The annual report of said board shall be passed upon by said governing body and spread upon the minutes of their meeting

at the first regular meeting after the return of such report. Such examiners shall receive for their services such compensation as said governing body shall fix for every day actually employed in their investigations, not to exceed fifteen days in each year, which shall be paid by order of said body. [Acts 1905, p. 41; G. L. Vol. 10, p. 771.]

Art. 1023. [889] [556] [485] **Financial statement.**— The city council shall, at least ten days before the expiration of each municipal year, cause to be published in a city newspaper a correct and full statement of the receipts and expenditures from the date of the last annual report, together with the sources from which the funds were derived, and showing for what purpose disbursed, the condition of the treasury, together with such information as may be necessary to a full understanding of the financial condition of the city. [Acts 1875, p. 113; G. L. Vol. 8, p. 485.]

Art. 1024. [899] [480] **Receiver appointed.**— A city or town so situated as is herein set forth, which fails to effect a compromise of its debts, or pending the negotiation of a compromise, shall be permitted, on its application setting forth its financial condition and insolvency, to have the district court of the county in which said city or town is situated, take charge of the collection and appropriation of all taxes levied and assessed by said city or town, except so much thereof as is necessary to pay the current expenses of the city or town; and to that end, said court, or the judge thereof in vacation, shall appoint a receiver, or make the assessor and collector of said city or town its receiver to collect and pay into a named depository all taxes levied by said city or town for the payment of its debts; and said courts shall decide all questions of priority between conflicting claimants of said funds, and shall provide for the ratable and equitable distribution of said funds among all creditors entitled thereto. But it shall not be lawful for any court to appoint a receiver of or concerning any city or town except upon the voluntary application of such city or town. [Acts 1887, p. 50; G. L. Vol. 9, p. 848.]

Art. 1025. [902] [555] [484] **Official paper.**— The city council shall, as soon as may be after the commencement of each municipal year, contract, as they may by ordinance or resolution determine, with a public newspaper of the city as the official paper thereof, and to continue as such until another is elected, and shall cause to be published therein all ordinances, notices and other matters required by this title or by the ordinance of the city to be published. [Acts 1875, p. 113; G. L. Vol. 8, p. 485.]

CHAPTER FIVE.

TAXATION.

| | Article | | Article |
|-------------------------------------|---------|------------------------------------|---------|
| Power to levy..... | 1026 | Back taxes..... | 1047 |
| Ad valorem tax..... | 1027 | Equalization board..... | 1048 |
| Ad valorem tax in large cities..... | 1028 | Meetings of board..... | 1049 |
| Retirement of indebtedness..... | 1029 | Shall value property..... | 1050 |
| Poll tax..... | 1030 | Complaint..... | 1051 |
| Occupation tax..... | 1031 | Unrendered property appraisal..... | 1052 |
| Power to collect tax..... | 1032 | Notice to owners..... | 1053 |
| Power to assess tax..... | 1033 | Shall lower values..... | 1054 |
| Collection of License Tax..... | 1034 | Approval of rolls..... | 1055 |
| License revoked..... | 1035 | Compensation of board..... | 1056 |
| "Real estate"..... | 1036 | Collection of taxes..... | 1057 |
| "Personal estate"..... | 1037 | Tax sale..... | 1058 |
| Exemptions..... | 1038 | Effect of deed..... | 1059 |
| Special taxes..... | 1039 | Personal property..... | 1060 |
| Indebtedness..... | 1040 | May continue sale..... | 1061 |
| Powers of council..... | 1041 | Failure to sell..... | 1062 |
| Further powers..... | 1042 | Laws applicable..... | 1063 |
| Rendition..... | 1043 | One year redemptions..... | 1064 |
| Assessor and collector..... | 1044 | Two year redemptions..... | 1065 |
| List of personal property..... | 1045 | Payment of taxes..... | 1066 |
| Unrendered property..... | 1046 | | |

Art. 1026. [923] [484] **Power to levy.**—The governing body of any city or town in this State having a population of five thousand or less shall have power by ordinance to levy, assess and collect such taxes as such governing body may determine, not to exceed for any one year one and one-half per cent of the taxable property of such city or town, for current expenses and for the purpose of construction or the purchase of public buildings, water works, sewers, and other permanent improvements, within the limits of such city or town, and for the construction and improvement of the roads, bridges and streets of such city or town within its limits. [Acts 1921, p. 12.]

Art. 1027. [924] [485] **Ad valorem tax.**—The governing body of any incorporated city or town having a population of not more than five thousand inhabitants, shall have power, by ordinance, to levy and collect an annual ad valorem tax of not exceeding one and one-half per cent on the one hundred dollars valuation of taxable property within such city or town for the erection, construction or purchase of public buildings, streets, sewers and other permanent improvements within the limits of such city or town. Within the meaning of this article shall be included building sites and buildings for public free schools and institutions of learning within those cities and towns which have or may assume the exclusive control and management of public free schools and institutions of learning within their limits. [Acts 1885, p. 99; G. L. Vol. 9, p. 719; Constitutional Amendment 1921.]

Art. 1028. **Ad valorem tax in large cities.**—The governing body of any city in this State having more than five thousand inhabitants, unless otherwise provided in its special charter granted by the Legislature or adopted by the people, shall have power by ordinance to levy, assess and collect such taxes as such governing body may determine, not to exceed for any one year two and one-half per cent of the taxable property of such city, for current expenses and for the purpose of construction or the purchase of public buildings, water works, sewers, and other

permanent improvements, and for the construction and improvement of the roads, bridges and streets of such city, within its limits. [Acts 1921, p. 12.]

Art. 1029. Retirement of indebtedness.—To meet the interest and sinking fund on all indebtedness legally incurred prior to the adoption of the Constitutional amendment of September 25, 1883, regarding the power of cities and towns to levy and collect taxes, etc., the governing body of the following cities and towns shall have power by ordinance to levy, assess and collect an annual ad valorem tax sufficient therefor:

1. Of any city or town having a population of five thousand or less.

2. Of any city having more than five thousand inhabitants, unless otherwise provided in the special charter granted by the Legislature or adopted by the people. [Id.]

Art. 1030. [927] [489] [428] Poll tax.—The city council shall have power to levy and collect an annual poll tax, not to exceed one dollar, of every male inhabitant of said city over the age of twenty-one and under sixty years, idiots and lunatics excepted, who is a resident thereof at the time of such annual assessment. [Acts 1875, p. 113; G. L. Vol. 8, p. 485.]

Art. 1031. [928-9] Occupation tax.—The city council shall have the power to levy and collect taxes, commonly known as licenses, upon trades, professions, callings and other business carried on; and each person and firm engaging in the following trades, professions, callings and business, among others, shall be liable to pay such license tax; every person or firm keeping a ball alley, or nine or ten-pin alley; every person or firm selling goods, wares and merchandise at public auction; every merchandise or cotton broker or commission merchant; every person or firm pursuing the occupation of hawker or peddler of goods or any article whatever; but this enumeration shall not be held to deprive the city council of the right to levy and collect other license taxes, and from other persons and firms under the general authority herein granted.

Art. 1032. [930] [492] [431] Power to collect tax.—Nothing herein shall prevent the city council from collecting the license, and each license tax provided for by this title. Each establishment shall be liable to said license tax; and any person or firm pursuing occupations, business, avocations or calling subject to said tax shall pay on each. No license shall extend to more than one establishment, or include more than one occupation, avocation, business or calling. [Id.]

Art. 1033. [931] [493] [432] Power to assess tax.—The city council shall have power to provide by ordinance for the assessing and collecting of said taxes, and to determine when taxes shall be paid by corporations, and when by the individual corporators. No tax shall be levied unless by consent of two-thirds of the aldermen elected. [Id.]

Art. 1034. [932] [494] [433] Collection of license tax.—The license tax shall be collected by the assessor and collector,

and shall be paid to that officer by each person and firm owing such license and before engaging in any trade, profession, business, calling, avocation or occupation subject to said tax. This article shall apply to all persons owning any license and failing to pay the same. The city council may collect said license tax by suit under such rules as they may provide by ordinance. Said taxes, commonly known as licenses, shall not be construed to be a tax on property within the meaning of the provisions of this title. [Id.]

Art. 1035. [933] [554] [483] **License revoked.**—In any case where, by any provision of this title, or by an ordinance passed in pursuance thereof, a person is required to obtain a license for any calling, occupation, business or avocation, and has by the recorder been adjudged guilty of violating any city ordinance in relation thereto, the recorder, in addition to a fine, may institute proceedings to suspend or revoke the license so granted. [Id.]

Art. 1036. [934] [495] [434] **“Real estate.”**—The term real estate or property as used in this law shall be held to include lots, lands, and all buildings or machinery and structures of every kind erected upon and affixed to the same. [Id.]

Art. 1037. [935] [496] [435] **“Personal estate.”**—The term personal estate or property as used in this law shall be held to include all household furniture, money, goods, capital, chattels, public stocks and stocks of corporations, moneyed or otherwise, and generally all property which is not real. [Id.]

Art. 1038. [936] [497] [436] **Exemptions.**—The city council may, by ordinance, provide for the exemption from taxation of such property as they may deem just and proper. [Id.]

Art. 1039. [936] [497] [436] **Special taxes.**—Nothing in this chapter shall be construed to prevent the city council from imposing, levying and collecting special taxes and assessments for the improvement of the avenues, streets and alleys, as hereinafter provided. [Id.]

Art. 1040. [937] [498] [437] **Indebtedness.**—The city council may also levy, assess and collect taxes necessary to pay the interest and provide a sinking fund to satisfy any indebtedness heretofore legally made and undertaken. All such taxes shall be assessed and collected separately from those levied, assessed and collected for current expenses of municipal government, and shall, when levied, specify in the act of levying the purpose therefor. Such taxes may be paid in coupons, bonds or other indebtedness for the payment of which such tax may have been levied. [Const. Art. 11, Sec. 6.]

Art. 1041. [938] [499] [438] **Powers of council.**—The city council may provide, by ordinance, for the prompt collection of all taxes assessed, levied and imposed under this title, and is authorized to sell or cause to be sold real as well as personal property, and may make such rules and regulations, and pass all ordinances as they may deem necessary to the levying, laying, imposing, assessing and collecting of any tax herein provided. [Acts 1875, p. 113; G. L. Vol. 8, p. 485.]

Art. 1042. [939] [500] [439] **Further powers.**—The city council may by ordinance, regulate the manner of making out tax lists or inventories and appraisements of property therein, and prescribe the oath that shall be administered on such rendition of property, and to prescribe how and when property shall thus be rendered, and to prescribe the number and form of assessment rolls, and fix the duties and powers of the assessor and collector, and adopt such measures as they deem advisable to secure the assessment of all property within the limits of said city, and collect the tax thereupon. [Id.]

Art. 1043. [940] [501] [440] **Rendition.**— Each person, partnership and corporation owning property within the limits of the corporation shall, between January first and April first of each year, hand to the city assessor and collector a full and complete sworn inventory of the property possessed or controlled by him, her or them, within said limits on the first day of January of the current year. [Id.]

Art. 1044. [941] [410] [366] **Assessor and collector.**— The assessor and collector shall make up the assessment of all property taxed by the city, and make duplicate rolls thereof, and on completion of the rolls, shall deliver one of them to the city secretary. He shall collect all the taxes due the city, and in the event of the non-payment of any taxes, shall proceed to sell the property to raise the amount of taxes so due; and shall in performance of his duties, observe the provisions of this title, and the ordinances of the city relating thereto. He shall give a good bond in such amount and form as the city council may prescribe. The council may require a new bond whenever they deem the existing bond insufficient; and when such bond is required, he shall perform no official act until said bond shall be given and approved. He shall at the end of every week, pay to the treasurer all money by him collected, and shall report to the city council at the first meeting in every month all money so collected and paid and perform all such other duties in such manner as the council may prescribe. The assessor and collector is authorized to require the owners of all property subject to taxation to render a correct account of the same under oath, to be administered by him. He shall receive such compensation as may be allowed by the city ordinances. [Id.]

Art. 1045. [942] [502] [442] **List of personal property.**— The assessor and collector shall make out a list of all personal property which has not been given in for assessment according to the provisions of this title, and assess the same in the name of the owner, if he be known; if not, then it shall be assessed by description of the property and as unknown owner. The value of such property shall be determined by the board of equalization. The same may be sold as in other cases, if the tax be not paid in the time prescribed by law. [Id.]

Art. 1046. [943] [503] [443] **Unrendered property.**—The assessor and collector, at the expiration of the time fixed by ordinance for the rendition of property shall ascertain such

property in the city subject to taxation as has not been rendered; and the same shall be by him presented to the board of equalization for valuation by said board; and the same shall be by him entered in a supplement to the assessment roll as unknown, specifying the year for which said tax is not paid within the time prescribed by law; said property shall be sold at the same time and with like effect as other property. [Id.]

Art. 1047. [944] [504] [444] **Back taxes.**—Whenever the assessor and collector shall ascertain that any taxable property, real or personal, has not been assessed for any previous year, he shall assess the same in a supplement to his next assessment roll, at the same rate under which such property should have been assessed for such year, stating the year for which such property should have been assessed; and the taxes thereon shall be collected in the same manner as other assessments. In any case where any party has omitted to render property for taxation for any former year or years, and such taxes have not been paid, such party shall give such property in for assessment for the years thus omitted and pay such taxes; and the assessor and collector shall enter all such property in a supplement to his next assessment roll, under the head of payments for former years. [Id.]

Art. 1048. [945-955] **Equalization board.**—The city councils of cities and towns incorporated under the general laws shall annually, at their first meeting, or as soon thereafter as practicable, appoint three commissioners, each a qualified voter, a resident and property owner of the city or town for which he is appointed who shall be styled the board of equalization. At the same meeting said council shall, by ordinance, fix the time for the meeting of such board. Before said board enters upon its duties, it shall be sworn to faithfully and impartially discharge all duties incumbent upon it by law as such board. [Acts 1887, p. 152; G. L. Vol. 9, p. 950.]

Art. 1049. [946] [506] **Meetings of board.**—The board of equalization shall convene annually, at the time so fixed to receive all the assessment lists or books of the assessor of their city, for examination, correction, equalization, appraisement, and approval. At each meeting of said board the city secretary shall act as secretary therefor. [Id.]

Art. 1050. [947] [507] **Shall value property.**—The board of equalization shall cause the assessor to bring before them, at the time so fixed all the assessment lists or books of the assessor of their city for their examination. Said board shall have power to send for persons and papers, to swear persons who testify, to ascertain the value of such property; and, if they are satisfied it is too high, they shall lower it to its proper value; and if too low, they shall raise the value of such property to a proper figure. Said board shall also have power to correct any errors that may appear on the assessor's lists or books. [Id.]

Art. 1051. [948] [508] **Complaint.**—Any person may file with said board at any time before the final action of said board

a complaint as to the assessment of his or any other person's property, and said board shall hear said complaint. Said complainant shall have the right to have witnesses summoned in sustaining said complainant as to the insurance on said property, or the rents and profits it may bring to the holder thereof.

Art. 1052. [949] [509] **Unrendered property appraisal.**—The city assessor, when he delivers to said board his lists and books, shall also furnish a certified list of the names of all persons who either refuse to swear or qualify or to sign the oath as required by law, together with a list of the property of such persons situated within the corporate limits of their city, as made by him through other information. The board shall examine said lists and appraise the property so listed by the assessor. [Id.]

Art. 1053. [950] [510] **Notice to owners.**—In all cases where the board of equalization shall raise the value of any property appearing on the lists or books of the assessor, they shall, after having examined such lists or books and corrected all errors appearing therein, adjourn to a day not less than ten nor more than fifteen days from the date of adjournment, such day to be fixed in the order of adjournment, and shall cause the secretary of said board to give written notice to the owner of such property or to the person rendering the same of the time to which said board has adjourned, and that such owner or person rendering said property may at that time appear and show cause why the value of said property should not be raised. Such notice may be served by depositing the same, properly addressed and postage paid, in the city post office. [Id.]

Art. 1054. [951-953] **Shall lower values.**—The board of equalization shall meet at the time fixed in said order of adjournment, and shall hear all persons the value of whose property has been raised. If said board is satisfied they have raised the value of such property too high, they shall lower the same to its proper value. The action of said board at said meeting shall be final, and shall not be subject to revision by said board or by any other tribunal. [Id.]

Art. 1055. [952] [512] **Approval of rolls**—The board of equalization, after it has finally examined and equalized the value of all property on the assessor's lists or books, shall approve said lists or books and return them, together with the lists that he may make up therefrom his general rolls as required by law; and when said general rolls are so made up, the board shall meet again to examine and approve said rolls. [Id.]

Art. 1056. [954] [514] **Compensation of board.**—The members of the board of equalization and the city secretary, while acting as secretary of said board, shall receive such pay for their services, to be allowed by the city council, as said council may deem just. [Id.]

Art. 1057. [956] [516] [445] **Collection of taxes.**—The assessor and collector, after the completion of the assessment

roll, shall proceed to collect the taxes therein mentioned within the time, and give such notice as may be prescribed by the city council, and shall call once upon every person taxed, or on the agent or attorney of such person and demand the payment of the tax charged upon his or her person or property, if the person is to be found, and if not, then a written demand, specifying the amount of taxes due, left at the residence of some adult member of the family, shall be sufficient demand. If any person thus owing taxes has no residence, office or place of business, and no agent in the city or town known to the assessor and collector, then said demand shall not be necessary, and the ordinary published notice required by ordinance shall be sufficient. [Acts 1875, p. 115; G. L. Vol. 8, p. 485.]

Art. 1058. [957] [517] [446] **Tax sale.**—If any person shall fail to pay the taxes imposed on him and his property within the time prescribed by the ordinances of the city, the assessor and collector shall, by virtue of his tax list and assessment roll, levy upon so much of the property subject to taxation belonging to such person as may be sufficient to pay his taxes and shall give notice of the time and place of the sale by advertisement (if not unknown property), of the property and amount of taxes, costs and fees due thereupon. Such notice shall be published in some newspaper published in said city. At the expiration of the time stated in such notice and on the day therein specified, the assessor and collector shall proceed to sell such property at public auction at some public place in said city designated in said notice. When real estate is offered for sale, the least amount of such real estate shall be sold as will be sufficient to bring the amount of the taxes, penalties and costs due by said delinquent. Should a less amount than the whole tract levied upon be sold, the assessor and collector shall, in making his deed to the purchaser, begin at a corner of said tract or parcel of land and designate the same as nearly as possible in a square so that the remaining portion will be affected to as little advantage as possible. [Acts 1875, p. 113; G. L. Vol. 485.]

Art. 1059. [958] [518] [447] **Effect of deed.**—The assessor and collector shall, when any property has been sold for the payment of taxes, make, execute, and deliver a deed for said property to the person purchasing the same, and such deed shall be prima facie evidence in all controversies and suits in relation to the right of the purchaser, his heirs and assigns, to the premises thereby conveyed of the following facts:

1. That the land or lot or portions thereof conveyed was subject to taxation or assessment at the time the same was advertised for sale, and had been listed or assessed in the time or manner required by law.
2. That the taxes or assessment were not paid at any time before the sale.
3. That the land, lot, or portion thereof conveyed had not been redeemed from the sale at the date of the deed, and shall be conclusive evidence of the following facts:

(a) That the land, lot or portion thereof sold was advertised for sale in the manner and for the length of time required by law.

(b) That the property was sold for taxes or assessments as stated in the deed.

(c) That the grantee in the deed was the purchaser.

(d) That the sale was conducted in the manner prescribed by law.

And in all controversies and suits involving the title to land claimed and held under and by virtue of such deed, the person claiming title adverse to the title conveyed by such deed shall be required to prove, in order to defeat said title, either that the land was not subject to taxation at the date of the sale, that the taxes or assessment had been paid, that the land had never been listed or assessed for taxation and assessment, as required by this title, or some ordinance of the city, or that the same had been redeemed according to the provisions of this title, and that such redemption was made for the use and benefit of the person having the right of redemption under the law; but no person shall be permitted to question the title acquired by the said deed without first showing that he, or the person under whom he claims title, had title to the land at the time of the sale, or that the title was obtained after the sale; provided, however, that the owner of such property shall have the right to redeem the same at any time within two years of the day and date of the sale thereof, upon payment to the purchaser of double the amount of taxes for which the same was sold, together with the costs of such sale and double the amount of all taxes paid by the purchaser since such sale. [Acts 1875, p. 113; G. L. Vol. 8, p. 485.]

Art. 1060. [958] [518] [447] **Personal property.**—The assessor and collector shall have power to levy upon any personal property to satisfy any tax imposed by this title. All taxes shall be a lien upon the property upon which they are assessed, and in case any property levied upon is about to be removed out of the city, the assessor and collector shall proceed to take into his possession so much thereof as will pay the taxes assessed and the costs of collection. [Id.]

Art. 1061. [959] [519] [448] **May continue sale.**—If, from any cause, the sale of property levied upon or seized for taxes shall not take place at the time first appointed, the assessor and collector shall appoint some other time, give like notice, and proceed to sell such property as prescribed in the first instance. If said property levied upon or seized for taxes cannot be sold on the day advertised, such sale may be postponed from day to day until completed, of which postponement the assessor and collector shall give verbal notice at the expiration of sale each day. [Id.]

Art. 1062. [960] [520] [449] **Failure to sell.**—If, at any sale of real or personal property or estate for taxes, no bid shall be made for any parcel of land, or any goods and chattels, the

same shall be struck off to the city, and the city shall receive, in the corporate name, a deed for said property, and shall be vested with the same right as other purchasers at such sale, and may sell and convey the same. [Id.]

Art. 1063. [961] [5198] [4760] **Laws applicable.**—The provisions of Chapter 8 Title 122, in reference to the seizure and sale of real and personal property for taxes, penalties and costs due thereon, shall apply as well to tax collectors for towns and cities as for tax collectors for counties. Tax collectors for cities and towns shall be governed, in selling real and personal property, by the same rules and regulations in all respects as to time, place, manner and terms and making deeds as are provided for tax collectors for counties, except as in this chapter otherwise provided. [Acts 1876, p. 259; G. L. Vol. 8, p. 1095.]

Art. 1064. [962] [521] [450] **One year redemptions.**—If the real estate of an infant, feme covert, or lunatic be sold under this title, the same may be redeemed at any time within one year after such disability be removed. [Acts 1875, p. 113; G. L. Vol. 8, p. 485.]

Art. 1065. [963] **Two year redemptions.**—All lands sold under and by virtue of decree and judgment of court or as otherwise provided by law, for taxes due any incorporated city or town within this State, may be redeemed by the owner or owners thereof within two years from the date of deed, upon the payment to the purchaser, or his assigns, of double the amount so paid, including costs of court. The purchaser at such foreclosure sale, and his assigns, shall not be entitled to the possession of the property sold for taxes until the expiration of two years from the date of deed. [Acts 1899, p. 50.]

Art. 1066. [964] [522] [452] **Payment of taxes.**—Taxes levied to defray the current expenses of the city government, and all license and occupation tax levied, and all fines, forfeitures, penalties and other dues accruing to cities, shall be collectible only in current money. [Const. Art. 11, Sec. 4.]

CHAPTER SIX.

FIRE PREVENTION.

| | Article | | Article |
|---------------------------------|---------|----------------------------|---------|
| Frame building regulations..... | 1067 | Fire department..... | 1069 |
| Fire regulations..... | 1068 | May destroy buildings..... | 1070 |

Art. 1067. [965] [523] [453] **Frame building regulations.**—The city council may prohibit the erection, building, placing, moving or repairing of wooden buildings within such limits of the city as it may designate and prescribe, in order to guard against the calamities of fire; and may within said limits prohibit the moving or putting up of any wooden building from without said limits, and may also prohibit the removal of any wooden building from one place to another within said limits, and may direct that all buildings within the limits so designated as aforesaid, shall be made or constructed of fire-proof mate-

rials, and may prohibit the rebuilding or repairing of wooden buildings within the fire limits when the same shall have been damaged to the extent of fifty per cent of the value thereof, and may prescribe the manner of ascertaining such damage; and may declare any dilapidated building to be a nuisance and direct the same to be repaired, removed or abated in such manner as they shall direct; to declare all wooden buildings in the fire limits which they deem dangerous to contiguous buildings, or in causing or promoting fires, to be nuisances, and require and cause the same to be removed in such manner as they shall prescribe. [Acts 1875, p. 143; G. L. Vol. 8, p. 515.]

Art. 1068. [966 to 975] **Fire regulations.**—The city council shall have power:

1. To prevent and prohibit the dangerous condition of chimneys, flues, fire-places, stove pipes, ovens or other apparatus used in or about any building or manufactory, and to cause the same to be removed or placed in a secure and safe condition.

2. To prevent the deposit of ashes where they would be liable to produce fire, or in any wooden box or barrel, or within any wooden building, and to appoint officers to enter into any building or inclosure to examine and discover whether the same are in a dangerous state, and to cause such as may be dangerous to be put in a safe condition.

3. To require the inhabitants to keep and provide as many fire buckets and ladders, or other means to reach the roof as they shall prescribe, and to regulate the use thereof in times of fire.

4. To compel the owners or occupants of houses or other buildings to have scuttles in the roofs and stairs or ladders leading to the same.

5. To regulate or prevent the carrying on of manufactories and works dangerous in promoting or causing fires; to prohibit or regulate the building and erection of cotton presses and sheds.

6. To regulate or prevent and prohibit the use of fireworks and firearms.

7. To direct, control or prohibit the keeping and management of houses or any buildings for the storing of gun powder and other combustible, explosive or dangerous materials within the city; to regulate the keeping and conveying of the same.

8. To regulate and prescribe the manner and to order the building of parapet and party walls.

9. To authorize the mayor, officers of fire companies or any officer of said city to keep away from the vicinity of any fire all idle, disorderly or suspicious persons, and arrest and imprison the same, and compel all officers of the city and all other persons to aid in the extinguishment of fires and in the preservation of property exposed to danger thereat, and in preventing theft.

10. And generally to establish such regulations for the prevention and extinguishment of fires as the city council may deem expedient. [Id.]

Art. 1069. [976] [534] [464] **Fire department.**—The city council may procure fire engines and other apparatus for the extinguishment of fires, and have control thereof, and provide engine houses for preserving the same; and shall have power to organize fire, hook and ladder, hose and ax companies and fire brigades. The companies so organized, the chief engineer and such assistant engineers as may be provided for, shall constitute the fire department. Each company may elect its own members and officers. The engineers shall be chosen as said department may determine, subject to the approval of the city council, who shall define the duties of said officers and pass such ordinances as they may deem proper for the welfare of said department. All officers so elected and approved shall be commissioned by the mayor. Said companies may adopt their own constitution and by-laws, not inconsistent with this title or the city ordinances. Said department shall take the care and management of the engines and other implements and apparatus provided and used for fighting fire, and their powers and duties shall be prescribed and defined by the city council. [Id.]

Art. 1070. [977-8] **May destroy buildings.**—When any building in the city is on fire, it shall be lawful for the chief or acting chief engineer, with the concurrence of the mayor, to direct such building, or any other building which they may deem hazardous and likely to take fire and communicate to other buildings, to be torn down or blown up or destroyed, and no action shall be maintained against any person or against the city therefor. Any person interested in any such building so destroyed or injured may, within six months, and not thereafter, apply in writing to the city council to assess and pay the damage he has sustained, and, if the city council and the claimant cannot agree on the terms of adjustment, then the application of such claimant shall be referred to three commissioners, one to be appointed by the claimant, one by the city council and the third by both. Said commissioners shall be qualified voters and owners of real estate in the city. They shall be sworn faithfully to execute their duty according to the best of their ability, shall have power to subpoena and swear witnesses and shall give all parties a fair and impartial hearing, and give notice of the time and place of meeting. They shall take into account the probabilities of the building being destroyed by fire if it had not been so destroyed, and the loss of insurance upon said property, if any, caused by destroying the same, and may report that no damage should equitably be allowed to such claimant. Whenever a report shall be made and finally confirmed for the appraising of said damages, a compliance with the terms thereof by the city council shall be deemed a full satisfaction of said damages. [Id.]

CHAPTER SEVEN.

SANITARY DEPARTMENT.

| | Article | | Article |
|---------------------------------|---------|-----------------------------|---------|
| Health officers..... | 1071 | Plumbing inspector..... | 1077 |
| Regulation of disease, etc..... | 1072 | Board of plumbers..... | 1078 |
| Public conveyances..... | 1073 | Regulation of plumbers..... | 1079 |
| Shall report disease..... | 1074 | License..... | 1080 |
| Physician, powers..... | 1075 | License denied..... | 1081 |
| Sewerage, etc..... | 1076 | | |

Art. 1071. [979] [537] [467] **Health officers.**—The city council shall appoint a health officer, and as many health inspectors as they may deem necessary, and shall prescribe, by ordinance, the powers and duties and compensation of the same. [Acts 1909, p. 340.]

Art. 1072. [980] [538] [468] **Regulation of disease, etc.**—The city council may take such measures as they may deem effectual to prevent the entrance of any pestilence, contagious or infectious diseases into the city; to stop, detain and examine for that purpose any person coming from any place infected, or believed to be infected, with such disease; to establish, maintain and regulate pesthouses or hospitals at some place within or not exceeding five miles beyond the city limits; to cause any person who shall be suspected of being infected with any such disease to be sent to such pesthouse or hospital; to remove from the city or destroy any furniture, wearing apparel, or property of any kind which shall be suspected of being tainted or infected with pestilence, or which shall be likely to pass into such a state as to generate or propagate diseases; to abate all nuisances of every description which are or may become injurious to the public health, in any manner that they deem expedient; and from time to time to do all acts, which they deem expedient; to preserve health and suppress disease in the city. [Acts 1875, p. 113; G. L. Vol. 8, p. 485.]

Art. 1073. [981] [539] [469] **Public conveyances.**—The owner, driver, conductor or person in charge of any stage, railroad car or public conveyance which shall enter the city, knowingly having on board any person sick of a malignant fever, or pestilential, contagious or infectious disease, unless such person become sick on the way and could not be left, shall, within three hours after the arrival of such sick person, report in writing the facts, with the name of such person and the house where he was put down in the city, to the health officer. [Id.]

Art. 1074. [983] [541] [471] **Shall report disease.**—Every keeper of a hotel, boarding or lodging house in the city, in which any inmate thereof shall be sick with any infectious or pestilential disease, shall upon such fact coming to his knowledge, forthwith report the same to the health officer. Every physician in the city shall report, under his hand, to the officer above named, the name, residence and disease of every patient whom he shall have sick of any infectious or pestilential disease, within six hours after he shall have visited such patient. [Id.]

Art. 1075. [985] [543] [473] **Physician, powers.**—The health officer may be authorized by the council, when the public interest requires, to exercise for the time being such of the

powers and perform such of the duties of the chief of police as the city council may direct, and is authorized to enter all houses and other places, private or public, at all times, in the discharge of such duties, having first asked permission of the owners or occupants. The city council shall have power to punish, by fine; any neglect or refusal to observe the orders and regulations of the health officer. [Id.]

Art. 1076. [986] **Sewerage, etc.**—Every city in this State, however organized, having underground sewers or cesspools, shall pass ordinances regulating the tapping of said sewers and cesspools, regulating house draining and plumbing. [Acts 1897, p. 236; Acts 1909, p. 162; G. L. Vol. 10, p. 1290.]

Art. 1077. [990] **Plumbing inspector.**—In any such city where there is no city inspector of plumbing provided for by special charter, the governing body shall elect such inspector of plumbing, who shall hold office for such time as fixed by such board. Such inspector of plumbing may be the city engineer, if the board sees fit to elect him. [Id.]

Art. 1078. [987-8-9] **Board of plumbers.**—Such cities shall create a board for the examination of plumbers, to be known as the examining and supervising board of plumbers, to provide for an inspection of plumbing. Members of said board shall receive no compensation for services on said board. The said board shall consist of the following five persons: A member of the local board of health, if there be such a board of health, and if not, then the city physician or the city health officer, the city engineer, the city inspector of plumbing, a master plumber of not less than ten years active and continuous experience as a plumber, and one journeyman plumber of not less than five years of such active and continuous experience. The mayor and the governing body shall regulate the term each member shall serve; they shall fill all vacancies for the unexpired term of the member whose place is filled. [Id.]

Art. 1079. [991] **Regulation of plumbers.**—The examining and supervising board of plumbers shall examine and pass upon all persons now engaged in the business of plumbing, whether as master, employing, or journeyman plumber, in their respective cities, and all persons who may hereafter wish to engage in the business of plumbing as master, employing, or journeyman plumber, within their respective jurisdictions, and also any person who may apply for the office of plumbing inspector. They shall issue a license to such persons only as shall successfully pass a required examination. They shall register in a book to be kept for that purpose, the name and place of business of each person to whom a plumber's license is issued. Such license shall not be transferable. [Acts 1897, p. 236; G. L. Vol. 10, p. 1290.]

Art. 1080. [992-3-6] **License.**—The board shall not issue licenses for more than one year, but the same shall be renewed from year to year upon proper application. Each applicant for said examination for plumber's license shall pay, to such person as said board may designate, three dollars for each master plumber examined, and two dollars for each journeyman plumber examined, which fees may be used by said board to defray any of its legitimate expenses, the residue, if any, to be paid to the

city treasurer. The examination and examination fee shall not be required of the same person more than once. [Id.]

Art. 1081. [997] **License denied.**—Except in cities of less than five thousand inhabitants, a license shall not be issued to any person to carry on or work at the business of plumbing, or to act as an inspector of plumbing, until he has appeared before an examining or supervising board for examination and registration, and shall have successfully passed the required examination. [Id; Acts 1919, p. 248.]

CHAPTER EIGHT.

STREETS AND ALLEYS.

| | | | |
|-------------------|---------|-----------------------|---------|
| Powers of council | Article | Execution on property | Article |
| Estimate of cost | 1082 | Suit | 1084 |
| | 1083 | | 1085 |

Art. 1082. [999] [544] [474] **Powers of council.**—The city council shall be invested with full power and authority to grade, gravel, repair, pave or otherwise improve any avenue, street or alley, or any portion thereof, within the limits of said city, whenever, by a vote of two-thirds of the aldermen present, they may deem such improvement for the public interest; provided, the city council pay one-third and the owner of the property two-thirds thereof, except at the intersection of streets, from lot to lot across the streets either way shall be paid for by the city alone. Said costs shall be assessed on the property fronting on said street so improved, to be collected in equal annual payments, not less than five in number. All moneys collected from these assessments shall be appropriated exclusively to the payment of the bonds issued for the payment of the cost of said improvement. [Acts 1875, p. 113; G. L. Vol. 8, p. 485.]

Art. 1083. [1000] [545] [475] **Estimates of cost.**—Whenever the city council shall determine to make any such improvement, they shall cause an estimate to be made of the probable cost thereof by the city engineer, or by some other officer of the city, or by a committee of three aldermen; and such engineer or other officer or committee shall also report a full list of all lots or fractional lots, giving number and size of the same, and the number of the block in which situated, and the names of the owners thereof, if known, and such other information as may be required by the city council; and if there be a lot or fractional lot the owner of which is not known, the same shall be entered on said list as unknown. The officer or committee aforesaid shall enter on said list, opposite each lot or fractional lot lying and being on each side of the street, avenue or alley so to be improved as aforesaid, one-third of the estimated expense for such work or improvement on such avenue, street or alley fronting, adjoining or opposite such lot or fractional lot; and, on the acceptance and approval of said report and list by the city council, said amount shall be imposed, levied and assessed as taxes, and shall be a lien upon the property until the payment of the same. [Id.]

Art. 1084. [1001] [546] [476] **Execution on property.**—After such action on the part of the city council, such officer or committee shall give such notice as may be required by ordi-

nance, of said tax being due and within what time payable, and shall begin to collect the same. After the expiration of the period for payment of said tax, said officer or committee shall levy on so much of any property on said list on which said tax has not been paid as will be sufficient to pay the same, and the same notice of sale as is required in sales for other tax shall be given. If said tax is not paid before the day of sale, said officer or committee shall sell property in the name and under the circumstances, and to the extent and subject to the same conditions which may be provided by ordinance for the sale of real estate in the city, charged with the payment of taxes imposed by said corporation. Said officer or committee shall execute a deed to the purchaser at any such sale; and all other provisions of this title in reference to a deed drawn by the assessor and collector shall apply to the deed herein provided for. [Id.]

Art. 1085. [1002] [547] [477] **Suit.**—In addition to the authority granted to the city council to collect said assessment of taxes, they shall have the additional remedy of instituting suit in the corporate name for the recovery against any owner of the property for the amount due for any such work so made as aforesaid. They shall provide by resolution or ordinance under the provision of this title, for carrying out and executing the powers in this chapter conferred, and may adopt necessary resolutions, ordinances and regulations. [Id.]

CHAPTER NINE.

STREET IMPROVEMENTS.

| | Article | | Article |
|-----------------------------|---------|------------------------|---------|
| Powers of city | 1086 | Owner may sue | 1096 |
| Order for improvements | 1087 | Special reassessment | 1097 |
| Costs | 1088 | Notice, etc. | 1098 |
| Assessment, railways | 1089 | Special lien | 1099 |
| Assessment and certificates | 1090 | Time limit | 1100 |
| Exempt property | 1091 | Amount of assessment | 1101 |
| Enforcement of lien | 1092 | Enforcible when | 1102 |
| Notice of hearing | 1093 | Effect of law | 1103 |
| Hearing | 1094 | Adoption of provisions | 1104 |
| Reassessment | 1095 | Provisions cumulative | 1105 |

Art. 1086. [1006-7] **Powers of city.**—Towns, cities and villages, incorporated under either general or special law, which shall accept the benefits of this chapter as herein provided, shall have power to improve any highway within their limits, by filling, grading, raising, paving or repaving the same in a permanent manner, or by the construction or reconstruction of sidewalks, curbs and gutters, or by widening, narrowing or straightening the same, and to construct necessary appurtenances thereto, including sewers and drains. "City," when used herein, shall include all incorporated towns, cities and villages, and the term "highway" shall include any street, avenue, alley, highway, or public place or square, or portion thereof, dedicated to public use. [Acts 2nd C. S. 1909, p. 402.]

Art. 1087. [1008] **Order for improvements.**—The governing body of any city shall have power to order the improvement of any highway therein, or part thereof, and to select the materials and methods for such improvement, and to contract for the construction of such improvements in the name of the city,

and to provide for the payment of the cost of such improvements out of any available funds of the city. [Id.]

Art. 1088. [1009] **Costs.**—The cost of making such improvements may be wholly paid by the city, or partly by the city and partly by the owners of the property abutting thereon. In no event shall more than three-fourths of the cost of any improvement, except sidewalks and curbs, be assessed against such property owners or their property. The whole cost of construction of sidewalks and curbs in front of any property may be assessed against the owner thereof or his property. [Id.]

Art. 1089. [1010] **Assessments, railway.**—Subject to the terms hereof, the governing body of any city shall have the power to assess against the owner of any railroad or street railroad occupying any highway ordered to be improved, the whole cost of the improvement between or under the rails or tracks of said railroad or street railroad and two feet on the outside thereof, and shall have power, by ordinance, to levy a special tax upon said railroad, or street railroad, and its roadbed, ties, rails, fixtures, rights and franchise, which tax shall constitute a lien thereon superior to any other lien or claim, except State, county and municipal taxes, and which may be enforced, either by sale of said property in the manner provided by law in the collection of ad valorem taxes by the city, or by suit against the owner. The ordinance levying said tax shall prescribe when same shall become due and delinquent, and the method of enforcing the same. [Id.]

Art. 1090. [1011] **Assessment and certificates.**—Subject to the terms hereof, the governing body shall have power by ordinance to assess the whole cost of constructing sidewalks or curbs, and not to exceed three-fourths of the cost of any other improvement, against the owners of property abutting on such improvement and against their abutting property benefitted thereby, and to provide for the time and terms of payment of such assessments and the rate of interest payable upon deferred payments thereon, which rate shall not exceed eight per cent per annum, and to fix a lien upon the property and declare such assessments to be a personal liability of the owners of such abutting property; and such governing body shall have the power to cause to be issued in the name of the city, assignable certificates declaring the liability of such owners and their property for the payment of such assessments and to fix the terms and conditions for such certificate. If any such certificate shall recite that the proceedings with reference to making such improvements have been regularly had in compliance with law, and that all prerequisites to the fixing of the assessment lien against the property described in said certificate and fixing the personal liability of the owner have been performed, such certificate shall be prima facie evidence of the facts so recited. The ordinance making such assessments shall provide for the collection thereof, with costs and reasonable attorney's fees, if incurred. Such assessments shall be secured by, and constitute a lien on said property, which shall be the first enforceable claim against the property against which it is assessed, superior to all other liens and claims, except State, county and municipal taxes. [Id.]

Art. 1091. [1012] **Exempt property.**—Nothing herein shall be construed to empower any city to fix a lien by assessment against any property exempt by law from sale under execution; but the owner of such exempt property shall nevertheless be personally liable for the cost of improvements constructed in front of his property, which may be assessed against him. The fact that any improvement is omitted in front of exempt property shall not invalidate the lien of assessments made against other property on the highway improved, not so exempt. [Id.]

Art. 1092. [1012] **Enforcement of lien.**—The lien created against any property, or the personal liability of the owner thereof, may be enforced by suit or by sale of the property assessed in the same manner as may be provided by law for the sale of property for ad valorem city taxes. The recital in any deed made pursuant to such sale, that all legal prerequisites to said assessment and sale have been complied with, shall be prima facie evidence of the facts so recited and shall in all courts be accepted without further proof. [Id.]

Art. 1093. [1013] **Notice of hearing.**—No assessment of any part of the cost of such improvement shall be made against any property abutting thereon or its owner, until a full and fair hearing shall first have been given to the owners of such property, preceded by a reasonable notice thereof given to said owners, their agents or attorneys. Such notice shall be by advertisement inserted at least three times in some newspaper published in the city, town or village where such tax is sought to be levied, if there be such a paper there, if not, then in the nearest to said city, town or village, of general circulation in the county in which said city is located, the first publication to be made at least ten days before the date of the hearing. The governing body may provide for additional notice cumulative of notice by advertisement. [Id.]

Art. 1094. [1013] **Hearing.**—Said hearing shall be before the governing body of such cities, at which such owners shall have the right to contest the said assessment and personal liability, and the regularity of the proceedings with reference to the improvement, and the benefit of said improvement to their property, and any other matter relating thereto. No assessment shall be made against any owner of abutting property or his property in any event in excess of the actual benefit to such owner in the enhanced value of his property, by means of such improvement, as ascertained at such hearing. The governing body of any city making improvements under the terms hereof shall, by ordinance, adopt rules and regulations providing for such hearings to property owners, and for giving reasonable notice thereof. [Id.]

Art. 1095. [1014] **Reassessment.**—The governing body of any city shall be empowered to correct any mistake or irregularity in any proceedings with reference to such improvement, or the assessment of the cost thereof against abutting property and its owners, and in case of any error or invalidity, to reassess against any abutting property and its owner the cost or part of the cost of improvements, subject to the terms hereof, not in excess of the benefits in enhanced value of such property from

such improvement, and to make reasonable rules and regulations for a notice to and hearing of property owners before such reassessment. [Id.]

Art. 1096. [1015] Owner may sue.—Any property owner, against whom or whose property any assessment or reassessment has been made, shall have the right within twenty days thereafter, to bring suit to set aside or correct the same, or any proceeding with reference thereto, on account of any error or invalidity therein. But thereafter such owner, his heirs, assigns or successors, shall be barred from any such action, or any defense of invalidity in such proceedings or assessments or reassessments in any action in which the same may be brought in question. [Id.]

Art. 1097. Special reassessment.—In any case in which the public funds of a city or town may have been or may hereafter be expended, or its vouchers or certificates issued to any contractor, or any contract made therewith, for the special improvement, raising or lowering the grade of, opening, straightening, widening, paving, constructing or grading of any street, avenue, alley, sidewalk, gutter or public way, or any part thereof, and if for any reason, no part of the cost of such improvement has been borne by the abutting property or paid by the owner or owners thereof, either because an attempted assessment and enforcement thereof for the same was erroneous or void, or was so declared in any judicial proceeding, the governing body shall have the power to proceed at any time to specially assess or reassess, such abutting property with such amount of the cost of such improvement as it deems proper, but in no event shall the amount exceed the special benefits such property receives therefrom by enhanced value thereto, the amount of such special benefits to be determined on a basis of the condition of such improvement as it exists at the time of such assessment or reassessment. [Acts 2nd C. S. 1919, p. 105.]

Art. 1098. Notice, etc.—No such assessment or reassessment, shall be made without at least ten days written notice and an opportunity to be heard on such question of special benefits given to the owner or owners of such abutting property. Such notice may be served either personally or by publication in some newspaper of general circulation, published in said city or town; and the governing body of any such city or town shall have power to provide for all procedure, rules and regulations necessary or proper for such notice and hearing and to levy, assess and collect such assessment or reassessment. [Id.]

Art. 1099. Special lien.—Such assessment, or reassessment shall constitute a lien upon such abutting property and a personal charge against the owner or owners thereof, which amount shall not be construed as becoming due, or having become due, before such assessment or reassessment is properly made in accordance with the provisions of this law. [Id.]

Art. 1100. Time Limit.—Such assessment or reassessment as hereinbefore provided shall be begun within three years after the completion of improvements contiguous to the property against which assessment or reassessment is made, and not there-

after. In cases of re-assessments where the question of validity of the original assessment may be, or may have been, in litigation, the period of time during which it was in litigation shall not be considered in computing said period of limitation. [Id.]

Art. 1101. Amount of assessment.—Any such assessment or reassessment made by the governing body of any city or town with less than five thousand inhabitants may equal the entire cost of sidewalk, curb and gutter, and the cost of any street improvement, exclusive of street intersections, and such governing body of such town in making such assessment or reassessment, shall follow the procedure prescribed in articles 1082 and 1083 in so far as applicable, but no such assessment or reassessment shall be made in excess of the special benefits in enhanced value conferred thereby on the property abutting such improvement, or until the owner or owners of such property shall have had notice, as provided above, and opportunity to contest such issue before such governing body under such rules and regulations as it may, by ordinance, prescribe. [Id.]

Art. 1102. Enforcible when.—Such assessment, or reassessment, shall be due and payable in equal annual installments not less than five in number; provided that the owner of such property shall have the right to appeal from the decision of the governing board to any court of competent jurisdiction within twenty days after such reassessment shall have been made, and upon failure to do so in said period, such assessment shall be final and conclusive upon such owner and property. [Id.]

Art. 1103. Effect of law.—The provisions of the six preceding articles relating to special assessments or reassessments are cumulative of all powers heretofore granted to any city or town either by general or special law; and all charter provisions of all cities and towns in this State heretofore adopted relative to the subject covered by this law are hereby validated. [Id.]

Art. 1104. [1016] Adoption of provisions.—The benefits of the provisions of this article and Articles 1086 to 1096, both inclusive, and Article 1105 shall apply to any city, and the terms thereof extend to the same, when the governing body thereof shall submit the question of the adoption or rejection hereof to a vote of the resident property taxpayers, who are qualified voters of said city, at a special election called for the purpose by said city. Said election shall be held as nearly as possible in compliance with the law with reference to regular city elections in said city, but said governing body is hereby empowered, and it shall be their duty on the written petition of one hundred qualified voters of said city, by resolution, to order said election, and prescribe the time and manner of holding the same. Said body shall canvass and determine the results of such election. If a majority of the voters voting upon the question of the adoption of said article, at such election, shall vote to adopt the same, the result of the election shall be entered by said governing body upon their minutes, and thereupon all the terms of said articles shall be applicable to and govern such city adopting the same. A certified copy of said minutes shall be prima facie evidence of the

result of such election and the regularity thereof. When the provisions of said articles have been adopted by any city, the governing body thereof shall have full power to pass all ordinances or resolutions necessary or proper to give full force and effect thereto and to every part thereof. [Acts 2nd C. S. 1909, p. 402.]

Art. 1105. [1017] **Provisions cumulative.**—The provisions of Articles 1086 to 1096, both inclusive, and Article 1104 and of resolutions or ordinances passed pursuant thereto shall be cumulative of and in addition to existing laws pertaining to the making of such improvements. In any case in which a conflict may exist or arise between the provisions of said articles and the provisions of any law granting a special charter to any city in this State, the provisions of such special charter shall control. [Id.]

CHAPTER TEN.

PUBLIC UTILITIES.

1. City Owned Utilities.

| | | | |
|-------------------------------|---------|------------------------------|---------|
| | Article | | Article |
| Appropriation of revenue..... | 1106 | Cities may mortgage..... | 1109a |
| Condemnation of property..... | 1107 | Eminent domain..... | 1109b |
| Public utilities..... | 1108 | Waterworks right of way..... | 1110 |
| Waterworks..... | 1109 | | |

Art. 1106. **Appropriation of revenue.**—The governing body of any city or town in this State, whether operating under special charter or under general law, may appropriate and apply the net revenues of its water works system or other public utility system, service or enterprise to the payment of the sinking fund and interest due by said city or town on the bonded indebtedness incurred on account of said system, service or enterprise, producing such revenues in the following manner:

1. Whenever said governing body desires to take advantage of the provisions of this article it shall at the end of its fiscal year, and before the passage of any ordinance levying taxes for that year, appropriate and set aside out of the net revenues such sums for such purpose only as such governing body shall deem to be the best interest of the city or town.

2. Where the sums so set aside and appropriated shall be sufficient to pay in full the amounts needed for such sinking fund and interest for the fiscal year in which said revenues are produced, it shall not be thereafter necessary for the governing body to levy any tax for such sinking fund or interest for which this appropriation is made; but when said sums so appropriated shall not be sufficient to meet the required amounts for such sinking fund and interest, then the governing body shall include in the general tax ordinance for that year a tax sufficient to meet the deficiency in such sinking fund and interest allowance for that year. Nothing herein shall authorize said city or town to exceed the authorized tax limit. [Acts 1917, p. 355.]

Art. 1107. [1003] [548] **Condemnation of property.**—An incorporated city or town shall have the right of eminent domain to condemn private property for either of the following purposes:

1. To open, change or widen any public street, avenue, or alley.

2. To construct water mains, or supply reservoirs, or stand pipes for water works or sewers.

3. To establish thereon one or more hospitals or pest houses, within or without the limits of such city or town.

4. To construct and maintain sewer pipes, mains and laterals and connections and also private property upon which to maintain vats, filtration pipes and other pipes, and which to use and occupy as a place for ultimate disposition of sewerage in or out of the town or city limits, whenever it be made to appear that the use of any such private property is necessary for successful operation of such sewer system, and when it also be made to appear that such sewer system is beneficial to the public use, health and convenience. [Acts 1909, p. 9.]

Art. 1108. [769 to 722] **Public utilities.**—Any town or city in this State which has or may be chartered or organized under the general laws of Texas, or by special Act or charter, and which owns or operates waterworks, sewers, gas or electric lights, shall have the power and right:

1. To own land for such purposes within or without the limits of such town or city.

2. To purchase, construct and operate water, sewer and gas and electric light systems inside or outside of such towns or city limits, and regulate and control same in a manner to protect the interests of such town or city.

3. To sell water, electric light or power and sewer privileges to any person or corporation outside of the limits of such town or city and to permit them to connect therewith under contract with such town or city, under such terms and conditions as may appear to be for the best interests of such town or city.

4. To prescribe the kind of water or gas mains or sewer pipes and electric appliances within or beyond the limits of such town or city, and to inspect the same and require them to be kept in good order and condition at all times and to make such rules and regulations and prescribe penalties concerning same, as shall be necessary and proper. [Acts 1909, p. 159.]

Art. 1109. **Waterworks.**—These rules shall govern incorporated cities having more than one thousand inhabitants according to its preceding Federal census and owning and operating their own waterworks systems for the purpose of supplying the inhabitants thereof with water for fire protection or domestic consumption and the users of the city:

1. They may proceed in accordance with the provisions of this article independently of and without reference to any other applicable law or charter provision, present or future, except as hereinafter provided, which said law or charter provisions shall remain in force as alternate methods.

2. Subject to the terms hereof, any such city may by purchase, gift or devise, or by the exercise of the right of eminent domain, acquire and own in fee simple or otherwise public or private lands and property including riparian rights, within or without the city limits or within any county in this State.

3. To furnish any such city an adequate and wholesome supply of water, any such city may exercise the right of eminent domain to acquire and condemn either public or private lands or

property for the extension, improvement or enlargement of its waterworks system, including water supply reservoirs, riparian rights, stand pipes, water sheds, the construction of water supply reservoirs, wells or artesian wells and dams and the construction, building, erection or establishment of any necessary appurtenances or facilities which will furnish to the inhabitants of the city an abundant supply of wholesome water.

4. Any such city shall also have all the powers conferred upon water improvement districts or water control and preservation districts under the statutes now or hereafter existing providing for the exercise of the right of eminent domain, and shall have all the powers conferred by general law authorizing cities and towns to exercise the right of eminent domain.

5. Any such city may acquire the fee simple title to any land or property when same is expressed in the resolution ordering said condemnation proceedings by the governing body.

6. The term "city" or "cities" as used herein shall include all incorporated towns and cities acting hereunder. [Acts 1923, p. 29.]

Art. 1109a. **Cities may mortgage.**—All cities having more than one hundred and sixty thousand (160,000) inhabitants shall have power to issue bonds or notes therefor, and to secure payment thereof, to mortgage and encumber any such water system, and the incomes thereof and everything pertaining thereto.

And to purchase or otherwise acquire additions to, or extensions or enlargements of any such water systems, or additional water powers, riparian rights, or repair of such systems, or either of them; all cities having more than one hundred and sixty thousand (160,000) inhabitants shall have power to issue bonds and notes therefor, and to secure payment thereof, to mortgage and encumber such additions, extensions, enlargements, additional water powers, riparian rights, the income therefrom, and everything pertaining thereto, either separately or with such systems, or either of them.

And as additional security therefor, by the terms of such encumbrance, may grant to the purchaser, or purchaser under any sale or foreclosure thereunder, a franchise to operate the system and properties so purchased, for a term not over twenty years after such purchase, subject to all laws regulating the same then in force. [Acts 1925, p. 154.]

2. Whenever the income of any water system shall be encumbered under this Act, the expense of operating and maintenance, including all salaries, labor, materials, interest, repairs, and extensions, necessary to render efficient service, and every proper item of expense shall always be a first lien and charge against such income. The rates charged for services furnished by any of said systems shall be equal and uniform, and no free service shall be allowed except for city public schools, or buildings and institutions operated by such city, and there shall be charged and collected for such services a sufficient rate to pay for all operating, maintenance, depreciation, replacement, betterment and interest charges, and for interest and sinking fund sufficient to pay any bonds or notes issued to purchase, con-

struct or improve any such systems or of any outstanding indebtedness against same. No part of the income of any such system shall ever be used to pay any other debt, expense or obligation of such city, until the indebtedness so secured shall have been finally paid. [Id.]

3. All cities acquiring a water system, or any addition, improvement or extension thereto, under this Act, may borrow money on the security of the plant, or addition or extension, so acquired, or owned, for the purpose of paying the purchase price and for the addition, improvement and extension thereof, and may issue bonds, notes or other obligations to evidence the moneys so borrowed, which bonds, notes or other obligations shall have the characteristics of negotiable instruments under the law merchant. Every contract, bond or note executed or issued under this Act shall contain this clause "The holder hereof shall never have the right to demand payment of this obligation out of any funds raised or to be raised by taxation." No such obligation shall ever be a debt of such city, but solely a charge upon the properties so encumbered, and shall never be reckoned in determining the power of such city to issue bonds for any purpose authorized by law. [Id.]

4. The management and control of any such system or systems during the time same are encumbered, may by the terms of such encumbrance be placed in the hands of the city council of such city; but if deemed advisable may be placed in the hands of a board of trustees to be named in such encumbrance, consisting of not more than five members, one of whom shall always be the mayor of such city; and the compensation of such trustees shall be fixed by such contract, but shall never exceed five per cent of the gross receipts of any such systems in any one year. The terms of office of such board of trustees, their powers and duties, the manner of exercising same, the election of their successors, and all matter pertaining to their organization and duties may be specified in such contract of encumbrance; but in all matters where such contract is silent, the laws and rules governing the council of such city shall govern said board of trustees so far as applicable. Said city council or board of trustees having such management and control shall have power to make rules and regulations governing the furnishing of service to patrons and for the payment for same, and providing for discontinuance of such service to those failing to pay therefor when due until payment is made; and such city council shall have power to provide penalties for the violation of such rules and regulations and for the use of such service without the consent or knowledge of the authorities in charge thereof, and to provide penalties for all interference, trespassing or injury to any such systems, appliances or premises on which same may be located. [Id.]

5. Any contract of encumbrance under this Act may name, or provide for the selection of a trustee to make sale upon default in the payment of the principal or interest according to the terms of such contract, and for the selection of his successor, if disqualified or failing to act, and may provide for collection fees not exceeding five per cent of the principal; but no collec-

tion fees shall accrue, and no foreclosure proceedings shall be begun in any court or through any trustee, and no option to mature any part of such obligation, because of default in payment of any installment of principal shall be exercised until ninety days written notice shall be given to each member of the city council of such city and to each member of such board of trustees, if any, that payment has been demanded and default made, which notice shall date from the sending of a letter to each person to be notified, by registered mail, postage and registration fees prepaid, and addressed to them at the post office in such city; and if the installments of principal and interest then due shall be paid before the expiration of said ninety days, together with the interest prescribed in such contract, not exceeding ten per cent per annum, from the date of default until the date of payment, it shall have like effect as if paid on the date same was originally due. [Id.]

6. In the encumbrance of any properties under this Act such city may encumber any such water systems, or any extensions, additions or enlargements thereof, singly or together, and may or may not include in such encumbrance the franchise provided for, and may omit or include in said encumbrances the whole or any part of the properties mentioned in Section 1 of this Act; but no such system shall ever be sold until such sale is authorized by a majority vote of the qualified property taxpayers of such city, or under the terms of any such mortgage or encumbrance, nor shall same be encumbered for purchase money or original cost, until authorized in like manner; such vote in either case to be ascertained at an election, of which notice shall have given in like manner as cases of the issuance of municipal bonds by such cities.

All obligations herein authorized to be issued under Section 1 of this Act shall be submitted to the Attorney General for examination, and upon his approval as to the form thereof, shall be registered by the Comptroller in a book kept for that purpose; the Comptroller shall endorse his certificate of registration on each such obligation. [Id.]

7. All proceedings heretofore had by cities having more than one hundred and sixty thousand (160,000) inhabitants, in the acquisition of any water systems, and the encumbrance of same, within the authority given by this Act, be and the same are hereby approved and ratified. [Id.]

Art. 1109b. **Eminent domain.**—Incorporated cities and towns of less than five thousand inhabitants shall have the power to appropriate private property for public purposes whenever the governing authorities shall deem it necessary and to take any private property within or without the city limits for any of the following purposes, to-wit:

To have the power to appropriate private property for public purposes whenever the governing authorities shall deem it necessary and to take any private property within or without the city limits for any of the following purposes, to-wit: City halls, police stations, jails, calaboose, fire stations, libraries, school houses,

high school buildings, academies, hospitals, sanitariums, auditoriums, market houses, reformatories, abattoirs, railroad terminals, docks, wharves, warehouses, ferries, ferry landings, elevators, loading and unloading devices, shipping facilities, piers, streets, alleys, parks, highways, boulevards, speedways, playgrounds, sewer systems, storm sewers, sewage disposal plants, drains, filtering beds and emptying grounds for sewer systems, reservoirs, water sheds, water supply sources, wells, water and electric light systems, gas plants, cemeteries, crematories, prison farms, and to acquire lands with and without the city for any other municipal purposes that may be deemed advisable.

The power herein granted for the purpose of acquiring private property shall include the power of the improvement and enlargement of the water works, including water supply, riparian rights, stand pipes, water sheds, the construction of supply reservoirs, parks, squares, and pleasure grounds, public wharves and landing places for steamers and other crafts, and for the purpose of straightening or improving the channel of any stream, branch or drain, or the straightening or widening or extension of any street, alley, avenue or boulevard. That, in all cases where the city seeks to exercise the power of eminent domain, it shall be controlled, as nearly as practicable, by the law governing the condemnation of property of railroad corporations, in this State, the city taking the position of the railroad corporations in any such case; that the power of eminent domain hereby conferred shall include the right of the governing authority, when so expressed, to take the fee in the lands so condemned and such power and authority shall include the right to condemn public property for such purposes.

Art. 1110. Waterworks right of way.—To acquire rights of way for digging or excavating canals, laying mains or pipe lines for the purpose of conducting water through the same into the cities or towns for the use of the public, incorporated cities and towns owning their own waterworks system shall have the right of eminent domain to condemn private property for public use in and outside of the city or town limits of such cities or towns. [Acts 1915, p. 166.]

2. ENCUMBERED CITY SYSTEM.

| | | | |
|-----------------|--------------|---------------|--------------|
| Powers | Article 1111 | Control | Article 1115 |
| Vote, etc..... | 1112 | Rules | 1116 |
| Income | 1113 | Default | 1117 |
| Notes, etc..... | 1114 | Notice | 1118 |

Art. 1111. Powers.—All cities and towns operating under this title have power to mortgage and encumber their light systems or water systems, either or both, and the franchise and income thereof, and everything pertaining thereto, acquired or to be acquired, to secure the payment of funds to purchase same, or to purchase additional water powers, riparian rights, or to build, improve, enlarge, extend or repair such systems, or either of them, and as additional security therefor, by the terms of such encumbrance, may grant to the purchaser under sale or foreclos-

ure thereunder a franchise to operate the systems and properties so purchased for a term of not over twenty years after such purchase, subject to all laws regulating same then in force. No such obligation shall ever be a debt of such city or town, but solely a charge upon the properties so encumbered and shall never be reckoned in determining the power of such city or town to issue any bonds for any purpose authorized by law. [Acts 1911, p. 230.]

Art. 1112. Vote, etc.—No such light or water system shall ever be sold until such sale is authorized by a majority vote of the qualified voters of such city or town; nor shall same be encumbered for more than five thousand dollars, except for purchase money, or to refund any existing indebtedness, until authorized in like manner. Such vote in either case shall be ascertained at an election, of which notice shall be given in like manner as in cases of the issuance of municipal bonds by such cities and towns. [Id.]

Art. 1113. Income.—Whenever the income of any lighting or water systems shall be encumbered under this law, the expense of operation and maintenance, including all salaries, labor, materials, interest, repairs and extensions, necessary to render efficient service, and every proper item of expense shall always be a first lien and charge against such incomes. The rates charged for services furnished by any said system shall be equal and uniform, and no free service shall be allowed except for city public schools, or buildings and institutions operated by such city or town. There shall be charged and collected for such services a sufficient rate to pay for all operating, maintenance, depreciation, replacement, betterment and interest charges, and for interest and sinking fund sufficient to pay any bonds issued to purchase, construct or improve any such systems or of any outstanding indebtedness against same. No part of the income of any such system shall ever be used to pay any other debt, expense or obligation of such city or town, until the indebtedness so secured shall have been finally paid. [Id.]

Art. 1114. Notes, etc.—Every contract, bond or note issued or executed under this law shall contain this clause: "The holder hereof shall never have the right to demand payment of this obligation out of any funds raised or to be raised by taxation." [Id.]

Art. 1115. Control.—The management and control of any such system or systems during the time they are encumbered, may by the terms of such encumbrance, be placed in the hands of the city council of such town, or may be placed in the hands of a board of trustees to be named in such encumbrance, consisting of not more than five members, one of whom shall be the mayor of such city or town. The compensation of such trustees shall be fixed by such contract, but shall never exceed five per cent of the gross receipts of such systems in any one year. The terms of office of such board of trustees, their powers and duties, the manner of exercising same, the election of their successors, and all matters pertaining to their organization and duties may be

specified in such contract of encumbrance. In all matters where such contract is silent, the laws and rules governing the council of such city or town shall govern said board of trustees so far as applicable. [Id.]

Art. 1116. **Rules.**—The city council or board of trustees having such management and control shall have the power to make rules and regulations governing the furnishing of service to patrons and for the payment of the same, and providing for the discontinuance of such service failing to pay therefor when due until payment is made. The city council shall have power to provide penalties for the violation of such rules and regulations and for the use of such service without the consent or knowledge of the authorities in charge thereof, and to provide penalties for all interference, trespassing or injury to any such systems, appliances or premises on which same may be located. [Id.]

Art. 1117. **Default.**—A contract of encumbrance may provide for the selection of a trustee to make sale upon default in the payment of the principal or interest according to the terms of such contract, and for the selection of his successor if disqualified or failing to act, and for collection fees not exceeding five per cent of the principal. [Id.]

Art. 1118. **Notice.**—No collection fees shall accrue, and no foreclosure proceedings shall be begun in any court or through any trustee, and no option to mature any part of such obligation because of default in payment of any installment of principal or interest shall be exercised until ninety days written notice shall be given to each member of the city council of such city or town and to each member of such board of trustees, if any, that payment has been demanded and default made, which notice shall date from the sending of a prepaid registered letter to each person to be notified, addressed to them at the post office in such city or town. If the installments of principal and interest then due shall be paid before the expiration of said ninety days, together with the interest prescribed in such contract, not exceeding ten per cent per annum, from the date of default until the date of payment, it shall have like effect as if paid on the date the same was originally due. [Id.]

3. CITY REGULATION.

| | | | |
|---------------------------------|--------------|------------------------------|--------------|
| Rates prescribed..... | Article 1119 | Penalties | Article 1122 |
| Protective ordinances, etc..... | 1120 | City owned plants..... | 1123 |
| Reports | 1121 | Rates in certain cities..... | 1124 |

Art. 1119. [1018] **Rates prescribed, etc.**—The governing body of all cities and towns in this State of over two thousand population, incorporated under the general laws thereof, shall have the power to regulate, by ordinance, the rates and compensation to be charged by all water, gas, light and sewer companies, corporations or persons using the streets and public grounds of said city or town, and engaged in furnishing water, gas, light or sewerage service to the public, and also to prescribe rules and regulations under which such commodities shall be furnished, and service rendered, and to fix penalties to en-

force such charges, rules and regulations. The governing body shall not prescribe any rate or compensation which will yield less than ten per cent per annum net on the actual costs of the physical properties, equipment and betterments. [Acts 1907, p. 217.]

Art. 1120. [1020] **Protective ordinances, etc.**—The governing body shall have power to pass such ordinances as they may deem proper to protect any said company, corporation or person, in the free enjoyment of all their rights and franchises, to protect any interference with their property or privileges, and to prevent the free or unauthorized use or waste of the water or other commodity or service furnished. [Id.]

Art. 1121. [1021] **Reports.**— Any such company, corporation or person who may be engaged in furnishing to the inhabitants of any such city or town any water, light, gas or sewerage service, shall, on or before the first day of March of each year, file with the mayor of such city or town a written report sworn to by the manager, secretary or president of such corporation, by a member of such company, and by any such person, which shall show:

1. The amount of any lien or mortgage upon the properties composing such plant;

2. All other indebtedness pertaining to such enterprise and the consideration therefor;

3. The actual cost of the visible physical properties, date when installed and the present value thereof, and herein the lands, machinery, buildings, pipes, poles, circuits, mains shall each be treated separately;

4. The annual cost of operating such plant, showing separate items, the amount paid for actual salaries, amount paid for labor of all kinds, fixed charges, including interest, taxes and insurance, giving each separately, amount paid for fuel, for extension and repairs, giving each separately, and particularizing the extension and repairs the cost of maintenance, amount paid for damages, claim or suits for damages, identifying each claim or suit, amount paid for miscellaneous expenses, and, if any machinery or equipment is abandoned, worn out or its use discontinued within the preceding year, the same shall be stated, the original cost, and the present value thereof shall be given;

5. The report shall give the gross earnings from any such plant, including revenues from every source whatever, stating items separately, amount received by each department. [Id.]

Art. 1122. [1022] **Penalties.**— Any such corporation, or any member of such company, or any such person mentioned in this chapter, who shall for thirty days wilfully refuse or fail to report in the manner provided by this chapter, shall forfeit and pay to any such city or town the sum of one hundred dollars per day for each and every day during which it shall continue in default; or, if any such corporation, or company, or person, shall file any report, knowing that the same does not truly report the facts about the matters mentioned therein, it shall forfeit and pay to such city or town the sum of two hundred and fifty dollars

for each such wilfully false report. Such forfeitures and penalties shall be recovered at the suit of such city or town brought in the county where such city or town is located. [Id.]

Art. 1123. [1023] **City owned plants.**—The governing body of any city or town incorporated under the general laws shall have the power where such city or town owns the plant, to regulate by ordinance, the rates and compensation to be charged the public by such city or town for water, sewerage, gas, electricity or other fluid or substance used for lights, heat or power, to establish and operate necessary plants for the manufacture, generation or production thereof, and to sell and distribute the same to the public within the corporate limits. [Id.]

Art. 1124. **Rates in certain cities.**—Any city having a special charter or a charter adopted or amended under the provisions of chapter 13 of this title, and having authority under its charter to determine, fix and regulate the charges, fares or rates of compensation to be charged by any person, firm or corporation enjoying a franchise in said city, shall in determining, fixing and regulating such charges, fares or rates of compensation, base the same upon the fair value of the property of such person, firm or corporation devoted to furnishing service to such city, or the inhabitants thereof, and not upon any stocks or bonds issued or authorized to be issued, by, or any other indebtedness of, such person, firm or corporation. No city shall be responsible for, concerned with, authorize, approve or have jurisdiction over, the issuance or sale of any stocks or bonds by any such person, firm or corporation, but the issuance and sale thereof shall be governed solely by the Constitution and laws of this State applicable thereto. [Acts 1st C. S. 1921, p. 152.]

4. JUDICIAL REGULATION.

| | Article | | Article |
|----------------------|---------|----------------------------|---------|
| Excessive rates..... | 1125 | Appeal | 1129 |
| Complaint | 1126 | Enforcement | 1130 |
| Suit | 1127 | Corporations affected..... | 1131 |
| Trial | 1128 | Cities affected..... | 1132 |

Art. 1125. [1025] **Excessive rates.**—All extortionate and unreasonable rates charged by public utility corporations, as hereinafter defined, are hereby declared to be unlawful; and the district courts of this State are hereby vested with jurisdiction and full power and authority to regulate, prevent and abolish the same; and said courts are given the power and authority whenever the public interest may require, to fix and establish rates for the service and products of all public utility corporations, and whenever the public interest may require and to carry out the provisions herein conferred, said courts are hereby expressly authorized to issue injunctions, quo warranto, and all other writs for the purpose of carrying out and making effective the purposes of this chapter, and said writs shall be governed by the rules and regulations now prescribed by law. No proceeding shall be begun in the district court having for its purpose the fixing or rates of public utility corporations until and unless the city council of the city or town desiring to invoke the power herein conferred upon the district courts shall com-

ply with the provisions of the succeeding article. [Acts 1905, p. 348.]

Art. 1126. [1026] Complaint.—If the city council of any city or town incorporated under the general laws of this State, shall desire to invoke the power of the district court granted in the preceding article, such council shall, by a two-thirds vote of all the members elected to said council, pass a resolution setting forth the matters complained of, naming the corporation against which the complaint is made, and in a general way the reasons for such complaint, and shall cause a copy of the same to be delivered to the president, vice president or secretary of said corporation, or cause to be left a copy of said resolution at the principal office of such corporation. [Id.]

Art. 1127. [1027] Suit.—If, within twenty days after the said corporation has been furnished with a copy of the resolution of the city council, the wrongs complained of shall not be corrected to the satisfaction of the city council, a petition setting forth the wrongs and grievances complained of, and stating the relief sought, may be filed in the name of the city or town as plaintiff against the corporation as defendant in any district court of the county in which such city or town may be situated. Process shall be issued upon said petition, and be served upon such corporation as now provided by law in civil cases. The case shall be set for trial in the same manner as other civil cases, except that it shall have precedence over all cases of a different character filed in such court as to the time of trial. Process shall issue in said cause in the same manner as process may issue in civil cases. The right of trial by jury of the issues involved shall also be given upon the demand of either party. [Id.]

Art. 1128. [1028] Trial.—Upon the trial of the cause, the court or jury, in arriving at a decision as to whether or not the rates complained of are reasonable or extortionate, and in fixing the rates, shall consider the cost of construction of the plant of the public utility corporation against which the petition is filed; the cost of the operation of such plant, its maintenance and repairs, the fixed charges that may be against the corporation, amount invested in such plant, and such other matters as may be material to the issues. The court trying the same shall have the power to order the corporation to make profert of its books and records for inspection in court in determining the question in issue. After a full hearing of all the evidence adduced, the court or jury shall have power, and it shall be their duty to fix the rates which may be charged by such public utility corporation; provided, that the rates fixed must be sufficient to yield such public utility company not less than ten per cent upon the investment, and the same shall continue in force for a period of three years. The rates fixed shall be entered of record upon the minutes of the court, and shall be held conclusive, as reasonable, fair and just, and shall remain for three years as the rates to be charged by such corporation, unless changed or modified by the judgment of said district court, or by the appellate courts to which either of the parties to said suit may appeal, or have writ of error. [Id.]

Art. 1129. [1029] **Appeal.**—If either party to the suit shall be dissatisfied with the decision of the court and the rate thereby established, an appeal may be taken by either party to the proper court of civil appeals, and said appeal shall be at once returnable to said court of civil appeals, and shall have precedence in such court of all cases of a different character therein pending. The parties to said suit may apply to the Supreme Court for a writ of error. [Id.]

Art. 1130. [1030] **Enforcement.**—When the final judgment is rendered in any cause fixing the rates to be charged by said corporation, the court rendering such judgment shall order in its decree the enforcement of the same; and is authorized and empowered to provide in its decree that, if the same is not obeyed according to the terms thereof, the said corporation shall forfeit its charter if the same be a domestic corporation, or its permit to do business in this State if the corporation be a foreign corporation. If said order or decree be violated, it shall be the duty of the Attorney General, or county or district attorney, under the direction of the Attorney General, to institute suit in the district court of the county in which such corporation may have its principal office, or in Travis County, for the forfeiture of the charter of such corporation, or the cancellation of its permit, as the case may be, and, if said charter be forfeited or permit canceled, the offending corporation shall thereafter be prohibited from carrying on its business within this State. [Id.]

Art. 1131. [1031] **Corporations affected.**—The public utilities included within the meaning of this subdivision are defined to be water companies furnishing water to the public; gas companies furnishing gas to the public; electric light or power companies furnishing light or power to the public; telephone companies furnishing telephones to the public; sewerage companies conducting sewerage for the public, whether said companies are incorporated under the laws of this or a foreign State. [Id.]

Art. 1132. [1032] **Cities affected.**—Any city within this State, incorporated under a special law, may at its option, avail itself of the provisions of this subdivision, but the same shall be cumulative of any other method which may now be provided in such special charter, and this law shall not repeal any provisions of such special charters. [Id.]

CHAPTER ELEVEN.

TOWNS AND VILLAGES.

| | Article | | Article |
|---------------------------------|---------|----------------------------------|---------|
| May be incorporated..... | 1133 | Annual election..... | 1144 |
| Mode of incorporation..... | 1134 | Quorum may pass by-laws..... | 1145 |
| Adjoining territory added..... | 1135 | Powers of aldermen..... | 1146 |
| Election order..... | 1136 | Powers of marshal..... | 1147 |
| Qualifications of electors..... | 1137 | Tax sales..... | 1148 |
| Ballots..... | 1138 | Condemnation for highways..... | 1149 |
| Returns..... | 1139 | Commissioners court may con- | |
| Powers of corporation..... | 1140 | demn..... | 1150 |
| Election of officers..... | 1141 | Crossings: duty of railroad..... | 1151 |
| Commission..... | 1142 | Publication of ordinances..... | 1152 |
| Term of office..... | 1143 | Amendment of charter..... | 1153 |

Art. 1133. [1033] [579] [506] **May be incorporated.**—

When a town or village may contain more than four hundred and less than ten thousand inhabitants, it may be incorporated as a town or village in the manner prescribed in this chapter. [Acts 1881, p. 63; G. L. Vol. 9, p. 155; Acts 1897, p. 193; G. L. Vol. 10, p. 1247; Acts 1915, p. 130.]

Art. 1134. [1034] [580] [507] **Mode of incorporation.**—If the inhabitants of such town or village desire to be so incorporated, at least twenty residents thereof, who would be qualified voters under the provisions of this chapter, shall file an application for that purpose in the office of the county judge of the county in which the town or village is situated, stating the boundaries of the proposed town or village, the name by which it is to be known when incorporated, and accompany the same with a plat of the proposed town or village including therein no territory except that which is intended to be used for strictly town purposes. If any town or village be situated on both sides of a line dividing two counties, application may be made to the county judge of either county in which a portion of said town or village is located, in manner and form as herein provided. A new election shall not be ordered in less than one year. [Acts 1889, p. 5; G. L. Vol. 9, p. 1033.]

Art. 1135. [1035] **Adjoining territory added.**—Whenever a majority of the inhabitants, who are qualified voters of any territory adjoining the limits of any town or village incorporated hereunder, shall vote in favor of becoming a part of said town or village, any three of them may make affidavit to such fact and file such affidavit with the mayor of said town or village, and such mayor shall certify the same to the council of said town or village. Thereupon, such council may, by ordinance, receive such inhabitants as a part of said town or village. Thenceforth the territory so received shall be a part of said town or village and the inhabitants shall be entitled to all the rights and privileges of other citizens and bound by all the acts and ordinances made in conformity thereto and passed in pursuance of this chapter; provided, that the area of no town or village shall ever exceed that of cities or towns, as provided for in chapter one of this title. [Acts 1903, p. 116.]

Art. 1136. [1036-7] **Election order.**—If satisfactory proof is made that the town or village contains the requisite number of inhabitants, the county judge shall make an order for holding an election on a day therein stated and at a place designated within the town or village for the purpose of submitting the question to a vote of the people. He shall appoint an officer to preside at the election, who shall select two judges and two clerks to assist in holding it. After a previous notice of ten days, by posting advertisement thereof at three public places in the town or village, the election shall be held in the manner prescribed for holding elections in other cases.

Art. 1137. [1038] [583] [510] **Qualifications of electors.**—Every person who has attained the age of twenty-one years and who has resided within the limits of the proposed town for the six months next preceding and is a qualified elector under the laws of this State, shall be entitled to vote at the election.

Art. 1138. [1039] [584] [511] **Ballots.**—On each ticket the voter must write or cause to be written or printed, “corporation” or “no corporation.”

Art. 1139. [1040-41] **Returns.**—If a majority of the votes are cast in favor of incorporation the officers holding the election shall make return thereof to the county judge within ten days after the same was held. The county judge shall, within twenty days after the receipt thereof make an entry upon the records of the commissioners court that the inhabitants of the town or village are incorporated within the boundaries thereof; which boundaries shall also be designated in the entry. A certified copy of such entry, together with the plat of the town or village, shall thereupon be recorded in the proper record of deeds of such county. [Acts 1897, p. 193; G. L. Vol. 10, p. 1247.]

Art. 1140. [1042] [587] [514] **Powers of corporation.**—When the entry mentioned in the preceding article has been made, the town shall be invested with all the rights incident to such corporation under this chapter, and shall have power to sue and be sued, plead and be impleaded, and to hold and dispose of real and personal property, provided such real property is situated within the limits of the corporation.

Art. 1141. [1043-4] **Election of officers.**—The county judge shall immediately order an election for a mayor, a marshal and five aldermen. No person shall be eligible to any of said offices unless he possess the requisites provided by this chapter for persons qualified to vote hereunder.

Art. 1142. [1045] [590] [517] **Commission.**—The county judge shall, immediately after the returns have been made, commission the candidate who received the highest number of votes for the office of mayor, and shall deliver certificates of election to the other officers elected. [R. S. 1879, p. 517.]

Art. 1143. [1046] [591] [518] **Term of office.**—The mayor, aldermen and all other officers elected at the first election under this chapter, regardless of the time of such first election, shall hold their offices until their successors shall have been duly elected and qualified at the next succeeding annual election, according to the provisions of the succeeding article. [Acts 1873, p. 99; G. L. Vol. 7, p. 551.]

Art. 1144. [1047] [592] [519] **Annual election.**—The annual election of officers of all towns and villages incorporated under the provisions of this chapter shall take place on such day as may be fixed by law for municipal elections throughout the towns and cities of the State. Should no such uniform day be fixed, then the elections herein provided for shall take place on the first Tuesday in April of each year. The mayor, or in case of his inability or refusal to act, any two aldermen, shall order such annual election by notices posted for at least ten days at three public places within the corporate limits. The returns of such election shall be made to the town or village council, and certificates of election given by the mayor or person acting as such to the persons elected to the various offices of such corporation. [Id.]

Art. 1145. [1048] [593] [520] **Quorum may pass by-laws.**

—The mayor shall be the president of the board of aldermen and shall, with three of the aldermen, constitute a quorum for the transaction of business; and the quorum shall have power to enact such by-laws and ordinances not inconsistent with the laws and constitution of this State as shall be deemed proper for the government of the corporation.

Art. 1146. [1049 to 1055] **Powers of aldermen.**—The board of aldermen shall:

1. Have power to levy and collect an occupation tax of not more than one-half of the amount levied by the State; also to levy taxes on persons and property, real and personal, within the corporation, subject to taxation by the laws of this State; but the tax on persons and property shall not, in any one year, exceed the rate of one-fourth of one per cent on the one hundred dollars valuation.

2. Have and exercise exclusive control over the streets, alleys and other public places within the corporate limits; provided, that, with the consent of the board of aldermen, where streets are continuations of public roads, the commissioners court shall have power to construct bridges and other improvements thereon which facilitate the practicability of travel on said streets.

3. Have the power to cause the male inhabitants between the ages of twenty-one and forty-five years, except ministers of the gospel actually engaged in the discharge of their duties, to work on the streets and public alleys not to exceed five days in any one year, or furnish a substitute, or a sum of money, not to exceed one dollar for each day's work demanded, to employ such substitute.

4. Prevent, as far as practicable, any nuisances within the limits of the corporation, and cause such as exist to be removed at the expense of the person by whom they were occasioned or upon whose property they may be found.

5. Have power to prescribe the fine to be imposed by the mayor for the violation of any by-laws or ordinance, which shall in no case exceed one hundred dollars; but no fine shall be imposed except upon the verdict of a jury, should the defendant demand a trial by jury.

6. Fill, for the unexpired term, any vacancy which may occur in any office created by this chapter or by the board of aldermen under its provisions, such vacancy to be filled by the acting aldermen.

7. Have power to appoint such officers, other than those mentioned in this chapter, as shall be deemed necessary to carry out the provisions of the same, to prescribe their duties and to fix their compensation; and shall also have power to dismiss them at any time and appoint others in their stead.

8. Prescribe the bonds and security which the marshal and such other officers as may be appointed shall give, which shall be executed and approved by the mayor, before the marshal or other officer shall enter upon the discharge of his duties, said bond to be payable to the corporation.

9. Have power to appoint another marshal or officer in the

place of the one so elected or appointed if the bond required in the preceding paragraph is not given within five days after the marshal is elected or appointed.

10. The board of aldermen may establish markets and may do whatever else may be necessary to give effect to the provisions of this chapter.

Art. 1147. [1056-7] **Powers of marshal.**—The marshal shall have the same power within the town that constables shall have within their precincts, and shall be entitled to the same fees. He shall discharge all other duties that may be prescribed by the by-laws and ordinances, not inconsistent with the laws of this State, and shall receive therefor such fees as may be fixed by the board. He shall assess and collect the corporation tax, and if the same be not voluntarily paid, he shall have power to make the collection in the same manner and with like effect as is prescribed in chapter 5 of this title for collection of taxes in cities, so far as applicable.

Art. 1148. [1058-9-61] **Tax sales.**—When any property shall be liable to assessment for corporation taxes, and the owner is unknown, such property shall be valued by the marshal and assessed by its description, stating that the owner of the property is unknown; unless the taxes are paid, the property shall be sold for the payment thereof, as nearly as may be in the manner in which such property when duly rendered is required to be sold, and the sale shall be equally valid. Real estate sold for taxes due the corporation may be redeemed as provided in chapter 5 of this title. Where the purchaser does not reside within the limits of the corporation, the estate may be redeemed by making the payment into the treasury of the corporation for the benefit of the purchaser.

Art. 1149. [1066-7] **Condemnation for highways.**—Any town or village in this State, incorporated under this chapter or by special charter, shall have the right, and they are hereby empowered, to condemn the right of way and roadbed of any railway company whose roadbed runs within the corporate limits of such town or village, when deemed necessary and so declared, by a majority vote of the board of aldermen, for the purpose of opening, widening or extending the streets of such town or village; provided, there are less than four railroad tracks. Failing to agree on the damages to be paid therefor, the mayor shall prepare a statement in writing showing the point on said railroad right of way where said street is desired to be opened, widened or extended, giving the width and length of that portion of the right of way of the railroad sought to be condemned, and describing it so that it can be clearly identified, the object for which it is sought to be condemned, the name and style of the railway company, and file the same with the county judge of the county in which such town or village is situated, whereupon proceedings shall be had to condemn said right of way. [Acts 1897, p. 216; G. L. Vol. 10, p. 1270.]

Art. 1150. [1069] **Commissioners court may condemn.**—County commissioners shall have the right, upon petition of

twenty freeholders of any community, or unincorporated town or city, to condemn roadbed of railroads for the same purpose mentioned in the preceding article. [Id.]

Art. 1151. [1068] **Crossings: duty of railroad.**—Every railroad company in this State shall place and keep that portion of its roadbed and right of way over or across which any public street of any incorporated town or village may run, in proper condition for the use of the traveling public; and in case of its failure to do so for thirty days after written notice given to the section boss of the section where such work or repairs are needed, by the town marshal of such town or village, it shall be liable to a penalty of twenty-five dollars for each week such railroad may fail or neglect to comply with the requirements of this article, recoverable in any court having jurisdiction of the amount involved, in a suit in the name of such town or village. [Id.]

Art. 1152. [1060] [611] [538] **Publication of ordinances.**—No ordinance or by-laws shall be enforced until it has been published at least ten days in three public places in the town, or in a newspaper if one be published in the corporation. [R. S. 1879, 538.]

Art. 1153. [1062-3] **Amendment of charter.**—Towns and villages heretofore incorporated by the Congress of the Republic or the Legislature of this State may, by a resolution of the board of aldermen and a two-thirds vote of the voters at an election held therefor, amend their charters in any particular not in conflict with the constitution of this State or the Revised Statutes. In order to amend the charter of any town or village, it shall be necessary, before said amendment shall go into effect, for the board of aldermen to adopt a resolution setting forth the amendment; and a certified copy of the same shall be approved by the Attorney General and recorded in the office of the Secretary of State before the same shall take effect. [Acts 1881, p. 83; G. L. Vol. 9, p. 175.]

CHAPTER TWELVE.

COMMISSION FORM OF GOVERNMENT.

| | Article | | Article |
|----------------------------|---------|----------------------------------|---------|
| Petition | 1154 | Shall supersede council | 1160 |
| Unincorporated towns | 1155 | Officers appointed | 1161 |
| Ballot, etc. | 1156 | Bonds of officers | 1162 |
| Election | 1157 | Commissioners, duties, etc. | 1163 |
| Officers | 1158 | Meetings and salary | 1164 |
| Vacancies | 1159 | | |

Art. 1154. [1070] **Petition.**—Whenever ten per cent of the qualified voters of any incorporated city or town having a population of over five hundred and less than five thousand inhabitants incorporated under the provisions of this title or any previous general law, or hereafter incorporated under any general law, or of any incorporated town or village having a population of more than five hundred and less than one thousand inhabitants incorporated under chapter 11 of this title or any previous general law, or hereafter incorporated under any general law, shall petition in writing the mayor of said city, town or village

requesting that an election be ordered to determine whether such city, town or village shall adopt the commission form of government, the mayor shall order an election in such city, town or village, to determine whether or not the commission form of government shall be adopted. Thirty days notice of such election shall be given by publishing such notice in some newspaper therein if there be one, and if none, then by posting notices of same at three public places in such town, city or village. [Acts 1909, p. 189; Acts 1913, p. 36; Acts 1921, p. 123.]

Art. 1155. [1070] **Unincorporated towns.**—If any unincorporated city or town in this State, having a population of over five hundred and less than five thousand inhabitants, or any unincorporated town or village in this State having a population of more than two hundred and less than one thousand inhabitants, shall desire to be incorporated under the commission form of government as herein provided, an election to determine whether such incorporation may be had shall be called by the county judge of the county under the provisions herein governing incorporated cities and towns, and incorporated towns and villages, and notice of such election shall be given as herein provided, and if satisfactory proof is made that the city or town or village contains the requisite number of inhabitants, the county judge shall make an order for holding an election on a day therein stated, and at a place designated within the city or town or village, for the purpose of submitting the question to a vote of the people. [Id.]

Art. 1156. [1071] **Ballot.**—The ballots to be used in said election shall have written or printed thereon "For Commission" or "Against Commission." [Acts 1909, p. 189; Acts 1913, p. 36.]

Art. 1157. [1072] **Election.**—The mayor or county judge, as the case may be, shall appoint two judges of election, one of which shall be designated as the presiding judge, and two clerks, to hold said election. The election shall be held and governed by the general laws of this State except as herein otherwise provided, and the returns shall be made to the mayor or the county judge, as the case may be within five days after said election shall have been held. If a majority of the votes cast are "For Commission," then the mayor or county judge shall enter an order to that effect upon the minutes of the city council, or board of aldermen, or of the commissioners court, and after the entry of said order said incorporated city or town or village shall be under the commission form of government, and said unincorporated city or town, or unincorporated town or village, shall be incorporated and under the commission form of government. [Id.]

Art. 1158. [1073] **Officers.**—At such election there shall be elected two commissioners, who shall serve until the first Tuesday in April following, and in said unincorporated cities and towns, and unincorporated towns and villages, there shall at such elections be elected a mayor and two commissioners, who shall serve until the first Tuesday in April following. The mayor of the incorporated cities and towns, and incorporated towns and villages, adopting the commission form of government shall con-

tinue to hold his office for the term for which he was elected. The term of office of the mayor and commissioners, except the first elected under the provisions hereof, shall be two years, and they shall be elected on the first Tuesday in April every two years. [Id.]

Art. 1159. [1073] Vacancies.—In case of the death or the resignation of the mayor or commissioners, the others shall fill the place by appointment, provided, that shall a vacancy occur from death, resignation, or failure to qualify, or any other cause, of the mayor and one commissioner at the same time, or of two commissioners at the same time, the vacancy shall be filled by special election called by the county judge of the county, upon notice for the time, and subject to all the regulations herein for the original election; the result of said election shall be certified by the county judge to the clerk of said commission, and shall be entered upon the minutes. [Id.]

Art. 1160. [1073] Shall supersede council.—In incorporated cities and towns and incorporated towns and villages, adopting the commission form of government under the provisions hereof, the members of the city council, and board of aldermen shall hold their offices until the commissioners elected hereunder shall have qualified, and after such qualification, the officers of the city council, and board of aldermen shall be abolished, and the mayor and commissioners herein provided for shall constitute the "Board of Commissioners" of said city or town, or town or village. [Id.]

Art. 1161. [1074] Officers appointed.—Said "Board of Commissioners" shall appoint a competent person to be clerk, who shall also be treasurer and assessor and collector of taxes of such city or town, or town or village. He shall before entering upon the duties of his office, enter into a good and sufficient bond in double the estimated amount of annual revenues of such city or town or of such town or village, said estimate to be made by the "Board of Commissioners" and said bond to be approved by the said board and filed and recorded in the minutes thereof. Said clerk shall be invested and charged with and shall exercise all the power, rights and duties conferred upon and imposed by the general laws, upon the clerk, treasurer, assessor and collector of taxes, of cities and towns, or towns and villages, as the case may be. The board shall also have the authority to appoint a city attorney and such police force and such other officers as they may deem necessary, and fix the salary or other compensation to be received by such clerk, and by such officers, and define their duties, and at any time may abolish any office which it creates, and may discharge any officer, clerk or employe which it appoints. [Id.]

Art. 1162. [1074] Bond of officers.—The mayor and each commissioner shall enter into a bond in the sum of three thousand dollars each, conditioned for the faithful performance of the duties of their office; said bond of the officers, first elected hereunder, shall be approved within twenty days after the entry upon the minutes of the city council, or board of aldermen or the commissioners court, as the case may be, by the county judge of

the county in which such city or town, or town or village is located, and to be payable to said city or town or town or village for its use and benefit. All subsequent bonds of officers elected hereunder shall be approved by the "Board of Commissioners." [Id.]

Art. 1163. [1075] **Commissioners, duties, etc.**—The "Board of Commissioners" of all incorporated and unincorporated cities or towns or towns and villages of over five hundred and less than five thousand inhabitants incorporated under or adopting the commission form of government under the provisions of this chapter, shall have all of the authority and powers, and be subject to all of the duties granted and conferred under Chapters 1 to 10 both inclusive of this title, except where same may conflict with some provision of this chapter. In incorporated and unincorporated towns and villages of more than two hundred and not more than five hundred inhabitants, adopting or incorporated under the commission form of government hereunder, the "Board of Commissioners" shall have all authority and powers conferred under Chapter 11 of this title except where the same may be in conflict with some provision contained herein. [Id.; Acts 1921, p. 123.]

Art. 1164. [1076] **Meetings and salary.**—Said Board shall hold at least one regular monthly meeting and the mayor or two commissioners may call as many special meetings as may be necessary to attend to the municipal business. Each commissioner and said mayor shall receive for their service five dollars per day for each regular meeting, and three dollars per day for each special meeting. The Mayor or any commissioner shall not receive pay for more than five special meetings in any one month. In lieu of such per diem said "Board of Commissioners" of any such town or city with not less than two thousand population may fix a salary to be received by the mayor and commissioners, not to exceed the sum of twelve hundred dollars per year for said mayor and six hundred dollars per year for each commissioner. [Id.]

CHAPTER THIRTEEN.

HOME RULE.

| | Article | | Article |
|-------------------------------|---------|----------------------------|---------|
| May change charter..... | 1165 | Registration | 1174 |
| Requisites of submission..... | 1166 | Enumerated powers..... | 1175 |
| Submission of charter..... | 1167 | Further powers..... | 1176 |
| First election..... | 1168 | Former powers..... | 1177 |
| Adoption of charter..... | 1169 | Vested rights..... | 1178 |
| Amendments..... | 1170 | Improvement districts..... | 1179 |
| Notice of intention..... | 1171 | Private improvements..... | 1180 |
| Other issues..... | 1172 | Franchises..... | 1181 |
| Certification..... | 1173 | Franchise election..... | 1182 |

Art. 1165. **May change charter.**—Cities having more than five thousand inhabitants may, by a majority vote of the qualified voters of said city, at an election held for that purpose, adopt or amend their charters, subject to such limitations as may be prescribed by the Legislature. No charter or any ordinances passed under said charter shall contain any provision inconsistent with the Constitution or general laws of this State; said cities may levy, assess and collect such taxes as may be

authorized by law, or by their charters; but no tax for any purpose shall ever be lawful for any one year which shall exceed two and one-half per cent of the taxable property of such city, and no debt shall ever be created by any city unless at the same time provision be made to assess and collect annually a sufficient sum to pay the interest thereon and create a sinking fund of at least two per cent thereon. No city charter shall be altered, amended or repealed oftener than every two years. The governing body of such city may, by two-thirds votes of its members, or upon petition of ten per cent of the qualified voters of said city, shall provide by ordinance for the submission of the question, "Shall a commission be chosen to frame a new charter." [Acts 1913, p. 307.]

Art. 1166. Requisites of submission.—The ordinance providing for the submission of such question shall require that it be submitted at the next regular municipal election, if one should be held, not less than thirty nor more than ninety days after the passage of said ordinance; otherwise it shall provide for the submission of the question at a special election to be called and held not less than thirty days nor more than ninety days after the passage of said ordinance and the publication thereof in some newspaper published in said city. The ballot containing such question shall bear no party designation, and provision shall be made thereon for the election from the city at large of a charter commission of not less than fifteen members, nor more than one member for each three thousand inhabitants, provided, that a majority of the qualified voters, voting on said question shall have voted in the affirmative. [Id.]

Art. 1167. Submission of charter.—The charter so framed by said commission shall be submitted to the qualified voters of said city at an election to be held at a time fixed by the charter commission not less than forty nor more than ninety days after the completion of the work of the charter commission; provision for which shall be made by the governing body of the city in so far as not prescribed by the general law. Not less than thirty days prior to such election, the governing body shall cause the city clerk or city secretary to mail a copy of the proposed charter to each qualified voter in said city as appears from the tax collector's rolls for the year ending January 31st, preceding said election. In preparing the charter the commission shall, as far as practicable, segregate each subject so that the voter may vote "Yes" or "No" on the same. [Id.]

Art. 1168. First election.—Where the legislative or governing authority of any city, or where any mass meeting has selected a charter committee or charter commission, or where the mayor of any city has appointed a charter committee which has proceeded with the formation of a charter for said city, the provisions hereof as to the selection of the charter commission shall not apply to the first charter election to be held in said city under the terms of this law.

Art. 1169. Adoption of charter.—If such proposed charter is approved by a majority of the qualified voters, voting at said election, it shall become the charter of said city until amended

or repealed. No charter shall be considered adopted until an official order has been entered upon the records of said city by the governing body thereof declaring the same adopted. [Id.]

Art. 1170. **Amendments.**—When the governing body desires to submit amendments to any existing charter and in the absence of such petition, said body may, on its own motion, and shall upon the petition of at least ten per cent of the qualified voters of said city, submit any proposed amendment or amendments to such charter. The ordinance providing for the submission of any proposed amendment shall make the same provisions for holding the election and publishing notice thereof as provided in the second article of this chapter. The governing body of said city shall cause the city clerk or city secretary to mail a copy of the proposed amendment or amendments to every qualified voter in said city as appears from the tax collector's rolls for the year ending January 31st, preceding said election. Every amendment submitted must contain only one subject, and in preparing the ballot for such amendment, it shall be done in such manner that the voter may vote "Yes" or "No" on any amendment or amendments without voting "Yes" or "No" on all of said amendments. Each such proposed amendment, if approved by the majority of the qualified voters voting at said election, shall become a part of the charter of said city. No amendment shall be considered adopted until an official order has been entered upon the records of said city by the governing body thereof declaring the same adopted. [Id.]

Art. 1171. **Notice of intention.**—No ordinance shall be passed submitting an amendment or amendments until twenty days' notice has been given of such intention by publication for ten days in some newspaper published in said city. By "twenty days" is meant from the first date said notice is published. [Id.]

Art. 1172. **Other issues.**—Nothing in this chapter shall prevent the qualified voters of any city of over five thousand inhabitants from adopting any charter or amendment thereto, and at the same time electing officers under such charter or amendment. [Id.]

Art. 1173. **Certification.**—Upon the adoption of any such charter or amendment to any existing charter as provided herein, the mayor or chief executive officer exercising like or similar powers, of any such city, as soon as practicable, after the adoption of any such charter or amendment, shall certify to the Secretary of State an authenticated copy under the seal of the city, showing the approval by the qualified voters of any such charter or amendment, and the Secretary of State shall thereupon file and record the same in a separate book to be kept in his office for such purpose. [Id.]

Art. 1174. **Registration.**—The city secretary of any such city or officer exercising like or similar powers, upon the adoption and approval of any such charter or any amendment thereof by the qualified voters as herein provided, shall record at length upon the records of the city, in a separate book to be kept in his office for such purpose, any such charter, or amend-

ment so adopted. When such charter or any amendment thereof shall be so recorded, it shall be deemed a public act and all courts shall take judicial notice of same and no proof shall be required of same. All cities may institute and prosecute suits without giving security for cost and may appeal from judgment without giving supersedeas or cost bond. [Id.]

Art. 1175. Enumerated powers.—Cities adopting the charter or amendment hereunder shall have full power of local self-government, and among the other powers that may be exercised by any such city the following are hereby enumerated for greater certainty:

1. The creation of a commission, aldermanic or other form of government; the creation of offices, the manner and mode of selecting officers and prescribing their qualifications, duties, compensation and tenure of office.

2. The power to fix the boundary limits of said city, to provide for the extension of said boundary limits and the annexation of additional territory lying adjacent to said city, according to such rules as may be provided by said charter.

3. To hold by gift, deed, devise or otherwise any character of property, including any charitable or trust fund; to plead and be impleaded in all courts, and to act in perpetual succession as a body politic.

4. To provide that no public property or any other character of property owned or held by said city shall be subject to any execution of any kind or nature.

5. To provide that no fund of the city shall be subject to garnishment, and the city shall never be required to answer in any garnishment proceedings.

6. To provide for the exemption from liability on account of any claim for any damages to any person or property, or to fix such rules and regulations governing the city's liability as may be deemed advisable.

7. To provide for the levying of any general or special ad valorem tax for any purpose not inconsistent with the Constitution of this State.

8. To provide for the mode and method of assessing taxes, both real and personal, against any person and corporation, including the right to assess the franchise of any public corporation using and occupying the public streets or grounds of the city, separately from the tangible property of such corporation.

9. To provide for the collection of all taxes, including the right to impose penalties for delinquent taxes.

10. The power to control and manage the finances of any such city; to prescribe its fiscal year and fiscal arrangements; the power to issue bonds upon the credit of the city for the purpose of making permanent public improvements or for other public purposes in the amount and to the extent provided by such charter, and consistent with the Constitution of this State; provided, that said bonds shall have first been authorized by a majority vote by the duly qualified property taxpaying voters voting at an election held for that purpose. Thereafter all such bonds shall be submitted to the Attorney General

for his approval, and the Comptroller for registration, as provided by law, provided that any such bonds after approval, may be issued by the city, either optional or serial or otherwise as may be deemed advisable by the governing authority. Whenever any city has heretofore been authorized, under any special charter, creating such city, to issue any bonds by the terms of such charter, the provisions of this chapter shall not be construed to interfere with the issuance of any such bonds under the provisions of any charter under which such bonds were authorized.

11. To have the exclusive right to own, erect, maintain and operate water works and water works system for the use of any city, and its inhabitants, to regulate the same and have power to prescribe rates for water furnished and to acquire by purchase, donation or otherwise, suitable grounds within and without the limits of the city on which to erect any such works and the necessary right of way, and to do and perform whatsoever may be necessary to operate and maintain the said water works or water works system and to compel the owners of all property and the agents of such owners or persons in control thereof to pay all charges for water furnished upon such property and to fix a lien upon such property for any such charges. To provide that all receipts from the water works may, in its discretion, constitute a separate or sacred fund which shall be used for no other purpose than the extension, improvement, operation, maintenance, repair and betterment of said water works system or water works supply, and to provide for the pledging of any such receipts and revenues for the purpose of making any of such improvements, and the payment of the principal and providing an interest and sinking fund for any bonds issued therefor under such regulations as may be provided by the charter adopted by such city.

12. To prohibit the use of any street, alley, highway or grounds of the city by any telegraph, telephone, electric light, street railway, interurban railway, steam railway, gas company, or any other character of public utility without first obtaining the consent of the governing authorities expressed by ordinance and upon paying such compensation as may be prescribed and upon such condition as may be provided by any such ordinance. To determine, fix and regulate the charges, fares or rates of any person, firm or corporation enjoying or that may enjoy the franchise or exercising any other public privilege in said city and to prescribe the kind of service to be furnished by such person, firm or corporation, and the manner in which it shall be rendered, and from time to time alter or change such rules, regulations and compensation; provided that in adopting such regulations and in fixing or changing such compensation, or determining the reasonableness thereof, no stock or bonds authorized or issued by any corporation enjoying the franchise shall be considered unless proof that the same have been actually issued by the corporation for money paid and used for the development of the corporate property, labor done or property actually received in accordance with the laws and Constitution

of this State applicable thereto. In order to ascertain all facts necessary for a proper understanding of what is or should be a reasonable rate or regulation, the governing authority shall have full power to inspect the books and compel the attendance of witnesses for such purpose.

13. To buy, own, construct within or without the city limits and to maintain and operate a system or systems, of gas, or electric lighting plant, telephone, street railways, sewerage plants, fertilizing plants, abattoir, municipal railway terminals, docks, wharfs, ferries, ferry landings, loading and unloading devices and shipping facilities, or any other public service or public utility, and to demand and receive compensation for service furnished for private purpose or otherwise, and to exercise the right of eminent domain as hereinafter provided for the appropriation of lands, rights of way or anything whatsoever that may be proper and necessary to efficiently carry out said objects. Any city shall have the power to condemn the property of any person, firm or corporation now conducting any such business and for the purpose of operating and maintaining any such public utilities and for the purpose of distributing such service throughout the city or any portion thereof; provided that any city may adopt by its charter any such rules and regulations as it may deem advisable for the acquiring and operation of any such public utilities.

14. To manufacture its own electricity, gas, or anything else that may be needed or used by the public; to purchase and make contracts with any person or corporation for the purchasing of gas, electricity, oil or any other commodity or article used by the public and to sell the same to the public upon such terms as may be provided by the charter.

15. To have the power to appropriate private property for public purposes whenever the governing authorities shall deem it necessary; to take any private property within or without the city limits for any of the following purposes; city halls, police stations, jails, calaboose, fire stations, libraries, school houses, high school buildings, academies, hospitals, sanitariums, auditoriums, market houses, reformatories, abattoirs, railroad terminals, docks, wharves, warehouses, ferries, ferry landings, elevators, loading and unloading devices, shipping facilities, piers, streets, alleys, parks, highways, boulevards, speedways, playgrounds, sewer systems, storm sewers, sewerage disposal plants, drains, filtering beds and emptying grounds for sewer systems, reservoirs, water sheds, water supply sources, wells, water and electric light systems, gas plants, cemeteries, crematories, prison farms, and to acquire lands within and without the city for any other municipal purposes that may be deemed advisable. The power herein granted for the purpose of acquiring private property shall include the power of the improvement and enlargement of the water works, including water supply, riparian rights, stand pipes, water sheds, the construction of supply reservoirs, parks, squares and pleasure grounds, public wharves, and landing places for steamers and other crafts, and for the purpose of straightening or improving the channels of any stream, branch or drain, or the straighten-

ing, widening or extension of any street, alley, avenue or boulevard. The power of eminent domain hereby conferred shall include the right of the governing authority, when so expressed, to take the fee in the lands so condemned and such power and authority shall include the right to condemn public property for such purposes.

16. To have exclusive dominion, control, and jurisdiction in, over and under the public streets, avenues, alleys, highways and boulevards, and public grounds of such city and to provide for the improvement of any public street, alleys, highways, avenues or boulevards by paving, raising, grading, filling or otherwise improving the same and to charge the cost of making such improvement against the abutting property, by fixing a lien against the same, and a personal charge against the owner thereof according to an assessment specially levied therefor in an amount not to exceed the special benefit any such property received in enhanced value by reason of making such improvement, and to provide for the issuance of assignable certificates covering the payments for said cost, provided that the charter shall apportion the cost to be paid by the property owners and the amount to be paid by the city, and provided further, that all street railways, steam railways, or other railways, shall pay the cost of improving the said street between the rails and tracks of any such railway companies and for two feet on each side thereof. The city shall have the power to provide for the construction and building of sidewalks and charge the entire cost of constructing of said sidewalks, including the curb, against the owner of abutting property, and to make a special charge against the owner for such cost and to provide by special assessment a lien against such property for such cost; to have the power to provide for the improvement of any such sidewalk or the construction of any such curb by penal ordinance and to declare defective sidewalks to be a public nuisance. The power herein granted for making street improvements and assessing the cost by special assessment in the manner herein stated shall not be construed to prevent any city from adopting any other method or plan for the improvement of its streets, sidewalks, alleys, curbs, or boulevards, as it may deem advisable by its charter.

17. To open, extend, straighten, widen any public street, alley, avenue or boulevard and for such purpose to acquire the necessary lands and to appropriate the same under the power of eminent domain and to provide that the cost of improving any such street, alley, avenue or boulevard by opening, extending and widening the same shall be paid by the owners of property specially benefited whose property lies in the territory of such improvement and to provide that the cost shall be charged by special assessment and that a personal charge shall be made against any owner for the amount due by him and to provide for the appointment by the county judge or other officer exercising like or similar powers, of three special commissioners for the purpose of condemning the said lands and for the purpose of apportioning the said cost, which apportionment of said cost shall be specially assessed by the governing authorities

against the owners and the property of the owners lying in the territory so found to be specially benefited in enhanced value by said special commissioners. The city shall pay such portion of such cost as may be determined by the said special commissioners, provided the same shall never exceed one third the cost, and the property owners and their property shall be liable for the balance of the same as may be apportioned by said commissioners. The city may issue assignable certificates for the payment of any such cost against such property owners and may provide for the payment of any such cost in deferred payments, to bear interest at such rate as may be prescribed by the charter not to exceed eight per cent. The city may adopt any other method for the opening, straightening, widening or extending of its streets as herein provided for as may be deemed advisable, and charge the cost of same against the property and the owner specially benefited in enhanced value and lying in the territory of said improvement, that its charter may provide. The authority to adopt any other method shall include the manner of appointing commissioners, the manner of giving notice and the manner of fixing assessments or providing for the payment of any such improvement.

18. To control, regulate and remove all obstructions or other encroachments or encumbrances on any public street, alley or ground, and to narrow, alter, widen or straighten any such streets, alleys, avenues or boulevards, and to vacate and abandon and close any such streets, alleys, avenues or boulevards, and to regulate and control the moving of buildings or other structures over and upon the streets or avenues of such city.

19. Each city shall have the power to define all nuisances and prohibit the same within the city and outside the city limits for a distance of five thousand feet; to have power to police all parks or grounds, speedways, or boulevards owned by said city and lying outside of said city; to prohibit the pollution of any stream, drain or tributaries thereof, which may constitute the source of water supply of any city and to provide for policing the same as well as to provide for the protection of any water sheds and the policing of same; to inspect dairies, slaughter pens and slaughter houses inside or outside the limits of the city, from which meat or milk is furnished to the inhabitants of the city.

20. To license, operate and control the operation of all character of vehicles using the public streets, including motorcycles, automobiles or like vehicles, and to prescribe the speed of the same, the qualification of the operator of the same, and the lighting of the same by night and to provide for the giving bond or other security for the operation of the same.

21. To regulate, license and fix the charges or fares made by any person owning, operating or controlling any vehicle of any character used for the carrying of passengers for hire or the transportation of freight for hire on the public streets and alleys of the city.

22. To regulate the location and control the conduct of

theaters, moving picture shows, ten pin alleys, vaudeville shows, and all places of public amusements.

23. To license any lawful business, occupation or calling that is susceptible to the control of the police power.

24. To license, regulate, control or prohibit the erection of signs or bill boards as may be provided by charter or ordinance.

25. To provide for the establishment and designation of fire limits and to prescribe the kind and character of buildings or structures or improvements to be erected therein, and to provide for the erection of fire proof buildings within certain limits, and to provide for the condemnation of dangerous structures or buildings or dilapidated buildings or buildings calculated to increase the fire hazard, and the manner of their removal or destruction .

26. To divide the city in zones or districts, and to regulate the location, size, height, bulk and use of buildings within such zones or districts, and to establish building lines within such zones or districts or otherwise, and make different regulations for different districts and thereafter alter the same. The governing authorities may be authorized by their charter to create a commission or board for the purpose of carrying out the powers of this section, or may provide for the creation of a board of appeals or review for the purpose of hearing and deciding on appeals from and reviewing any order, requirement, decision or determination of the governing authorities in carrying out the powers and authority herein conferred; provided the authority and power herein conferred shall never be construed to be a limitation of any other power and authority conferred in this chapter.

27. To provide for police and fire departments.

28. To provide for a health department and the establishment of rules and regulations protecting the health of the city and the establishment of quarantine stations, and pest houses, emergency hospitals and hospitals, and to provide for the adoption of necessary quarantine laws to protect the inhabitants against contagious or infectious diseases.

29. To provide for a sanitary sewer system and to require property owners to make connections with such sewers with their premises and to provide for fixing a lien against any property owner's premises who fails or refuses to make sanitary sewer connections and to charge the cost against said owner and make it a personal liability. To provide for fixing penalties for a failure to make sanitary sewer connections.

30. The power to require water works corporations, gas companies, street car companies, telephone companies, telegraph companies, electric light companies or other companies or individuals enjoying a franchise now or hereafter from the city, to make and furnish extensions of their service to such territory as may be required by the charter.

31. Provided that in all cities of over twenty-five thousand inhabitants, the governing body of such city, when the public service of such city may require the same, shall have the right and power to compel any street railway or other public utility

corporation to extend its lines of service into any section of said city not to exceed two miles, all told, in any one year.

32. To provide for the establishment of public schools and public school system in any such city, and to have exclusive control over same and to provide such regulations and rules governing the management of same as may be deemed advisable; to levy and collect the necessary taxes, general or special, for the support of such public schools and public school system.

33. Whenever any city may determine to acquire any public utility using and occupying its streets, alleys, and avenues as hereinbefore provided, and it shall be necessary to condemn the said public utility, the city may obtain funds for the purpose of acquiring the said public utility and paying the compensation therefor, by issuing bonds, notes or other evidence of indebtedness and shall secure the same by fixing a lien upon the said properties constituting the said public utility so acquired by condemnation or purchase or otherwise; said security shall apply alone to said properties so pledged; and such further regulations may be provided by any charter for the proper financing or raising the revenue necessary for obtaining any public utilities and providing for the fixing of said security.

34. To enforce all ordinances necessary to protect health, life and property, and to prevent and summarily abate and remove all nuisances and to preserve and enforce the good government, order and security of the city and its inhabitants. [Id; Acts 1921, p. 169.]

Art. 1176. Further powers.—The enumeration of powers hereinabove made shall never be construed to preclude, by implication or otherwise, any such city from exercising the powers incident to the enjoyment of local self-government, provided that such powers shall not be inhibited by the State Constitution. [Id.]

Art. 1177. Former powers.—All powers heretofore granted any city by general law or special charter are hereby preserved to each of said cities, and the power so conferred upon such cities, either by special or general law, is hereby granted to such cities when embraced in and made a part of the charter adopted by such city; and until the charter of such city as the same now exists is amended and adopted, it shall be and remain in full force and effect. [Id.]

Art. 1178. Vested rights.—The adoption of any charter hereunder or any amendment thereof shall never be construed to destroy any property, action, rights of action, claims and demands of any nature or kind whatever vested in the city under and by virtue of any charter theretofore existing or otherwise accruing to the city, but all such rights of action, claims or demands shall vest in and inure to the city and to any persons asserting any such claims against the city as fully as though the said charter or amendment had not been adopted hereunder. The adoption of any charter or amendment hereunder shall never be construed to affect the right of the city to collect by special assessment any special assessment heretofore levied under any law or special charter for the purpose of paving or improving any

street, highway, avenue or boulevard of any city, or for the purpose of opening, extending, widening, straightening or otherwise improving the same, nor affect any right of any contract or obligation existing between the city and any person, firm or corporation for the making of any such improvements. For the purpose of collecting any such special assessment and carrying out of any such contract, the provisions of all charters shall be continued in force. [Id.]

Art. 1179. Improvement districts.—Such city shall have the power to create and establish improvement districts, to levy, straighten, widen, enclose or otherwise improve any river, creek, bayou, stream or other body of water or streets or alleys, and to drain, grade, fill and otherwise protect and improve the territory within its limits, and shall have power to issue bonds for making such improvements, such improvement districts to be created and established agreeably to the general laws of this State providing for the creation of such improvement districts, and the issuance of such bonds shall be governed by the powers a city possesses in the matter of issuing bonds. [Id.]

Art. 1180. Private improvements.—Such city shall further have the power to straighten, widen, levy, enclose, or otherwise improve any river, creek, bayou, stream, or other body of water, or streets or alleys and to drain, grade, fill and otherwise protect and improve the territory within its limits and to provide that the cost of making any such improvements shall be paid for by the property owners owning property in the territory specially benefited in enhanced value by reason of making such improvements, and a personal charge shall be made against such owners as well as a lien shall be fixed by special assessment against any such property, and the city may issue assignable certificates or negotiable certificates, as it deems advisable, covering such cost, and may provide for the payment of such cost in deferred payments and fix the rate of interest not to exceed eight per cent, and may provide for the appointment of special commissioners or otherwise for the making or levying of said special assessment, or may provide that the same shall be done by the governing authorities, and that such rules and regulations may be adopted for a hearing and other proceedings had as may be provided by said charter. [Id.]

Art. 1181. Franchises.—No charter or any amendment thereof framed or adopted under this charter, shall ever grant to any person, firm or corporation any right or franchise to use or occupy the public streets, avenues, alleys or grounds of any such city, but the governing authority of any such city shall have the exclusive power and authority to make any such grant of any such franchise or right to use and occupy the public streets, avenues, alleys, and grounds of the city. If, at any time, before any ordinance granting a franchise takes effect, a petition shall be submitted to the governing authority signed by five hundred of the bona fide qualified voters of the city, then the governing body shall submit the question of granting such franchise to a vote of the qualified voters of the city, at the next succeeding general election. [Id.]

Art. 1182. Franchise election.—Such election shall occur within twelve months from the date such ordinance takes effect. If such election shall not occur within the said twelve months, then such ordinance may be submitted, if petitioned therefor as before provided, at a special election to be called by the governing body therefor. Whenever said ordinance is submitted at any election, notice thereof shall be published at least twenty days successively in a daily newspaper in said city prior to the holding of said election. The ballot used at said election shall briefly describe the franchise to be voted on and the terms thereof and shall contain the words “For the granting of a franchise” and “Against the granting of a franchise”. If a majority of those voting at said election shall vote in favor of granting a franchise, the governing body upon canvassing the returns shall so declare and said franchise shall take effect in accordance with its terms. No franchise shall extend beyond the period fixed for its termination. [Id.]

CHAPTER FOURTEEN.

CITIES ON NAVIGABLE STREAMS.

| | | | |
|--------------------------|---------|--------------------|---------|
| | Article | | Article |
| Extension of limits..... | 1183 | Regulation | 1186 |
| Powers | 1184 | Restrictions | 1187 |
| Status of territory..... | 1185 | | |

Art. 1183. Extension of limits.—The city council of all cities situated along or upon navigable streams in this State, and acting under special charters, may extend the limits of said city for the limited purposes named in the four succeeding articles, so as to include in said city the said navigable streams and the land lying on both sides thereof for a distance of twenty-five hundred feet from the thread of said stream to a distance of twenty miles or less in an air line from the ordinary boundaries of said city, either above or below the boundaries of said city, or both, by the passage of an ordinance extending the boundaries of said city to include the territory aforesaid, being a strip five thousand feet wide, and twenty miles, more or less, in length, or so much thereof as the city council may consider advisable to add to the limits of said city. [Acts 1913, p. 47.]

Art. 1184. Powers.—The city council of said city shall have the right, power and authority to secure land within the territory so added to said city by purchase, condemnation or gift, for the improvement of the navigation of said navigable streams or waters either by the United States or by said city, or by any navigation or other improvement district, and for the purpose of establishing and maintaining wharves, docks, railway terminals, side tracks, warehouses or any other facilities or aids whatsoever to either navigation or wharves. In all condemnation proceedings under this law the same procedure shall apply that now applies in condemnation of land by cities for the purchase of streets. [Id.]

Art. 1185. Status of territory.—For the purposes specified, the corporate limits of said cities shall, upon passage of said

ordinance, be extended from the existing limits so as to include all the land added to said city by said ordinance. Such city shall have no right to tax the property over which such boundaries are extended, unless such property is within the line and within the limits of the general city boundaries or limits. [Id.]

Art. 1186. Regulation.—After the passage of the ordinance adding said territory to said city, said city shall have and exercise the fullest and most complete power of regulation of navigation and of wharfage and of wharfage rates and of all facilities, conveniences and aids to wharfage or navigation consistent with the Constitution of this State, and shall further have authority by criminal ordinances or otherwise, to police the navigation of said waters and the use of said wharves and facilities and aids to wharfage and navigation. [Id.]

Art. 1187. Restrictions.—The power granted in the four preceding articles shall not authorize the extension of the territory of any city for the limited purposes named so as to include any land which is already part of any other city or town corporation whether incorporated under the general laws or under special law, or any land at the time belonging to any other city or town. [Id.]

CHAPTER FIFTEEN.

CONSOLIDATION OF CITIES.

| | Article | | Article |
|-----------------|---------|-----------------------|---------|
| Authority | 1188 | "Consolidation" | 1191 |
| Petition | 1189 | Registration | 1192 |
| Election | 1190 | Merger | 1193 |

Art. 1188. Authority.—When two or more cities in this State over five thousand in population, adjoining and contiguous to each other in the same county, shall be desirous of being consolidated, it shall be lawful for them to adopt or amend their respective charters so as to consolidate under one government and take the name of the larger city, in the manner and subject to the provisions hereinafter prescribed. [Acts 1917, p. 71.]

Art. 1189. Petition.—Whenever as many as one hundred qualified voters of each of said cities shall petition the governing body of their respective cities to order an election for the purpose of voting on the consolidation of such cities into one city, said bodies may, at their next regular meeting order an election to be held at the usual voting places in the cities, on the same day, not less than thirty days after such order is made. If said petitions be signed respectively, however, by qualified electors equal to fifteen per cent of the total vote cast at the last preceding general election for city officials in each of said cities, next preceding the filing of said petitions, the respective governing bodies shall, within ten days after the receipt thereof, order an election to be held. [Id.]

Art. 1190. Election.—The governing body of each of said cities shall appoint from among the qualified voters of their respective cities, judges and clerks of said elections, and such elections shall be conducted under the ordinances of said cities, and in conformity with the general laws of this State. All persons:

voting at such election in favor of consolidation shall have written or printed on their ballots the words, "For Consolidation," and all persons voting at such election not in favor of consolidation shall have written or printed on their ballots the words, "Against Consolidation." [Id.]

Art. 1191. "**Consolidation**".—The term "consolidation," as used in this chapter, means the adoption by the smaller cities of the charter and name of the larger of said cities, and the amendment of the charter of the larger cities so as to include in its boundaries the territory of the smaller city or cities so consolidated with it. [Id.]

Art. 1192. **Registration**.—If a majority of the qualified voters at said election in each of said cities shall vote in favor of consolidation, the mayor or chief executive officer exercising like or similar powers of each of said cities as soon as practicable after the returns of said election have been made, shall certify to the Secretary of State an authenticated copy under the seal of the said cities showing the approval of the qualified voters of the consolidation of the two cities. The Secretary of State shall thereupon file and record the same in a separate book to be kept in his office for such purpose. The returns of such election shall be recorded at length in the record books of the respective cities, and the consolidation of such cities shall be held thereupon to be consummated. [Id.]

Art. 1193. **Merger**.—After the consummation of such consolidation, all record books, public property, money on hand, credits, accounts and all other assets of the smaller of the annexed cities shall be turned over to the officers of the larger city, who shall be retained in office as the officials of the consolidated city during the remainder of their respective terms, and by such consolidation the offices existing in the smaller municipality shall be abolished and declared vacant, and the persons holding such offices shall not be entitled after the consummation of such consolidation, to further remuneration or compensation. All outstanding liabilities of the two cities so consolidated shall be assumed by the consolidated city. Whenever at the time of any such consolidation the respective cities shall have on hand any bond funds voted for public improvements not already appropriated or contracted for, such money shall be kept in a separate fund and devoted to public improvements in the territory for which such bonds were voted, and shall not be diverted to any other purpose. [Id.]

CHAPTER SIXTEEN.

CORPORATION COURT.

| | | | |
|----------------------------|--------------|---------------------|--------------|
| Creation of court..... | Article 1194 | Term of office..... | Article 1198 |
| Jurisdiction..... | 1195 | Vacancy..... | 1199 |
| Judge or recorder..... | 1196 | Clerk..... | 1200 |
| Judge in other cities..... | 1197 | | |

Art. 1194. [903] **Creation of court**.—There is hereby created and established in each of the incorporated cities, towns, and villages of this State, a court to be known as the "Corporation Court." [Acts 1899, p. 40.]

Art. 1195. [904] **Jurisdiction.**—A corporation court shall have jurisdiction within the territorial limits of the city, town or village, in all criminal cases arising under the ordinances of the said city, town or village, and shall also have concurrent jurisdiction with any justice of the peace in any precinct in which said city, town or village is situated in all criminal cases arising under the criminal laws of this State, in which punishment is by fine only, and where the maximum of such fine may not exceed two hundred dollars, and arising within such territorial limits. [Id.]

Art. 1196. [905] **Judge or recorder.**—Such court shall be presided over by a judge to be known as the “recorder” who, in cities, towns or villages incorporated under special charter shall be selected under the provisions of the charter concerning the election or appointment of the judge to preside over the municipal court. All such provisions are hereby made applicable to the recorder herein provided for. [Id.]

Art. 1197. [905] **Judge in other cities.**—In cities, towns and villages, not incorporated under special charter, the mayor shall be ex-officio recorder of the “corporation court,” unless the governing body shall by ordinance authorize the election of a recorder, in which case a recorder shall be elected in the same manner and for the same time as the mayor is elected. [Id.]

Art. 1198. [906] **Term of office.**—Wherever in any such city, town or village, the office of the presiding magistrate of the municipal court therein shall not have expired when the recorder is elected, the recorder first elected shall hold his term of office corresponding to the unexpired term of said magistrate; and every two years thereafter such recorder shall be elected for a term of two years., [Id.]

Art. 1199. [906] **Vacancy.**—A vacancy in the office of recorder or clerk of the court in any city, town or village, shall be filled by the governing body for the unexpired term only. [Id.]

Art. 1200. [907] **Clerk.**—A clerk for said corporation court shall be elected by the governing body of each such city, town or village, at the same time at which the recorder is elected; but it may be provided by ordinance that the city secretary shall be ex-officio clerk of the said court, who may be authorized to appoint a deputy with the same power as the secretary. Such clerk shall hold his office for two years. In case of ex-officio clerk, he shall hold his office during his term as city secretary. The clerk shall keep minutes of the proceedings of the said court, issue all process, and generally perform all the duties of the clerk of a court as prescribed by law for a county clerk in so far as the same may be applicable. [Id.]

CHAPTER SEVENTEEN.

CONDEMNATION FOR HIGHWAYS.

| | Article | | Article |
|--------------------------|---------|-----------------------------|---------|
| Cities empowered..... | 1201 | Notice of assessment..... | 1211 |
| Powers | 1202 | Hearing | 1212 |
| Further powers..... | 1203 | Assessments levied..... | 1213 |
| Resolution | 1204 | Assessment commission..... | 1214 |
| Survey | 1205 | Certificates | 1215 |
| Condemnation | 1206 | Suit on certificate..... | 1216 |
| Statutes applicable..... | 1207 | Reassessments | 1217 |
| Errors | 1208 | Deficiency assessments..... | 1218 |
| Assessments | 1209 | Suit | 1219 |
| Lien | 1210 | Enforcement of law..... | 1220 |

Art. 1201. Cities empowered.—Cities having more than one thousand inhabitants under the preceding Federal census may proceed in accordance with the provisions hereof, independently of and without reference to any other applicable law or charter provision, present or future, which, however, shall remain in force as alternative methods. The term “city” or “cities” used herein shall include all incorporated towns and cities acting hereunder. [Acts 1923, p. 4.]

Art. 1202. Powers.—Subject to the terms hereof, the governing body of a city may lay out, open, establish, widen, straighten, or extend any highway within its limits, and purchase, condemn, and take property therefor. The cost of property purchased, taken or damaged, and costs of condemnation and making assessments hereinafter referred to, and of the enforcement, collection, sale or realization into money of assessments or certificates, together with all other costs of making such improvements, may be paid wholly from any fund of the city available therefor, or wholly from the fund created by said assessments, or partly from each of said funds. The governing body shall have power to assess part or all of such costs against the owners of property abutting or in the vicinity of such improvements specially benefited thereby, and against said property, and to collect, enforce, sell or realize said assessments into money. The term “highway” shall include any street, avenue, boulevard, alley, public place or square, dedicated or to be dedicated to public use. [Id.]

Art. 1203. Further powers.—Cities may purchase by agreement with the owner any property, all or part of which in the opinion of the governing body is necessary for the making of improvements under the terms hereof, and pay for same out of any fund available. Cities may sell and convey any part of such property not appropriated to such improvement on such terms and for such consideration as they may see fit, and the proceeds shall become a part of a special fund out of which the cost of improvements provided for herein may be defrayed and shall be used for no other purpose, but only the cost of property actually appropriated to such improvement shall be included in any assessment made under the provisions hereof. [Id.]

Art. 1204. Resolution.—When the governing body shall determine to proceed hereunder it shall so declare by resolution which may state the nature and extent of the improvement to

be made and the limits thereof, and may describe the parcel or parcels of land proposed to be taken or condemned by any description substantially identifying the same, or by lot or block number, or number of front feet, or by the name of the owner, or if owned by an estate, the name thereof. No mistake or omission of said resolution shall invalidate it, and its passage shall be conclusive of the public use and necessity of the proposed improvement. [Id.]

Art. 1205. Survey.—Upon passage of such resolution, the city engineer or engineer designated by the governing body shall prepare and submit to said body a plat showing the nature and limits of the proposed investments, the boundaries thereof, and the points between which it is proposed to establish the same, and the property through which it is to be extended, which is to be taken or condemned therefor, and shall in writing report the estimated total cost of said improvement, and of each parcel of property to be condemned or acquired. The governing body shall examine said plat and report and correct errors therein, if any, but no error or omission shall invalidate the same, or any proceeding had thereafter pursuant thereto. [Id.]

Art. 1206. Condemnation commission.—No property shall be taken without just compensation first made to the owner. If the amount of the compensation can not be agreed upon, the city may condemn said property under the rules governing procedure as provided by law under the title of "Eminent Domain." [Id.]

Art. 1207. Statutes applicable.—The applicable provisions of the laws relating to eminent domain are made a part of this law, and shall apply to proceedings hereunder, and all parties shall proceed in accordance with and be governed by said articles, unless otherwise herein provided. The city shall not be required to execute the bond referred to in said laws. [Id.]

Art. 1208. Errors.—The governing body, said commission and judge before whom condemnation proceedings are pending, shall take all steps and do all things proper to correct any error, invalidity or irregularity in any proceeding with reference thereto, and shall do so at the instance of any interested party. No error or omission in said proceedings shall invalidate the same, but any proceeding may be corrected, taken again, or adjourned, until such corrections are made or omissions supplied. [Id.]

Art. 1209. Assessments.—Whenever the governing body shall order the making of any improvement herein referred to, it may then or thereafter at any time provide by resolution that all or part of the costs thereof, as defined in the third article of this chapter, shall be assessed against said property abutting said proposed improvement, or in the vicinity thereof, and the owners thereof specially benefited thereby, together with reasonable attorney's fees and all costs incurred in the collection of said assessments, and shall have power to apportion the same among the owners of said property, and may designate the

property proposed to be assessed, or the district within which property will be benefited and within which assessments may be made, provided no assessment shall be made against any property, or its owner, in excess of the special benefits thereto in the enhanced value thereof from said improvement. No assessments shall be made against any property exempt from execution, but the owner shall be personally liable and assessed therefor. [Id.]

Art. 1210. **Lien.**—Assessments shall constitute a prior lien upon the property to all others, except ad valorem taxes, and shall relate back and take effect as of the date of the resolution ordering the same. [Id.]

Art. 1211. **Notice of assessment.**—No assessment shall be made against owners of property benefited, or their property, until after a reasonable opportunity to be heard shall have been given them, lienholders, and others interested, before such governing body, or the commission hereafter referred to, preceded by a reasonable notice thereof, published three times prior to said hearing in some newspaper of general circulation in the city, the first publication to be not less than ten days prior to said hearing, and the names of owners, lienholders, and others interested need not be specifically set out in said notice, but the parcel or parcels of land proposed to be assessed shall be briefly described in said notice, either by lot and block, number, front feet, or by any other description reasonably identifying the same, or by reference to any plat, report or record filed in connection with said proceedings. The governing body or commission shall have power to give other and additional notice, but said published notice shall be sufficient. [Id.]

Art. 1212. **Hearing.**—At said hearing said owners, lienholders, and other interested parties shall have the right to contest in writing said assessments, the special benefits, irregularities or invalidities thereof, or any prerequisite thereto, and to produce testimony in support of said contests, and the governing body or said commission shall determine the amounts, if any, to be assessed. [Id.]

Art. 1213. **Assessments levied.**—The governing body shall make assessments by ordinance. Said assessments may be enforced by suit brought by the city for the benefit of any holder and owner of such assessments, or of the certificates issued thereon, or brought by such holder and owner; or by the sale of the property assessed in the same manner as near as possible as is provided for the sale of real estate for municipal taxes. Assessments may be made payable in not exceeding six installments, the last maturing in not over five years, and may bear interest at not over eight per cent per annum. [Id.]

Art. 1214. **Assessment commission.**—At the time of or after the passage by the governing body of the resolution ordering such assessments, it shall have power in its discretion to declare that said hearing to property owners and other interested parties shall be had before the commissioners then or thereafter appointed to make condemnations, or before their successors are

appointed should a vacancy occur, and thereupon such commission shall cause to be given the notice or notices provided in the third preceding article, and it shall have all the powers conferred by this law upon such governing body, and shall do all things with reference to said assessments which said governing body is hereby empowered to do, except as herein expressly provided. If said hearing shall be before said commission, it shall report in writing its findings to the governing body, which shall examine said report, and, if found correct, approve the same, and shall by ordinance assess against the owners and their property found to be benefited by said improvements, the amounts found to be properly chargeable against them. [Id.]

Art. 1215. **Certificates.**—The city may issue assignable certificates, payable to the city, or to the purchaser thereof, declaring the liability of owners and their property for the payment of assessments, and may fix the terms, time of payment, the conditions of default, and maturity thereof. [Id.]

Art. 1216. **Suit on certificate.**—The allegations of such recitals of such certificates in any suit brought for the enforcement thereof, shall be a sufficient allegation of all proceedings had by said governing body with reference to the making of said improvements and the assessment of the cost thereof, and of all prerequisites to the said assessment, and shall be deemed sufficient to permit proof of said proceedings and prerequisites without the necessity of alleging and setting forth the same in the pleadings, by caption, substantially or in full. [Id.]

Art. 1217. **Reassessments.**—No error in any proceeding hereunder, or in the description of property, or in the name of the owner, shall invalidate an assessment, which shall nevertheless be in effect as against the real and true owner and his property. Whenever the governing body is advised of such error it shall correct the same, and shall at the request of any interested party reassess any owner or property erroneously assessed, after lawful notice and hearing and in accordance with benefits as herein provided as to original assessments, and may fix the time and terms of payment of said sums so reassessed, and issue assignable certificates evidencing the same as herein provided as to original assessments. The right to make said reassessments shall continue until the expiration of six years from the date of the ordinance making the original assessment. But if the same shall have been resisted or brought in question in any action at law, the time consumed in said action shall be excluded in computing said term of six years. In making such reassessments it shall not be necessary to do any act, or take any step, or again perform any prerequisite already legally done or performed with reference to the original assessment, but the governing body may in its discretion proceed without again taking steps already validly taken or performed provided no reassessment shall be made until after the notice and hearing and in accordance with benefits, as herein provided. [Id.]

Art. 1218. **Deficiency assessments.**—If after any assessment has been made hereunder, if by means of an increased award of

compensation for property taken or damaged in condemnation proceedings hereunder, or on appeal from the award of said commission, or for any other reason, the amount assessed and apportioned between the property owners benefited shall be found insufficient to defray all the costs of the improvement as herein defined, the governing body may, in its discretion, assess the deficiency against owners of property benefited, and their property, and apportion same among them, after the hearing and notice herein provided and after complying with each provision hereof applicable to original assessments; or said deficiency assessments may be made after notice and hearing before said commission in the manner provided in the fourth preceding article and assignable certificates evidencing said assessment may be issued by the city. [Id.]

Art. 1219. Suit.—Any property owner against whom or whose property an assessment or reassessment has been made, may, within ten days thereafter bring suit to set aside or correct the same, or any proceeding with reference thereto on account of any error or invalidity therein, but thereafter such owner, his heirs, assigns, or successors shall be barred from such action or any defense of invalidity in such proceedings or assessment or reassessment, in any action in which the same may be brought into question. [Id.]

Art. 1220. Enforcement of law.—The governing body shall have power to pass any ordinance or resolution, or to adopt rules and regulations, or to take any steps proper to give full legal effect to every part of this chapter. No assessment or reassessment shall be affected or invalidated in any manner by any error, omission or invalidity in any proceeding of the city hereunder with reference to the making of any improvement herein provided for, or with reference to the taking or condemnation of any property therefor, or with reference to determining and paying damages for property taken or damaged, but regardless thereof, and regardless of the fact that at the date of said assessments said improvements may not have been completed, the said assessments shall be in all things valid and binding. [Id.]

CHAPTER EIGHTEEN.

ARTIFICIAL LIGHTING SYSTEM

| | Article | | Article |
|--------------------|---------|----------------------|---------|
| May install | 1221 | Notice of hearing | 1231 |
| Petition | 1222 | Hearing | 1232 |
| Plans | 1223 | Order of assessments | 1233 |
| Resolution | 1224 | Lien | 1234 |
| Specifications | 1225 | Suit | 1235 |
| Bids | 1226 | Proceedings | 1236 |
| Contract | 1227 | Certificates | 1237 |
| Assessments | 1228 | Public Improvements | 1238 |
| Mode of assessment | 1229 | General powers | 1239 |
| Statement | 1230 | Control | 1240 |

Art. 1221. May install.—Incorporated cities or towns of more than five thousand inhabitants under the preceding Federal census for the purpose of making local public street improvements by installing and maintaining special lighting systems in said cities or portions thereof, may proceed in accordance with the provisions of the next succeeding nineteen articles, in-

dependently of and without reference to any other applicable law or charter provisions, present or future, except as herein provided for, which said law or charter provision shall remain in force as alternative methods. The term "city" or "cities," as used herein, shall include all incorporated cities and towns acting hereunder. [Acts 2d C. S. 1923, p. 16.]

Art. 1222. Petition.—Subject to the terms hereof, whenever a petition is filed with the governing body setting forth that a certain street, streets, or portions thereof not less than one block, naming and describing the same, or certain districts composed of streets, highways, boulevards or alleys, should be specially illuminated, and that an additional system is necessary for that purpose, and stating that such illumination thereof will be a public improvement and will be conducive to the public welfare, and is signed by a majority of the owners of property abutting on said street, streets or portions thereof, and praying that the governing body of such city specially illuminate such street, streets or portion thereof, and construct, install, equip and maintain additional system of street lights for that purpose, the governing body shall proceed in the manner hereinafter set out. [Id.]

Art. 1223. Plans.—The petitioning property owners may provide in said petition plans and specifications together with the kind of poles and lights and other material necessary to properly install said special lighting system, or such part of same as they desire to specify, and the governing body in that instance may order the same or any part thereof used in the construction of said system. If the kind specified in said petition is not available, the governing body shall use material of like kind and quality to that specified in said petition. Said body may reject any or all of said plans and specifications and have same prepared as hereinafter provided for. [Id.]

Art. 1224. Resolution.—The governing body shall have power, by resolution, to order the making of the public improvements mentioned herein, or any of them, by a majority vote, without first being petitioned to do so by the abutting property owners as hereinbefore provided, and the passage of such resolution shall be conclusive of the public necessity and the benefits thereof, and no notice of such action by the governing body shall be requisite to its validity. Such resolution shall in general terms, set forth the nature and extent of the improvements or improvement to be made, the street, streets or portions thereof to be illuminated, the material or materials with which the improvements are to be constructed, and the method or methods under which the cost of such improvements are to be paid. Such resolution shall be passed whether the improvements are made with or without the petition of the abutting property owners. [Id.]

Art. 1225. Specifications.—Upon the passage of the resolution by the governing body as hereinbefore provided, it shall be the duty of the city engineer, or the official of the city whose duties most nearly correspond to that of city engineer, to forth-

with prepare plans and specifications for the said improvement, which, when completed, shall be submitted to the governing body for its approval.

Art. 1226. Bids.—When the plans and specifications have been approved and adopted by the governing body, it shall be the duty of the city secretary, or other officer as may be designated by the governing body, to at once advertise for sealed bids for the construction of such improvements in accordance with the specifications. Such advertisement shall be inserted in a daily paper of general circulation in the city concerned, and shall state the time within which the bids may be received as prescribed by the governing body, which shall not be less than ten and not more than fifteen days from the insertion of said advertisement. Bids shall be filed with the city secretary, or such other officer as the governing body may designate, and shall be opened and read at a public meeting of the governing body. Such body shall have the right to accept such bids as it shall deem most advantageous to the abutting property owners concerned in the improvement, or may reject any and all bids. No bid shall be amended, changed or revised after being filed. [Id.]

Art. 1227. Contract.—When the bids for such improvements have been accepted by the governing body, the city shall enter into a contract with the contractor or contractors to whom the work has been let for the performance thereof, which contracts shall be executed in the name of the city by its chief executive and attested by the city secretary, or such other officer as may be designated by the governing body, with the corporate seal. [Id.]

Art. 1228. Assessments.—The city shall have power to assess the whole cost of installing and completing the improvements provided for herein, both for labor and material, against the owners of property abutting upon the street, streets or portions thereof, upon which said improvements are to be constructed, and who are specially benefited thereby, and shall have power to fix a lien against such property to secure the payment of the proportion of such costs assessed against the owners of such property. In no event shall costs be assessed against such owners or their property, or their personal liability therefor finally determined until after the hearing hereinafter mentioned, and after the adjustment of equities between such owners. The cost assessed against any property or the owner thereof, shall not exceed the amount of the special benefit in enhanced value which such property shall receive from such improvement. [Id.]

Art. 1229. Mode of assessment.—The portion of the costs of such improvements which may be assessed against any such property or its owners, shall be in proportion as the frontage of the property of each owner is to the whole frontage of the property on the street, streets or portions thereof abutting on the special lighting system, and such cost shall be apportioned in accordance with what is commonly known as the frontage or front foot rule; provided that if the application of this rule would, in the opinion of the governing body in particular cases be unjust or unequal, it shall be the duty of said body to assess

and apportion said costs in such proportion as it may deem just and equitable, having in view the specific benefit in enhanced value to be received by each owner of such property, the equities of such owners and the adjustment of such apportionment, so as to produce a substantial equality of the benefits received by and the burdens imposed upon each owner. [Id.]

Art. 1230. **Statement.**—The contract or contracts for such improvements having been executed and approved by the governing body, the city engineer, or the officer of the city whose duties most nearly correspond to that of city engineer, shall prepare a written statement which shall contain the names of such persons, firms, corporations or estates as may own property abutting on the section to be improved, the number of front feet owned by each, and describing the property owned by each, either by lot and block number, or otherwise so describing such property as may be sufficient to identify same; and such statement shall contain an estimate of the total cost of the improvement, the amount per front foot to be assessed against abutting property and its owners, and the total estimated amount to be assessed against each owner. Such statement shall be submitted to the governing body whose duty it shall be to examine same and correct any errors that may appear therein, but no error, omission or mistake in said statement shall in any manner invalidate any assessment made, or lien or claim of personal liability fixed thereunder. [Id.]

Art. 1231. **Notice of hearing.**—When the statement shall have been examined and approved by the governing body, it shall declare by resolution, and directing notice thereof to be given to the owners aforesaid by publication for ten consecutive days in a daily newspaper of general circulation in the city where the improvement is to be made; but if there be no daily newspaper in such place, then the governing body shall give such notice to such owners by registered mail at least ten days before the time set for the hearing as hereinafter provided. The notice shall state the time and place of the hearing and the street, streets or portions thereof to be improved, with a general description of such improvements and a statement of the amount per front foot proposed to be assessed against the property, and a notice to all such property owners and all persons interested to appear at such hearing. It shall not be necessary to include in such notice a description of any property or the name of the owner, but such notice shall nevertheless be binding and conclusive upon all owners of property, or persons interested in or having a lien or claim thereon. [Id.]

Art. 1232. **Hearing.**—On the day set out in the notice for the hearing, not less than ten days from the date of such notice, or at any time thereafter before the close of the hearing, any person, firm or corporation interested in any property which may be claimed to be subject to assessment for the purpose of paying the cost of the improvement, in whole or in part, shall be entitled to a hearing before the governing body as to all matters affecting said property, or the benefits thereto, or such improve-

ments, or any claim of liability, or objection to the making of said improvements, or any invalidity or irregularity in any proceeding with reference to making said improvements, or any other objection thereto. Such person, firm, or corporation shall file their objections in writing, and thereafter the governing body shall hear and determine the same, and all persons interested shall have full opportunity to produce evidence and witnesses and appear in person or by attorney; and a full and fair hearing thereof shall be given by such governing body, which hearing may be adjourned from time to time without further notice. The governing body shall have the power to inquire into and determine all facts necessary to the adjudication of such objections and the ascertainment of the special benefits to such owners by reason of the contemplated improvements; and shall render such judgment or order in each case as may be just and proper. Any objection to the irregularity of the proceedings with reference to the making of such improvements as herein provided, or to the validity of any assessment or adjudication of personal liability against such property or the owners thereof, shall be deemed waived unless presented at the time and in the manner herein specified. [Id.]

Art. 1233. Order of assessments.—When the hearing above mentioned has concluded, the governing body shall, by ordinance, assess against the several owners of the property abutting on the street, streets or portions thereof, such proportionate part of the cost of improvements as said body shall have adjudged against the respective owners and their property. Said ordinance shall fix a lien upon such property and declare the respective owners thereof to be personally liable for the respective amounts to be assessed; and shall state the time and manner of payment of such assessment; and said governing body may order that the said assessments shall be payable in installments, and prescribe the amount, time and manner of payment of such installments, which, except as hereinafter provided, shall not exceed six, and the last payment shall not be deferred beyond five years from the completion of such improvement and its acceptance by the city. The said ordinance shall also prescribe the rate of interest to be charged upon deferred payments, not to exceed seven per cent per annum; and may provide for the maturity of all deferred payments and their collection upon default of any installment of principal or interest. [Id.]

Art. 1234. Lien.—Each property owner shall have the privilege of discharging the whole amount assessed against him, or any installment thereof, at any time before maturity, upon payment thereof with accrued interest. The fact that more than one parcel of land, the property of one owner or jointly owned by two or more persons, firms or corporations, have been assessed together in one assessment, shall not invalidate the same or any lien thereon, or any claim of personal liability thereunder. The cost of any such improvement assessed against any property or owner thereof, together with all costs and reasonable attorneys fees when incurred, shall constitute a personal claim against such property owner, and shall be secured by a lien on such prop-

erty superior to all other liens, claims, or titles, except city, county and State taxes, and such personal liability may be enforced by suit in any court of competent jurisdiction. In any suit brought under this article, it shall be proper to join as defendants two or more property owners who are interested in any single improvement or any single contract for such improvement. The person or persons who own property at the date of any ordinance providing for the assessment thereof, shall be severally and personally liable for their respective portions of the said assessment. The lien of such improvements shall revert back and take effect as of the date of the original resolution ordering the improvement, and the passage of such resolution shall operate as notice of such lien to all persons. Any error or mistake in such ordinance in the name of the owner of the property assessed, shall not invalidate the lien or personal liability thereby created, but the same shall nevertheless exist against the real and true owner of such property as if correctly described. [Id.]

Art. 1235. Suit. — At any time within ten days after the hearing herein provided for has been concluded, any person or persons having an interest in any property which may be subject to assessment under this law, or otherwise having any financial interest in such improvement or improvements or in the manner in which the cost thereof is to be paid, who may desire to contest on any ground the validity of any proceeding that may have been had with reference to the making of such improvements or the validity in whole or in part of any assessment or lien or personal liability fixed by said proceedings, may institute suit for that purpose in any court of competent jurisdiction. Any person who shall fail to institute such suit in said period of ten days, or who shall fail to diligently prosecute such suit in good faith to final judgment, shall be forever barred from making any such contest or defense in any other action, and this estoppel shall bind their heirs, successors, administrators and assigns. The city and the person or persons to whom the contract has been awarded shall be made defendants in such suit, and any other proper parties may be joined therein. [Id.]

Art. 1236. Proceedings. — There shall be attached to the plaintiff's petition an affidavit of the truth of the matters therein alleged, except such matters as are alleged on information and belief, that said suit is brought in good faith and not to injure or delay the city or the contractor or any owner of real estate abutting on the improvement. Unless the provisions of this article are complied with by the plaintiff or plaintiffs, such suit shall be dismissed on motion of any defendant and in that event plaintiff or plaintiffs shall be barred and estopped to the same extent as if suit had not been brought. In any case where a suit is brought as above provided, then the performance of the work may be suspended at the election of either the city or contractor until such suit shall be finally determined in the court of original jurisdiction or any appellate court to which the same may be taken by appeal or writ of error. Every appeal or writ of error shall be perfected within thirty days from the adjourn-

ment of the term of court of original jurisdiction at which final judgment was rendered in such suit; and no appeal or writ of error to review the judgment of said court may thereafter be taken or sued out by either party. Any such suit shall be entitled to precedence in the courts of this State, both of original and appellate jurisdiction, and shall be heard and determined as promptly as practicable. [Id.]

Art. 1237. Certificates.—The governing body may provide that for the cost, which is assessed against the abutting property and its owners, the contractor to whom the work may be let shall look only to such property owners and their property, and that the city shall be relieved of liability for such cost. The governing body may also authorize assignable certificates against abutting property or property owners. The recital in such certificates that the proceedings with reference to making such improvements have been regularly had in compliance with the terms of this law, and all prerequisites to the fixing of this lien and the claim of personal liability evidenced by such certificate, have been performed, shall be prima facie evidence of the facts so recited, and no other proof thereof shall be required, but in all courts the said proceedings and prerequisites shall, without further proof, be presumed to have been had or performed. Such certificates shall be executed by the chief executive of the city, and attested with the corporate seal by the city secretary or such other officer as may be designated by the governing body. [Id.]

Art. 1238. Public improvements.—The governing body, if it deems it to be more advantageous to the public, provided public funds are available therefor, may order by resolution the making of any local public improvement by installing a special lighting system as contemplated herein, and for such purpose shall prescribe the district composed of the street or streets, highways, boulevards or alleys, or any portion thereof, that are sought to be improved by the establishment and maintenance of such special lighting system. Specifications shall be prepared therefor under the direction of the governing body and bids shall be invited upon the same as provided herein for making such local improvements. Contracts shall be let as provided herein for making contracts in other cases. A hearing shall be accorded to all property owners owning property abutting upon the streets in such districts to be improved by the said lighting system, and the cost of the same shall be assessed against such property in the same manner as provided herein in other cases; a special lien shall be created against the abutting property and the owners thereof shall be personally liable as is provided herein in all other cases. The cost of making the said improvement shall be paid out of any available funds of the city which may be provided by said body. The amount of the cost of making such improvements so paid by the city to the contractor shall be reimbursed to the city by the property owners whose property is assessed in the manner provided for herein. All proceedings relative to making the assessments and issuing assignable cer-

tificates shall apply as far as practicable to the procedure to be followed in making the public improvements under the terms of this article. [Id.]

Art. 1239. **General powers.**—The governing body may provide additional rules and regulations governing hearings and the issuance of notices therefor as may be deemed advisable in order to afford a full hearing to all property owners concerning the assessments levied or to be levied against them on account of the special benefits received from the improvements so ordered. Such body may use such money as is at its disposal to assist in the financing of the public improvements herein provided for. [Id.]

Art. 1240. **Control.**—After the public improvements provided for in the preceding nineteen articles have been completed and the job accepted by the city, the same shall become the property of the city, and the city shall maintain the same at its own expense, as a part of its regular lighting system. [Id.]

CHAPTER NINETEEN.

ABOLITION OF CORPORATE EXISTENCE.

| Article | Article | | |
|-------------------------------|---------|----------------------------------|------|
| Authority | 1241 | Suits barred | 1253 |
| Petition | 1242 | Payment of claims | 1254 |
| Requisites of abolition | 1243 | Collection of tax, etc. | 1255 |
| Receiver | 1244 | Delinquent taxes | 1256 |
| Duties of receiver | 1245 | Prior claims | 1257 |
| Claim | 1246 | Public schools | 1258 |
| Notice of claim | 1247 | School taxes | 1259 |
| Adjustment | 1248 | Public buildings | 1260 |
| Contest, suit | 1249 | Abolition of towns | 1261 |
| Judgment and costs | 1250 | When corporation ceases to func- | |
| Limitation | 1251 | tion | 1262 |
| Certain dissolutions | 1252 | Action for debt | 1263 |

Art. 1241. [1077] **Authority.**—Cities and towns incorporated under the general laws and cities and towns of ten thousand inhabitants or less chartered under special law, including those which may have heretofore accepted the provisions of Chapter 1 of this title, may abolish their corporate existence in the manner hereinafter provided. [Acts 1895, p. 166; G. L. Vol. 10, p. 896.]

Art. 1242. [1078] **Petition.**—When one hundred of the property tax-payers, who are qualified voters of any such city or town, desire the abolishment of such corporation, they may petition the county judge to that effect, who shall thereupon order an election to be held in such city or town, as in the case of its incorporation. If a majority of the property taxpayers, who are qualified voters, of any such city or town is less than one hundred in number, then the county judge shall order an election as above provided upon the presentation to him of a petition signed by a majority of the tax payers of such city or town, who are qualified voters thereof. [Acts 1899, p. 245.]

Art. 1243. [1079] **Requisites of abolition.**—All persons who are legally qualified voters of the State and county in which such an election is ordered, and are resident property taxpayers in the city or town where such election is to be held, as shown by the last assessment roll of such city or town, shall be entitled to vote at such election. If a majority of such voters voting at

such election shall vote to abolish such corporation, the county judge shall declare such corporation abolished, and enter an order to that effect upon the minutes of the commissioners court, and from the date of such order, said corporation shall cease to exist. [Acts 1895, p. 166; G. L. Vol. 10, p. 896.]

Art. 1244. [1080] **Receiver.**—In all cases where any city or town having theretofore had a valid corporate existence, under the laws of this State, has abolished said corporate existence in the manner provided by law, and in all cases where any city or town having a valid corporate existence under such laws may hereafter abolish their corporate existence, any creditor of any such city or town may apply to the judge of the district court of the district in which such city or town may be situated, for the appointment of a receiver for said corporation. After having posted up in at least three public places in the county where such city or town is located, one of which shall be in said city or town, written notice stating the substance of the application, when and before whom the same will be heard, such judge in term time or vacation, may appoint a suitable person as such receiver for such corporation, and shall fix the amount of bond to be given by such receiver in at least double the probable amount of the indebtedness or value of the property of such town or city, conditioned for the faithful performance of his duties as such officer, and for the paying over and delivery of all money and property coming into his hands as such receiver, to the parties entitled to receive same, such bond to be approved by the judge making the appointment; and same, together with order of appointment, shall be filed with, and recorded in, the minutes of said court by the district clerk of the county where such city or town is situated. Receivers appointed under the provisions of this chapter shall receive such compensation as the court may allow. [Acts 1905, p. 325.]

Art. 1245. [1081] **Duties of receiver.**—A receiver appointed under the preceding article, after having given the required bond, and after having same duly filed and recorded, shall take charge of all the real and personal property, including moneys, minute books, ordinances, etc., except such property as pertains to the public free schools or devoted exclusively to public use, and shall return an inventory of all such property, money, books, etc., so received by him to the next succeeding term of the district court for the county in which such city or town is situated; and, for the purpose of securing such property, money, books, etc., he may, under the order of said court, or the judge thereof in vacation, bring suit against any person in possession of such property, books, or moneys, or indebted to said city or town, the same as such city or town could were it still incorporated. [Id.]

Art. 1246. [1082] **Claim.**—Any person, firm or corporation, having any claim against such city or town, shall within six months from the appointment of said receiver, present to him a statement of the amount of such claim, duly verified, which, if he finds correct, he will mark allowed, and file same in the district court; and at its next regular term, if no protest be filed, said

claim shall be approved by said court and shall thereafter be considered a valid debt against such city or town. [Id.]

Art. 1247. [1082] **Notice of claim.**—No such claim or account against such city shall be allowed or approved by the receiver without notice of the presentment thereof first having been given, by publication in some newspaper, if any, in the town or city where same is filed or presented, for four consecutive weeks, and in case there be no newspaper published in such town or city, then by posting notice of the presentment of such claim at the courthouse door of the county in which said town or city is situated, for four weeks prior to the allowance of said claim or account. Such notice, whether published or posted, shall state the name and residence of the creditor, the amount and date of said claim and account, and for what purpose incurred. [Id.]

Art. 1248. [1082] **Adjustment.**—If such receiver finds any claim so presented to him unjust, in whole or in part, he shall endorse his finding thereon, and return same to the claimant, who may file same with the district court, if he desires to accept the findings of the receiver, and such claim for the amount allowed by the receiver may be acted upon by said court as other claims. [Id.]

Art. 1249. [1082] **Contest, suit.**—In case any protest by any taxpayer of said city or town be filed against any claim in said court, together with a bond to be approved by said court, that he will pay all costs of suit in case said claimant established his claim in full in any State court in which he may sue thereon, then such district court shall refuse to approve such claim until it shall have been established by judgment, recovered thereon in a State court of competent jurisdiction. Such suit to establish such claim or any claim disallowed in part or in whole, may be brought against the receiver, who shall make all legal defense against such claim. The court trying said claim is hereby authorized to hear and consider any material defense that may be or may have been urged against said claim, except that of limitation, though such claim, prior thereto, may have been reduced to judgment, but such judgment shall be considered, upon such trial, as prima facie evidence of the justness of such a claim. [Id.]

Art. 1250. [1082] **Judgment and costs.**—Any judgment recovered against such receiver upon a claim against such city or town shall be allowed by the receiver and approved by the district court wherein the receivership is pending. In all suits upon claims wherein protest and bond were filed in the district court, the claimant shall be liable for the costs of the suit, unless he recovers judgment for the full amount for which he asked the approval of the said district court. In suits upon claims rejected in part by the receiver, the claimant shall be liable for the costs of the suit, unless he establishes his claim for a greater amount than was allowed by the receiver. [Id.]

Art. 1251. [1083] **Limitation.**—Limitations shall not run, begin to run or be plead against any claim against such city or town at any time prior to six months after the appointment of such receiver. [Id.]

Art. 1252. [1084] **Certain dissolutions.**—No receiver shall be appointed for any such city or town whose corporate existence was dissolved prior to July 17, 1905, where the application therefor was not filed in said court within two years from and after July 10, 1905. [Id.]

Art. 1253. [1085] **Suits barred.**—No suit shall be brought against such receiver upon any claim, against the allowance of which a protest has been filed, as herein provided for, at any time after six months from the date of filing such protest, nor after the expiration of six months from the date of the disallowance of any such claim in whole or in part, where the claim has not been filed in the district court, after such disallowance as hereinbefore provided. [Id.]

Art. 1254. [1086] **Payment of claims.**—The district court of the county in which such town or city is situated, and in which such receivership is pending, shall provide for the payment of all claims legally established against such city or town, and determine the priority of any claims and order the sale of all property in the hands of the receiver subject to sale for such purpose, and direct such receiver to pay such claims. If the money and proceeds of property are insufficient to pay such indebtedness, then said court, at the request of any creditor, at the first regular term of said court in each year, shall levy a tax upon all the property and real and personal estate situated within the limits of said city or town, as previously incorporated, on the first day of the preceding January, not exempt from taxation under the Constitution and laws of this State, sufficient to discharge the indebtedness, but not to exceed the rate allowed by existing law for such purposes in incorporated cities and towns. [Id.]

Art. 1255. [1087] **Collection of tax, etc.**—Whenever the district court, having jurisdiction in the premises, has or may order the assessment and collection of taxes for the payment of the indebtedness of such town, or city, the tax assessor for the county in which such town or city is situated, shall assess the taxes so ordered in like manner as taxes in rural school districts. The county tax collector for such county shall collect such taxes in like manner as taxes in rural school districts. This article shall not repeal any part of Articles 1245 to 1250 inclusive. For the services rendered under this article, the assessor and collector shall receive the same compensation as for like services for the assessment and collection of taxes in rural school districts; and said collector shall pay such taxes when collected, to the receiver of such city or town. [Id.; Acts 1909, p. 68.]

Art. 1256. [1088] **Delinquent taxes.**—Suits may be brought by the receivers against delinquents, and a lien shall exist upon all property for such taxes, the same as though the corporate existence of such city or town had never been abolished, and such levy and assessment had been made by its council and assessor. [Acts 1905, p. 327.]

Art. 1257. [1090-1-2] **Prior claims.**—The compensation of the receiver, together with all the court costs and expenses, shall constitute a prior claim against such city or town, and shall be

first paid out of any money on hand or collected. In case of taxation the money collected each year shall be paid pro rata upon all claims according to their priorities until all claims established and all costs and expenses are fully paid. On final settlement of such receivership, any money or property left on hand shall be turned over to the trustees or other officers in charge of the public free school situated in said city or town for the benefit of such school. [Id.]

Art. 1258. [1093] **Public schools.**—Where the public free schools of such city or town are under the management of trustees appointed or elected by the voters of the city or town, or by the city or town council, at the time its incorporation is abolished under the provisions of this chapter, such trustees shall have the management of said schools for the remainder of the term for which they were appointed or elected, subject to the supervision of the commissioners court, unless such city or town shall sooner become incorporated for school purposes only. [Acts 1895, p. 166.]

Art. 1259. [1094] **School taxes.**—All taxes for municipal or school purposes which shall have been levied at the date of the abolishment of such corporation, and which shall not have been paid, shall be collected by the collector of the county in the same manner provided by law for the collection of State and county taxes, and paid into the county treasury; but the portion of such taxes levied for the purpose of maintaining the public free schools of such city or town shall be paid over to the trustees of the public free schools of said city or town and applied by them to the purpose for which they were levied.

Art. 1260. [1095] **Public buildings.**—When any corporation is abolished under the provisions of this chapter, and shall at the time of any such abolishment own any public buildings, public parks, public works or other property, and the same shall not have been sold or disposed of as provided in this chapter, the same shall be managed and controlled by the commissioners court of such county for the purpose to which same were originally used and intended; and, for this purpose, the commissioners court shall have and exercise, with reference thereto, the powers originally conferred by charter upon the mayor and aldermen of such city.

Art. 1261. [1096] [615] [540] **Abolition of towns.**—When twenty-five of the qualified voters of any incorporated town or village shall desire the abolishment of such corporation they may petition the county judge to that effect, who shall thereupon order an election to be held in such town or village, as in the case of its incorporation; and, if there be a majority of the voters of said corporation, voting at such election in favor of abolishing such corporation, the county judge shall declare the corporation abolished, and enter an order to that effect upon the minutes of the commissioners court. From and after the date of such order, the said corporation shall cease to exist. Nothing in this chapter shall be construed to repeal or otherwise affect any laws now upon the statutes of this State providing for the incorporation of towns and villages for school purposes;

said towns and villages having not less than two hundred inhabitants. [Acts 1897, p. 194.]

Art. 1262. When corporation ceases to function.—When any corporation is abolished, or if any defacto corporation has been or shall be declared void by any court of competent jurisdiction, or if the same shall cease to operate and exercise the functions of such corporation or de facto corporation, when such corporation or defacto corporation has indebtedness outstanding, then the officers of such corporation, in office at the time of such dissolution, or at the time such corporation ceases to operate and exercise the functions of such corporation, shall take charge of the property of the corporation and sell and dispose of same, and shall settle the debts due by the corporation, and for said purpose shall have power to levy and collect a tax from the inhabitants of said city, town or village in the same manner as the said corporation. In the event of their failure or refusal to do so, and upon the petition of any number of the citizen taxpayers of such corporation or of the holders of the evidences of indebtedness of such corporation or de facto corporation, to the proper court within this State having jurisdiction in the county in which such dissolved or de facto corporation shall have been situated, the judge of said court shall appoint three trustees to take charge of such property and dispose of same and settle the debts of such corporation or de facto corporation, and for said purpose the said trustees so appointed shall be vested with all the powers herein given to the officers of such corporation. [Acts 1923, p. 309.]

Art. 1263. Action for debt.—The holder of any indebtedness against any municipal corporation which has or may be dissolved in any way provided in the preceding article, including dissolution of a de facto corporation by a court of competent jurisdiction, may maintain a suit in the proper court within this State having jurisdiction in the county in which such dissolved or de facto corporation shall have been situated, to establish said indebtedness against said municipal corporation, and service may be had on such dissolved corporation by serving the citation upon any person who was the mayor, secretary or treasurer of said corporation or pretended to act as such, at the time of its dissolution, and judgment may be rendered in such suit in favor of the holder of such indebtedness against such municipal corporation as fully as if it had not been dissolved or its organization declared void. The status of such city, town or village shall be and remain the same in so far as it affects the holders of its indebtedness, until such indebtedness has been paid. [Id.]

CHAPTER TWENTY.

MISCELLANEOUS PROVISIONS.

| | Article | | Article |
|------------------------------|---------|---------------------------------|---------|
| Current expenses..... | 1264 | Oil and mineral lands..... | 1267 |
| Extension of limits..... | 1265 | Sale or lease of franchise..... | 1268 |
| Discontinuing territory..... | 1266 | Salaries of officers..... | 1269 |

Art. 1264. Current expenses.—Any incorporated city or town in this State, whether incorporated under the general laws

of this State, or incorporated by special charter adopted in the manner provided by law, and having a population of 161,000 or more according to the preceding Federal census, may, through its governing body, provide for the payment of its current expenses for any current fiscal year, or for any portion of such fiscal year, by the issuance of warrants drawn against the current revenues of said city or town for such fiscal year, in the manner following:

1. Such warrants shall be dated and numbered consecutively as they are issued, and shall become a lien upon the revenues of said city or town for such fiscal year, available for the payment thereof, and shall be paid consecutively according to their respective dates and numbers as funds for the payment thereof become available.

2. If no funds are available to pay such warrants at the time of their issuance, the governing body may provide for the payment of interest upon such warrants, or may provide for the payment of a discount thereon. Such interest or discount shall never exceed an amount equal to six per cent per annum upon the face of such warrants for the period of time intervening between the date of their issuance and the time of their payment.

3. In no event shall the governing body provide for the issuance of warrants upon which interest or discount is to be paid, in excess of eighty per cent of the estimated revenues of said city or town for such fiscal year, after the deduction of all interest upon the bonded indebtedness of such city or town to be paid out of the revenues for such fiscal year, and such sums as may be required to be paid into any sinking fund or into any special fund or any special trust fund of said city or town out of its revenues for such fiscal year. [Acts 1st C. S. 1921, p. 25.]

Art. 1265. **Extension of limits.**—Any city having a population of 100,000 and under 150,000 as shown by the preceding Federal census, shall have the power and authority to amend its charter so as to extend its boundary limits by annexing additional territory adjacent and contiguous to such city, where the territory so annexed does not include any incorporated city or town having more than five thousand inhabitants according to the preceding Federal census. Such extension shall be effected in the manner following:

1. The governing body of such city may, upon its own motion, and shall upon the petition of at least ten per cent of the qualified voters of said city as shown by the preceding general election, submit such proposed amendment to a vote of the qualified voters of such city, which election shall be held as provided by chapter 13 of this title.

2. If such amendment is adopted by a majority of those voting at such election, and such annexed territory shall include any incorporated city or town of five thousand inhabitants or less, then, from and after the adoption of such amendment, the incorporation of such city or town of five thousand inhabitants or less shall be abolished and shall cease to exist, and all record

books, public property, public buildings, money on hand, credit accounts and other assets of the annexed incorporated city or town shall become the property of said larger city and shall be turned over to the officers thereof, and by such annexation, the offices existing in the smaller municipality shall be abolished and the persons holding such offices shall not be entitled to further remuneration or compensation; and all legal outstanding liabilities of such smaller city shall be assumed by the enlarged city.

3. Whenever such annexed city or town shall have on hand any bond funds for public improvement and not already appropriated or contracted for, such money shall be kept in a separate special fund and devoted to public improvements in the territory for which such bonds were voted, and shall not be diverted or used for any other purpose.

4. After such annexation, all claims, fines, debts and taxes due or payable to the annexed city or town shall thereupon become due and payable to said larger city and shall be collected by it. If taxes for the current year shall have been duly assessed prior to said annexation, then the amount so assessed shall remain as the amounts due and payable from the inhabitants of such annexed city or town for such current year. [Id. p. 153.]

Art. 1266. Discontinuing territory.—Whenever there exists within the corporate limits of any city in this State of 150,000 or more population according to the preceding Federal census located in a county having a population according to such census in excess of 205,000, whether such city was organized by special law, home rule charter, or general laws of this State, territory to the extent of at least three acres contiguous, unimproved and adjoining the lines of any such city, the governing body of any such city may, by ordinance duly passed, discontinue said territory as a part of any such city. When said ordinance has been duly passed, the governing body shall cause to be entered an order to that effect on the minutes or records of such city; and from and after the entry of such order, said territory shall cease to be a part of such city. [Acts 3rd C. S. 1923, p. 166.]

Art. 1267. Oil and mineral lands.—Cities and towns chartered or organized under the general laws of Texas, or by special Act or charter, which may own oil or mineral lands, shall have the power and right to lease such oil or mineral lands for the benefit of such town or city, but shall not lease for such purposes any street or alley or public square in said town or city, or any land therein dedicated by any person to public uses in such town or city; and no well shall be drilled within the thickly settled portion of any city or town, nor within two hundred feet of any private residence. [Acts 1919, p. 183.]

Art. 1268. Sale or lease of franchise.—Any individual, association or corporation now or hereafter organized under the laws of this State, including any municipal corporation of this State, engaged in manufacturing, producing, supplying or selling electricity, natural or artificial gas, steam, or water, or owning or operating any street railway within any incorporated city,

town or village within this State, where the rates charged for such service are subject to regulation under authority of the laws of this State, may, by a majority vote of the qualified voters thereof having been first obtained at an election held for that purpose, lease, sell or otherwise dispose of its entire plant or business or any part thereof, to any other individual, association or corporation which, at the time of said sale, lease or other disposition of said plant or business or any part thereof, is doing, or has authority to do, a like business in said incorporated city, town or village. Nothing herein shall authorize any corporation to engage in any kind of business not authorized by its charter. [Acts 1915, p. 131.]

Art. 1269. **Salaries of officers.**—The municipalities of this State, having a population exceeding 150,000 according to the preceding Federal census, organized under any special Act of this State or by virtue of the Constitutional provisions of this State, shall have power and authority, acting by and through their governing bodies, to fix and prescribe from time to time, and to alter, modify and change the same, a salary or compensation of not exceeding the following sums, anything in any charter of such municipality or any special law to the contrary:

An annual salary to be paid the corporation judge, four thousand dollars; city attorney and city auditor, six thousand dollars each. No salary of said officers shall be decreased, after being fixed by said governing bodies, during the term of office for which they are elected or appointed. The salaries named herein may be changed in any charter or any amendment to any charter voted on at the home rule election by any such city. [Acts 3rd C. S. 1920, p. 31; Acts 3rd C. S. 1923, p. 187.]

TITLE 29.

COMMISSIONER OF DEEDS.

| | | | |
|-------------------|-----------------|-----------------|-----------------|
| Appointment | Article 1270 | Seal | Article 1272 |
| Oath | 1271 | Authority | 1273 |

Art. 1270. [1097] [618] [542] **Appointment.**—The Governor is authorized to biennially appoint and commission one or more persons in each or any of the other states of the United States, the District of Columbia, and in each or any of the territories of the United States, and in each or any foreign country, upon the recommendation of the executive authority of said state, District of Columbia or territory or foreign country to serve as commissioner of deeds. Such commissioner shall hold office for two years. [Acts 1885, p. 98; G. L. Vol. 9, p. 718.]

Art. 1271. [1098] **Oath.**—Such commissioner, before he shall proceed to perform any duty under and by virtue of this title, shall take and subscribe an oath or affirmation, before the clerk of any court of record in the city, county or country in which such commissioner may reside, well and faithfully to execute and perform all the duties of such commissioner under the laws of this State; which oath or affirmation, certified to by the clerk under his hand and seal of office, shall be filed in the office of the Secretary of State in this State. [Acts 1846, p. 187; G. L. Vol. 2, p. 1493.]

Art. 1272. [1102] [623] [547] **Seal.**—Every such commissioner shall provide for himself a seal with a star of five points, in the center, and the words, "Commissioner of the State of Texas," engraved thereon, which seal shall be used to certify all the official acts of such commissioner; and without the impress of said seal upon any instrument, or to certify any act of such commissioner, said act shall have no validity in this State. [Act Dec. 31, 1861, p. 21; G. L. Vol. 5, p. 465.]

Art. 1273. [1097] [618] [542] **Authority.**—The commissioner of deeds shall have the same authority as to taking acknowledgments and proofs of written instruments, administering oaths, and taking depositions to be used or recorded in this State, as is conferred by law upon a notary public of this State. [Acts 1885, p. 98; G. L. Vol. 9, p. 718.]

TITLE 30.

COMMISSION MERCHANTS.

1. COMMISSION MERCHANTS.

| | | | |
|------------------------------------|---------|------------------------|---------|
| | Article | | Article |
| "Commission Merchant" defined..... | 1274 | Account of sales..... | 1278 |
| Bond of..... | 1275 | False charges..... | 1279 |
| Suits on bond..... | 1276 | Duties of shipper..... | 1280 |
| Unlawful interest in sales..... | 1277 | | |

Art. 1274. [3826] **"Commission Merchant" defined.**— Any person, firm or corporation pursuing, or who shall pursue the business of selling produce, or goods, wares or merchandise of any kind upon consignment for a commission, shall be held to be a commission merchant. [Acts 1907, p. 61.]

Art. 1275. [3827] **Bond of.**—Every commission merchant shall make bond in the sum of three thousand dollars, with a solvent surety company doing business in this State or with two or more good and sufficient sureties, who are residents of this State, and who shall make affidavit that they in their own right, over and above all exemptions, are worth the full amount of the bond they sign as sureties, payable to the county judge of each county in which such commission merchant maintains an office, and to the successors in office of such county judge as trustees for all persons who may become entitled to the benefits of this subdivision; conditioned that such commission merchant will faithfully and truly perform all agreements and contracts entered into with consignors for said produce, goods, wares or merchandise, will promptly receive and sell such produce, goods, wares or merchandise, and will on receipt of such produce, goods, wares or merchandise class the same, and if such class as made by such commission merchant is not as high as that made and sent to him by the consignor, he (the commission merchant) will immediately notify the consignor of such fact and of the class made by him; and, as soon as sold will send to the consignor a full and complete account of sales of same, giving an itemized account thereof, and the price received, the dates of sales, and shall, within five days after said produce, goods, wares or merchandise are sold, send to the consignor the full amount received for the same, less the commission due said commission merchant under the contract of assignment, such bond to be approved by the county judge of the county in which said commission merchant maintains an office, and by said judge filed for record in the county clerk's office as chattel mortgages are now authorized to be filed by law. [Acts 1907, p. 61; Acts 1913, p. 178.]

Art. 1276. [3828] **Suits on bond.**—Such bond shall be made and filed for record in each county in which such commission merchant maintains an office, and in which county suits may be maintained upon such bond by any person claiming to have been damaged by a breach of its condition. Said bond shall not become void upon the first recovery thereon, but may be sued upon until the amount thereof is exhausted. When said bond

by suits of recovery has been reduced to the sum of fifteen hundred dollars, said commission merchant shall be required to enter into a new bond in the sum of three thousand dollars as required in the first instance. Said new bond shall be liable for all future contracts, agreements or consignments thereafter entered into by said commission merchant and consignor of such produce, cotton, sugar, goods, wares or merchandise, and upon failure of said commission merchant to give said new bond as above required, he shall cease doing business in this State. [Id.]

Art. 1277. [3829] [2432] **Unlawful interest in sales.**—No factor or commission merchant to whom any cotton, sugar, produce or merchandise of any kind is consigned for sale on commission or otherwise, shall purchase the same or reserve any interest whatever therein upon the sale of same, either directly or indirectly, in his own name or in the name or through the instrumentality of another, for his own benefit or for the benefit of another, or as a factor or agent of any other person, without express written license from the owner or consignor of such cotton, sugar, produce or other merchandise, or some person authorized by him, under a penalty of forfeiture of one-half the value of cotton, sugar, produce or other merchandise so purchased or sold, to be recovered by the owner of the same by suit in the county where the sale took place, or wherein the offending party resides. [Acts 1860, p. 82; G. L. Vol. 4, p. 1444.]

Art. 1278. [3830] [2433] **Account of sales.**—Upon the shipment of any produce, cotton, sugar, goods, wares or merchandise, consigned for sale to any factor or commission merchant, it is hereby made his duty that such commission merchant will faithfully and truly perform all agreements and contracts entered into with consignors for said produce, cotton, sugar, goods, wares and merchandise; that said commission merchant will promptly receive and sell such produce, cotton, sugar, goods, wares or merchandise, in accord with the contract of consignment and will on receipt of such produce, cotton, sugar, goods, wares or merchandise class the same, and if such class as made by such commission merchant is not as high as that made and sent to him by the consignor, he, (the commission merchant) will immediately notify the consignor of such fact and of the class made by him and as soon as sold will send to the consignor a full and complete account of sales of same, giving an itemized account thereof, and the price received, the dates of sales, and shall, within five days after said produce, cotton, sugar, goods, wares or merchandise are sold, send to the consignor the full amount received for the same, less the commission due said commission merchant under the contract of consignment; and if cotton, sugar, or other produce sold by weight, the weight of same in gross, and the tare allowed, and be accompanied by the certificate or memorandum, signed by the weigher who weighed the same, of the weight and condition as required by law, and upon failure of said commission merchant to comply with any one of the provisions of this article, he and the bondsmen

required by this subdivision shall be liable for all actual damages incurred by the consignor by reason thereof, and in addition thereto a penalty of not less than one hundred nor more than five hundred dollars, to be recovered by the consignor in a suit filed for said actual damages and for said penalty. [Acts 1913, p. 178.]

Art. 1279. [3831] [2434] **False charges.** — No commission merchant or factor shall be permitted to make any charge for mending or patching, or roping bales, or for cooperage or repairing bales, or for labor, or hauling, or cartage, or for storage, marking or weighing, unless the same has been actually done; and, in case of any such charge, a bill of particulars shall be rendered notwithstanding any usage or custom to the contrary to make such charge, by rate or average; and the person offending against any provision of this article shall be liable to a penalty of not less than one hundred nor more than five hundred dollars, to be recovered by suit by the owner or consignor. [Acts 1860, p. 82; G. L. Vol. 4, p. 1444.]

Art. 1280. **Duties of shipper.** — Each consignor of produce, goods, wares or merchandise in this State consigning produce goods, wares, or merchandise to commission merchants to be sold on commission shall, when he consigns such produce, goods, wares or merchandise, send to such commission merchant a written statement in which such consignor shall state the amount, the quality or class, the condition of such produce, goods, wares or merchandise so consigned, and if said merchant, on receipt of same, fails to promptly notify said consignor of any objection he may have to the class, quality or quantity so consigned, then such statement shall be prima facie evidence of the fact that said consignment of such produce, goods, wares or merchandise is truly stated in said statement by the consignor to said commission merchant. When such produce, goods, wares or merchandise is received by said commission merchant, such merchant shall give to the agent of the railroad or other carrier so delivering such produce, goods, wares or merchandise, a receipt for same which receipt shall state the quality, quantity, grade and condition of such produce, goods, wares or merchandise, and said agent of the railroad or other carrier shall keep such receipt on file in his office subject to the inspection of any one interested in such shipment, for six months from the date of such receipt. [Acts 1913, p. 278.]

2. LIVE STOCK COMMISSION MERCHANT.

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|-------------------------------------|--------------|--------------------------|--------------|
| Live stock commission merchant..... | Article 1281 | Bond recorded..... | Article 1285 |
| To make bond..... | 1282 | Deposit of proceeds..... | 1286 |
| Conditions and amount of bond..... | 1283 | Suit on bond..... | 1287 |
| Duty of court, judge..... | 1284 | | |

Art. 1281. **Live stock commission merchant.** — Any person, firm or corporation, who shall pursue the business of selling live stock, cattle, cows, calves, steers, hogs, sheep, goats, mules, horses, jacks, and jennets or any of them, upon consignment for a commission or other charges, or who shall solicit consignment of live stock as a commission merchant or agent, or

who shall advertise or hold himself out to be such, shall be deemed and held to be a live stock commission merchant within the meaning of this subdivision and subject to all the provisions and penalties herein prescribed. [Acts 1921, p. 175.]

Art. 1282. To make bond.—All live stock commission merchants before they shall engage in said business within this State, are hereby required to make bond in an amount hereinafter specified, signed by a solvent surety company authorized to do business in this State and having a paid up capital of not less than five hundred thousand dollars, which said bond shall be payable to the county judge of the county in which such commission merchant has his principal office or place of business, and to his successors in office, as trustee for all persons who may become entitled to the benefits of this law, such bond to be filed by such county judge in the office of the county clerk of the county in which such commission merchant has his principal office or place of business, and in which county suits shall be instituted for any illegal breaches of said bond. [Id.]

Art. 1283. Conditions and amount of bond.—Said bond shall be conditioned that such live stock commission merchant will faithfully obey and carry out all the terms and provisions of this law, and will faithfully and truly perform all agreements entered into with all the consignors, owners or those holding valid liens on said live stock with respect to receiving, handling, selling and making remittances and payments of the net proceeds thereof to the said named parties, or to the person, firm or corporation to whom said consignors, owners or valid lien holders shall direct such payments to be made; and said bond shall further provide and shall be conditioned that such commission merchant shall within forty-eight hours of the sale of live stock so consigned, excluding the day of sale, Sundays, and holidays, remit the net proceeds thereof to the parties rightfully entitled to receive the same, or to such person, firm or corporation to whom such parties shall direct the payment to be made, or shall within forty-eight hours of the sale of such live stock for said parties at interest deposit to the credit of such parties their respective interest in the net proceeds thereof in some State or National bank in the city or town where such live stock commission merchant has his principal office or place of business, if requested by any or all of the said parties at interest to do so. Said bond shall be made annually and shall expire on September 1st of each year. The amount of such bond shall be fixed by the county judge as follows: Double the amount of the average daily sales of the stock sold on commission for the preceding twelve months period (computed upon the number of business days) by the person, firm or corporation desiring to pursue the business of a live stock commission merchant, which facts shall be made to appear to the county judge by the sworn statement of the individual, or member of the partnership, or by the president or secretary of the corporation, seeking the approval of said bond. Any person, firm or corporation who has not heretofore engaged in the business of a live stock com-

mission merchant shall give bond in the sum of twenty thousand dollars, which shall be the minimum bond to be given under this law. The period of forty-eight hours shall be computed, excluding the day of sale, Sundays and holidays. [Id.]

Art. 1284. Duty of court, judge.—The county judge shall carefully scrutinize said bond when tendered and if satisfied therewith approve said bond. No bond shall be approved by him which is not in the amount prescribed by this law, and conditioned as required by this law and executed by such surety company. The data as to such surety company shall be first duly certified to the said county judge by a certificate to that effect issued by the Commissioner of Insurance. [Id.]

Art. 1285. Bond recorded.—Said bond together with the sworn statement made to the county judge by the applicant seeking the approval of the same and setting forth the average daily sales of such applicant for the twelve months period next prior thereto, shall, as soon as practicable after the approval of said bond by the county judge, be filed for record in the county clerk's office in the county where the principal business of said commission merchant is to be carried on, and shall be recorded at length and properly indexed in a well-bound book kept for that purpose, to be labeled "Bonds of Live Stock Commission Merchants" and shall also file and securely retain in the archives of his office said original bond and sworn statement. Said clerk shall immediately upon the recording and indexing of said bond and statement furnish to the person, firm or corporation filing the same a correctly certified copy thereof. It is also made the duty of said commission merchant to procure said certified copy from said clerk at the earliest practicable date after the filing and recording thereof. [Id.]

Art. 1286. Deposit of proceeds.—If the proceeds of any live stock sold by said live stock commission merchant shall become involved in a dispute between contending claimants or if said live stock commission merchant is notified that other parties are asserting rights to said proceeds, or any part thereof, in opposition to the claim of those shipping said stock to said commission merchant, said live stock commission merchant shall deposit the amount of said net proceeds involved in such contention in some State or National bank in the town or city where said live stock commission merchant has his principal place of business, and promptly notify all interested parties of his said action in the premises; whereupon no further liability as to such funds so deposited shall accrue or continue as to said live stock commission merchant, either personally or on his bond. [Id.]

Art. 1287. Suit on bond.—The bond provided for by this law may be sued upon and recovery had thereon by any persons claiming to have been damaged by a breach of its conditions. Said bond shall not become void upon the first recovery thereon but may be sued upon until the amount thereof is exhausted. Upon a reduction of said bond by recoveries thereon to the extent of one-half thereof said live stock commission merchant shall be required forthwith to make and file a new bond condi-

tioned as in the third article of this subdivision so as to restore said bond to the required amount. If it shall come to the knowledge of the county judge that the surety company making such bond has become insolvent or is not financially able to make the said bond ample and sufficient in the opinion of said judge, then said officer shall notify said commission merchant to execute a new bond as herein provided for; whereupon it shall be the duty of such commission merchant to make a new bond the same as originally required by the provisions of this law. [Id.]

TITLE 31.
CONVEYANCES.

| | | | |
|---|--------------|---|--------------|
| Instrument of conveyance..... | Article 1288 | Conveyance by authorized officer..... | Article 1295 |
| Notice..... | 1289 | Estates in futuro..... | 1296 |
| Partial conveyances..... | 1290 | Implied covenants..... | 1297 |
| When an estate deemed a fee simple..... | 1291 | Incumbrances include what..... | 1298 |
| Form of conveyance..... | 1292 | Conveyance of separate lands of wife..... | 1299 |
| Other forms and clauses valid..... | 1293 | Conveyance of homestead..... | 1300 |
| Must be witnessed or acknowledged..... | 1294 | Failing as a conveyance..... | 1301 |

Art. 1288. [1103] [624] [548] **Instrument of conveyance.**—No estate of inheritance or freehold, or for a term of more than one year, in lands and tenements, shall be conveyed from one to another, unless the conveyance be declared by an instrument in writing, subscribed and delivered by the party disposing of the same, or by his agent thereunto authorized by writing. [Act. Feb. 5, 1840; P. D. 671; G. L. Vol. 2, p. 327.]

Art. 1289. [1104] [625] [549] **Notice.**—A conveyance, such as is described in the preceding article, shall not be good and effectual against a purchaser in good faith, without notice thereof and for a valuable consideration, nor against any creditor, unless such conveyance be acknowledged by the party who shall have signed or delivered it, or proved, in the manner required by law, and before some officer authorized by law to take such acknowledgment or proof, and be filed for record with the clerk of the county in which the land, or a part thereof, is situated. [Id.]

Art. 1290. [1105] [626] [550] **Partial conveyances.**—All alienations of real estate, made by any person purporting to pass or assure a greater right or estate than such person may lawfully pass or assure, shall operate as alienations of so much of the right and estate in such lands, tenements or hereditaments as such person might lawfully convey; but shall not pass or bar the residue of said right or estate purporting to be conveyed or assured; nor shall the alienation of any particular estate on which any remainder may depend, whether such alienation be by deed or will, nor shall the union of such particular estate with the inheritance by purchase or by descent, so operate as to defeat, impair or in any wise affect such remainder. [Id.]

Art. 1291. [1106] [627] [551] **When an estate deemed a fee simple.**—Every estate in lands which shall thereafter be granted, conveyed or devised to one although other words heretofore necessary at common law to transfer an estate in fee simple be not added, shall be deemed a fee simple, if a less estate be not limited by express words or do not appear to have been granted, conveyed or devised by construction or operation of law. [Id.]

Art. 1292. [1107] [628] [552] **Form of conveyance.**—The following form, or the same in substance, shall be sufficient as a conveyance of the fee simple of any real estate with a covenant of general warranty, viz:

"The State of Texas,

"County of _____.

"Know all men by these presents, That I, _____, of the _____ (give name of city, town or county), in the state aforesaid, for and in consideration of _____ dollars, to me in hand paid by _____, have granted, sold and conveyed, and by these presents do grant, sell and convey unto the said _____, of the _____ (give name of city, town or county), in the state of _____, all that certain _____ (describe the premises). To have and to hold the above described premises, together with all and singular the rights and appurtenances thereto in any wise belonging, unto the said _____, his heirs or assigns forever. And I do hereby bind myself, my heirs, executors and administrators to warrant and forever defend all and singular the said premises unto the said _____, his heirs and assigns, against every person whomsoever, lawfully claiming or to claim the same, or any part thereof.

"Witness my hand, this _____ day of _____, A. D. 19_____.

"Signed and delivered in the presence of _____

_____. [Id.]

Art. 1293. [1108] [629] [553] **Other forms and clauses valid.**—No person shall be obliged to insert the covenant of warranty, or be restrained from inserting any clause or clauses in conveyances hereafter to be made, that may be deemed proper and advisable by the purchaser and seller; and other forms not contravening the laws of the land shall not be invalidated. [Id.]

Art. 1294. [1109] [630] [554] **Must be witnessed or acknowledged.**—Every deed or conveyance of real estate must be signed and acknowledged by the grantor in the presence of at least two credible subscribing witnesses thereto; or must be duly acknowledged before some officer authorized to take acknowledgments, and properly certified to by him for registration. [R. S. 1879, 554.]

Art. 1295. [1110] [631] [555] **Conveyance by authorized officer.**—Every conveyance of real estate by a commissioner, sheriff or other officer legally authorized to sell, under or by virtue of a decree or judgment of any court within this State, shall be good and effectual to pass the absolute title to such real estate to the purchaser thereof; but nothing herein shall be construed to affect the right, title or interest of any person or persons other than the parties to such conveyance, decree or judgment, and those claiming under them. [Id.]

Art. 1296. [1111] [632] [556] **Estates in futuro.**—An estate or freehold or inheritance may be made to commence in futuro, by deed or conveyance, in like manner as by will. [Id.]

Art. 1297. [1112] [633] [557] **Implied covenants.**—From the use of the word "grant" or "convey," in any conveyance by which an estate of inheritance or fee simple is to be passed, the following covenants, and none other, on the part of the grantor for himself and his heirs to the grantee, his heirs or assigns, are

implied, unless restrained by express terms contained in such conveyance:

1. That previous to the time of the execution of such conveyance the grantor has not conveyed the same estate, or any right, title or interest therein, to any person other than the grantee.

2. That such estate is at the time of the execution of such conveyance free from incumbrances.

Such covenants may be sued upon in the same manner as if they had been expressly inserted in the conveyance.

Art. 1298. [1113] [634] [558] **Incumbrances include what.**—The term “incumbrances” includes taxes, assessments, and all liens upon real property.

Art. 1299. [1114] [635] [559] **Conveyance of separate lands of wife.**—The husband and wife shall join in the conveyance of real estate, the separate property of the wife; and no such conveyance shall take effect until the same shall have been acknowledged by her privily and apart from her husband before some officer authorized by law to take acknowledgments to deeds for the purpose of being recorded, and certified to in the mode pointed out in articles 6605 and 6608. [Acts 1897, p. 41; G. L., Vol. 10, p. 1095.]

Art. 1300. [1115] [636] [560] **Conveyance of homestead.**—The homestead of the family shall not be sold and conveyed by the owner, if a married man, without the consent of the wife. Such consent shall be evidenced by the wife joining in the conveyance, and signing her name thereto, and by her separate acknowledgment thereof taken and certified to before the proper officer, and in the mode pointed out in articles 6605 and 6608. [Id.]

Art. 1301. [1116] [637] [561] **Failing as a conveyance.**—When an instrument in writing, which was intended as a conveyance of real estate, or some interest therein, shall fail, either in whole or in part, to take effect as a conveyance by virtue of the provisions of this chapter, the same shall nevertheless be valid and effectual as a contract upon which a conveyance may be enforced, as far as the rules of law will permit.

TITLE 32.

CORPORATIONS—PRIVATE.

| Chapter | Page | Chapter | Page |
|---|------|-----------------------------------|------|
| 1 Purposes | 392 | 11 Roads | 429 |
| 2 Creation | 400 | 12 Bridges, Ferries and Causeways | 432 |
| 3 General Provisions | 404 | 13 Channel and Dock | 434 |
| 4 Lands | 412 | 14 Deep Water | 437 |
| 5 Books, Records, Etc. | 413 | 15 Oil, Gas, Salt, Etc. | 440 |
| 6 Liens for Fines, Etc. | 414 | 16 Waste Water | 443 |
| 7 Insolvent Corporations | 416 | 17 Trust and Investments | 444 |
| 8 Dissolution of Corporations | 417 | 18 Miscellaneous | 447 |
| 9 Religious, Charitable and Educational | 419 | 19 Foreign Corporations | 449 |
| 10 Public Utilities | 422 | 19a Non-Par Corporations | 451 |

CHAPTER ONE.

PURPOSES.

| Subject | Subdivision No. | Subject | Subdivision No. |
|---------------------|----------------------------|-------------------------|--|
| Abstractors | 56, 57 | Investment | 49, 50, 51, 52, 55 |
| Accountants | 59 | Iron | 45 |
| Advertising | 41 | Irrigation | 16, 28, 30, 31, 32, 80 |
| Aeroplanes | 78 | Labor | 83, 84 |
| Agriculture | 7, 8, 25, 28, 55, 80 | Land | 47, 56, 57, 80 |
| Alcohol | 18 | Laundry | 44 |
| Animals | 4, 5, 10 | Light | 14, 15, 16, 80 |
| Apartments | 44 | Livery | 66 |
| Apiaries | 26 | Loan | 24, 47, 48, 49, 81 |
| Automobiles | 64, 65 | Manufacturing | 34, 80 |
| Beverages | 17 | Merchants | 39, 40 |
| Boating | 10 | Metals | 45 |
| Bonds | 49, 50 | Mills | 15, 16, 25, 81 |
| Brine | 36 | Mining | 32, 34, 37, 38, 52, 80 |
| Bridges | 60, 62, 63, 70 | Molasses | 25 |
| Brokers | 49, 50, 51, 52, 55, 81 | Navigation | 73, 74, 75, 76, 77, 80 |
| Buildings | 43, 44, 45, 46, 47 | Office Buildings | 44 |
| Canals | 28, 30, 31, 32, 75, 76, 80 | Oil | 36, 37, 38 |
| Canning | 19, 24 | Opera | 44 |
| Causeways | 62 | Packing | 24 |
| Cemetery | 87 | Pipe Line | 36, 37 |
| Chamber of Commerce | 53 | Piows | 14, 15, 33, 80 |
| Charity | 2 | Printing | 42 |
| Child protection | 4 | Radio | 12 |
| Clearing Houses | 54 | Railways | 65, 66, 70, 71, 72, 74, 80 |
| Clubs | 9, 10 | Real estate | 47, 80 |
| Contractors | 45, 46 | Refrigerating | 15, 16, 17, 24 |
| Cotton | 15, 16, 27, 53, 81 | Religious | 1, 2 |
| Crematory | 87 | Rice | 28 |
| Dairies | 21 | Roads | 60, 61 |
| Dams | 28, 32 | Salt | 36 |
| Docks | 74, 77, 80, 81 | Sand and Clay | 36 |
| Drainage | 29, 30, 31 | Sanitariums | 6 |
| Drilling | 38 | Sewerage | 29 |
| Education | 2, 3 | Stages | 67 |
| Elevators, grain | 81 | Steamships | 73, 74, 77, 80 |
| Embalmers | 86 | Steel | 45 |
| Ferry | 63 | Stock raising | 21, 22, 23, 80 |
| Fire companies | 85 | Stocks | 49, 50, 51, 52, 55 |
| Fishing | 10 | Street railways | 67 |
| Foreign Business | 77, 78, 79, 80, 81 | Sugar | 25 |
| Fruits | 19, 20 | Surety | 55, 57, 58 |
| Garage | 64 | Telegraph and telephone | 11, 12 |
| Gas | 14, 15, 16, 36, 37 | Transfer | 65 |
| Gins | 15, 81 | Transportation | 36, 65, 66, 67, 68, 69, 70, 71, 72, 73, 77, 78, 80 |
| Guaranty | 55, 57, 58, 64 | Trust | 49, 55 |
| Horticulture | 7, 8 | Undertaking | 86 |
| Hotel | 44 | Unions | 83 |
| Hunting | 10 | Vegetables | 19, 20 |
| Ice | 15, 16, 17 | Warehouses | 77, 80, 81, 82 |
| Immigration | 84 | Water | 13, 15, 16, 32, 33, 38 |
| Insurance | 58 | Wireless | 12 |
| International trade | 79 | | |
| Interurban | 67, 68 | | |

Art. 1302. [1121] [642] [566] Purposes.—The purposes for which private corporations may be formed are:

1. The support of public worship.

2. The support of any benevolent, charitable, educational or missionary undertaking.

3. The support of any literary and scientific undertaking; the maintenance of a library, or promotion of painting, music and other fine arts.

4. The protection of women and children and the prevention of cruelty to animals.

5. The protection and preservation and propagation of fish, oysters and game.

6. The erection and maintenance of sanitoriums, with the right to acquire and own lands and town lots; to improve, cultivate, rent and alienate same; to erect storage dams and otherwise develop irrigation on such lands; to erect, acquire and maintain hotels and bath houses on its property; and in conjunction therewith, to erect and maintain training schools and outdoor sports on its property for the training and pleasure of its patients and their families; to maintain and carry on such industrial enterprises in conjunction therewith as shall be necessary to furnish employment to the patients therein and their families; provided such corporation shall not own or control more land than is necessary for the actual conduct and control of a sanitarium. [Acts 1897, p. 191; Acts 1913, p. 114; G. L. Vol. 10, p. 1245.]

7. The encouragement of agriculture and horticulture by associations for the maintenance of public fairs and exhibitions of stock and farm products.

8. To grow, sell and purchase seeds, plants, trees, etc., for agricultural, horticultural and ornamental purposes, and to purchase and lease all lands necessary for that purpose.

9. To support and maintain bicycle clubs, and other innocent sports. [Acts 1897, p. 189; G. L. Vol. 10, p. 1243.]

10. To establish and maintain fishing, hunting and boating clubs; to protect, preserve and propagate fish and game; to purchase and own such lands and bodies of water as may be desirable in connection therewith; to erect suitable improvements thereon; and to raise such live stock for profit only as the preserves of the club will maintain. [Acts 1907, p. 291.]

11. To construct and maintain a telegraph and telephone line.

12. To engage in radio telegraphy and telephony and wireless telegraphy and telephony, with authority to own, lease, conduct, maintain and operate all the necessary plants, equipment and facilities thereto pertaining. [Acts 1923, 3rd C. S. p. 171.]

13. To supply water to the public.

14. To manufacture and supply gas, light, heat and electric motor power, or either of them to the public by any means.

15. Private corporations may be created for, or after being created, may be so amended as to include two or more of the following purposes: To construct or purchase and maintain mills and gins; to manufacture and supply to the public by any means, ice, gas, light, heat, water and electric motor power, or either, in connection with such mills and gins, or either; to harvest grain, or to harvest and thresh grain; provided, that the

authorized capital stock of any corporation authorized by this subdivision shall not exceed two hundred and fifty thousand dollars. [Acts 1903, p. 227.]

16. The authorized capital stock of corporations created under or authorized by subdivision 88 hereof which shall include irrigation and any one or more of the other purposes named herein shall not exceed one million dollars; the authorized capital stock of corporations created under or authorized by this subdivision which shall include water works for the supply of water to the public or municipalities, and any one or more of the other purposes named, except irrigation, shall not exceed five hundred thousand dollars; and the authorized capital stock of corporations so authorized for any two or more of the purposes named herein, except irrigation and water works, or the supply of water to the public, shall not exceed two hundred thousand dollars. [Acts 1907, pp. 291, 294; Acts 1913, p. 352.]

17. To manufacture ice and non-intoxicating beverages, and in connection therewith, to operate a general storage business; provided, that no beverage of any kind prohibited by any law of this State from being manufactured, sold or stored, shall be so manufactured, sold, stored or in any manner kept in the possession of any company so incorporated. [Acts 1st. C. S. 1921, p. 151.]

18. To manufacture and sell denatured alcohol and its by-products, provided such corporation shall by provision in its charter, or by amendment thereof, limit the amount of its capital stock that may be owned or controlled, directly or indirectly, by one stockholder, and the number of votes that may be cast in any stockholders' meeting by one stockholder. [Acts 1907, p. 291.]

19. To construct and maintain establishments for the preserving and canning of fruits, vegetables and fish.

20. To grow and sell fruits, vegetables and tobacco. [Acts 1901, p. 70.]

21. To establish and carry on a dairy and creamery business. [Acts 1897, p. 192; G. L. Vol. 10, p. 1245.]

22. To raise, buy and sell livestock.

23. To construct and maintain stock yards and pens.

24. To construct and maintain establishments for slaughtering, refrigerating, canning, curing and packing meat, and to lend or advance money by such establishments on any class of live stock.

25. To grow and sell sugar cane with the right to make and refine sugar, molasses, and all by-products of sugar cane and to sell the same. [Acts 1905, p. 28.]

26. To conduct and carry on a general apiary business, and in connection therewith, to manufacture bee hives and bee keepers' supplies, and purchase and sell such goods, wares and merchandise used, manufactured and produced in such business. [Acts 1907, p. 11.]

27. To gather and harvest cotton; provided that the capital

stock of such corporation shall not exceed fifty thousand dollars. [Acts 1911, p. 28.]

28. To grow, prepare for market, and sell rice, with power to construct, maintain and operate such dams, reservoirs, lakes, wells, canals, flumes, laterals, and other appurtenances as may be necessary or convenient for the purpose of irrigating. [Acts 1905, p. 28.]

29. To construct and maintain sewers.

30. To construct, maintain and operate canals, drains and ditches outside the corporate limits of cities and towns in any county in Texas. [Acts 1897, p. 109; Acts 1893, p. 109; Acts 1888, S. S. p. 1; Acts 1887, p. 40; Acts 1885, p. 59; G. L. Vol. 9, pp. 679, 838, 999; G. L. Vol. 10, pp. 539, 1163.]

31. To excavate, maintain and operate drainage ditches, canals, and flumes with power to condemn lands necessary for the right of way and machinery plants for such drainage ditches, canals and flumes. [Acts 1897, p. 192; G. L. Vol. 10, p. 1245.]

32. To construct, maintain and operate canals, ditches, flumes, feeders, laterals, dams, reservoirs, lakes and wells, and for conserving, storing, conducting and transferring water to all persons entitled to the use of the same for irrigation, mining, milling, manufacturing, the development of power to cities and towns for waterworks, and for stockraising. [Acts 1917, p. 224.]

33. To construct and maintain water power.

34. To transact any manufacturing or mining business, and to purchase and sell goods, wares and merchandise used for such business.

35. To construct steam and electric plows for breaking, cultivating and draining lands.

36. To store, transport, buy and sell oil, gas, salt, brine and other mineral solutions; also sand and clay for the manufacture and sale of clay products. [Acts 1899, p. 202; Acts 1915, p. 259.]

37. To establish and maintain an oil business with authority to contract for the lease and purchase of the right to prospect for, develop and use coal and other minerals, petroleum and gas; also the right to erect, build and own all necessary oil tanks, cars and pipes necessary for the operation of the business of the same. [Acts 1897, p. 188; G. L. Vol. 10, p. 1242; Acts 1915, p. 225.]

38. To establish and maintain a drilling business, with authority to own and operate drilling rigs, machinery, tools and apparatus necessary in the boring, or otherwise sinking of wells in the production of oil, gas, or water, or either, and the purchase and sale of such goods, wares and merchandise used for such business. [Acts 1919, p. 8.]

39. To purchase and sell goods, wares and merchandise, and agricultural and farm products.

40. To buy and sell goods, wares and merchandise of any description, by wholesale or wholesale and retail, with a capital stock of not less than twenty thousand dollars; provided, such

wholesale and retail business shall not be conducted apart or in separate establishments.

41. To do a general advertising business. [Acts 1911, p. 28.]

42. To transact a printing or publishing business, and in connection therewith to sell goods, wares and merchandise of a stationery and blank book manufacturing business.

43. To erect and maintain market houses and market places.

44. To establish, maintain, erect or repair a hotel, office building, opera and play house, apartment house, or steam laundry. [Acts 1907, p. 291; Acts 1897, p. 189; G. L. Vol. 10, p. 1241.]

45. To design, purchase and sell steel and iron and other metal products and the manufacture of any or all of such products, and to design, sell, construct and erect engineering and architecture structures, and to contract for the construction and erection of such structures. [Acts 1915, p. 175.]

46. To contract for the erection, construction, or repair of any building, structure or improvement, public or private, and erect, construct or repair same or any part thereof, and to acquire, own, prepare for use any materials for said purposes. [Acts 1919, p. 65.]

47. To erect or repair any building or improvement, and to accumulate and lend money for said purposes, and to purchase, sell and subdivide real property in towns, cities and villages and their suburbs not extending more than two miles beyond their limits and to accumulate and lend money for that purpose. [Acts 1897, p. 189; G. L. Vol. 10, p. 1241.]

48. To accumulate and lend money without banking or discounting privileges.

49. For any one or more of the following purposes: To accumulate and lend money, purchase, sell and deal in notes, bonds and securities, but without banking and discounting privileges; to act as trustee under any lawful express trust committed to them by contract and as agent for the performance of any lawful act. [Acts 1919, p. 134.]

50. To subscribe for, purchase, invest in, hold, own, assign, pledge and otherwise deal in and dispose of shares of capital stock, bonds, mortgages, debentures, notes and other securities, obligations, contracts and evidences of indebtedness of foreign or domestic corporations not competing with each other in the same line of business; provided the powers and authority herein conferred shall in no way affect any provision of the anti-trust laws of this State. [Acts 1921, p. 265.]

51. To take and promote stock in manufacturing companies and corporations.

52. To organize exchanges, with authority to deal in the stocks of mining companies:

53. To organize cotton exchanges, chambers of commerce and boards of trade, with power to provide and maintain suitable rooms for the conduct of their business, and to establish and maintain uniformity in the commercial usages of cities and

towns, to acquire, preserve and disseminate valuable business information, and to adopt rules, regulations and standards of classification, which shall govern all transactions connected with the cotton trade, and with other commodities where standards and classifications are required, and generally to promote the interest of trade and increase the facilities of commercial transactions. [Acts 1899, p. 58.]

54. To establish and maintain clearing houses.

55. To accept, guarantee, enforce, become surety upon, buy, sell, contract with reference to, or otherwise deal in acceptances, bills of exchange, bills of lading and warehouse and other receipts growing out of or to be used in aid of the transportation, warehousing, distribution, or financing, in either domestic or foreign trade, of readily marketable, staple, non-perishable, agricultural products, and so executed or supported as to be secured upon or to represent such products in amounts at least equal in clear market value to the amount of the financial undertaking of such corporations upon or on account of such instruments; to buy, sell, indorse, contract with reference to, or otherwise deal in acceptances of approved banking corporations, not secured upon nor representing any such products, but eligible for rediscount to, or for purchase in, the open market by Federal Reserve Banks. [Acts 2nd. C. S. 1919, p. 21.]

56. To make, compile and own abstracts of titles to lands, and liens of all character on any property, or any other abstracts of records in this State, or county thereof, required by law.

57. To guarantee titles to lands and indemnify the holders thereof against losses by reason of defects in titles. [Acts 1907, p. 292.]

58. To guarantee and assure the validity of bills of lading and other contracts. [Id.]

59. To audit books, accounts and transactions of persons, firms or corporations, private, public or municipal.

60. To construct and maintain any species of roads and bridges in connection therewith.

61. To construct, build, acquire, own, operate and maintain toll roads within this State. [Acts 1913, p. 143.]

62. To construct, operate, and maintain causeways, or causeways and bridges, which may be used for any mode of travel and transportation, with the right to demand, receive and collect charges as fares or tolls.

63. To construct and maintain a bridge or ferry which may be used for any or all modes of travel and transportation.

64. To establish and maintain garages with authority to purchase, sell, store, house, rent, operate, repair and otherwise deal in automobiles and other motor vehicles and their accessories, gasoline, and oils necessary to the operation of motor vehicles. The right to operate shall not conflict with any ordinance of any incorporated city or town in which they shall operate. [Acts 1919, p. 7.]

65. To conduct a livery and transfer business with auto and

horse drawn vehicles, and for the sale of such vehicles. [Acts 1913, p. 174.]

66. To establish and maintain a line of stages.

67. To construct or acquire with power to maintain and operate, street railways and suburban railways and belt lines of railways within and near cities and towns, for the transportation of freight and passengers, with power also to construct, own and operate union depots, and to buy, own, sell and convey right of way upon which to construct railroads. [Acts 1897, p. 189; Acts 1903, p. 62; G. L. Vol. 10, p. 1241.]

68. To construct, acquire, maintain and operate lines of electric gas or gasoline, denatured alcohol, or naphtha motor railways within and between any cities or towns, and interurban railways within and between cities and towns, in this State, for the transportation of freight or passengers, or both. [Acts 1897, p. 188; G. L. Vol. 10, p. 1242; Acts 1903, p. 204; Acts 1909, 2nd. C. S. p. 396; Acts 1913, pp. 67, 349; Acts 1917, p. 390.]

69. To transport goods, wares and merchandise, or any valuable thing.

70. To construct railroads and bridges for railroad companies.

71. To build, maintain and operate a line of railroads to mines, gins, quarries, manufacturing plants and mills.

72. The construction, operation and maintenance of terminal railways. [Acts 1907, p. 300; Acts 1905, p. 211; Acts 1897, p. 188; Acts 1917, p. 134; G. L. Vol. 10, p. 1242.]

73. To build and navigate steamboats and vessels and to carry persons and property therein.

74. The building, constructing and repairing boats, ships and vessels for use in and for the navigation of rivers, lakes, streams and seas, with power to build, construct, maintain and operate such docks, dry docks, marine railways, wharves and other appurtenances as may be necessary for the accomplishment of such purpose. [Acts 1917, p. 246.]

75. To construct harbors and canals on the coast of the Gulf of Mexico.

76. To improve rivers and other waterways in this State, and to render the same navigable for steam vessels and other water craft, with the authority to charge and collect tolls for the navigation of such rivers and waterways.

77. To establish a transportation business with power to buy, construct, lease, own, operate and maintain and convey all kinds of steamships, vessels and other water craft, and to navigate the same between all parts of the globe, and upon rivers, and to construct, buy, lease, own, maintain, operate and convey warehouses, docks, and wharves, and to buy, lease, receive, own, hold, and enjoy real and personal property necessary in the transaction of its business; to receive, purchase, hold, use and convey such rights, privileges, franchises and property, and to exercise beyond the jurisdiction of this State such power as may be granted to or conferred upon it by any foreign government,

state or municipality; to have officers and agents, and to maintain offices at all points at which the company may do business; to act as principal or agent in buying and selling merchandise in all foreign countries; to carry passengers, freight, express and mail. [Acts 1897, p. 191; G. L. Vol. 10, p. 1245.]

78. To construct, build and manufacture aeroplanes, including all classes of flying machines, to buy, sell and otherwise deal therein, and to operate, or have operated any such machines for the purpose of carrying passengers and freight, or either, including United States mail, from and to any point in this State, and subject to the laws thereof, to and from any point in any State of the United States, or any foreign country, with the right to acquire, by purchase or otherwise, and to maintain all necessary starting and lighting grounds and fields. [Acts 1919, p. 9.]

79. To engage in international trade and to purchase and sell products of the farm, ranch, orchard, mine and forest. [Acts 1921, p. 227.]

80. To do business in any State or foreign country:

(a) The establishment of land companies to buy, own, sell and convey real estate and minerals, and engage in mining, agriculture and stock raising.

(b) Doing a general business in merchandise and manufactures.

(c) The acquisition, construction, maintenance, operating and owning of power and illuminating plants, and systems of every character.

(d) The acquisition, construction, maintenance, operating and owning of urban and other lines of railway and all other kinds of transportation and communication.

(e) The improvement of harbors and rivers, and the acquisition, construction, ownership, and operation of canals, irrigation work, wharves and warehouses, and all kinds of machinery, tools and materials used for all the purposes enumerated in this subdivision. Any corporation organized hereunder shall only own such real estate in this State as may be necessary for its office. For every charter granted hereunder which may include more purposes than are contained in any one paragraph of this subdivision, a separate franchise fee or tax shall be paid to this State for the additional purposes for which such corporation is organized. [Acts 1897, p. 191; G. L. Vol. 10, p. 1245; Acts 1901, p. 70.]

81. To construct or purchase or purchase and maintain mills, gins, cotton compresses, grain elevators, wharves, and public warehouses for the storage of products and commodities, and the purchase, sale and storage of products and commodities by grain elevator and public warehouse companies; the loan of money by such elevator and public warehouse companies; and to act as general commercial brokers and as custom brokers in the United States and foreign countries. [Acts 3rd C. S. 1920, p. 27.]

82. To construct, purchase, maintain and operate warehouses at one or more places in this State for the storage of products of the soil, with authority to issue negotiable receipts therefor; provided such corporation shall, by provisions of its charter, or amendment thereof, limit the amount of its capital stock that may be owned or controlled directly or indirectly by one stockholder, and the number of votes that may be cast in any stockholder's meeting by one stockholder to not exceeding one thousand dollars of its capital stock. [Acts 1907, p. 291.]

83. To organize laborers, workingmen, wage earners and farmers to protect themselves in their various pursuits. [Acts 1897, p. 191.]

84. To promote immigration.

85. To organize and maintain volunteer fire companies.

86. To conduct the business of undertaker and embalmer. [Acts 1901, p. 70.]

87. To maintain a public or private cemetery or crematory.

88. Private corporations may be created for, or, after being created, may so amend their charters as to include two or more of the following purposes, namely: The supply of water to the public for irrigation, power, municipal or domestic purposes; the manufacture of and supply of ice to the public; the generation of and supply of gas, electric light and motor power to the public; the manufacture, supply and sale of carbonated water to the public; the operation of cottonseed oil mills and the operation of cotton compresses; provided, that corporations including more than one of the purposes named in this Article shall pay the franchise tax provided by law for each of the purposes so included in their charter or amendments thereto. [Acts 1925, p. 188.]

CHAPTER TWO.

CREATION OF CORPORATIONS.

| | | | |
|---------------------------|--------------|-----------------------------------|--------------|
| May create..... | Article 1303 | Exempt corporations: stock..... | Article 1311 |
| Charter..... | 1304 | No capital stock..... | 1312 |
| Acknowledgment..... | 1305 | Filing charter..... | 1313 |
| Female incorporators..... | 1306 | Amendments..... | 1314 |
| Notice by firm..... | 1307 | Renewal of charter..... | 1315 |
| Capital stock..... | 1308 | Consolidation..... | 1316 |
| Further evidence..... | 1309 | Ostensible corporation: debt..... | 1317 |
| Corporations exempt..... | 1310 | Legislative authority..... | 1318 |

Art. 1303. [1120] [641] [565] **May create.**—Private corporations may be created by the voluntary association of three or more persons for the purposes authorized by law and in the manner hereinafter mentioned. [Acts 1874, p. 120; G. L. Vol. 8, p. 122; Act 1897, p. 188; P. D. 5935; G. L. Vol. 10, p. 1242.]

Art. 1304. [1122] [643] [567] **Charter.**—A charter must be prepared setting forth:

1. The name of the corporation;
2. The purpose for which it is formed;
3. The place or places where its business is to be transacted;
4. The term for which it is to exist;
5. The number of directors or trustees, and the names and residences of those who are appointees for the first year;

6. The amount of its capital stock, if any, and the number of shares into which it is divided. [Id.]

Art. 1305. [1123] [644] [568] **Acknowledgment.**—It must be subscribed by three or more persons, two of whom must be citizens of this State, and must be acknowledged by them, before an officer duly authorized to take acknowledgments of deeds. [Acts 1887, p. 103; Acts 1919, p. 246; G. L. Vol. 9, p. 901.]

Art. 1306. [1123] [644] [568] **Female incorporators.**—Charters may be subscribed by married women who may be stockholders, officers and directors thereof; and their acts, contracts and deeds as such stockholders, officers and directors shall be as binding and effective for all the purposes of said corporation as if they were males. The joinder and consent of the husband and privy examinations separate and apart from him shall not be required. [Id.]

Art. 1307. [1124] [679] [603] **Notice by firm.**—Whenever any banking, mercantile or other business firm desires to become incorporated without a change of the firm name, such firm shall, in addition to the notice of dissolution required at common law, give notice of such intention to become incorporated, for at least four consecutive weeks in some newspaper published at the seat of State government, and in the county in which such firm has its principal business office, if there be a newspaper in such county, and, if not, then in some newspaper published in some adjoining county. Until such notice has been so published for the full period above named, no change shall take place in the liability of such firm or the members thereof. [Id.]

Art. 1308. [1125-1126-1127] **Capital stock.**—Before the charter of a private corporation created for profit can be filed by the Secretary of State, the full amount of its authorized capital stock must be in good faith subscribed by its stockholders and fifty per cent thereof paid in cash, or its equivalent in other property or labor done, the product of which shall be worth to the company the actual value at which it was taken or at which the property was received. The affidavit of those who executed the charter shall be furnished to the Secretary of State, showing:

1. The name, residence and postoffice address of each subscriber to the capital stock of such company;

2. The amount subscribed by each, and the amount paid by each;

3. The cash value of any property received, giving its description, location and from whom and the price at which it was received;

4. The amount, character and value of labor done, from whom, and price at which it was received. [Acts 1901, p. 18; Acts 1897, p. 192; Acts 1907, p. 309; G. L. Vol. 10, p. 246.]

Art. 1309. [1128] [642] **Further evidence.**—If the Secretary of State is not satisfied, he may, at the expense of the incorporators, require other satisfactory evidence before he shall be required to receive, file and record such charter. [Id.]

Art. 1310. [1129] [642] **Corporations exempt.**—Corporations created under subdivisions 48, 67, 68, 71, 72 of Article 1302; corporations formed for the construction, purchase and maintenance of mills and gins, having a capital stock of not exceeding fifteen thousand dollars; mutual building and loan associations; corporations formed for the construction, purchase, maintenance and operation of cotton mills; and waterworks, ice plants, electric light plants and cotton warehouses in cities of less than ten thousand inhabitants, are exempt from the provisions of the two preceding articles. [Id. 3d C. S. 1920, p. 86.]

Art. 1311. [1130] [642] **Exempt corporations: stock.**—The stockholders of all private corporations such as are designated in the preceding article, with an authorized capital stock under the provisions of this chapter, shall be required to pay in at least one hundred thousand dollars in cash of their authorized capital stock, or to subscribe at least fifty per cent, and pay in at least ten per cent of their authorized capital, before they shall be authorized to do business in this State. [Acts 1907, p. 309.]

Art. 1312. [1224] [714] [638] **No capital stock.**—No society, association, company, corporation or institution that does not have a capital stock is required in its charter to make any statement of the amount of capital stock or amount of each share; but it will suffice if the charter contains the other statements required, and also an estimate of the value of the goods, chattels, lands, rights and credits owned by the corporation.

Art. 1313. [1130-1-2] **Filing charter.**—When the stockholders of any company shall furnish satisfactory evidence to the Secretary of State of a compliance with the provisions of this chapter, said officer shall receive, file and record the charter of such company in his office, upon application and the payment of all fees therefor, and give his certificate showing the record of such charter and authority to do business thereunder. The charter shall thereupon be filed in the office of the Secretary of State, who shall record the same at length in a book to be kept for that purpose, and retain the original on file in his office. A copy of the charter, or of the record thereof, certified under the great seal of the State, shall be evidence of the creation of the corporation. The existence of the corporation shall date from the filing of the charter in the office of the Secretary of State. The certificate of the Secretary of State shall be evidence of such filing. [Acts 1874, p. 121, Sec. 9; P. D. 5940; G. L. Vol. 8, p. 123.]

Art. 1314. [1133-4-5] **Amendments.**—Any private corporation organized or incorporated for any purpose mentioned in this title, may amend or change its charter or act of incorporation by filing, authenticated in the same manner as the original charter, such amendments or changes with the Secretary of State. A corporation created by special Act of the Legislature shall also file with said officer its original charter and such amendments thereto or changes therein, if any, as have been made by special Act of the Legislature; and the same shall be recorded by the Secretary of State, followed by the proposed amendments or

changes thereof. Such amendments or changes shall take effect and be in force from the date of the filing thereof. The certificate of the Secretary of State shall be evidence of such filing. No amendment or change violative of the Constitution or laws of this State or any provision of this title or which so changes the original purpose of such corporation as to prevent the execution thereof, shall be of any force or effect. [Acts 1874, Sec. 10; p. 120; G. L. Vol. 8, p. 122; Acts 1903, p. 227.]

Art. 1315. [1136] [651] **Renewal of charter.**—Corporations created for the support of benevolent, charitable, educational or missionary undertakings, the support of any literary or scientific undertaking, the maintenance of a library, or the promotion of painting, music or other fine arts, whose charter has expired by limitation, may revive such charter with all the privileges and immunities and rights of property, real and personal, exercised and held by it at the date of the expiration of its said charter, by filing, with the consent of a majority of its stockholders, a new charter under the provisions of this chapter, reciting therein such original privileges and immunities and rights of property, and by filing therewith a certified copy of such original expired charter. [Acts 1874, p. 120; G. L. Vol. 8, p. 122; Acts 1883, p. 98; G. L. Vol. 9, p. 404; Acts 1907, p. 301; Acts 1909, p. 226; P. D. 5942.]

Art. 1316. [1137] [651] **Consolidation.**—Any two or more of such corporations may revive and consolidate their charters under a new corporate name, or under the name of either, with all privileges, immunities and rights of property, real and personal, enjoyed by each at the date of the expiration of their several charters, by, in like manner, filing a charter, which shall recite the facts of consolidation, accompanied by certified copies of said original charters; provided the provisions thereof shall not be construed to relieve any corporation from the payment of occupation taxes, now or hereafter required by law. [Id.]

Art. 1317. [1138] [675] [599] **Ostensible corporation: debt.**—No person who assumes an obligation to an ostensible corporation as such, shall resist the enforcement of such obligation, on the ground that there was in fact no such corporation, until that fact shall have been adjudged in a direct proceeding had for that purpose.

Art. 1318. [1139] [650] [574] **Legislative authority.**—All charters or amendments to charters, under the provisions of this chapter, shall be subject to the power of the Legislature to alter, reform or amend the same. [Act April 23, 1874, p. 120; G. L. Vol. 8, p. 122.]

CHAPTER THREE.

GENERAL PROVISIONS.

| | Article | | Article |
|---------------------------|---------|-------------------------|---------|
| Corporations classified | 1319 | Default of payment | 1339 |
| General powers | 1320 | Forfeiture; notice | 1340 |
| May borrow money | 1321 | Redemption | 1341 |
| Conveyances | 1322 | Avoidance of forfeiture | 1342 |
| Directors; quorum | 1323 | Failure to revive | 1343 |
| Failure to elect officers | 1324 | Liability for debt | 1344 |
| Officers | 1325 | Stockholders' liability | 1345 |
| By-laws | 1326 | Lists of stockholders | 1346 |
| Directors' powers | 1327 | Director's liability | 1347 |
| Records | 1328 | Indebtedness | 1348 |
| Dividends | 1329 | Acts prohibited | 1349 |
| Increase of capital | 1330 | Campaign expenditures | 1350 |
| Unpaid increase | 1331 | Penalty | 1351 |
| Decrease of capital | 1332 | Political contributions | 1352 |
| Reduction; voting | 1333 | Watering stock | 1353 |
| Stock, status of | 1334 | Suit | 1354 |
| Payment of stock | 1335 | Avoidance | 1355 |
| Stock forfeited | 1336 | Remedies cumulative | 1356 |
| May sue members | 1337 | Misnomer | 1357 |
| Unpaid stock | 1338 | Principal office | 1358 |

Art. 1319. [1117-18-19] **Corporations classified.**—Corporations are either public or private. A public corporation is one which has for its object the government of a portion of the State. Private corporations are of three kinds:

1. Religious.
2. For charity or benevolence.
3. For profit. [Acts 1874, p. 120; G. L. Vol. 8, p. 122.]

Art. 1320. [1140] [651] [575] **General powers.**—Every private corporation as such has power:

1. To have succession by its corporate name for the period limited in its charter, not to exceed fifty years, and when no period is limited, for twenty years.
2. To maintain and defend judicial proceedings.
3. To make and use a common seal.
4. To purchase, hold, sell, mortgage or otherwise convey such real estate and personal estate as the purposes of the corporation shall require, and also to take, hold and convey such other property, real, personal, or mixed, or shall be requisite for such corporation to acquire in order to obtain or secure the payment of any indebtedness or liability due, or belonging to, the corporation.
5. To appoint and remove subordinate officers and agents as the business of the corporation shall require, and to allow them a suitable compensation.
6. To make by-laws not inconsistent with existing laws, for the management of its property, the regulation of its affairs and the transfer of its stock.
7. To enter into any obligation or contract essential to the transaction of its authorized business.
8. To increase or diminish, by a vote of its stockholders cast as its by-laws may direct, the number of its directors or trustees, to be not less than three nor more than twenty-one; provided; that any corporation formed under Subdivisions 1, 2 and 3, of Chapter 1, may increase the number of its directors or trustees to not more than seventy-five. [Acts 1874, p. 120; G. L., Vol.

8, p. 122; Acts 1907, p. 301; Acts 1909, p. 225; Acts 1923, p. 261.]

Art. 1321. [1162] [653] [577] **May borrow money.**—Corporations may borrow money on the credit of the corporation and may execute bonds or promissory notes therefor and may pledge the property and income of the corporation. [Acts 1874, p. 120; G. L. Vol. 8, p. 122; Acts 1883, p. 98, G. L. Vol. 9, p. 404; Acts 1917, p. 66.]

Art. 1322. [1173] [676] [600] **Conveyances.**—Any corporation may convey lands by deed, sealed with the common seal of the corporation, and signed by the president or presiding member or trustee of said corporation, or in common form without seal by its attorney in fact where the instrument constituting such attorney in fact is executed in said manner first mentioned. Such deed, when acknowledged by such officer or attorney in fact to be the act of the corporation, or proved in the manner prescribed for other conveyances of lands, may be recorded in like manner and with the same effect as other deeds. [Acts 1905, p. 230.]

Art. 1323. [1153] [655] [579] **Directors: quorum.**—A majority of the directors or trustees shall constitute a quorum, and be competent to fill vacancies in the board, and to transact all business of the corporation. An annual election shall be held for directors or trustees, at such time and place as the by-laws of the corporation may require. [Acts 1907, p. 311, Sec. 15; P. D. 5946.]

Art. 1324. [1157] [659] [583] **Failure to elect officers.**—Should an election for directors not be held on the day appointed by the by-laws of any corporation organized under any law of this State, such corporation shall not, for that reason, be deemed to be dissolved. It shall be lawful on any other day to hold a meeting and elect its directors or trustees, in such manner as shall be prescribed by the by-laws thereof. [Id., Sec. 19; P. D. 5950.]

Art. 1325. [1154] [656] [580] **Officers.**—The directors or trustees shall choose one of their number president, and shall appoint a secretary and treasurer and such other officers as they may deem necessary for the corporation. [Id., Sec. 16.]

Art. 1326. [1155] [657] [581] **By-laws.**—The directors may adopt by-laws for the government of the corporation. Such by-laws may be altered, changed or amended by a majority vote of the stockholders at any election or special meeting ordered for that purpose by the directors or trustees, on a written application of a majority of the stockholders or members. [Id.]

Art. 1327. [1159] [661] [585] **Directors' powers.**—The directors shall have the general management of the affairs of the corporation, and may dispose of the residue of the capital stock at any time remaining unsubscribed, in such manner as the by-laws may prescribe. [Id., Sec. 21.]

Art. 1328. [1160] [662] [586] **Records.**—They shall cause a record to be kept of all stock subscribed and transferred, and

of all business transactions. Their books and records shall at all reasonable times be open to the inspection of any stockholder. [Id.]

Art. 1329. [1161] [663] [587] **Dividends.**—They shall, when required by one-third of the stockholders, present written reports of the situation and amount of business of the corporation, and declare and make such dividends of the profits from the business of the corporation as they shall deem expedient, or as the by-laws may prescribe. [Id.]

Art. 1330. [1145] [652] [576] **Increase of capital.**—The board of directors, trustees or managers of a corporation may increase its authorized capital when empowered to do so by a two-thirds vote of all its stock, by complying with the provisions of Article 1348. Upon such increase of stock being made in accordance with such provisions and certified to the Secretary of State by the directors, and, if the Secretary of State is satisfied that the increase has been made in accordance with law and that the requirements of law have been complied with as to the subscription and payment of stock and in other respects, as on an original application for charter, he shall file such certificate of increase; and thereupon the same shall become a part of the capital stock of such corporation. Such certificate shall be filed and recorded in the same manner as the charter. [Id; Acts 1893, p. 123; G. L. Vol. 10, p. 553.]

Art. 1331. [1151] [652] **Unpaid increase.**—In case of failure by the stockholders to pay the unpaid portion of an increase of stock within two years from the date of the filing of the certificate of increase in the office of the Secretary of State, the charter of such company shall be forfeited, and the provisions of Articles 1339 to 1343 inclusive, shall govern the same as in case of the creation of a corporation. [Acts 1907, p. 311]

Art. 1332. [1152] [652] **Decrease of capital.**—A corporation may decrease its capital stock by such amount as its stockholders may decide, by a two-thirds vote of all its outstanding stock, in like manner as is required for an increase. No such decrease shall prejudice the rights of any creditor of such corporation in any claim or cause of action such creditor may have against the company, or any stockholder thereof. Such decrease shall not become effective until full proof is made by affidavit of the directors to the Secretary of State of the financial condition of such corporation, giving therein all its assets and liabilities, with names and postoffice addresses of all creditors and amount due each; and the Secretary of State may require, as a condition precedent to the filing of such certificate of decrease, that the debts of such corporation be paid or reduced. [Id.]

Art. 1333. **Reduction: voting.**—Whenever any corporation shall reduce its capital stock, and by reason thereof fractional shares of its stock shall be issued to or held by any of its stockholders, the holder of any such fractional share shall be entitled to vote the same at any meeting of the stockholders in accordance

with the proportionate or ratable value of such shares. [Acts 1919, p. 173.]

Art. 1334. [1168] [666] [590] **Stock, status of.**—The stock of any corporation created under this title shall be deemed personal estate, and shall be transferable only on the books of the corporation in such manner as the by-laws may prescribe. [Acts 1907, p. 312., P. D. 5955.]

Art. 1335. [1169] [667] [591] **Payment of stock.**—The board of directors of any corporation may require the subscribers to the capital stock of the corporation to pay the amount by them respectively subscribed, in such manner, and in such installments, as may be required by the by-laws. [Id.]

Art. 1336. [1170] [668] [592] **Stock forfeited.**—If any stockholder shall neglect to pay any installment as required by the board of directors, the directors may declare his stock and all previous payments forfeited to the use of the company; but no stock shall be forfeited until the directors have caused a written notice to be served on him personally, or by depositing the same in the postoffice, properly directed to him at the postoffice nearest his usual place of residence, stating that he is required to make such payment at the time and place specified in said notice, and that if he fails to make the same, his stock and all previous payments thereon will be forfeited for the use of the company. Such notice may be served at least thirty days previous to the day on which such payment is required to be made. [Id.]

Art. 1337. [1171] [669] [593] **May sue members.**—All bodies corporate may sue for, recover and receive from their respective members all arrears or other debts, dues or demands owing to them, in like mode, manner and form as they might sue for, recover and receive the same from any person not a member of their body. [Id.]

Art. 1338. [1141] [642] **Unpaid stock.**—The stockholders of all corporations chartered under the provisions of the preceding chapter shall, within two years from the date of the filing of such charter, pay in the unpaid portion of the capital stock of such company; proof of which shall, within said time, be made to the Secretary of State, in the manner provided in said articles, for the filing of charters. [Acts 1907, p. 309.]

Art. 1339. [1142] [642] **Default of payment.**—In cases of the failure to pay the unpaid portion of capital stock, and to make proof thereof to the Secretary of State within two years from the date of the filing of the charter, the charter of such company shall become forfeited. Such forfeiture shall be consummated without judicial ascertainment by the Secretary of State entering upon the margin of the ledger kept in his office relating to such corporations the word, "forfeited," giving the date and reason therefor. [Id.]

Art. 1340. [1143] [642] **Forfeiture notice.**—The Secretary of State shall notify such corporation by mailing to the postoffice named as its principal place of business, or to any

other place of business of such corporation, addressed in its corporate name, a written or printed statement of the date and fact of such forfeiture. A record of the date and fact of such notice shall be kept by such officer. [Id.]

Art. 1341. [1143] [642] **Redemption.**—The stockholders of any such corporation whose charter has been so forfeited, who shall within six months from the date of such forfeiture and not thereafter, pay in full the unpaid capital of such company and furnish to the Secretary of State proof of such fact as required herein, and in addition, shall pay the Secretary of State as fees belonging to his office, the sum of five dollars per month for each month and fractional part thereof between the date of forfeiture and settlement, shall be relieved from such forfeiture; and said officer shall write on the margin of said ledger the word “revived,” giving the date thereof. [Id.]

Art. 1342. [1144] [642] **Avoidance of forfeiture.**—The stockholders of any such company shall have the right, at any time within two years from the date of filing of the charter, to make payment of the unpaid portion of the capital stock, to reduce the same so that by reduction, or reduction and payment, the full amount of the capital stock authorized by such reduction shall be paid, and thus avoid a forfeiture of the charter. No creditor of said company shall in any wise be prejudiced by such reduction of its capital stock in any claim or cause of action such creditor may have against such company or any stockholder or officer thereof. [Id.]

Art. 1343. [1144] [642] **Failure to revive.**—If the stockholders fail to cause the charter powers of said corporation to be revived, the affairs of such company shall be administered and wound up as on dissolution. [Id.]

Art. 1344. [552] **Liable for debt.**—If default shall be made in the payment of any debt or liability contracted by a trust, guaranty or surety company, each stockholder thereof, as long as he owns shares therein, and for twelve months after the date of a transfer thereof, shall be personally liable for all debts of such corporation existing at the date of such default or transfer, to an amount double the par value of such shares. [Acts 1905, S. S. p. 511.]

Art. 1345. [1198] [671] [595] **Stockholders' liability.**—If execution has issued against the property of a corporation, except a railway or a religious or charitable corporation, and there cannot be found any property whereon to levy such execution, then the execution may be issued against any of the stockholders to an extent equal to the amount of the stock unpaid. No execution shall issue against any stockholder, except upon an order of the court in which the suit or other proceeding was instituted, made in open court upon motion after a reasonable written notice to the person or persons sought to be charged. Upon such motion, such court may order execution to issue accordingly; or the plaintiff in execution may proceed by action to charge the stockholders with the amount of his judg-

ment, in accordance with the liability of the stockholders. [Acts 1874, p. 120; G. L. Vol. 8, p. 122.]

Art. 1346. [1199] [672] [596] **Lists of stockholders.**—The secretary or other officer having charge of the books of any corporation, on demand of the plaintiff in any execution against the corporation, his agent or attorney, shall furnish such plaintiff, his agent or attorney, with the name and place of residence of each stockholder as far as known, and the amount of stock held by each, as shown by such books. [Id.]

Art. 1347. [1200] [670] [594] **Directors' liability.**—If the directors of any corporation shall knowingly declare and pay any dividend when the corporation is insolvent, or any dividend the payment of which would render it insolvent, they shall be jointly and severally liable for all the debts of the corporation then existing, and for all debts of the corporation which thereafter, during the time such directors respectively remain in office, shall be contracted. The amount for which they shall be so liable shall not exceed the amount of such dividend. If any director is absent at the time of declaring the dividend, or shall object thereto at the time such dividend is declared and shall file his objections in writing with the secretary or other officer of the corporation having charge of the books, he shall be exempt from said liability. [Id; Acts 1871, 2nd C. S. p. 66; Acts 1893, p. 123; G. L. Vol. 7, p. 68; Vol. 10, p. 553.]

Art. 1348. [1165] [665] [589] **Indebtedness.**—No corporation, domestic or foreign, doing business in this State shall create any indebtedness whatever except for money paid, labor done which is reasonably worth at least the sum at which it was taken by the corporation, or property actually received reasonably worth at least the sum at which it was taken by the corporation. [Acts 1907, p. 312.]

Art. 1349. [1164] [665] [589] **Acts prohibited.**—No corporation, domestic or foreign, doing business in this State, shall employ or use its stock, means, assets or other property, directly or indirectly for any purpose whatever other than to accomplish the legitimate business of its creation, or those purposes otherwise permitted by law; provided that nothing in this article shall be held to inhibit corporations from contributing to any bona fide association, incorporated or unincorporated, organized for and actively engaged for one year prior to such contribution in purely religious, charitable or eleemosynary activities, nor to local, district, or statewide commercial or industrial clubs or associations or other civic enterprises or organizations not in any manner nor to any extent directly or indirectly engaged in furthering the cause of any political party, or aiding in the election or defeat of any candidate for office, or aiding in defraying the expenses of any candidate for office, or defraying or aiding in defraying the expenses of any political campaign, or political headquarters, or aiding or assisting the success or defeat of any question to be voted upon by the qualified voters of this State or any subdivision thereof. [Acts 1917, p. 25.]

Art. 1350. [1166] **Campaign expenditures.**—No corporation, domestic or foreign, doing business in this State shall, directly or indirectly, contribute or pay any part of its assets, property or funds to any political party, or to any officer or campaign manager of any political party, or to any person whatsoever, for or on account of such party, nor to any candidate for any office, before or after nominations are made, or to aid in defraying the expenses of any candidate for office, or to any person for or on account of aid in defraying the expenses of a candidate for office, or to any person whatsoever for or on account of aid in maintaining or defraying the expenses of any campaign or political headquarters, or to any person whatsoever for or on account of the success or defeat of any question to be voted upon by the qualified voters of this State or any subdivision thereof. [Acts 1907, p. 312.]

Art. 1351. [1167] **Penalty.**—Any corporation which shall violate any provision of the three preceding articles, shall, on proof thereof in any court of competent jurisdiction, forfeit its charter, permit or license, and all rights and franchises which it holds under, from or by virtue of the laws of this State.

Whenever it appears that the money, assets, property or funds of a corporation have been issued, paid out, or used, in violation of any provision of the three preceding articles, by any agent, attorney, director or officer of such corporation, it shall be considered the act of the corporation, unless, within one year from the date of such violation it has caused to be entered, through its board of directors on its records in this State, an order repudiating the wrong and permanently dismissing from its service all persons directly or indirectly connected with such violation. [Id.]

Art. 1352. **Political contributions.**—No national bank, or any other corporation organized by authority of any law of Congress, and doing business in this State, or authorized to do business in this State, or any other corporation organized by the authority of the laws of this State, or of any foreign country, or any corporation authorized by the authority of the laws of any other State of the United States, doing business in this State, or authorized to do business in this State, shall make any money contribution, or its equivalent, or offer to pay at any future time any money, or its equivalent, directly or indirectly, for the purpose of aiding or defeating the election of any candidate for the office of Representative in Congress, or Presidential or Vice-Presidential Electors from this State, or any candidate for any State, district, county or precinct office in this State, or the success or defeat of any political measure submitted to a vote of the people of this State. Every corporation which shall make, or offer to make, any contribution in violation of the provisions of this article shall be subject to a penalty payable to the State of Texas of not less than five thousand nor more than ten thousand dollars for each offense. [Acts 1907, p. 169.]

Art. 1353. [1146] **Watering stock.**—No corporation shall

issue any stock whatever, except for money paid, labor done which is reasonably worth at least the sum at which it was taken by the corporation, or property actually received reasonably worth at least the sum at which it was taken by the company. Any corporation which violates any provision of this article shall, on proof thereof in any court of competent jurisdiction, forfeit its charter, permit or license, as the case may be, and all rights and franchises which it holds under, from, or by virtue of the laws of this State. [Acts 1907, p. 309.]

Art. 1354. [1147] **Suit.**—When any corporation has issued and has outstanding any stocks or bonds given or issued for any purpose, other than money paid to, labor done for, or property actually received by the corporation, the Attorney General when convinced that the facts exist which authorize the action, shall institute quo warranto or other appropriate judicial proceedings in Travis County or in any other county of this State where such corporation may be sued, to have such stocks or bonds issued in violation of the Constitution or laws of Texas, cancelled, expunged, and held for naught.

Within the meaning of the above, is included any bond or stock given in renewal, or in lieu of, any originally issued for purposes other than those mentioned above, also any issued by any corporation with which the corporation originally issuing any such stock or bonds has merged or been consolidated and given by said issuing corporation in the place of those originally issued for purposes other than as mentioned above. [Id.]

Art. 1355. [1148] **Avoidance of suit.**—If any suit authorized under the preceding article has been instituted, the same shall be dismissed at the cost of the defendant, or if not instituted, no action shall be brought, if the defendant corporation shall surrender, or cause to be surrendered, to the court, or to the Railroad Commission of Texas, for destruction, all such illegal stocks and bonds complained of, with proper and legal releases thereof, suitably executed for record, with such other written evidences and documents as may be necessary to show that such stocks or bonds are no longer outstanding against the corporation. [Id.]

Art. 1356. [1149] **Remedies cumulative.**—The rights and remedies given by the two preceding articles are cumulative, and shall not affect, change or repeal any other remedies or rights now existing in this State for the enforcement, payment, or collection of fines, forfeitures and penalties. [Id.]

Art. 1357. [1172] [674] [598] **Misnomer.**—No misnomer of any corporation shall defeat or vitiate any gift, grant, conveyance, devise, or bequest to the same. [Acts 1907, p. 312.]

Art. 1358. [1174] [673] [597] **Principal office.**—Each corporation or joint stock company of every description, whether organized and acting under a special charter or general law of this State, shall keep its principal office within this State. [Acts 1905, p. 230.]

CHAPTER FOUR.

LANDS.

| | Article | | Article |
|------------------------------|---------|-------------------------------|---------|
| Conditions of purchase..... | 1359 | Town lot corporations..... | 1363 |
| Sale of surplus..... | 1360 | Escheat proceedings..... | 1364 |
| Liquidation..... | 1361 | Disposition of penalties..... | 1365 |
| Corporations prohibited..... | 1362 | | |

Art. 1359. [1175] **Conditions of purchase.**—No private corporation shall be permitted to purchase any lands under any provision of this chapter, unless the lands so purchased are necessary to enable such corporation to do business in this State, or except where such land is purchased in due course of business to secure the payment of debt. [Acts 1893, p. 36; Acts 1897, p. 48; G. L. Vol. 10, pp. 466, 1102.]

Art. 1360. [1176] **Sale of surplus.**—All private corporations authorized by the laws of Texas, to do business in this State, whose main purpose is not the acquisition or ownership of lands, which have or may acquire by lease, purchase or otherwise more land than is necessary to enable them to carry on their business, shall, within fifteen years from the date said land may be acquired, in good faith sell and convey in fee simple all lands so acquired which are not necessary for the transaction of their business. [Id.]

Art. 1361. [1178] **Liquidation.**—Any lands acquired by corporations in payment of debts due such corporations shall be sold and conveyed as herein provided, within fifteen years from the date of the acquisition of such land. [Id.]

Art. 1362. [1177] **Corporations prohibited.**—No private corporation heretofore or hereafter chartered or created whose main purpose of business is the acquisition or ownership of land by purchase, lease or otherwise, shall hereafter be permitted to acquire any land within this State by purchase, lease or otherwise. [Id.]

Art. 1363. [1179] **Town lot corporations.**—Nothing in this chapter shall be construed to prohibit the lease, purchase, sale or subdivision of real property within incorporated towns, cities or villages, and their suburbs not extending more than two miles beyond their corporate limits, by corporations whose charters authorize them to lease, purchase, sell and subdivide real estate, within towns, cities and villages, and their suburbs, whether their suburbs be stated to be measured from the limits merely, or the corporate limits, of such towns, cities and villages. All such corporations now existing, or which may be hereafter created shall be authorized to lease, sell or subdivide real property in any unincorporated city, town or village, or the suburbs thereof, within this State, not exceeding two miles in any direction from the courthouse, or depot nearest the center of such city, town or village, or from the center thereof, if there be no courthouse or depot. [Id.]

Art. 1364. [1180] **Escheat proceedings.**—All corporations holding lands contrary to the provisions of this law shall hold the same subject to forfeiture and escheat proceedings. The

Attorney General, or any district or county attorney, when either of them has reason to believe that any corporation is holding lands in violation of this law, shall institute suit in the name of the State of Texas, in Travis County, or in any county in Texas where such corporation may have an agent, or in any county where any part of the land may be situated, against such corporation, as is provided for the escheat of estates of deceased persons dying without devise thereof and having no heirs. [Acts 1893, p. 36; G. L. Vol. 10, p. 466.]

Art. 1365. [1181] **Disposition of penalties.**— If it be determined upon the trial of said suit that lands are held contrary to this law, the court trying said cause shall enter judgment condemning such lands and ordering them to be sold as under execution, the proceeds of such sale to be first applied to the payment of costs of such suit, and the balance to be paid into the State Treasury subject to be paid to the stockholders, or persons entitled to receive the same as owners, upon proper proof made within twelve months from date of sale. If the legal representatives of such corporation fail to claim the said balance of money realized on sale of said land, then it shall escheat to the State and be applied to the available school fund. The court trying said cause shall allow the attorney representing the State a reasonable fee, to be taxed as cost in the suit. In no case shall the State be liable for costs or fees unless it is successful in said suit. [Id.]

CHAPTER FIVE.

BOOKS, RECORDS, ETC.

| | Article | | Article |
|----------------------------|---------|-----------------------------|---------|
| Examination | 1366 | Disclosures | 1369 |
| Request to examine | 1367 | Penalty | 1370 |
| Authority to examine | 1368 | Provisions cumulative | 1371 |

Art. 1366. [1187] **Examination.**— Every corporation, domestic or foreign, doing business in Texas, shall permit the Attorney General or any of his authorized assistants or representatives, to make examination of all the books, accounts, records, minutes, letters, memoranda, documents, checks, vouchers, telegrams, constitution and by-laws, and other records of said corporation as often as he may deem necessary. [Acts 1907, p. 34.]

Art. 1367. [1187] **Request to examine.**— A written request shall be made to the president or other officer of said corporation at the time the Attorney General or his assistants desire to examine the business of said corporation. It shall be the duty of the officer or agent of any corporation to whom said request is presented to immediately permit the Attorney General, or his authorized assistant or representative to inspect and examine all the said books, records and other documents of said corporation. [Id.]

Art. 1368. [1188] **Authority to examine.**— The Attorney General, or any of his assistants or representatives when au-

thorized by the Attorney General, has the power and authority to make investigation into the organization, conduct and management of any corporation authorized to do business within this State, and has authority to inspect and examine any of its said books, records and other documents, and take such copies thereof as in his judgment may show or tend to show that said corporation has been or is engaged in acts or conduct in violation of its charter rights and privileges, or in violation of any law of this State. [Id.]

Art. 1369. [1188] **Disclosures.**—The Attorney General, or his authorized assistants or representatives shall not make public, or use said copies or any information derived in the course of said examination of said records or documents, except in the course of some judicial proceedings in which the State is a party, or in a suit by the State to cancel the permit or forfeit the charter of such corporation, or to collect penalties for a violation of the laws of this State, or for information of any officer of this State charged with the enforcement of its laws. [Id.]

Art. 1370. [1189-1190] **Penalty.**—Any foreign corporation doing business in Texas under a permit granted under the laws of this State, or any officer or agent thereof, or any domestic corporation which shall fail or refuse to permit the Attorney General, or his authorized representative or representatives, to examine or take copies of any of its said books, records, and other documents whether same be situated within this or any other State within the United States, shall thereby forfeit its right to do business in this State; and its permit or charter shall be canceled or forfeited. [Id.]

Art. 1371. [1192] **Provisions cumulative.**—The provisions of this chapter shall be cumulative of all other laws now in force in this State, and shall not be construed as repealing any other means afforded by law for securing testimony or inquiring into the charter rights and privileges of corporations. [Id.]

CHAPTER SIX.

LIENS FOR FINES, ETC.

| | Article | | Article |
|------------------------|---------|----------------------|---------|
| Law violations..... | 1372 | Rights of State..... | 1376 |
| Lien, notice..... | 1373 | Foreclosure..... | 1377 |
| Abatement of suit..... | 1374 | Law cumulative..... | 1378 |
| Receiver..... | 1375 | | |

Art. 1372. [1193] **Law violations.**—Whenever any domestic or foreign corporation in this State shall violate any law of this State, including the law against trusts, monopolies and conspiracies or combinations or contracts in restraint of trade, for the violation of which fines or penalties or forfeitures are provided, all property of such corporation within this State at the time of such violation, or which may thereafter come within this State, shall, by reason of such violation, become liable for such fines or penalties and for costs of suit and costs of collection. [Acts 1907, p. 175.]

Art. 1373. [1193] **Lien, notice.**—The State of Texas shall

have a lien on all such property from the date that suit shall be instituted by the Attorney General or district or county attorney acting under his direction, in any court of competent jurisdiction within this State, for the purpose of forfeiting the charter or canceling the permit of such corporation, or for such fines or penalties. The institution of such suit for such fine, penalties or forfeiture, shall constitute notice of such lien. [Id.]

Art. 1374. [1194] **Abatement of suit.**—Any action or cause of action for any fine, forfeiture or penalty that the State of Texas has, or may have, against any corporation chartered under the laws of this or any other state, territory or nation, shall not abate or become abated by reason of the dissolution of such corporation, whether voluntary or otherwise, or by the forfeiture of its charter or permit. [Id.]

Art. 1375. [1194] **Receiver.** — Whenever a corporation, against which the State has instituted suit for forfeiture of its charter or cancellation of its permit or for fines or penalties, shall dissolve in this or any other state, or shall have a judgment rendered against it in this or any other state for the forfeiture of its charter, the court in this State in which such suit is pending shall appoint a receiver for the property and business of such corporation within this State, or that may come or be brought within this State during such receivership; or the court may, in any case wherein the State is suing any such corporation for the forfeiture of its charter, or of its permit to do business in this State, or for fines or penalties, appoint a receiver for such corporation whenever the interest of the State may seem to require such action. [Id.]

Art. 1376. [1194] **Rights of State.**—The State shall have the right to writs of attachment, garnishment, sequestration or injunction, without bond, to aid in the enforcement of its rights created by this law; and all property not otherwise exempt by law that may come into the possession of any receiver appointed under any provision of this chapter, shall be subject to the lien herein created, and for the payment of any such fine or penalty. [Id.]

Art. 1377. [1195] **Foreclosure.**—The Attorney General or any district or county attorney acting under his direction, may bring suit in the name of this State for the foreclosure of such lien. In case the suit for foreclosure is brought against any corporation which has dissolved or had a judgment for the forfeiture of its charter or the cancellation of its permit rendered against it, pending any suit by the State of Texas against such corporation for the forfeiture of its charter or cancellation of its permit or for penalties or fines, service may be had upon any person within this State who acted and was acting as agent of any such corporation in this State at the time of such dissolution or forfeiture of charter or cancellation of permit. [Id.]

Art. 1378. [1196] **Law cumulative.**—The rights and remedies given by this law shall be construed as cumulative of all

other laws in force in this State, and shall not affect, change or repeal any other remedies or rights now existing in this State for the enforcement, payment or collection of fines, penalties and forfeitures. [Id.]

CHAPTER SEVEN.

INSOLVENT CORPORATIONS.

| | Article | | Article |
|------------------------------|---------|-----------------------------|---------|
| Unlawful to operate..... | 1379 | Suit to dissolve..... | 1383 |
| Attorney General to sue..... | 1380 | Permission to sue..... | 1384 |
| Liquidation..... | 1381 | Examination and notice..... | 1385 |
| May dismiss action..... | 1382 | Provisions cumulative..... | 1386 |

Art. 1379. [1201] **Unlawful to operate.**—It shall be unlawful for any insolvent corporation, domestic or foreign, to do business in this State, or to exercise or retain any franchise or permit or charter granted from or by this State. [Acts 1907, p. 341.]

Art. 1380. [1202] **Attorney General to sue.**—The Attorney General, when convinced that any corporation is insolvent, shall institute quo warranto or other appropriate proceedings to forfeit its charter or cancel its permit. [Id.]

Art. 1381. [1202] **Liquidation.**—Each district and county attorney shall bring and prosecute the proceedings mentioned in the preceding article whenever directed so to do by the Attorney General. The court trying said cause, after the corporation has been shown to be insolvent, may, in its discretion, appoint a receiver or receivers for said corporation and all its properties, with full power to settle its affairs, collect its outstanding debts and divide the moneys and other properties belonging to said company among the stockholders thereof, after paying the debts due and owing by such corporation, and all expenses incident to the judicial proceedings and receivership. The court may continue the existence of such corporation for three years, and for such further reasonable time as may be necessary to accomplish the objects and purposes of this law. [Id.]

Art. 1382. **May dismiss action.**—If any suit authorized by this chapter has been instituted, the same shall be dismissed at the cost of the defendant; or, if not instituted, the same shall not be begun, if the defendant corporation, through its stockholders, shall pay off its indebtedness or reduce the same by paying, so that it is relieved of insolvency. [Id.]

Art. 1383. [1203] **Suit to dissolve.**—Stockholders of any insolvent corporation who own twenty-five per cent of its stock, or creditors of any such insolvent corporation who own twenty-five per cent of its indebtedness, may institute and prosecute a suit for the dissolution of such corporation. [Id.]

Art. 1384. [1203] **Permission to sue.**—Before such petition is filed by the Attorney General, or under his authority, or by the stockholders or creditors, as provided herein, leave therefor shall be first granted by the judge of the court in which the proceeding is to be instituted. [Id.]

Art. 1385. [1203] **Examination and notice.**— On presentation of such petition, before granting leave to sue, the judge shall carefully examine the same; and he may also require an examination into the facts; and if it shall be made to appear with reasonable certainty from said petition, or from the petition and facts, that the relief sought should be granted, the judge may grant such relief. On an application for the appointment of a receiver, the corporation proceeded against shall have ten full days notice prior to the day set for the hearing. [Id.]

Art. 1386. [1204] **Provisions cumulative.**—The rights and remedies given by this chapter are cumulative, and shall not affect, change or repeal any other remedies or rights now existing in this State for the enforcement, payment or collection of fines, forfeitures and penalties. [Id.]

CHAPTER EIGHT.

DISSOLUTION OF CORPORATIONS.

| | | | |
|------------------------------|--------------|----------------------------|--------------|
| How dissolved..... | Article 1387 | May sue stockholders..... | Article 1392 |
| Liquidation by officers..... | 1388 | Apportionment of debt..... | 1393 |
| Extension of existence..... | 1389 | Forced apportionment..... | 1394 |
| Effect of dissolution..... | 1390 | Extent of liability..... | 1395 |
| Suit on claim..... | 1391 | | |

Art. 1387. [1205] [680] [604] **How dissolved.**—A corporation is dissolved:

1. By the expiration of the time limited in its charter.
2. By a judgment of dissolution rendered by a court of competent jurisdiction.
3. Where four-fifths in interest of all the stock outstanding shall vote in favor of a dissolution at a stockholders' meeting called for that purpose on notice signed by a majority of the directors, stating time, place and object of the meeting, served personally or by mail at least thirty days next before the meeting. If, at said meeting, four-fifths in interest of all the stockholders of said company shall consent in writing to the dissolution of the corporation, such written consent, together with a list of the directors and officers of the company, giving post-office address and place of residence of each, certified by the president and secretary and treasurer as a true and correct action of the stockholders, shall be filed with the Secretary of State.
4. When, without a stockholders' meeting, all the stockholders of the corporation consent in writing to a dissolution, the same shall be certified to as above and filed with the Secretary of State. When any such certificate is filed with the Secretary of State, he shall issue a certificate that such consent has been filed and that the corporation is dissolved; and said officer shall so note on the ledger in his office.
5. By forfeiture of its charter without judicial ascertainment under any special provision of law.
6. Where a corporation created under this title or a general law of Texas shall fail to commence active operations within

three years after filing its charter with the Secretary of State.

7. Whenever a corporation upon proper judicial ascertainment is found to be insolvent. [Acts 1907, p. 311.]

Art. 1388. [1206-7] **Liquidation by officers.**—Upon the dissolution of a corporation, unless a receiver is appointed by some court of competent jurisdiction, the president and directors or managers of the affairs of the corporation at the time of its dissolution shall be trustees of the creditors and stockholders of such corporation, with power to settle the affairs, collect the outstanding debts, and divide the moneys and other property among the stockholders after paying the debts due and owing by such corporation at the time of its dissolution, as far as such money and property will enable them after paying all just and reasonable expenses; and for this purpose they may in the name of such corporation, sell, convey and transfer all real and personal property belonging to such company, collect all debts, compromise controversies, maintain or defend judicial proceedings, and exercise full power and authority of said company over such assets and property. Said trustees shall be severally responsible to the creditors and stockholders of such corporation to the extent of its property and effects that shall have come into their hands. [Id.; Acts 1919, 2nd C. S., p. 140.]

Art. 1389. [1206] [682] [606] **Extension of existence.**—The existence of every corporation may be continued for three years after its dissolution from whatever cause, for the purpose of enabling those charged with the duty, to settle up its affairs. In case a receiver is appointed by a court for this purpose, the existence of such corporation may be continued by the court so long as in its discretion it is necessary to suitably settle the affairs of such corporation. [Id.]

Art. 1390. [1206] [682] [606] **Effect of dissolution.**—The dissolution of a corporation shall not operate to abate, nor be construed as abating any pending suit in which such corporation is a defendant, but such suit shall continue against such corporation and judgment shall be rendered as though the same were not dissolved. [Id.]

Art. 1391. [1206] [682] [606] **Suit on claim.**—When no receiver has been appointed for said corporation, suit may be instituted on any claim against said corporation, as though the same had been dissolved, and service of process may be obtained on the president, directors, general manager, trustee, assignee, or other person in charge of the affairs of the corporation at the time it was dissolved, and judgment may be rendered as though the corporation had not been dissolved, and the assets of said corporation shall be liable for the payment of such judgment just as if said corporation had not been dissolved. [Id.]

Art. 1392. [1208] [684] [608] **May sue stockholders.**—If a corporation, except a railway, charitable or religious corporation, be dissolved leaving debts unpaid, suit may be brought against any person or persons who were stockholders at the

time of such dissolution, without joining the corporation in such suit; and if judgment be rendered and execution satisfied, any defendant may sue all who were stockholders at the time of dissolution for the recovery of the portion of such debt for which they were liable.

Art. 1393. [1208] [684] [608] **Apportionment of debt.**—Execution upon such judgment shall direct the collection to be made from the property of each stockholder respectively. If any number of stockholders defendants in the case shall not have property enough to satisfy his or their portion of the execution, then the amount of deficiency shall be divided equally among all the remaining stockholders, and collections made accordingly, deducting from the amount a sum in proportion to the amount of stock owned by the plaintiff at the time the company dissolved.

Art. 1394. [1209] [685] [609] **Forced apportionment.**—Any stockholder who pays more than his due proportion of any debt of the corporation may, by suit, compel contribution from the other stockholders.

Art. 1395. [1210] [686] [610] **Extent of liability.**—No stockholder shall be liable to pay debts of the corporation beyond the amount unpaid on his stock.

CHAPTER NINE.

RELIGIOUS, CHARITABLE AND EDUCATIONAL.

1. RELIGIOUS AND CHARITABLE.

| | | | |
|-------------------|---------|------------------|---------|
| Powers | Article | Lodges: demise | Article |
| Secular affairs | 1396 | Lodges: loans | 1403 |
| Spiritual affairs | 1397 | Lodges: duration | 1404 |
| Lodges | 1398 | Existing lodge | 1405 |
| Lodges: charter | 1399 | Lodges: tax | 1407 |
| Lodges: trustees | 1400 | May affiliate | 1408 |
| Lodges: property | 1401 | Property rights | 1409 |
| | 1402 | | |

Art. 1396. [1212] [713] [637] **Powers.**—Any religious society, charitable, benevolent, literary or social association (other than colleges, universities, academies or seminaries), and any military or fire company, may, by the consent of a majority of its members become a body corporate under this title, electing directors or trustees, and performing such other things as are directed in the case of other corporations; and when so organized shall have all the powers and privileges, and be subject to all the restrictions in this title contained, for the objects named in the charter, and shall have the same power to make by-laws for the regulation of their affairs as other corporations. [Acts 1899, p. 236.]

Art. 1397. [1158] [660] [584] **Secular affairs.**—The secular affairs of a religious corporation shall be under the control of a board of trustees, to be elected by the members of such corporation; and the title to all property of any such corporation shall vest in such trustees. [Acts 1907, p. 311.]

Art. 1398. [1213] [713] [637] **Spiritual affairs.**—The di-

rectors or trustees of any corporation under this title shall not usurp or exercise the functions of any officer in charge of the spiritual affairs of any society. [Acts 1899, p. 236.]

Art. 1399. [1214] **Lodges.**—The grand lodge of Texas, Ancient, Free and Accepted Masons, the Grand Royal Arch Chapter of Texas, the Grand Commandery of Knights Templars of Texas (Masonic); the grand lodge of the Independent Order of Odd Fellows of Texas, and other like institutions and orders organized for charitable or benevolent purposes may, by the consent of their respective bodies expressed by a resolution or otherwise, become bodies corporate under this title. [Id.]

Art. 1400. [1215-18] **Lodges: charter.**—The incorporation of any such grand lodge shall include all of its subordinate lodges, or bodies holding warrant or charter under such grand body, and each of such subordinate bodies shall have all the rights of other corporations under and by the name given it in such warrant or charter issued by the grand body to which it is attached, such rights being provided for in the charter of the grand body. Such subordinate bodies shall, at all times, be subject to the jurisdiction and control of their respective grand bodies, and subject to have their warrants or charters revoked by such grand body. [Id.]

Art. 1401. [1216] **Lodges: trustees.**—Such grand bodies and their subordinates may elect their own trustees or directors, or name certain of their officers as such, and perform such other acts as are directed or provided by law in the case of other corporations, and shall have power to make constitutions and by-laws for the government of their affairs. [Id.]

Art. 1402. [1217] **Lodges: property.**—Such orders, grand and subordinate, shall have the right to acquire and hold such lands and personalty as may be necessary or convenient for sites upon which to erect buildings for their use and occupancy, and for homes and schools for their widows, orphans or aged or decrepit or indigent members, and to sell or mortgage the same, such conveyances to be executed by the presiding officer, attested by the secretary with the seal. The power and authority of such subordinate bodies to sell or to mortgage shall be subject to such conditions as may be from time to time prescribed or established by the grand body to which the subordinate is attached. [Id.]

Art. 1403. [1219] **Lodges: demise.**—Upon the demise of any subordinate body so incorporated, all property and rights existing in such subordinate body shall pass to, and vest in, the grand body to which it was attached, subject to the payment of all debts due by such subordinate body; but the grand body shall never be liable for any sum greater than the actual cash value of the effects of such subordinate actually received by it, or its authority. [Id.]

Art. 1404. [1220] **Lodges: loans.**—Any grand body incorporated under this subdivision shall have the right and authority to loan any funds held and owned by it for charitable pur-

poses, for the endowment of any of its institutions, or otherwise, and may secure such loans by taking and receiving liens on real estate, or in such other manner as it may elect. Upon sale of any real estate under such lien, such grand body may become the purchaser thereof, and hold title thereto. [Id.]

Art. 1405. [1221] **Lodges: duration.**—Any grand body incorporating under this subdivision may provide in its charter for the expiration of its corporate powers at the end of any given number of years; or it may provide in its charter for its perpetual existence, and by its corporate name have perpetual succession of the officers and members. [Id.]

Art. 1406. [1222] **Existing lodge.**—Any such grand body or subordinate body now having a valid chartered existence may continue under its present charter, or reincorporate under this subdivision. [Id.]

Art. 1407. [1223] **Lodges: tax.**—Bodies incorporated under this subdivision shall not be subject to, or required to pay a franchise tax. [Id.]

Art. 1408. **May affiliate.**—Boards of trustees of religious, charitable, educational or eleemosynary institutions may be affiliated with, elected and controlled by a convention, conference or association organized under the laws of this State or another State, whether incorporated or unincorporated, whose membership is composed of representatives, delegates, or messengers from any church or other religious association. [Acts 1923, p. 171.]

Art. 1409. **Property rights.**—Any religious, charitable, educational or eleemosynary institution organized under the laws of this State may acquire, own, hold, mortgage and dispose of and invest its funds in real and personal property in this State for the use and benefit and under the discretion of, and in trust for, such electing, controlling and parent body in furtherance of the purposes of the organization of the member institution. This article shall not apply to corporations organized for profit. [Id.]

2. EDUCATIONAL.

| | | | |
|--------------------------|---------|------------------------------|---------|
| | Article | | Article |
| Faculty | 1410 | Conversion of property | 1413 |
| Powers of trustees | 1411 | Directors' liability | 1414 |
| Property | 1412 | Removal | 1415 |

Art. 1410. [1225] [707] [631] **Faculty.**—The president, professors or principals shall constitute the faculty in academy, college or university corporations, and shall have power to enforce the rules and regulations enacted by the directors or trustees for the government and discipline of the students, and to suspend and expel offenders, as may be deemed necessary. [Acts 1874, p. 135; G. L. Vol. 8, p. 137.]

Art. 1411. [1226] [708] [632] **Powers of trustees.**—The directors or trustees named in the charter of any college, academy, university or other corporation to promote education, and their successors, may make all necessary by-laws, elect and employ officers, provide for filling vacancies, appoint and remove

professors, teachers, agents, etc, and fix their compensation, confer degrees, and do and perform all necessary acts to carry into effect the objects of the corporation. [Id.]

Art. 1412. [1227] [709] [633] **Property.**—Such corporations may procure, to be used as a part of the course of education, shops, tools and machinery, land for agricultural purposes and necessary buildings for carrying on their mechanical and agricultural operations. [Id.]

Art. 1413. [1228] [710] [634] **Conversion of property.**—Any such corporation may when a majority of its stockholders consent thereto, convert its property, except when held upon some special trust, into stock or scholarships, and file a certificate of their action, as required in the case of an increase of capital stock of a corporation. [Id.]

Art. 1414. [1229] [711] [635] **Directors' liability.**—The directors of any such corporation, whose property is held not as stock, but upon trust or devise, donation, gift or subscription, shall not contract debts beyond the means of the corporation. If they do contract debts to a larger amount, they shall be held individually liable for the same, after the means of the corporation are exhausted. [Id.]

Art. 1415. [1230] [712] [636] **Removal.**—Any such corporation, may by a vote of three-fourths of the directors, or if the same is owned in shares of stock, then by three-fourths of the stockholders, change the location and name of the institution, and transfer the effects thereof to the place of the new location, or may apply the property thereof to other purposes of education than those named in the original charter filed with the Secretary of State.

CHAPTER TEN.

PUBLIC UTILITIES.

1. TELEGRAPH.

| | | | |
|-------------------------|--------------|----------------------------|--------------|
| Public ways: use..... | Article 1416 | Consolidations | Article 1420 |
| Right of way..... | 1417 | Consolidation: powers..... | 1421 |
| Competitor: rights..... | 1418 | Municipal regulation..... | 1422 |
| Interstate lines..... | 1419 | | |

Art. 1416. [1231] [698] [622] **Public ways: use.**—Corporations created for the purpose of constructing and maintaining magnetic telegraph lines, are authorized to set their poles, piers, abutments, wires and other fixtures along, upon and across any of the public roads, streets and waters of this State, in such manner as not to incommode the public in the use of such roads, streets and waters. [Acts 1874, p. 132; G. L. Vol. 8, p. 134.]

Art. 1417. [1332] [699] [623] **Right of way.**—They may also enter upon any lands owned by private persons or by a corporation, in fee or less estate, for the purpose of making preliminary surveys and examinations with a view to the erection of any telegraph line, and from time to time appropriate so much of said lands as may be necessary to erect such poles, piers, abutments, wires and other necessary fixtures for a mag-

netic telegraph, and to make such changes of location of any part of said lines as may from time to time be deemed necessary, and shall have a right of access to construct said line, and when erected, from time to time as may be required, to repair the same, and shall have the right of eminent domain to obtain the right of way and condemn lands for the use of the corporation. [Id.]

Art. 1418. [1233] [700] [624] **Competitor: rights.**—No corporation shall have power to contract with any owner of land for the right to erect and maintain a telegraph line over his lands to the exclusion of the lines of other companies. [Id.]

Art. 1419. [1234] [701] [625] **Interstate lines.**—Any corporation created as herein provided may construct, own, use and maintain any line or lines of telegraph, whether wholly within, or wholly or partly beyond, the limits of this State. [Id.]

Art. 1420. [1234] [701] [625] **Consolidations.**—They shall have power to lease or attach to their line or lines other telegraph lines, by lease or purchase, and may join with any other corporation or association in constructing, leasing, owning, using or maintaining their line or lines, upon such terms as may be agreed upon between the directors or managers of the respective corporations, and may own and hold any interest in such line or lines, or may become lessees thereof on such terms as the respective corporations may agree. [Id.]

Art. 1421. [1236] [703] [627] **Consolidation: powers.**—Any telegraph company organized under the laws of this State may, at any regular meeting of the stockholders thereof, by vote of persons holding a majority of shares of the stock of such company, unite or consolidate with any other company or companies organized under the laws of the United States or of any State or territory, by the consent of the company with which it may consolidate or unite; and such company so formed may hold, use and enjoy all the rights and privileges conferred by the laws of Texas on companies separately organized under the provisions of this title, and be subject to the same liabilities. [Id.]

Art. 1422. [1235] [702] [626] **Municipal regulation.**—The corporate authorities of any city, town or village through which the line of any telegraph corporation is to pass, may, by ordinance or otherwise, specify where the posts, piers or abutments shall be located, the kind of posts that shall be used, the height at which the wires shall be run; and such company shall be governed by the regulations thus prescribed. After the erection of said telegraph lines, the corporate authorities of any city, town or village shall have power to direct any alteration in the erection or location of said posts, piers or abutments, and also in the height at which the wires shall run, having first given such company or its agents opportunity to be heard in regard to such alteration. [Id.]

2. TELEPHONE AND TELEGRAPH.

| | Article | | Article |
|----------------------------|---------|----------------------------|---------|
| Consolidations | 1423 | Telegraph connections..... | 1428 |
| Consolidation: mode..... | 1424 | Transfers excepted..... | 1429 |
| Consolidation: rates..... | 1425 | Transfer hearing..... | 1430 |
| Transfer of messages..... | 1426 | Penalty..... | 1431 |
| Telephone connections..... | 1427 | Appeals..... | 1432 |

Art. 1423. Consolidations.—Any person, firm or corporation organized under the laws of Texas owning a local telephone exchange, whether wholly within or partly beyond the State limits, shall have power to purchase and may join with any other individual, firm or corporation in constructing, leasing, owning, using or maintaining any other local telephone exchange, upon such terms as may be agreed upon between such persons, or the directors or managers of the respective corporations, and may own and hold any interest in such local telephone exchange or may become lessees thereof on such terms as the respective persons, firms or corporations may agree. In case of the purchase, lease or acquisition of one local telephone exchange by a company owning another when both systems are operating in the same incorporated city or town, the consent of such city or town shall be secured. [Acts 1913, p. 92.]

Art. 1424. Consolidation: mode.—Any telephone company organized under the laws of Texas owning a local telephone exchange may at any regular meeting of the stockholders thereof by vote of persons holding a majority of shares of the stock of such company, unite or consolidate such local exchange with the local exchange of any other company or companies organized under the laws of the United States, or of any State or territory, by the consent of the company with which it may so consolidate or unite. Such company so formed may hold, use and enjoy all the rights and privileges conferred by the laws of Texas on companies separately organized under the provisions of this title, and be subject to the same liabilities. Where two or more local exchanges are operating in the same incorporated city or town, the consent of such city or town shall be secured for such consolidation. [Id.]

Art. 1425. Consolidation: rates.—In case of the purchase, lease, acquisition or consolidation of one local telephone exchange with another, when both systems are operating in the same incorporated city or town, the rates charged for local telephone service, after such consolidation shall not exceed the rate charged by the company charging the lowest rates in such city or town at the time of such purchase, lease, acquisition or consolidation, unless authorized by such city or town. [Id.]

Art. 1426. [1237] Transfer of messages.—All companies and corporations that own or operate telephone or telegraph lines for the purpose of transmitting messages from one point to another, are hereby required to arrange for conversations or transfer of messages as hereinafter provided. [Acts 1907, S. S. n. 462.]

Art. 1427. [1238] Telephone connections.—All persons, companies, firms or corporations doing a telephone business in

this State shall be compelled to make physical connections between their toll line at common points, for the transmission of messages or conversations from one line to another. Such connection shall be made through the switchboard of such persons, companies, firms or corporations, if any is maintained at such points, so that persons so desiring may converse from points on one of such lines to points on another. [Id.]

Art. 1428. [1239] **Telegraph connections.**—Each telegraph company or person, firm, corporation or association engaged in the business of accepting and transmitting messages to and from different points in this State, where the use of a telegraph instrument or instruments is necessary in the conduct of such business, shall, if there be any other persons, firm, corporation or association engaged in such business at the same point or in the same town, city or village, provide means whereby all messages conveyed to such points over the lines of any such companies shall be transferred to the lines of either or all other such companies engaged in such business at such common points, and transmitted to their final destination; and such facilities shall be provided as will guarantee the transfer of such messages in compliance with the provisions of this subdivision. [Id.]

Art. 1429. [1239] **Transfers excepted.**—In no case shall any message be transferred from one line to another against the will of the company first handling the same, when it is possible for such company to deliver said message direct to the party for whom it is intended by way of the line or lines operated and owned by said company. No telegraph or telephone company shall, under the provisions of this subdivision be compelled to receive from the wires or lines of any other telegraph or telephone company and convey to its final destination any message originating at any point on its own lines. [Id.]

Art. 1430. [1240] **Transfer hearing.**—The city council in incorporated cities, and the commissioners court at points where there is no city council, shall on application of one hundred resident citizens, or upon its own motion, hear such evidence as they think necessary, and upon a final hearing they shall determine whether or not it would be necessary for public convenience, and just to the telephone or telegraph companies, to make such connection or arrange for the transfer of messages; whereupon they shall enter of record their findings, and shall also set out in their order the conditions upon which such arrangements for conversation or transfer of messages shall be made, and shall decide what proportion of expense shall be paid by each of said connecting lines. [Id.]

Art. 1431. [1241] **Penalty.**—Whenever the city council or commissioners court shall enter an order in compliance with Arts. 1428 and 1429 requiring telephone or telegraph companies to arrange for conversation or transfer of messages, it shall be compulsory on said company to arrange for such conversation or transfer of messages, and failing to do so, they shall forfeit to the State of Texas on suit by the county or district attorney, the sum of ten dollars for each day they so neglect. The penal-

ty herein assessed shall not be operative against a company which is prevented from making connections as herein required, through the fault or omission of another company, so long as such fault or omission shall cause such failure on its part to so connect. [Id.]

Art. 1432. [1241] **Appeals.**—Any company ordered to arrange for conversations or to transfer messages between its line and another line as herein provided, shall have the right to appeal from such order to the court having jurisdiction over said matter, and the court shall, if it shall find that appellant had reasonable grounds for prosecuting such appeal, suspend the penalty herein provided for until such appeal is finally determined. [Id.]

3. WATER.

| | | | | |
|------------------|-----------------|--|-----------------|-----------------|
| Privileges | Article 1433 | \| | Contracts | Article 1434 |
|------------------|-----------------|--|-----------------|-----------------|

Art. 1433. [1004-1282] **Privileges.**—Any water corporation shall have power to sell and furnish such quantities of water as may be required by the city, town or village where located, for public or private buildings, or for other purposes; and such corporation shall have power to lay pipes, mains and conductors for conducting water through the streets, alleys, lanes and squares in any such city, town or village, with the consent of the governing body thereof, and under such regulations as it may prescribe. When deemed necessary to preserve the public health, any company or corporation chartered under the laws of this State for the purpose of constructing water works or furnishing water supply to any city or town, shall have the right of eminent domain to condemn private property necessary for the construction of supply reservoirs or standpipes for water work. [Acts 1874, p. 134; G. L. Vol. 8, p. 136; Acts 1909, p. 8.]

Art. 1434. [1283] [706] [630] **Contracts.**—The governing body of any city, town or village in which any water corporation shall exist, is hereby authorized to contract with any such corporation for supplying with water the streets, alleys, lots, squares and public places in any such city, town or village. [Acts 1874, p. 134; G. L. Vol. 8, p. 136.]

4. GAS AND LIGHT.

| | | | | |
|--------------------|-----------------|--|----------------------|-----------------|
| Powers | Article 1435 | \| | Finances | Article 1437 |
| Right of way | 1436 | \| | Discrimination | 1438 |

Art. 1435. **Powers.**—Gas, electric current and power corporations shall have power to generate, make and manufacture, transport and sell gas, electric current and power to individuals, the public and municipalities for light, heat, power and other purposes, and to make reasonable charges therefor; to construct, maintain and operate power plants and substations and such machinery, apparatus, pipes, poles, wires, devices and arrangements as may be necessary to operate such lines at and between different points in this State; to own, hold and use such lands, right of way, easements, franchises, buildings and structures as may

be necessary for the purpose of such corporation. [Acts 1911, p. 228.]

Art. 1436. **Right of way.**—Such corporation shall have the right and power to enter upon, condemn and appropriate the lands, right of way, easements and property of any person or corporation, and shall have the right to erect its lines over and across any public road, railroad, railroad right of way, inter-urban railroad, street railroad, canal or stream in this State, any street or alley of any incorporated city or town in this State with the consent and under the direction of the governing body of such city or town. Such lines shall be constructed upon suitable poles in the most approved manner and maintained at a height above the ground of at least twenty-two feet; or pipes may be placed under the ground, as the exigencies of the case may require. [Id.]

Art. 1437. **Finances.**—Such corporation shall have the right to borrow money, to issue stock and preferred stock, to mortgage its franchises and property to secure the payment of any debt contracted for any of the purposes of such corporation, and shall possess all the rights and powers of corporations for profit in this State, whenever the same may be applicable. [Id.]

Art. 1438. **Discrimination.**—It shall be unlawful for any such corporation to discriminate against any person, corporation, firm, association or place, in the charge for such gas, electric current or power, or in the service rendered under similar and like circumstances. [Id.]

5. SEWERAGE.

Eminent domain

Article
1439

Art. 1439. [1284] **Eminent domain.**—Every company or corporation incorporated under the laws of this State for the purpose of owning, constructing or maintaining a system of sewerage in any city or town in this State, shall be empowered by the exercise of the right of eminent domain, to condemn private property through which to lay, construct and maintain sewer pipes, mains and laterals, and connections, and also private property upon which to maintain vats, filtration pipes and other pipes, such property to be used and occupied as a place for ultimate disposition of sewage, in or out of the town or city limits, whenever it be made to appear that the use of any such private property is necessary for the successful operation of such sewer system, and when it also be made to appear that such sewer system is beneficial to the public use, health or convenience. The right of condemnation herein permitted shall not be invoked nor exercised within the corporate limits of the city or town, except as permitted or required by the city or town granting franchise to the company or corporation seeking the right of condemnation. [Acts 1899, p. 263.]

6. DEPOSITS.

Deposit for installing service..... Article
1440

Art. 1440. **Deposits for installing service.**—Every person, firm, company, corporation, receiver or trustee engaged in the furnishing of water, light, gas or telephone service which requires the payment on the part of the user of such service a deposit of money as a condition precedent to furnishing the same, shall pay six per cent interest per annum on such deposit to the one making same, or to his heirs or assigns, from the time of such deposit, the same to be paid on the first day of January of each year or sooner if such service be discontinued. When such service is discontinued, such deposit, together with any unpaid interest thereon, or such part of such deposit and unpaid interest, not consumed in bills due for such service, shall be returned to such depositor, his heirs or legal representatives. [Acts 2nd C. S. 1923, p. 101.]

7. REPORTS.

| | | | |
|---------------------------|--------------|----------------------|--------------|
| Corporations subject..... | Article 1441 | Acknowledgments..... | Article 1444 |
| Report..... | 1442 | Registration..... | 1445 |
| Additional reports..... | 1443 | Penalty..... | 1446 |

Art. 1441. [1182] **Corporations subject.**—Every corporation within this State owning, leasing or operating in this State, in cities or towns of over twenty-five hundred population according to the preceding Federal census, a street railway, electric light or power plant furnishing light or power to the public, gas plant furnishing gas to the public, water plant furnishing water to the public, and sewerage company furnishing sewerage to the public, shall annually on or before the first day of March, file the report hereinafter provided with the Secretary of State, upon blank forms to be furnished by said officer. [Acts 1905, p. 40.]

Art. 1442. [1182] **Report.**—The report shall show the following facts:

1. The authorized capital stock of such corporation, the amount of such stock that has actually been issued, and how much of such stock actually issued is common, and how much preferred, and how much is due upon unpaid stock.

2. The bonded indebtedness of such corporation, and how many bonds have been actually sold, and the price of such sale, the rate of interest upon such bonds, and when such bonds mature.

3. Any other fixed lien or mortgage upon such property, and the amount thereof.

4. The floating indebtedness of such corporation, including all bills payable of whatever nature.

5. The value of the visible tangible property of such corporation, giving separate values of lands, machinery, buildings, tracks and equipment, and in gross, all bills receivable and cash on hand.

6. The annual cost of operating such corporation, showing under separate items: (a) amount paid for salaries; (b)

amount paid for labor; (c) fixed charges including interest, taxes and insurance, giving each separately; (d) amount paid for fuel; (e) amount paid for extensions, repairs and maintenance, giving each separately; (f) amount paid for claims or suits for damages; (g) amount paid for miscellaneous expenses.

7. The annual gross earnings of such corporation, including revenues from every source, showing by separate items amount received by departments, such as amount received for light, sewerage, power, water, gas, street railway fares and tickets. [Id.]

Art. 1443. [1183] **Additional reports.**—Such corporations shall also make to the Secretary of State, upon blanks furnished by him, reports as to the price charged the public for sewerage, gas, water, light, power, and the price charged per passenger upon street railways, and if such corporations have contracts with cities or towns for furnishing water or light, then, the amount of such charge. [Id.]

Art. 1444. [1184] **Sworn reports.**—All reports provided for in this subdivision shall be under oath, and shall be made by any officer of the corporation having knowledge of the facts, or its general manager or superintendent. [Id.]

Art. 1445. [1185] **Registration.**—A true sworn copy of the reports required by this subdivision shall be filed annually on or before the first day of March with the Mayor of the city or town where the corporation has its principal place of business; and there shall also be filed at the same time a true sworn copy of said reports with the county clerk of the county in which such corporation has its principal place of business; and the same shall be by said clerk delivered to the commissioners court. Such reports shall be recorded in a properly indexed book, to be kept for that purpose, and open to the inspection of the public at all times. [Id.]

Art. 1446. [1186] **Penalty.**—Any corporation which shall for thirty days wilfully fail or refuse to file such reports in the manner provided by this subdivision shall forfeit and pay to the State one hundred dollars for each day during which it shall continue in default; which shall be recovered by suit by the Attorney General. [Id.]

CHAPTER ELEVEN.

ROADS.

Charter

Article
1447

Art. 1447. **Charter.**—The charter of a road company, in addition to the information required by article 1304, shall state: First, the kind of road intended to be constructed: Second, the places from and to which the road is intended to be run: Third, the counties through which it is intended to be run: Fourth, the estimated length of the road. [Acts 1874, p. 120; G. L. Vol. 8, p. 122.]

TOLL ROADS.

| | Article | | Article |
|-----------------------------|---------|-----------------------------|---------|
| Toll road corporations..... | 1448 | Road construction..... | 1457 |
| Charter..... | 1449 | Railroad crossings..... | 1458 |
| Examination..... | 1450 | Public way crossings..... | 1459 |
| Registration..... | 1451 | Openings..... | 1460 |
| Duration..... | 1452 | Culverts, etc..... | 1461 |
| Charter amendments..... | 1453 | Obstruction of streams..... | 1462 |
| Powers..... | 1454 | Condemnations..... | 1463 |
| Use of State lands..... | 1455 | Rules and rates..... | 1464 |
| Private lands..... | 1456 | Use of road..... | 1465 |

Art. 1448. **Toll road: incorporation.**—Any number of persons, not less than five, being subscribers to the stock, may organize themselves into a corporation for the purpose of constructing, building, acquiring, owning, operating and maintaining toll roads within this State by complying with the requirements of this subdivision. No corporation, except one chartered under the laws of this State, shall be authorized or permitted to construct, build, operate, acquire, own or maintain any toll road within this State. [Acts 1913, p. 143.]

Art. 1449. **Charter.**—The persons proposing to form a toll road corporation shall adopt and sign articles of incorporation, which shall contain, in addition to the general requirements, the following:

1. The terminal points, and the intermediate counties through which it is intended to construct the toll road;

2. The names and places of residence of the several persons forming the association for incorporation; and

3. In what officers the management and control of the corporation shall be vested. [Id.]

Art. 1450. **Examination.**—The articles of incorporation, when so prepared, adopted and signed, shall be submitted to the Attorney General, who shall carefully examine the same; and, if he finds them to be in accordance with the provisions of this subdivision, and not in conflict with the laws of the United States or of this State, he shall attach thereto a certificate to that effect. [Id.]

Art. 1451. **Registration.**—When said articles have been examined and certified, the same shall be filed in the office of the Secretary of State, accompanied by the affidavit of at least three of the directors named in such articles. Such affidavit shall state that the entire amount of the capital stock of such proposed corporation has been in good faith subscribed, and that fifty per cent of the amount subscribed has been actually paid to the directors named in such articles; and the Secretary of State shall cause such affidavit and articles to be recorded in his office, and shall attach a certificate of the fact of such record to said articles, and return the same to such corporation. [Id.]

Art. 1452. **Duration.**—No toll road corporation shall be formed to continue more than fifty years in the first instance, but such corporation may be renewed from time to time, for periods not longer than fifty years, in the manner provided for the renewal of railroad corporations. [Id.]

Art. 1453. **Charter amendments.**—Any toll road corporation

may amend or change its articles of incorporation in the manner provided by law for railroad corporations. [Id.]

Art. 1454. **Powers.**—Every toll road corporation organized hereunder shall have the right to construct, build, acquire, own, operate and maintain toll roads between any points within this State. [Id.]

Art. 1455. **Use of State lands.**—Every such corporation shall have the right of way for its line of road through and over any land belonging to this State, and to use any earth, timber, stone or other material upon any such land necessary to the construction and operation of its road through or over said land. [Id.]

Art. 1456. **Private lands.**—Every toll road corporation shall have the right to cause such examination and survey for its proposed road to be made as may be necessary to the selection of the most advantageous route, and for such purposes may enter upon the lands or waters of any person or corporation, but subject to responsibility for all damage that may be occasioned thereby. [Id.]

Art. 1457. **Road construction.**—Every such corporation shall have the right to lay out its road, not exceeding two hundred feet in width, and to construct the same; and for the purpose of cuttings and embankments, to take as much more land as may be necessary for the proper construction and security of its road, and to cut down any standing trees that may be in danger of falling upon or obstructing such road, making compensation in the manner provided by law. [Id.]

Art. 1458. **Railroad crossings.**—Every such corporation shall have the right to construct its road across any railroad, street railroad or interurban line within this State, which it may intersect or touch; provided that it shall properly fence such crossings, and restore, in other respects, the property thus intercepted or crossed, to its former state. [Id.]

Art. 1459. **Public way crossings.**—Every such corporation shall have the right to construct its own road across any stream of water, water course, street, highway, plank road, turnpike or canal, which the route of said road shall intersect or touch; but such corporation shall restore the stream, water course, street, highway, plank road, turnpike or canal thus intersected or touched, to its former state, or to such state as not to unnecessarily impair its usefulness, and shall keep such crossings in repair. [Id.]

Art. 1460. **Openings.**—Every such corporation which may fence its right of way, may be required to make openings or crossings through its fence and over its roadbed every five miles thereof, in the manner provided by law with reference to railroad corporations. [Id.]

Art. 1461. **Culverts, etc.**—In no case shall any toll road corporation construct its road without first constructing the necessary culverts or sluices, as the natural lay of the land requires, for the necessary drainage thereof. [Id.]

Art. 1462. **Obstruction of streams.**—Nothing in this chapter shall be construed to authorize the erection of any bridge

or any other obstruction across or over any stream of water navigable by steamboats or sail vessels at the place where any bridge or other obstruction may be proposed to be placed, so as to prevent the navigation of such stream of water. [Id.]

Art. 1463. **Eminent domain.**—Every toll road corporation shall have and enjoy all of the rights, privileges and immunities conferred by and be subject to each provision of the law relating to the exercise of the right of eminent domain. [Id.]

Art. 1464. **Rules and rates.**—Every toll road corporation shall have the power to promulgate, by its board of directors, all necessary and reasonable rules and regulations relating to the manner in which traffic shall move over any toll road operated by it, and to refuse the use of such road to any person who shall fail or refuse to abide by such rules and regulations; and shall be empowered to fix and charge tolls for the use of such roads; provided, that such rules and regulations shall not be contrary to law, and that the rate to be charged for each class of vehicle shall be the same to all in each of such classes. [Id.]

Art. 1465. **Use of road.**—No such corporation shall have the right arbitrarily to refuse the use of such road to any person who shall offer to pay the regular toll therefor, except that such corporation shall be authorized to refuse to permit such road to be used by any vehicle which shall render the same unduly hazardous to the patrons of said road or damaging to the surface thereof, or to any person who shall fail or refuse to abide by the reasonable and necessary traffic regulations promulgated by such corporation. [Id.]

CHAPTER TWELVE.

BRIDGES, FERRIES AND CAUSEWAYS.

1. CAUSEWAYS.

| | Article | | Article |
|---------------------------------|---------|-----------------------------|---------|
| Authority to build..... | 1466 | Land under water..... | 1470 |
| Statement of location..... | 1467 | Lease of right of way..... | 1471 |
| Priority..... | 1468 | Lessee may issue bonds..... | 1472 |
| Condemnation of approaches..... | 1469 | Causeway corporations..... | 1473 |

Art. 1466. **Authority to build.**—Any person, corporation or association of persons, hereinafter called the owner, may purchase, build, construct, own, maintain and operate a combination bridge, dam, dike, causeway and roadway across any arm of the Gulf of Mexico or inlet thereof, or any of the saltwater bays, wholly within the limits of this State, to provide a causeway, roadway or highway for vehicles, teams, pedestrians, railroads, and for every character of inland transportation. [Acts 1913, p. 331.]

Art. 1467. **Statement of location.**—Within ninety days after the commencement of construction of such structure, said owner shall file for record with the clerk of the county where the greater part of such structure is situated, a sworn statement showing the location of said proposed structure, the name of the same, the size of the same, the name of the stream, bay or arm

of the gulf or inlet thereof, or salt water bay over which it is to be built, the time when the work was commenced and the name of the owner, together with a map showing the location of said structure. [Id.]

Art. 1468. **Priority.**—The claimant's right to build said structure will relate back to the time of so filing said statement and map, and the first in time shall be the first in right. The filing of said statement and map shall be considered as taking "formal action." [Id.]

Art. 1469. **Condemnation of approaches.**—Said claimant may acquire by purchase or by the exercise of the right of eminent domain, all necessary approaches to said structure that said claimant deems necessary. [Id.]

Art. 1470. **Land under water.**—The land under water to be occupied by such structure and approaches thereto is hereby granted absolutely to said claimant, and five hundred feet more on each side of such structure is also granted with the right only to dredge therefrom or beyond same for material for causeways if required in construction and maintenance. [Id.]

Art. 1471. **Lease of right of way.**—Such owner may lease the right of way over said structure to cities and towns for public utilities owned and operated by them, and to corporations for the constructions by such corporations of railroad tracks over which steam and electric trains and cars may be operated for the transportation of freight and passengers; such right not to be granted in such way as to obstruct or interfere with the use of such structure for pedestrians, teams and vehicles, or to permit a monopoly. Said lease to railroad corporations shall be for such time and on such terms and conditions as the Railroad Commission of Texas may prescribe. Said railroad companies shall only charge for the use of said tracks as a part of the mileage according to statutory rates and the general laws of Texas. [Id.]

Art. 1472. **Lessee may issue bonds.**—Any corporation so contracting for the right of way over any part of said structure shall have the right to make and enter into any contract with said owner subject to the approval of the Railroad Commission, for the payment to said owner of all sums of money due thereunder, and for this purpose may issue and sell its bonds to the extent of the amount of such corporation's obligations to the said owner. No such bonds shall be issued by any railroad company or other corporation without first obtaining the permission, order and approval of the Railroad Commission. [Id.]

Art. 1473. **Causeway corporations.**—Corporations may be formed and chartered under the provisions of this law and of this title for the purposes stated in article 1466 hereof. All such corporations shall have full power and authority to make contracts with other persons or corporations conveying to said persons or corporations the right of easement or user of any portion of any such structure, and shall have full power and authority to charge, demand and receive reasonable and just tolls and charges for the use of said portions of said

bridge, causeway or roadway, and the same shall be equal, just and uniform to all persons, corporations, cities and towns as herein provided, without discrimination as to the amount charged or delay in handling same. Any such corporation shall be subject to the regulation and control of the Railroad Commission as to all the powers and provisions of this law. [Id.]

2. BRIDGES AND FERRIES.

| | | | |
|----------------------------|---------|------------------------|---------|
| | Article | | Article |
| Bridge charter..... | 1474 | Toll rate..... | 1476 |
| Rights of corporation..... | 1475 | Owner's liability..... | 1477 |

Art. 1474. [1122] [643] [567] **Bridge charter.**—The charter of a bridge or ferry company, in addition to the general information required by law, shall state the stream intended to be crossed by the bridge or ferry. [Acts 1874, p. 122; G. L. Vol. 8, p. 124.]

Art. 1475. [1279] [718] [642] **Rights of corporation.**—Whenever any person shall file with the Secretary of State any article of association for the erection and maintenance of a bridge or ferry, it shall not be lawful for any other toll-bridge or toll-ferry, to be established on the same stream within the limits specified in said article; provided, that said limits shall not extend more than three miles above and three miles below said bridge or ferry. This article shall not be construed to prohibit bridges and ferries at the crossings of any road on such stream within such limits, declared, either before or after the erection of such bridge or ferry, to be a public road by the commissioners court of the county in which such crossing is situated. [Acts 1874, p. 139; G. L. Vol. 8, p. 141]

Art. 1476. [1280] [719] [643] **Toll rate.**—All charges or tolls for crossing any bridge or ferry shall be regulated by the commissioners court by an order made at a regular term, and spread upon the minutes of said court, as provided in the case of other bridges and ferries. [Id.]

Art. 1477. [1281] [720] [644] **Owner's liability.**—All persons or corporate companies owning any toll bridge or ferry shall be liable for all damages caused by neglect, delay or the insufficiency of their bridge or ferry boat, which damages may be recovered by suit therefor. [Id.]

CHAPTER THIRTEEN.

CHANNEL AND DOCK

| | | | |
|--------------------|---------|---------------------|---------|
| | Article | | Article |
| Purposes..... | 1478 | Further powers..... | 1481 |
| Powers..... | 1479 | Rate control..... | 1482 |
| Docks: powers..... | 1480 | | |

Art. 1478. [1249] [721] **Purposes.**—This chapter includes corporations created for the purpose of constructing, owning and operating deep water channels from the waters of the Gulf of Mexico along and across any of the bays on the coast of this State to the mainland, for the purposes of navigation and transportation, and for the construction, owning and operating of docks on the coast of this State for the protection and accommo-

dation of ships, boats and all kinds of vessels for navigation, and their cargoes. [Acts 1887, p. 91; G. L. Vol. 9, p. 889.]

Art. 1479. [1250] [722] Powers.—Every such channel corporation shall, in addition to the powers herein conferred, have power:

1. To cause such examination and survey for its proposed channel to be made as may be necessary to the selection of the most advantageous route for such purpose, by its officer, agents or servants; to enter upon any of the waters of such bays and upon any of the lands of this State, or of any person.

2. To take and hold voluntary grant of real estate and other property as shall be made to it to aid in the construction and maintenance of its deep water channel and works pertinent thereto.

3. To construct its channel across, along, through, or upon, any of the waters of the bays within the jurisdiction of this State, and so far into the main land as may be necessary to reach a place for its docks that will afford security from cyclones, storms, swells or tidal waves, with such depth as may suit its convenience and the wants of navigation, not less than five feet, and a width of not less than forty feet.

4. To furnish to vessels and boats adapted to the purpose, facilities for navigating in and along the entire length of its channel, and to charge and collect a toll therefor, to be prescribed by its by-laws, in no case to exceed one cent per barrel bulk of the capacity of each vessel for each mile of the length of its channel used by the vessel going either way.

5. To borrow such sums of money as may be necessary for constructing, finishing, or operating its channel, and to issue and dispose of its bonds, for any amount so borrowed, and to mortgage its corporate property and franchises to secure the payment of any debt contracted for the purposes aforesaid; provided, that damages for any property appropriated by such corporation shall be assessed and paid for as is provided for in case of railroads.

6. To enter upon and condemn and appropriate any lands of any persons or corporation that may be necessary for the uses and purposes of such channel corporation. No damages shall be assessed against or paid by it for any portion of the route of the channel embraced within and covered by the waters of any bay or lake on the coast of this State, nor for any portion of any island belonging to the State that may be requisite and necessary to the construction and successful operation of its channel; and provided, that its right of way shall not be less than the actual width of its channel, and not more than seven hundred feet in width on each side of its channel. When the land sought to be condemned is arable land, such right of way shall not extend farther than six hundred feet on each side of the channel from the edge or boundary of said channel.

7. To construct, own, and operate its channel so far into the waters of the Gulf of Mexico as may be necessary to obtain an adequate depth of water at its gulf entrance to facilitate the in-

gress and egress of such vessels as may navigate the same, in so far as this State may have the power to grant such right, which shall be in subordination to that of the United States government, in so far as that government has the constitutional power to control the same. [Acts 1874, p. 134; G. L. Vol. 8, p. 136; Acts 1887, p. 91; G. L. Vol. 9, p. 889; Acts 1895, p. 185; Acts 1897, p. 19; G. L. Vol. 10, pp. 915, 1073.]

Art. 1480. [1251] [723] **Docks: powers.**—Every such dock corporation shall, in addition to the powers heretofore conferred, have power:

1. To purchase, take and hold such land or real estate as shall be necessary for the construction and operation of its docks, approaches, entrances, moorings and ways, and the construction, use and enjoyment of such warehouses, stores and sheds as may be necessary to the receiving and discharging of freights, goods, wares and merchandise, and the proper protection and preservation thereof. No such dock corporation shall ever have the right or power to take or condemn to its use any private property without the free consent of the owner thereof, expressed by a sufficient deed in writing.

2. To construct its dock or docks in such manner and of such size and depth as it may deem proper to suit the convenience of such vessels as may see fit to use and occupy the same, and to collect from the vessels using the same, or from their masters, owners or consignees, such sum for the use thereof as may be authorized by its by-laws and agreed to by such masters, owners or consignees.

3. To borrow such sums of money as may be necessary for constructing, completing or operating its dock or docks, and to issue and dispose of its bonds for such amount borrowed, and to mortgage its corporate property and franchises to secure the payment of any debt contracted for the purposes aforesaid. [Acts 1887, p. 91; G. L., Vol. 9, p. 889.]

Art. 1481. [1252] [724] **Further powers.**—Every such corporation shall, in addition to the powers heretofore conferred, have power:

1. To purchase, take and hold such land or real estate as shall be necessary for the construction, maintenance and operation of its harbor approaches, entrances, and ways thereto, and the construction of wharves, piers and warehouses.

2. To construct, own and maintain its harbor by building piers and breakwaters so far into the gulf as may be necessary to obtain sufficient depth of water to facilitate the ingress and egress, and the safety while in port of such vessels as may enter the same, in so far only as the State may have power to grant such right, which, however, shall be exercised subject and in subordination to the government of the United States, in so far as it may have constitutional power to control the same.

3. To provide facilities to vessels and boats entering its harbor, for anchorage, receiving and discharging cargoes and passengers, and to charge and collect fair and reasonable tolls and wharfage therefor, to be prescribed by its by-laws.

4. To borrow money in such amounts and on such terms as may be necessary for constructing and finishing or operating its harbor or piers, and to issue and dispose of its bonds for any amount so borrowed, and to mortgage its corporate franchises to secure the payment of any debt contracted for the purposes aforesaid. [Id.]

Art. 1482. [1253] [725] **Rate control.**—All rates, tolls or charges made by any corporation formed under the provisions of this chapter, shall be subject to the right of the Legislature from time to time to alter, revise, change or amend the same. [Id.]

CHAPTER FOURTEEN.

DEEP WATER.

| | | | |
|------------------------|---------|--------------------------|---------|
| | Article | | Article |
| Powers | 1483 | Harbor facilities..... | 1489 |
| Frontage | 1484 | Rate control..... | 1490 |
| Application | 1485 | Railroad facilities..... | 1491 |
| Survey | 1486 | Effect of law..... | 1492 |
| Deferred payments..... | 1487 | Other railroads..... | 1493 |
| Forfeiture | 1488 | Shall file release..... | 1494 |

Art. 1483. [1254] [726] **Powers.**—Any corporation organized under the laws of Texas which is now authorized or which may hereafter be authorized by an Act of Congress of the United States to construct, own, operate or maintain, with private capital, a deep water harbor, navigable channel, docks or wharves on the Gulf Coast of Texas, shall be permitted to purchase from this State, at two dollars per acre, so much of any public lands, islands, shore or shallow bays belonging to this State, as may be situated within one-half mile from any point or points on the construction works of any jetties or any such deep water channel leading into the main harbor from the open sea. In no case shall such strip or body of land be more than one-half mile in width. Such company or corporation may also purchase from the State, at the same price per acre, any lands, shores, islands or shallow bays within one-fourth mile of each side of every navigable channel that such company or corporation may construct through or across such shallow bays in the prosecution of such work. [Acts 1891, p. 166; G. L. Vol. 10, p. 168.]

Art. 1484. [1255] [727] **Frontage.**—Any such company or corporation owning in whole or in part any lands fronting or abutting upon any shallow bays in which any such work is being constructed, may purchase at the same price per acre any lands, shores or shallow bays adjoining and lying in front of such lands; provided, that such purchase shall not extend into such bay so as to include land covered with water having an average depth of more than three and one-half feet at mean low tide. The purchases under the provisions of this article shall not extend a greater distance along the front of the survey on the shore than three miles, nor a greater distance into the bay than one-half mile. The islands known as Tolly Island and Lydia Ann Islands, situated in Aransas Bay, shall not be subject to purchase hereunder. One-half of the proceeds of the sale of the

lands provided for herein shall belong to the permanent free school fund of this State. [Id.]

Art. 1485. [1256] [728] **Application.**—All applications of a purchaser to buy under the foregoing articles shall be made in writing to the Land Commissioner, accompanied by one-fifth of the purchase money, and also a copy of the Act of Congress authorizing the construction of such deep water harbor, navigable channel, docks or wharves, and a complete plat or map showing the location and design of such improvements. Said map shall show the public lands, shores, islands and shallow bays applied for, and the depth of such shallow bays in feet, determined by actual survey, or as shown by the United States coast survey map. [Id.]

Art. 1486. [1257] [729] **Survey.**—Upon the payment of one-fifth of the purchase money, the Land Commissioner shall issue a receipt therefor, and attach thereto a copy of the application and plat filed by said purchaser. Said receipt shall be sufficient authority to the proper county surveyor to survey the lands, shores, islands or shallow bays sold. [Id.]

Art. 1487. [1257] [729] **Deferred payments.**—The remainder of the purchase money may be paid at any time within five years after the date of first payment. Deferred payments shall bear interest at the rate of five per cent per annum. If the purchaser of any island, shallow water bay, land, or either, under these articles, shall fail to pay the annual interest upon any part of the purchase money when such interest shall become due, or if such purchaser shall fail to pay the principal when the same shall become due, then all rights acquired under such purchases shall be forfeited, with all payments made thereon, without any judicial ascertainment of such forfeiture; and the Land Commissioner shall indorse upon the contract of purchase that the same is forfeited, whereby all rights so acquired shall be forfeited and revert to the State. [Id.]

Art. 1488. [1257] [729] **Forfeiture.**—If any such corporation, within five years from the date of the filing of its charter, shall fail to conform to the Act of Congress in prosecuting such work, or if such corporation shall fail to secure twenty feet of water at low tide upon the bars and other obstructions between the main harbor and the Gulf of Mexico, or if such corporation shall fail to maintain said twenty feet of water continuously for two years thereafter, then in any such case all islands, lands, shallow bays and other rights acquired under this chapter shall be forfeited and shall revert to and vest in the State of Texas. [Id.]

Art. 1489. [1258] [730] **Harbor facilities.**—Any such corporation may construct, own and maintain upon the Gulf Coast of Texas, in connection with its deep water harbor and navigable channels, docks and wharves and navigable channels for the accomodation of commerce, and such corporation may charge, demand and receive reasonable and just tolls and charge for the use of such docks and wharves, but such navigable channels so constructed shall forever remain open and free to all vessels without fee or charge. [Id.]

Art. 1490. [1258] [730] **Rate control.**—The tolls and charges for the use of said docks and wharves shall be equal, just and uniform to all vessels, persons and corporations, without discrimination as to amount charged or delay in handling the same. Such tolls and charges shall be under the control of the Legislature, and until otherwise directed by the Legislature, shall be subject to control and regulation by the Railroad Commission, under the rules prescribed for the regulations of railroads, so far as applicable. [Id.]

Art. 1491. [1258] [730] **Railroad facilities.**—Any railroad, or other means of transportation, which may be constructed between the mainland and any deep water harbor or channel shall be a public highway. All rates and charges for the transportation of freights and passengers thereon shall be subject to the control and regulation of the Railroad Commission as a railroad. Such railroad or other means of transportation shall receive from each ship, boat and vessel, or from the wharf on which the same is discharged, all freights and passengers, and transport and deliver them to the consignee, or any connecting line of railroad, without discrimination as to charges or delay in transportation and delivery, and shall in like manner receive from every person and from every connecting line of railroad, all freight and passengers, and transport and deliver the same to each and every ship, boat, vessel, person or corporation for delivery to such ship, boat or vessel on like equal and just terms, without discrimination as to charges and delay in transportation or delivery thereof. [Id.]

Art. 1492. [1258] [730] **Effect of law.**—Nothing herein shall be construed to affect any rights acquired before the enactment of this law. The acceptance of the provisions herein, or the exercise of any rights or privileges granted herein, by said corporation, or any person or corporation holding under the same, shall be deemed and held to be a contract with the State. Any wilful violation of these provisions, or the doing of any act herein prohibited, shall work a forfeiture of all rights acquired hereunder, so far as then held or claimed by the person or corporation guilty of such violation. [Id.]

Art. 1493. [1259] [731] **Other railroads.**—The privileges and rights granted herein shall never be exercised so as to in any way hinder or interfere with the completion of any railroad heretofore chartered to be built to and upon Harbor Island, in and upon the location designated in such charter; nor with any such railroads acquiring and controlling all necessary depot grounds, wharf grounds and deep water fronts that it may or could have acquired legally had not this law been enacted. [Id.]

Art. 1494. [1260] [732] **Shall file release.**—Before any rights can vest in any corporation by virtue of any purchase of public lands, islands, shores or shallow bays, the said corporation shall file with the Secretary of State a release to the State of Texas of all claim or right to have its tolls or charges imposed for any use to be made of such property or structures thereon

regulated by any Act of Congress now existing or hereafter to be passed. [Id.]

CHAPTER FIFTEEN.

OIL, GAS, SALT, ETC.

| | Article | | Article |
|-----------------------------|---------|---------------------------------|---------|
| Purposes | 1495 | Ownership of stock | 1502 |
| Powers | 1496 | Private pipe line | 1503 |
| Right of condemnation | 1497 | Effect of law | 1504 |
| Fiscal powers | 1498 | Discrimination | 1505 |
| Oil and gas | 1499 | Additional powers | 1506 |
| Oil pipe lines | 1500 | Fuller's earth pipe lines | 1507 |
| Separate corporations | 1501 | | |

Art. 1495. [1303] Purposes.—This chapter embraces corporations created for the purpose of storing, transporting, buying and selling oil, gas, salt brine and other mineral solutions; also sand and clay for the manufacture and sale of clay products; and the production of oil and gas. [Acts 1899 p. 202; Acts 1915, p. 259.]

Art. 1496. [1305] Powers.—Such corporations shall have power:

1. To store and transport oil, gas, brine and other mineral solutions, and also sand, clay and clay products, and to make reasonable charges therefor.

2. To buy, sell and furnish oil and gas for light, heat and other purposes; to lay down, construct, maintain and operate pipe lines, tubes, tanks, pump stations, connections, fixtures, storage houses and such machinery, apparatus, devices and arrangements as may be necessary to operate such pipes and pipe lines between different points in this State.

3. For the transportation of sand and clay, corporations shall have the right to construct, maintain and operate aerial tramways, a system consisting of wire cables supported by wooden, concrete or steel towers, over which buckets or carriers are propelled; and may own such connections, fixtures, guy lines and all necessary devices, storage houses and such machinery, apparatus and arrangements as may be necessary to operate such aerial tramways between different points in this State.

4. To own, hold, use and occupy such lands, right of way, easements, franchises, buildings and structures as may be necessary to the purposes of such corporation. [Id.]

Art. 1497. [1306] Right of condemnation.—Such corporation shall have the right and power to enter upon, condemn and appropriate the lands, right of way, easements and property of any person or corporation. Such corporation shall have the right to lay its pipes and pipe lines across and under any public road or highway, or under any railroad, railroad right of way, street railroad, canal or stream in this State, and to lay its pipes and pipe lines across or along and under any street or alley in any incorporated city or town in this State with the consent and under the direction of the governing body of such city or town. No pipe lines shall be laid parallel with and on any public highway, closer than fifteen feet from the improved section thereof, except with the approval and under the direc-

tion of the commissioners court of the county in which such highway is located. Said pipes and pipe lines shall be so buried and covered as not to interfere with the use and occupancy of such road, highway, street or alley by the public, or use and occupancy of such railroad or street railroad by the owner or owners thereof. Such pipes or pipe lines shall not pass through or under any cemetery, church or college, school house, residence, business or storehouse, or through or under any building in this State, except by the consent of the owner or owners thereof. All such pipes and pipe lines, when same shall pass through or over the cultivated or improved lands of another, shall be well buried under ground at least twenty inches under the surface, and such surface shall be properly and promptly restored by such corporation unless otherwise consented to by the owners of such land. When such pipes and pipe lines shall be laid over or along any uncultivated or unimproved lands of another, and such lands shall thereafter become cultivated or improved, such pipes or pipe lines shall be buried by said corporation as herein provided for cultivated lands, within a reasonable time after notice by the owner of such lands, or his agent, to said corporation or any agent thereof. [Id; Acts 1919, p. 272.]

Art. 1498. [1307] **Fiscal powers.**—Such corporation shall have the right to borrow money to an amount not in excess of its paid up capital stock, as provided by law, to issue stock and preferred stock, to mortgage its franchises and property to secure the payment of any debt contracted for any purposes of such corporation, and shall possess all the rights and powers of corporations for profit in this State whenever the same may be applicable to corporations of this character. [Acts 1899, p. 202; Acts 1915, p. 259; Acts 1917, p. 54.]

Art. 1499. [1307] **Oil and gas.**—Such corporation may also engage in the oil and gas producing business, prospecting for and producing oil and gas and owning and holding lands, leases and other property for said purposes and subject to the provisions of Chapter 4 of this title. No corporation shall exercise these powers while owning or operating oil pipe lines in this State. [Id.]

Art. 1500. [1307] **Oil pipe lines.**—Any corporation heretofore or hereafter organized under this chapter, and owning or operating oil pipe lines in this State, shall separately incorporate such oil lines, with the consent of a majority in amount of its stockholders and subject to the restrictions hereinafter imposed, whereupon, in addition to other powers which it may possess, it shall then acquire the right and power to engage in said oil and gas producing business. [Id.]

Art. 1501. [1307] **Separate corporations.**—Such separate incorporation shall be accomplished by the organization of another pipe line corporation under this chapter and the sale and conveyance to it of such oil pipe lines of the organizing company. In case of the ownership also of oil pipe lines beyond

the borders of this State, additional pipe line corporations may be organized outside of this State, and such oil pipe lines located outside of Texas may be sold and conveyed to them. In every case herein provided for, the organizing company may subscribe for and own the capital stock of the organized pipe line corporation without being precluded from engaging in said oil and gas producing business. [Id.]

Art. 1502. [1307] **Ownership of stock.**—In lieu of engaging directly in the oil and gas producing business in any State or country, a corporation organized under this chapter and authorized to engage in said producing business may own the stock of other corporations engaged therein, provided that it shall not own the stock of more than one producing corporation, or one pipe line corporation, organized under the laws of this or any other single State. No corporation organized in any other state or country shall be permitted to own or operate oil pipe lines or engage in the oil producing business in this State when the stock of such corporation is owned in whole or in part by a corporation organized under this chapter. [Id.]

Art. 1503. [1307] **Private pipe line.**—Nothing in this chapter shall preclude the ownership or operation by any corporation, of private pipe lines in and about its refineries, fields or stations, even though such corporation may be engaged in the producing business. [Id.]

Art. 1504. [1307] **Effect of law.**—No provision of the six preceding articles shall be construed as limiting, modifying or repealing any part of the law regulating oil pipe lines, or as authorizing any ownership or transaction, the effect of which would be to substantially lessen competition or to violate any law of this State prohibiting trusts and monopolies and conspiracies in restraint of trade or to violate any provision of the anti-trust laws of this State. [Id.]

Art. 1505. [1308] **Discrimination.**—It shall be unlawful for any corporation organized under this chapter to discriminate against any person, corporation, firm, association or place in the charge for such storage or transportation, or in the service rendered; but it shall receive, store or transfer oil or gas, salt, sand and clay for any person, corporation, firm or association upon equal terms, charges and conditions with all other persons, corporations, firms or associations for like service. [Acts 1899, p. 202; Acts 1915, p. 259.]

Art. 1506. **Additional powers.** — Corporations organized under this chapter which shall file with the Secretary of State a duly authorized acceptance of the provisions of this law, are hereby declared to have, in addition to the powers enumerated in this chapter, the power to carry on the business therein authorized outside of as well as within this State; to own and operate refineries, casing and treating plants, sales offices, warehouses, docks, ships, tank cars and vehicles necessary in the conduct of their business; and to cause the formation of corporations outside of this State, not exceeding one in any state, territory or foreign country, whose purposes and powers exer-

cised shall be only those conferred by law upon the forming or holding corporation as incorporated under the laws of Texas, and own and hold the stock of such corporation when the effect of such formation or stock holding is not substantially to lessen competition or otherwise to violate laws prohibiting trusts and monopolies and conspiracies in restraint of trade. [Acts 1915, p. 82.]

Art. 1507. **Fuller's earth pipe lines.**—Every person, firm, corporation, limited co-partnership, joint stock association or associations of any kind whatsoever owning, operating or managing any pipe line, or any part of any pipe line within this State for the transportation of fuller's earth for the public for hire, are declared to be common carriers, and shall have the right and power of eminent domain, and may condemn the necessary rights of way, easements, and sites, under the same terms and subject to the same conditions as are conferred by articles 1497 and 6022, on like persons, natural or otherwise, owning, operating or managing crude petroleum pipe lines. [Acts 1919, p. 272.]

CHAPTER SIXTEEN.

WASTE WATER CORPORATIONS.

| | | | |
|--------------------|---------|--------------------------|---------|
| | Article | | Article |
| Purposes | 1508 | Services | 1511 |
| Powers | 1509 | Ownership of stock | 1512 |
| Condemnation | 1510 | | |

Art. 1508. **Purposes.**—Corporations may be created for the purpose of gathering, storing, and impounding water containing salt or other substances in the drilling and operation of oil and other wells, and to prevent the flow thereof into streams at times when the latter may be used for irrigation. [Acts 4th C. S. 1918, p. 122.]

Art. 1509. **Powers.**—Such corporations, in addition to the general powers conferred by law upon private corporations, may acquire, own, and operate ditches, canals, pipe lines, levees, reservoirs, and their appliances appropriate for the gathering, impounding or storage of such water and for the protection of such reservoirs from inflow or damage by surface waters. [Id.]

Art. 1510. **Condemnation.**—Such corporation shall have power to condemn lands and rights necessary for the purposes of such corporation; and also to cross with their ditches, canals, and pipe lines under any highways, canals, pipe lines, railroads, and tram or logging roads; conditioned that the use thereof be not impaired longer than essential to the making of such crossings. No right is conferred to pass through any cemetery or under any residence, school house or other public building, nor to cross any street or alley of any incorporated city or town without the consent of the authorities thereof. [Id.]

Art. 1511. **Services.**—In the localities in which they operate and to the extent of the facilities provided, such corporations shall serve all producers of such waters in the gathering, impounding, and storage of such waters, in proportion to the needs of such producers at fair and reasonable charges, and without

discrimination between such producers under like conditions. [Id.]

Art. 1512. **Ownership of stock.**—Corporations interested in the proper disposition of such waters may subscribe for, own, and vote stock in the corporations which may be created hereunder. [Id.]

CHAPTER SEVENTEEN.

TRUST COMPANIES AND INVESTMENTS.

Trust companies.....

Article
1513

Art. 1513. **Trust companies.**—Every trust company organized under the laws of the State with a capital of not less than five hundred thousand dollars shall, in addition to all other powers conferred by law, have the power to purchase, sell, discount and negotiate with or without its endorsement or guaranty, notes, drafts, checks, bills of exchange, acceptances, including bankers' acceptances, cable transfers and other evidences of indebtedness; to purchase and sell, with or without its endorsement or guaranty, stocks, bonds, securities, including the obligations of the United States or of any States thereof; to issue debentures, bonds and promissory notes, to accept bills or drafts drawn upon it, but in no event having liabilities outstanding thereon at any one time exceeding five times its capital stock and surplus; provided, however, that with the consent in writing of the Banking Commissioner they may have outstanding at any one time ten times the capital stock and surplus; and generally to exercise such powers as are incidental to the powers conferred by this article. [Acts 3rd. C. S. 1920, p. 90.]

AGRICULTURAL FINANCE CORPORATIONS.

| | | | |
|------------------------------|-----------------|----------------------------|-----------------|
| Purposes | Article 1514 | Limit of indebtedness..... | Article 1517 |
| "Agricultural products"..... | 1515 | Ow.aership of stock..... | 1518 |
| Assets and liabilities..... | 1516 | Regulation | 1519 |

Art. 1514. **Purposes.**—This subdivision embraces private corporations formed for the purpose of dealing in acceptances and other receipts growing out, or to be used in aid, of the transportation, warehousing, distribution, or financing, in either domestic or foreign trade, of readily marketable, staple, non-perishable, agricultural products; and for dealing in acceptances of banking corporations not secured upon nor representing any such products. [Acts 2nd C. S. 1919, p. 21.]

Art. 1515. **"Agricultural products."**—By ready marketable, staple, non-perishable agricultural products are meant those classes of agricultural products which are subject to such constant dealing in ready markets as to make their values easily and definitely ascertainable and realizable on short notice, and which are not ordinarily subject to substantial depreciation in quality within the period of immaturity of the obligations which they secure, or by which they are represented. [Id.]

Art. 1516. **Assets and liabilities.**—The total liabilities to any

corporation chartered under this law of any such banking corporation, on account of any such unsecured acceptances, shall at no time be permitted to exceed ten per cent of the unimpaired capital of such corporation. Each such corporation shall invest and keep invested in obligations of the United States, Texas, or political sub-divisions or incorporated cities of Texas, not less than one-half of its paid in capital. Such corporation shall have an unauthorized capital stock of not less than five hundred thousand dollars which shall not be reduced by amendment to less than such sum. [Id.]

Art. 1517. **Limit of indebtedness.**—No such corporation shall enter into any contract or contracts of acceptances, guaranty, indorsement or suretyship when its obligation thereon in connection with its entire existing obligations and indebtedness primary or secondary, fixed or contingent, shall exceed five times its then unimpaired capital and surplus, unless previously authorized in writing by the Banking Commissioner so to do, in which case it may enter into such contract not to exceed the limit so fixed by such Commissioner, in no case to exceed ten times its said capital and surplus. Those obligations, to pay which at maturity, any such corporation has been furnished funds by other parties liable thereon, need not be considered in determining the amount of its existing obligations and indebtedness hereunder. All such contracts and obligations entered into in violation of this article shall be unenforceable against such corporation. Nothing herein shall prevent the enforcement of any such prohibited obligations by any holder who has acquired the same in due course, for value, before maturity, and without notice of its infirmity. [Id.]

Art. 1518. **Ownership of stock.**—Any private corporation formed under this title, and any banking corporation or trust company, except savings banks, may hold stock in corporations created hereunder, and in corporations chartered under the laws of the United States or in any State thereof, and principally engaged in financing domestic or foreign trade in any such agricultural products, in amounts not to exceed in the aggregate, ten per cent of the capital and surplus of such private corporation, banking or trust company, nor to exceed ten per cent of the capital stock of such corporation in which such stock is to be held. No banking corporation or trust company shall acquire stock in such corporation without express written authorization therefor from the Banking Commissioner, under such rules and regulations as he may provide, except in payment of debt. If it shall acquire same in payment of debt, it shall promptly dispose of same unless expressly permitted to retain same by such commissioner. [Id.]

Art. 1519. **Regulation.**—Such corporations shall be subject at all times to the supervision and control of the Banking Commissioner, and shall conform to all lawful regulations of such Commissioner. No such corporation shall begin business until

authorized to do so by such Commissioner after satisfactory showing made that such corporation has complied with the law, and thereafter it shall make reports to such Commissioner and be subject to such periodical visitations and examinations under his direction, and shall pay fees therefor, all as in the case of State banking corporations. Said Commissioner shall have such powers with reference to taking charge of such corporations, liquidating same, and for like causes as are possessed by him with reference to State banks. [Id.]

LOAN AND BROKERAGE COMPANIES.

| | | | |
|--------------|--------------|-------------------|--------------|
| Powers | Article 1520 | Liquidation | Article 1523 |
| Statements | 1521 | Violations of law | 1524 |
| Examinations | 1522 | | |

Art. 1520. Powers.—This subdivision shall embrace corporations created for any or all of the following purposes: To accumulate and lend money, purchase, sell and deal in notes, bonds, and securities, but without banking and discounting privileges; and to act as trustee under any lawful express trust committed to them by contract and as agent for the performance of any lawful act. No such corporation shall act as agent or trustee in the consolidation of or for the purpose of combining the assets, business or means of any other persons, firms, associations or corporations, nor shall such corporation as agent or trustee carry on the business of another. No such corporation shall be authorized to engage in or carry on any such business unless it shall have an actual paid in capital of not less than ten thousand dollars. [Acts 1919, p. 134.]

Art. 1521. Statements.—Such corporation shall publish in some newspaper of general circulation in the county where it has its principal place of business, on or before the first day of February of each year, a statement of its condition on the previous thirty-first day of December, in such form as may be required by the Banking Commissioner, showing under oath its assets and liabilities; and shall file a copy of such statement with the Commissioner, together with a fee of ten dollars for filing same. [Id.]

Art. 1522. Examinations.—The Banking Commissioner shall examine or cause to be examined, such corporation annually. Said corporation shall pay the actual traveling expenses, hotel bills, and all other actual expenses incident to such examination, and a fee therefor not exceeding one-eighth of one per cent of its actual paid in capital. [Id.]

Art. 1523. Liquidation.—If upon examination it shall appear that the assets of said corporation, exclusive of its said capital paid in, are less than its liabilities, the said Commissioner shall notify it thereof in writing, and if said corporation shall not within thirty days from the receipt of said notice restore and make good such impairment of its capital, then it shall be the duty of the Commissioner to take possession of said corporation and its property and to wind the same up and distribute its assets in

accordance with the provisions of law with reference to the liquidation of State banks. [Id.]

Art. 1524. **Violations of law.**—If it shall appear from such examination that said corporation has exceeded its corporation powers, or has been guilty of an unlawful act or acts, the said commissioner shall give written notice to such corporation to cease such act or practice and to conduct its business in accordance with law and its charter powers. If such corporation shall fail or refuse for a period of thirty days thereafter to comply with such notice, then it shall be the duty of said Commissioner to take possession of said corporation and its assets and wind up and distribute the said assets as hereinbefore provided. [Id.]

CHAPTER EIGHTEEN.

MISCELLANEOUS.

Art. 1525. [1262-3-4-5-6-7] **Drainage.**—Corporations chartered for the purpose of constructing, maintaining and operating canals, drains and ditches outside of the corporate limits of cities and towns in any county in Texas shall:

1. Have power for the purpose of drainage, to acquire lands for the purpose of its business or in payment of stock or drainage rights, and to hold and dispose of such lands and all other property.

2. Alienate within fifteen years from the date of acquiring same all lands acquired by such corporations, subject to judicial forfeiture, except lands used for the construction, maintenance and operation of drains, ditches and laterals.

3. Have power to make contracts for the permanent drainage of any tract of land and the charges therefor, said charges to be subject to the control of the Legislature; and the rights therein shall be secured by a lien expressly given upon the lands, other than homesteads, benefited by said drain or canal.

4. Have the right to borrow money for the construction, maintenance and operation of its ditches, canals and laterals, and to issue bonds and mortgage its franchises to secure the payment of any debts contracted for the same.

5. Report to the commissioners court of the county wherein constructed, all drains and canals so constructed by such corporations, such report to be approved by said court. [Acts 1897, p. 109; G. L. Vol. 10, p. 1163.]

Art. 1526. **Irrigation and waterpower.**—Corporations organized to construct, maintain and operate canals, ditches, flumes, feeders, laterals, dams, reservoirs, lakes and wells, and for conserving, storing, conducting and transferring water to all persons entitled to the use of same for irrigation, mining, milling, manufacturing, the development of power, to cities and towns for waterworks, and for stockraising, shall have power to acquire lands by voluntary donation or purchase in payment of stock or bonds or water rights; and to hold, improve, subdivide and dispose of all such land and other property. Such corporations

may elect directors or trustees to hold office for a period of three years, and may provide for the election of one-third in number thereof each year. [Acts 1917, p. 224.]

Art. 1527. **International trading corporations.**—Corporations created for the purpose of engaging in international trading and the purchase and sale of the products of the farm, ranch, orchard, mine and forest shall be empowered to pledge, borrow, hypothecate and receive in trust for the purpose of sale any and all products of the farm, ranch, and orchard, and shall be authorized to buy, sell and exchange raw products of the farm, ranch, orchard, mine and forest, and to take in payment therefor finished products of whatever kind and character that they may determine at a fair, equitable and just valuation. Such corporations shall have power to charter, lease, construct or purchase necessary vessels, ships, docks, wharves and warehouses for the conduct of their business; to pool products of the farm in the sale of same; to hypothecate or pledge the credit of such corporations for the products so received under contract for the necessary funds with which to market same; to borrow money as other business corporations and to lend the same upon products that they may be engaged in the sale of, either as owner, agent, consignee, or commission merchant. They shall have generally and specially all the rights, powers and privileges belonging to a corporation engaging in international trading. Such corporations shall have authority to receive in payment of capital stock, manufacturing establishments, and the stocks and bonds of same at a fair and just valuation, and to so receive the products of the farm, ranch and orchard. Whenever property is received in payment for capital stock, the Secretary of State shall appoint a board of appraisers who are familiar with the valuations of such property so taken in payment for capital stock to appraise same and furnish him with a sworn statement of the valuations of the property so taken in payment for capital stock. On receipt of same he shall approve, file and record the charter of such corporation. A majority of the stock shall in all instances be owned by citizens of the United States, and a majority of the officers and directors thereof shall in all instances be citizens of the United States and of this State. Nothing in this article shall prevent citizens of foreign countries from becoming stockholders in such corporations, but the control of such corporations shall never in any instance be vested in citizens of other countries than the United States. Violation of any provision herein as to the control of stock of such corporation shall be sufficient for the Secretary of State to cancel the charter of said corporation and same shall be placed in the hands of a receiver as provided by law. [Acts 1921, p. 227.]

Art. 1528. **Ice companies.**—Corporations organized or chartered under the laws of this State for the manufacture of ice shall also be authorized to engage in and transact the business of buying, selling and refrigerating poultry and poultry prod-

ucts, and buying, selling, canning and refrigerating fruits, produce and dairy products. [Acts 1913, p. 267.]

CHAPTER NINETEEN.

FOREIGN CORPORATIONS.

| | | | |
|---------------------------|--------------|-----------------------------|--------------|
| Permit | Article 1529 | Disposal of property | Article 1534 |
| Stock | 1530 | Evidence | 1535 |
| Affidavit | 1531 | Right to sue | 1536 |
| Rights under permit | 1532 | Amendments to charter | 1537 |
| Property rights | 1533 | Corporations exempt | 1538 |

Art. 1529. [1314-20] **Permit.**—Any corporation for pecuniary profit, except as hereinafter provided, organized or created under the laws of any other State, or of any territory of the United States, or of any municipality of such State or territory, or of any foreign government, sovereignty or municipality, desiring to transact or solicit business in Texas, or to establish a general or special office in this State, shall file with the Secretary of State a duly certified copy of its articles of incorporation; and thereupon such official shall issue to such corporation a permit to transact business in this State for a period of ten years from the date of so filing such articles of incorporation. If such corporation is created for more than one purpose, the permit may be limited to one or more purposes. [Acts 1889, p. 87; Acts 1901, p. 18; G. L. Vol. 9, p. 1115.]

Art. 1530. [1314] [745] **Stock.**—Before such permit is issued such corporation shall show to the satisfaction of the Secretary of State that at least one hundred thousand dollars in cash of their authorized capital stock has been paid in, or that fifty per cent of their authorized capital stock has been subscribed, and at least ten per cent thereof paid in. [Id.]

Art. 1531. [1315] **Affidavit.**—Before a permit is issued to such corporation, its president, vice president, secretary or treasurer, or two of the directors thereof, shall make and file in the office of the Secretary of State an affidavit stating that such corporation is not a trust or organization in restraint of trade in violation of the laws of this State, has not, within twelve months next preceding the making of such affidavit, become or been a party to any trust agreement of any kind which would constitute a violation of any anti-trust law of Texas existing at the date of such affidavit, and has not within that time, entered into or been in any wise a party to, any combination in restraint of trade within the United States, and that no officer of such corporation has, within the knowledge of affiant, within such time and on behalf of such corporation or for its benefit, made any such contract, or entered into or become a party to any such combination in restraint of trade. The jurat of the officer making such affidavit shall be attested by his official signature and seal of office. [Acts 1909, C. S. p. 267; Id.]

Art. 1532. [1317] [745] **Rights under permit.**—Such corporations, on obtaining such permit, shall have and enjoy all the rights and privileges conferred by the laws of this State on

corporations organized under the laws of this State. [Acts 1897, p. 167; G. L. Vol. 10, p. 1221.]

Art. 1533. **Property rights.**—Such corporations shall be authorized to hold, purchase, sell, mortgage or otherwise convey such real estate and personal estate as the purposes of such corporation may require, and to take, hold and convey such other property, real, personal, or mixed, as may be requisite for such corporation to acquire in order to obtain or secure the payment of any indebtedness or liability due, or which may become due, or belonging to, the corporation. [Id.]

Art. 1534. **Disposal of property.**—Such corporations shall alienate all real property so acquired not necessary for its purposes, within fifteen years from the time of acquisition; and shall alienate all real estate acquired for the purposes of such corporation within fifteen years from the expiration of the time for which the permit is issued, or, if such permit be renewed or such corporation be otherwise authorized to carry on business in Texas, then such real estate shall be alienated within fifteen years from the expiration of such renewal or authorization. If such corporation shall cease to carry on business in Texas, it shall alienate all such real estate so acquired by it, within fifteen years from the time of such cessation. [Id.]

Art. 1535. [1321] [749] **Evidence.**—Either the original permit or certified copies thereof by the Secretary of State shall be evidence of the compliance on the part of any corporation with the terms of this chapter. A certificate of the Secretary of State to the effect that the corporation named therein has failed to file in his office its articles of incorporation shall be evidence that such corporation has in no particular complied with the requirements of this chapter. [Id.]

Art. 1536. [1318] [746] **Right to sue.**—No such corporation can maintain any suit or action, either legal or equitable, in any court of this State upon any demand, whether arising out of contract or tort, unless at the time such contract was made, or tort committed, the corporation had filed its articles of incorporation under the provisions of this chapter. [Id.]

Art. 1537. **Amendments to charter.**—Each foreign corporation, after a permit has been granted it to do business in this State, shall immediately file with the Secretary of State a certified copy of any amendment or supplement to its original articles of incorporation when any such amendment or supplement to its original articles of incorporation is filed in the state, territory or foreign country under whose laws such corporation is incorporated. [Acts 1919, p. 81.]

Art. 1538. [1319] [747] **Corporations exempt.**—The provisions of this chapter shall not apply to corporations created for the purpose of constructing, building, operating or maintaining any railway, or to such corporations as are required by law to procure certificates of authority to do business from the Commissioner of Insurance or from the Banking Commissioner. [Acts 1897, p. 167; G. L. Vol. 10, p. 1221.]

CHAPTER NINETEEN "A."

NON-PAR CORPORATIONS.

| | Article | | Article |
|---|---------|-----------------------------|---------|
| Non-par stock..... | 1538a | May amend charter..... | 1538h |
| Statement on face..... | 1538b | Franchise tax..... | 1538i |
| Consideration for stock..... | 1538c | Stock to be subscribed..... | 1538j |
| Shall file with Secretary of State..... | 1538d | Forfeiture of charter..... | 1538k |
| Certificate by directors..... | 1538e | Blue sky law..... | 1538l |
| Fees..... | 1538f | Constitutionality..... | 1538m |
| Value of shares..... | 1538g | | |

Art. 1538a. **Non-par stock.**—Upon the organization, under the laws of this State, of any private corporation for profit, other than corporations authorized to conduct a banking or insurance business, or upon the amendment of the charter in the manner now or hereafter provided by law of any private corporation for profit organized under the laws of this State other than corporations authorized to conduct a banking or insurance business, provision may be made for the issuance of shares of its stock without nominal or par value. Every such share shall be equal in all respects to every other such share, except that the charter or any amendment thereof may provide that such shares should be divided into different classes, the shares of each class to have such preferences, designations, rights, privileges and powers and be subject to such restrictions, limitations and qualifications as shall be stated in the charter or any amendment thereof. Any law of this State requiring that the par value of shares of stock of a corporation be stated in any certificate, report or other instrument or paper shall be complied with by stating, in respect to shares without nominal or par value, that such stock is without par value, and wherever the amount of stock is required to be stated, the number of such shares without nominal or par value shall be stated and that such shares are without nominal or par value.

Art. 1538b. **Statement on face.**—Every certificate issued for shares of stock without nominal or par value shall have plainly stated on its face the number of shares which it represents and the class thereof, and shall not set forth any par value or value in dollars of such shares. No such certificate shall express or state thereon any rate of dividend, preference as to assets in liquidation, or price at which such shares may be redeemed except in dollars and cents per share.

Art. 1538c. **Consideration for stock.**—Corporations may issue and dispose of their authorized shares having no nominal or par value for such consideration as may be prescribed in the original charter or any amendment thereof; or, if no consideration is so prescribed, then for such consideration as may be fixed by the stockholders at a meeting duly called and held for that purpose, or by the board of directors when acting under general or special authority granted by the stockholders, or by the board of directors when acting under general authority conferred by the original charter or any amendment thereof; such consideration to be in the form of money paid, labor done or property actually received. Any and all shares without nominal or par value issued for the consideration prescribed or fixed in accordance with the provisions of this section shall be fully paid stock and not liable

to any further call or assessment thereon, nor shall the subscriber or holder be liable for any further payments.

Art. 1538d. Shall file with Secretary of State.—Corporations authorizing the issuance of shares of its stock without nominal or par value shall furnish to, and file with, the Secretary of State at the time of filing the charter or amendment to a charter authorizing the issuance of such stock a certificate authenticated by the incorporators as to original charter, and by a majority of the directors as to any amendment thereof, in the manner required by the laws of this State as to an original charter of incorporation, setting forth the following:

(a) The number of shares with a par or face value and the number of shares without nominal or par value that may be issued by the corporation and the classes, if any, into which such shares are divided.

(b) The par or face value of shares other than the shares which it is stated are to be without nominal or par value.

(c) That all stock having a par or face value, if any, has been in good faith subscribed, and fifty per cent thereof paid in, in cash, property or labor done.

(d) The number of shares without nominal or par value subscribed and the actual consideration received by the corporation for such shares; and upon receiving such certificate it shall be the duty of the Secretary of State, on payment of office fees and franchise tax due, to file and record the charter, or amendment thereof, of such corporation and to give his certificate showing the record thereof, provided, however, the stockholders of any corporation authorizing the issuance of shares of its stock without nominal or par value shall be required, in good faith, to subscribe and pay for at least ten per cent of the authorized shares to be issued without nominal or par value before said corporation shall be chartered or have its charter amended so as to authorize the issuance of shares without par or nominal value; provided further that in no event the amount so paid shall be less than \$25,000.00.

Art. 1538e. Certificate by directors.—In the event the original charter or any amendment to a charter of a corporation authorizing the issuance of shares of stock without nominal or par value does not prescribe the consideration for which such shares, other than those subscribed and paid for at the time of the filing of the charter or any amendment to a charter, shall be issued, then, within ninety (90) days after the issuance of any such shares, the corporation shall file, with the Secretary of State a certificate, authenticated by a majority of the directors in the manner required by the laws of this State as to an original charter of incorporation, setting forth the number of such shares so issued and the actual consideration received by the corporation for such shares.

Art. 1538f. Fees.—Any corporation authorizing the issuance of shares of its stock without nominal or par value shall be required to pay to the Secretary of State, for the use of the State, fees as follows:

(a) The fees now or hereafter provided by the laws of this

State as to any shares of its stock having a par or face value; and

(b) as to any shares of its stock without nominal or par value a fee of fifty dollars for the first ten thousand dollars of actual consideration received by the corporation for any such shares issued, provided, that if the actual consideration received by said corporation shall exceed ten thousand dollars, it shall be required to pay an additional fee of ten dollars for each additional ten thousand dollars, or fractional part thereof, of actual consideration received by it; and, provided further, that any shares without nominal or par value not subscribed and paid for at the time of filing said original charter or amendment to a charter shall for the sole and only purpose of computing the filing fees, be assumed to have the same value per share as that for which the shares actually subscribed and sold were issued so that the filing fees, as fixed herein, shall be paid upon the entire authorized number of shares to be issued without nominal or par value; which said fees shall be paid to the Secretary of State at the time of filing the charter or any amendment thereof, provided, that if, after payment of the fees herein provided, the corporation should thereafter issue shares of its stock without nominal or par value, which said shares were not subscribed, paid for, or issued, when the fees thereon were paid, for a consideration or value per share in excess of the value such shares were assumed to have when the charter or amendment to a charter was filed, then said corporation, at the time of filing the certificate showing the actual consideration received by it for said shares so subsequently sold and issued, shall pay further or additional fees at the rates herein stipulated, upon such excess value or consideration; provided that the aggregate fees to be paid by a corporation as prescribed in this Section 6 shall never exceed the sum of twenty-five hundred dollars (\$2500).

Art. 1538g. **Value of shares.**—The certificate required by this Act to be filed setting forth the value received by a corporation for the shares of its stock without nominal or par value which it may issue shall not be construed as fixing any value upon such shares, but said certificate shall be for the sole and only purpose of furnishing the Secretary of State a basis upon which to compute the filing fees and franchise tax to be paid upon said shares without nominal or par value.

Art. 1538h. **May amend charter.**—Any private corporation for profit, other than corporations authorized to conduct a banking or insurance business, having authorized shares with par or face value, or shares without nominal or par value, or both, may, by vote of the holders of a majority of its outstanding stock entitled to vote at any annual meeting or at any special meeting called and held for the purpose, amend its charter so as to change its shares or stock with par or face value, or any class or classes thereof, into the same number or into a larger or smaller number of shares without nominal or par value provided that all shares in any one class shall be changed on the same basis, or so as to change its shares without nominal or par value, or any class or classes therefor, into a larger or smaller number of

shares without nominal or par value provided that all shares in any one class shall be changed on the same basis; and provided further that the preferences, rights, limitations, privileges and restrictions granted or imposed with respect to any shares of outstanding stock shall not be impaired, diminished or changed without the consent of the holder thereof. Whenever any such amendment shall be made effective, all the shares with par or face value of the class or classes specified in said amendment shall be deemed for all purposes to have been converted, on the basis in said amendment stated, shares without nominal or par value of the class or classes specified, and all of the shares without nominal or par value changed into a larger or smaller number of shares without nominal or par value shall be deemed for all purposes to have been converted, on the basis in said amendment stated, into such larger or smaller number of shares without nominal or par value, and the corporation shall, in writing, notify all holders of shares of stock of the class or classes effected and shall thereafter, whenever any certificate for any such shares is presented for transfer or exchange, cancel the same, and in its place, issue, on the basis in said amendment stated, a new certificate, which shall conform to the provisions of Article 1538b hereof.

Art. 1538i. **Franchise tax.**—The amount of franchise tax to be paid by any corporation having shares of stock without nominal or par value shall be determined in the manner as now or hereafter prescribed by the laws of this State, except that such shares without nominal or par value shall, for the purpose of computing such tax only, be treated and considered as having and being of the value actually received by the corporation for the issuance of such shares as disclosed by the charter or any amendment thereof, as provided in Article 1538d hereof, or by a certificate as provided in Article 1538e hereof.

Art. 1538j. **Stock to be subscribed.**—Corporations authorizing the issuance of shares of its stock without nominal or par value are exempt from the provisions of Articles 1308 to 1311, inclusive, and of Article 1338 of the Revised Civil Statutes, provided that no original charter nor any amendment to a charter which provides for stock having a nominal or par value shall be filed or recorded by the Secretary of State until the full amount of all such authorized capital stock having a par value shall have been subscribed, and fifty per cent thereof paid, and proof thereof made in the manner provided in said Articles 1308 to 1311, inclusive; and provided further, that the provisions of said Article 1338 as to the payment of the unpaid portion of capital stock shall apply to the payment of the unpaid portion of any stock which has a nominal or par value.

Art. 1538k. **Forfeiture of charter.**—Any corporation authorized to issue shares of its stock without nominal or par value which shall fail or refuse to make and file within the time provided, any certificate or report required by this Act to be made and filed shall thereupon forfeit and pay to the State a penalty of not less than five dollars nor more than one hundred dollars for each and every day, during which it shall continue in default, which penalty shall be recovered by suit in a court of com-

petent jurisdiction by the Attorney General of Texas; and upon proof in said suit that such corporation has not then filed the certificate or report required to be filed by it, said corporation shall forfeit its charter and all rights and franchises which it holds under, from, or by virtue of, the laws of this State.

Art. 1538l. **Blue sky law.**—The privileges and powers conferred by this chapter shall be deemed to be in addition to any and all powers and authority conferred by any other law or laws, and not in restriction or limitation of any of the powers now permitted to corporations of this State; provided, that nothing in this chapter shall be construed to in any way exempt the sale of such par value stock or non par value stock from the operation and control of the Blue Sky Law of this State as the same now exists or may hereafter be amended.

Art. 1538m. **Constitutionality.**—Should any provision of this Act be held invalid, the validity of the other provisions shall not be affected or impaired thereby. [Acts 1925, p. 236-240.]

TITLE 33.

COUNTIES AND COUNTY SEATS.

| Chapter | Page | Chapter | Page |
|---------------------------------|------|--------------------------|------|
| 1 Creation of counties..... | 456 | 4 County lines..... | 463 |
| 2 Organization of counties..... | 460 | 5 County seats..... | 465 |
| 3 Corporate rights and powers | 461 | 6 County boundaries..... | 468 |

CHAPTER ONE.

CREATION OF COUNTIES.

| | Article | | Article |
|--------------------------------------|---------|--|---------|
| Legislature may create counties..... | 1539 | Tax for pro-rata indebtedness..... | 1552 |
| Area required..... | 1540 | County bonds held by school funds..... | 1553 |
| Division of exterior territory..... | 1541 | Levy of tax for debt..... | 1554 |
| Created out of other counties..... | 1542 | Detachment by vote..... | 1555 |
| Line of new county..... | 1543 | Election ordered..... | 1556 |
| County from existing county..... | 1544 | Application..... | 1557 |
| Existing counties reduced..... | 1545 | Notices of election..... | 1558 |
| Liability of new county..... | 1546 | Question to be voted upon..... | 1559 |
| Pro rata of indebtedness..... | 1547 | Law governing such election..... | 1560 |
| Apportionment of indebtedness..... | 1548 | Returns of elections..... | 1561 |
| Suits and special tax..... | 1549 | Subsequent election..... | 1562 |
| Non-residents to pay..... | 1550 | | |
| When territory added..... | 1551 | | |

Art. 1539. [1331] [756] [651] **Legislature may create counties.**—The Legislature shall have power to create counties for the convenience of the people. [Const. Art. 9, Sec. 1.]

Art. 1540. [1332] [757] [652] **Area required.**—In the territory of the State exterior to the counties now existing, no new county shall be created with a less area than nine hundred square miles in a square form unless prevented by pre-existing boundary lines. If the State lines render this impracticable in border counties, the area may be less. [Id.]

Art. 1541. [1333] [758] [653] **Division of exterior territory.**—The territory referred to in the preceding article may at any time, in whole or in part, be divided into counties in advance of population, and attached for judicial and land surveying purposes to the most convenient organized county. [Id.]

Art. 1542. [1334] [759] [654] **Created out of other counties.**—Within the territory of any county or counties now existing no new county shall be created with less area than seven hundred square miles. No such county now existing shall be reduced to a less area than seven hundred square miles. [Id.]

Art. 1543. [1335] [760] [655] **Line of new county.**—No new county shall be created so as to approach nearer than twelve miles of the county seat of any county from which it may, in whole or in part be taken. [Id.]

Art. 1544. [1336] [761] [656] **County from existing county.**—Counties of less area than nine hundred, but of seven hundred or more square miles, within counties now existing, may be created by a two-thirds vote of each house of the legislature, taken by yeas and nays, and entered on the journals. [Id.]

Art. 1545. [1337] [762] [657] **Existing counties reduced.**—Any county now existing may be reduced to an area of not less than seven hundred square miles by a like two-thirds vote

of each house of the legislature, taken by yeas and nays, and entered on the journals. [Id.]

Art. 1546. [1338] [763] [658] **Liability of new county.**—When any part of a county is stricken off and attached to, or created into another county, the part stricken off shall be obligated to pay its proportion of all existing liabilities of the county from which it was taken, in such manner as the law shall provide. [Id.]

Art. 1547. [1339] [764] **Pro rata of indebtedness.**—Any county which has been or may hereafter be created by the Legislature out of any other county or counties, shall be held liable for its proportion of all the liabilities of the county or counties from which it was taken, existing at the date of its creation as such new county, according to the proportionate value of the property in the excised territory, and the value of the property remaining in the old county. A suit to recover the same may be brought in the district court by the parent county, either in such parent county, or in the newly created county; and the court shall have power to make any order or render any judgment necessary to carry out and satisfy its decree therein. The provisions of this article shall not apply to any county, the claims against which have already been placed before courts having jurisdiction thereof and tried or dismissed under laws that were at such time constitutional. [Acts 1893, p. 124; G. L. Vol. 10, p. 554.]

Art. 1548. [1340] [765] **Apportionment of indebtedness.**—Where any suit has been, or shall be, brought to enforce payment of the indebtedness created by the parent county or counties, or for the pro rata share of the excised territory, the assessment rolls of the parent county or counties for the year in which such new county was created shall be conclusive evidence of the property and value thereof remaining in the parent county, and in the excised territory at the date of the creation of such new county; provided that when the new county was organized and made assessment rolls for the same year as that in which it was created, such rolls shall be taken as conclusive evidence of the property therein and the taxable values thereof at the date of the creation of such new county, and the assessment rolls of the parent county for the same year shall be conclusive evidence of the property and the value thereof remaining in the parent county at the date of the creation of such new county. [Id.]

Art. 1549. [1341] [765a] **Suits and special tax.**—All suits brought under this law shall be given precedence upon the dockets of the courts. If the plaintiff shall recover, the commissioners court of the newly created county shall levy a special tax on all property in the territory taken from the plaintiff county sufficient to pay off the judgment, and, if the first levy be insufficient, to make said levy annually till said judgment is satisfied, and the judgment of the court shall order said commissioners court to make such levies. [Id.]

Art. 1550. [1342] [766] **Non-residents to pay.**—The Comptroller shall assess and collect from the non-residents of unorganized counties such rate of taxation, to pay the pro-rata share of the debt due by such unorganized county, as the commissioners court of the parent county shall levy on property in said parent county to pay such debt, and a certified statement of the commissioners court making the levy in the parent county, giving the amount or the levy, shall be authority for his action. [Acts 1889, p. 136; G. L. Vol. 9, p. 1164.]

Art. 1551. [1343] [767] **When territory added.**—When the territory taken is added to and made a part of an organized county, the commissioners court of such county shall levy and have collected on all property in such territory a tax sufficient to pay their pro-rata of the indebtedness, said tax not to exceed the constitutional limit; and the commissioners court of the county to which any unorganized county may be attached for judicial purposes shall levy and have collected on all property in such unorganized county owned or held by resident citizens a tax for the purpose of paying such indebtedness. [Id.]

Art. 1552. [1344] [768] **Tax for pro-rata indebtedness.**—When any county has organized, the commissioners court of such county shall levy and have collected on all property in this county such rate of taxation to pay the pro rata share of the debt due by such county as the commissioners court of the parent county shall levy on property in said parent county to pay such debt. [Id.]

Art. 1553. [1346] [770] **County bonds held by school funds.**—When any new county has been created wholly out of an existing county, if any bonds were legally issued by the parent county prior to the severance of a part of its territory, such of said bonds and the coupons due thereon as are held by the school fund of this State shall be apportioned by the Comptroller between the parent county and the new county on the basis now provided by law. [Acts 1891, p. 39; G. L. Vol. 10, p. 41.]

Art. 1554. [1347] [771] **Levy of tax for debt.**—The commissioners court of the parent county, or of any county created out of the parent county, which has now or may hereafter be organized, shall levy and have collected on all property in such county a tax to pay such county's pro-rata share of the debt. The commissioners court of a county to which any unorganized county may be attached for judicial purposes shall levy and have collected on all property in said unorganized county owned by resident citizens thereof a tax for the purpose of paying said county's part of the debt. It shall be the duty of the Comptroller to assess and collect on all property in such unorganized counties owned by non-residents, a tax to pay said counties' pro rata part of said debt. Nothing herein shall be held to authorize the levy and collection of any tax in excess of that now allowed by the Constitution of this State. [Id.]

Art. 1555. [1348] [772] [659] **Detachment by vote.**—No part of any existing county shall be detached from it and attached to another existing county until the proposition for such change has been submitted to a vote of the electors of both counties, and shall have received a majority of those voting on the question in each. [Const. Art. 9.]

Art. 1556. [1349] [773] [660] **Election ordered.**—An election for such purpose shall be ordered by the county judge, or county judges of the county or counties from which it is proposed to detach any proportion thereof, or to attach any portion thereto, upon the written application of not less than fifty qualified voters of said county or counties.

Art. 1557. [1350] [774] [661] **Application.**—Such application shall designate particularly by metes and bounds, the portion of the territory proposed to be detached, and shall show the number of square acres contained within said bounds, and the number of square acres remaining in the county or counties from which it is proposed to detach such part or parts, and the distance on a direct line of the county seat of any such county or counties from the nearest boundary line of the territory which it is proposed shall be detached.

Art. 1558. [1351] [775] [662] **Notices of election.**—The notices of such election shall contain substantially the boundaries and statements contained in the application, and in order of election.

Art. 1559. [1352] [776] [663] **Question to be voted upon.**—The question to be voted upon at such election shall be, for or against the proposition, and the ballots shall be, "For the proposition," or "Against the proposition."

Art. 1560. [1353] [777] [664] **Law governing such elections.**—Such election shall be governed by the law governing other elections so far as applicable, and not in conflict with any provisions of this chapter.

Art. 1561. [1354] [778] [665] **Returns of election.**—The returns of such election shall be made to the county judge or county judges of the county or counties in which the election takes place; and such judge or judges shall estimate the vote and make duplicate statements of the same, and shall officially certify to such statements, and one of said statements, together with a copy of the application so certified, he shall seal in an envelope, writing his name across the seal, and endorsing upon the package "Election returns of _____ County," and direct and transmit the same by mail or other safe conveyance to the Speaker of the House of Representatives at the seat of government, in time for the same to be received as early as practicable during the next session of the Legislature.

Art. 1562. [1355] [779] [666] **Subsequent election.**—When any such election has been held in a county, and the proposition to detach a portion thereof has been defeated, no other election for the same purpose shall be ordered or held within five years thereafter.

CHAPTER TWO.

ORGANIZATION OF COUNTIES.

| | | | |
|-----------------------------------|---------|-----------------------------------|---------|
| | Article | | Article |
| Old county shall organize new one | 1563 | Disorganized counties | 1567 |
| Election to be ordered when and | | Organization of attached county | 1568 |
| by whom | 1564 | Certificate of election | 1569 |
| County commissioners may act | 1565 | Delivery to new officers | 1570 |
| Unorganized county | 1566 | Elections in unorganized counties | 1571 |

Art. 1563. [1356] [780] [667] Old county shall organize new one.—Whenever any new county shall hereafter be established, the commissioners court of the county from which the territory of such new county, or the greater part thereof was taken, at least one month previous to the general election next after such new county shall have been established shall lay off and divide such new county into convenient precincts for the election of justices of the peace and other precinct officers, defining particularly the boundaries of such precincts; and shall also designate convenient places in such new county where elections shall be held, and shall cause a record thereof to be made by the clerk. A copy thereof shall be transmitted to the county judge of such new county when elected. [Act March 20, 1848, p. 284; P. D. 1063; G. L. Vol. 3, p. 284.]

Art. 1564. [1357] [781] [668] Election to be ordered when and by whom.—It shall be the duty of the county judge of every county from which any new county has been so taken at least one month previous to the general election of county officers next after such new county has been established, to order an election to be held in such new county or said general election day, for all county officers authorized to be elected by the people of such new county, and to appoint a presiding officer for each place designated in such new county, for holding elections; such order of elections shall specify the number of precincts, their boundaries, and the officers to be elected in such county. Such presiding officers shall hold such elections in accordance with the laws regulating elections, and shall make their returns to the county judge who ordered such election, who shall open and examine such returns and give certificates to the persons elected. [Id.]

Art. 1565. [1358] [782] [669] County commissioners may act.—In any case where the office of county judge shall be vacant, any two of the county commissioners shall be authorized to perform each duty required of the county judge under this chapter. [Id.]

Art. 1566. [1359] [783] [670] Unorganized county.—Until a new county is legally organized, the territory thereof shall remain in all respects subject to the county from which the same has been taken. [Id.]

Art. 1567. [1360] [784] [671] Disorganized counties.—All legally organized counties that, from any cause, may have lost, or may hereafter lose, their county organization, shall be, for all judicial and surveying purposes, and for the registration of deeds, mortgages and all other instruments that are now, or

may hereafter be, required or permitted by law to be recorded attached to the organized county whose county seat is nearest to the county seat of such disorganized county, and so remain attached until such disorganized county shall again be legally organized. [Act Nov. 5, 1866, p. 90; G. L. Vol. 5, p. 1008.]

Art. 1568. [1361] [785] [672] **Organization of attached county.**—When any unorganized or disorganized county has been attached to another county for judicial or other purposes, and desires to be organized or reorganized, a petition expressing such desire, signed by not less than seventy-five qualified voters residing in such county, may be presented to the commissioners court of the county to which such unorganized or disorganized county is attached, and thereupon said court shall proceed without delay to the organization or reorganization of such county in the same manner as hereinbefore provided for the organization of new counties. [Act May 1, 1874, p. 188; Acts 1918, 4th C. S. p. 17; G. L. Vol. 8, p. 189.]

Art. 1569. [1362] [786] [673] **Certificates of election.**—The county judge of the county conducting the organization of another county shall issue certificates of election to the officers elected in such organized or reorganized county, and approve the bonds of such officers. [Act May 1, 1874; p. 188; G. L. Vol. 8, p. 189.]

Art. 1570. [1363] [787] [674] **Delivery to new officers.**—All officers of the county from which a new county has been created or to which any such newly organized or reorganized county has been attached, and all other persons who may have in their possession any books, records, maps, or other property belonging to such newly organized or reorganized county, shall deliver the same to the proper officers of such newly organized or reorganized county within five days after such officers have been legally qualified.

Art. 1571. [1364] [788] [675] **Elections in unorganized counties.**—Where a county is not organized and there is no officer in the same authorized by law to organize such county, the county judge of the nearest county which is organized may order elections for county officers in any such county, and appoint the presiding officers and managers and clerks of election. [Act March 26, 1848; P. D. 3624.]

CHAPTER THREE.

CORPORATE RIGHTS AND POWERS.

| | Article | | Article |
|-------------------------------|---------|------------------------------------|---------|
| County a body corporate..... | 1572 | Sale of real estate..... | 1577 |
| Suits against..... | 1573 | Contracts with a county valid..... | 1578 |
| Jurors..... | 1574 | Suits on writings by county..... | 1579 |
| Execution against county..... | 1575 | Agents to contract for county..... | 1580 |
| Validity of deeds, etc..... | 1576 | Costs in suit against county..... | 1581 |

Art. 1572. [1365] [789] [676] **County a body corporate.**—Each county which now exists or which may be hereafter established, shall be a body corporate and politic. [P. D. 1044.]

Art. 1573. [1366] [790] [677] **Suits against.**—No county

shall be sued unless the claim upon which such suit is founded shall have first been presented to the commissioners court for allowance, and such court shall have neglected or refused to audit and allow the same, or any part thereof. [P. D. 1045.]

Art. 1574. [1367] [791] [678] **Jurors.**—In any suit instituted by or against any county, the inhabitants of the county so suing or being sued may if otherwise competent, be jurors or witnesses. [P. D. 1049.]

Art. 1575. [1368] [792] [679] **Execution against county.**—No execution shall be issued on any judgment against any county. When a judgment is rendered against a county the commissioners court of such county shall settle and pay such judgment in like manner and pro rata as other similar claims are settled and paid by said court. [P. D. 1050.]

Art. 1576. [1369] [793] [680] **Validity of deed, etc.**—All deeds, grants and conveyances heretofore or hereafter made and duly acknowledged, or proven, and recorded as other deeds of conveyance, to any county, or to the courts or commissioners of any county, or any other person or persons, by whatever form of conveyance, for the use and benefit of any county, shall be good and valid to vest in such county in fee simple or otherwise all such right, title, interest and estate as the grantor in any such instrument had at the time of the execution thereof in the lands conveyed and was intended thereby to be conveyed. [P. D. 1051.]

Art. 1577. [1370] [794] [681] **Sale of real estate.**—The commissioners court may, by an order to be entered on its minutes, appoint a commissioner to sell and dispose of any real estate of the county at public auction. The deed of such commissioner, made in conformity to such order for and in behalf of the county, duly acknowledged and proven and recorded shall be sufficient to convey to the purchasers all the right, title and interest and estate which the county may have in and to the premises to be conveyed. Nothing contained in this article shall authorize any commissioners court to dispose of any lands given, donated or granted to such county for the purpose of education in any other manner than shall be directed by law. [P. D. 1052.]

Art. 1578. [1371] [795] [682] **Contracts with a county valid.**—Any note, bond, bill, contract, covenant, agreement or writing, made or to be made, whereby any person is or shall be bound to any county, or to the court or commissioners of any county, or to any other person or persons, in whatever form, for the payment of any debt or duty or the performance of any matter or thing to the use of any county, shall be valid and effectual to vest in said county any right, interest and action which would be vested in any person if any such contract had been made directly with him. [P. D. 1053.]

Art. 1579. [1372] [796] [683] **Suits on writings by county.**—Suits may be begun and prosecuted on such notes, bonds, bills, contracts, covenants, agreements and writings, in the name of

such county, or in the name of the person to whom they were made, for the use of the county, as fully and as effectually as any person may or can sue on like instruments made to him. [P. D. 1054.]

Art. 1580. [1373] [797] [684] **Agents to contract for county.**—The commissioners court may appoint an agent or agents to make any contract on behalf of the county for the erection or repairing of any county buildings, and to superintend their erection or repairing, or for any other purpose authorized by law. The contract or acts of such agent or agents, duly executed and done, for and on behalf of the county, and within his or their powers, shall be valid and effectual to bind such county to all intents and purposes. [P. D. 1055.]

Art. 1581. [1374] [798] [685] **Costs in suit against county.**—When the plaintiff in any suit against a county shall fail to recover a greater amount than the commissioners court of such county shall have allowed to such plaintiff on the presentation of his claim to such court, such plaintiff shall pay all costs of such suit. [P. D. 1056.]

CHAPTER FOUR.

COUNTY LINES.

| | Article | | Article |
|---------------------------------------|---------|------------------------------------|---------|
| Survey made..... | 1582 | Absence of surveyor..... | 1588 |
| Marking boundary..... | 1583 | Land Commissioner to direct survey | 1589 |
| Natural objects..... | 1584 | vey..... | 1590 |
| Notice to other counties..... | 1585 | Division of expense..... | 1591 |
| Oath and bond of surveyors..... | 1586 | Suit to establish boundary..... | 1592 |
| Return and record of field notes..... | 1587 | Marking line on map..... | 1592 |

Art. 1582. [1375] [799] **Survey made.**—Whenever it appears to the satisfaction of the county court of any county, or notice shall be given such court by the Land Commissioner that the boundary or any part thereof, of the county is not sufficiently definite and well defined, such court shall appoint an experienced and competent practical surveyor, whose duty it shall be to ascertain by actual survey the boundary, or any part thereof, of said county, and to make and establish the lines and corners in the manner herein prescribed. The court, in the order making the appointment, shall specify the line or lines to be run, and the corners to be established and marked; and shall in all things conform to the law defining the boundaries of said county. [Acts 1879, p. 137; G. L. Vol. 8, p. 1437.]

Art. 1583. [1376] [800] **Marking boundary.**—The initial corners of the surveys herein provided for shall be designated by posts, mounds or stone monuments; the posts shall be of hewn cedar, cypress or bois d' arc, at least eight inches in diameter, five feet long, and set in the ground not less than three feet; the mounds shall be of stone when practicable, otherwise of earth, and not less than two feet high; at the end of each mile in said boundary a like post, mound or stone monument shall be established; the initial corners shall be described on the post or monument established there. [Id.]

Art. 1584. [1377] [801] **Natural objects.**—In the field notes of the survey of the lines ordered to be run; the surveyor shall give accurate description of all prominent natural objects crossed by, or adjacent to said lines, as well as of the corners and lines of surveys on or near said boundaries. [Id.]

Art. 1585. [1378] [802] **Notice to other counties.**—The court making such order shall cause a copy thereof to be sent to the county courts of the counties interested in such boundary, stating the time and place, which time shall not be later than twenty days after the meeting of the county court of the county notified, for the commencement of the survey; and such notice shall be given at least ten days before the meeting of said county court; and the court so notified shall appoint an experienced and competent practical surveyor to proceed at the time and place to assist in running and establishing such line. [Id.]

Art. 1586. [1379] [803] **Oath and bond of surveyors.**—Such surveyors shall take the oath of office prescribed by law for county surveyors, and shall, before entering upon the duties herein prescribed, enter into bond in the sum of one thousand dollars, with two or more sureties to be approved by the county judge, payable to the county judge or his successors in office, conditioned for the faithful performance of his duty. [Id.]

Art. 1587. [1380] [804] **Return and record of field notes.**—When the line shall have been surveyed and marked as herein provided, it shall be the duty of the surveyor to make due return of the field notes and map to the county court; which field notes and map shall be recorded by the clerk, and a certified copy thereof returned to the general land office. [Id.]

Art. 1588. [1381] [805] **Absence of surveyor.**—If either of the surveyors appointed to run and mark such line shall fail to attend at the time and place appointed, the one in attendance shall proceed alone to perform the duties assigned and make his report to the county court of the county employing him, which being approved by such court, shall be recorded as evidence of the line in question. The line so surveyed and marked shall thereafter be regarded as the true boundary line between the counties. [Id.]

Art. 1589. [1382] [806] **Land Commissioner to direct survey.**—If the surveyors above provided for fail to agree as to the true boundary line between their respective counties, the facts of such disagreement, with a full statement of the questions at issue between them, shall be by them reported to the Land Commissioner, who shall examine the disputed matter at once; and from such data as the maps and archives of his office furnish, shall designate to such surveyors the line to be run stating at what specific point they shall begin and to what specific point they shall run, adhering as nearly as possible to the line designated in the act creating such county line, which instructions shall be authority for said surveyors to run such line. The line so run as above directed shall thereafter be the true dividing line between said counties. [Id.]

Art. 1590. [1383] [807] **Division of expense.**—The expense of surveying and marking such line shall be divided between the counties interested, in proportion to the frontage of each county upon the line, and paid for by each county as proportioned. The surveyors appointed as herein provided shall receive for their services three dollars per mile for each mile run. The expense of establishing the posts, mounds, or stone monuments shall be paid by the counties interested, and they shall be erected under the supervision and direction of the surveyor. [Id.]

Art. 1591. [1385] **Suit to establish boundary.**—Notwithstanding any preceding article of this chapter, any county in this State may bring suit against any adjoining county or counties, for the purpose of establishing the boundary line between them. Such suit shall be brought in the district court of the county in an adjoining judicial district whose boundaries are not affected by the suit, and whose county seat is nearest the county seat of the county suing. Said court shall try said cause as other causes, and shall have jurisdiction to determine where such boundary line is located, and, if necessary, shall order the same to be remarked and resurveyed. If, in the trial of any such cause, it is found that the boundary line between the counties involved has never been established and marked, or if marked has become indefinite and undefined, said court shall have power to re-establish the same and order it marked. Any boundary line so established by such judgment shall thereafter be regarded as the true boundary line between the counties in question; provided, that if it shall be found in any such cause that the boundary line in question has been heretofore established under the law then in force, the same shall be declared to be the true line, and shall be resurveyed and established as such. [Acts 1897, p. 222; G. L. Vol. 10, p. 1276.]

Art. 1592. [1386] **Marking line on map.**—It shall be unlawful for the Land Commissioner to mark, fix or place on any of the maps in said office any contested county line at any definite point thereon, until a certified copy of the final judgment of the court is filed in the General Land Office, together with a certified copy of the field notes of the line so established by such judgment. [Id.]

CHAPTER FIVE.

COUNTY SEATS.

| | Article | | Article |
|---|---------|---------------------------------------|---------|
| Election for county seats..... | 1593 | Election..... | 1599 |
| Vote necessary..... | 1594 | County seats removed, when..... | 1600 |
| Election for removal of..... | 1595 | Subsequent election..... | 1601 |
| Proceedings for removal of county seat..... | 1596 | Courts shall hold at county seat..... | 1602 |
| Geographical center..... | 1597 | Buildings to be provided..... | 1603 |
| Who may vote and form of ballot..... | 1598 | Place of holding court..... | 1604 |
| | | Location for officers..... | 1605 |

Art. 1593. [1387] [809] **Election for county seats.**—In the organization of any county or counties now existing, or hereafter created by the Legislature, it shall be the duty of the county judge holding the election in such county for county

officers thereof to order an election for the location of a county seat therein, which shall be conducted in the same manner as that regulating the election of the officers of such new county. The place receiving a majority of all the votes cast by the electors voting on the location of such county seat shall thereafter be the county seat of such county, subject to be removed as other county seats. When any county has been organized, and no county seat has been located, the county judge of such county shall order an election for the location of a county seat. [Acts 1883, p. 82; G. L. Vol. 9, p. 388.]

Art. 1594. [1388] [810] **Vote necessary.**—No county seat first established in a newly organized county shall be located at any point more than five miles from the geographical center of any county in this State, unless by a two-thirds vote of all the electors voting on the subject in said county. [Acts 1881, p. 67; G. L. Vol. 9, p. 159.]

Art. 1595. [1389] [811] **Election for removal of.**—No county seat situated within five miles of the geographical center of any county shall be removed except by a vote of two-thirds of all the electors in said county voting on the subject; nor shall any county seat be removed from a point more than five miles from the geographical center of any county to any other point more than five miles from such center, nor from a point within five miles of the geographical center to any other point within five miles of such center, except by a two-thirds vote of all the electors in said county voting on the subject. No person shall be allowed to vote except he be a bona fide citizen of the county in which he offers to vote. A majority of said electors, however, voting at such election may remove a county seat from a point more than five miles from the geographical center of the county to a point within five miles of such center; in either event the center to be determined by a certificate from the Land Commissioner. [Acts 1879, p. 84; G. L. Vol. 8, p. 1384.]

Art. 1596. [1390] [812] **Proceedings for removal of county seat.**—When it becomes desirable to remove the county seat of any county, the county judge of said county, upon the written application of not less than one hundred freeholders and qualified voters, who are resident citizens of said county shall make a written order upon the minutes of said commissioners court for the holding of an election at various voting precincts in said county on a day therein named, which shall not be less than thirty nor more than sixty days from date of order, for the purpose of submitting the question to the electors of said county. When a county seat has been established for more than ten years, it shall require two hundred freeholders and qualified voters to make said application. In counties having less than three hundred and fifty legal voters, to be determined by the number of votes cast at the last preceding general election such application may be made by one hundred resident freeholders and qualified voters of said county. When a county seat has been established for more than forty years, it shall

require a majority of the resident freeholders and qualified voters of said county to make the application, said majority to be ascertained by the county judge from the assessment rolls thereof. In counties having not more than 150 qualified voters, such application shall be held sufficient when it shall have been signed by a majority of the resident freeholders and qualified voters of said county, said majority to be ascertained by the county judge, from the assessment rolls thereof. In the event of the failure, refusal or inability of the county judge to perform any duty imposed upon him by this article such duty may be performed by any two county commissioners of the county. [Acts 1893, p. 164; Acts 1919, 2nd C. S. p. 77.]

Art. 1597. [1391] [813] **Geographical center.**—The Land Commissioner, upon being notified by the county judge that a proposition is submitted to the people of his county, or that it is desirable on the part of the people thereof, that the center of such county shall be designated, preliminary to the removal of any county seat, shall, from the maps, surveys and other data on file in his office, designate the center of such county, and shall certify the same to such county judge, who shall cause the same to be spread upon the records of deeds of his county. [Acts 1879, p. 84; G. L. Vol. 8, p. 1354.]

Art. 1598. [1392] [814] **Who may vote and form of ballot.**—All persons who are qualified voters under the Constitution and laws of the State shall be entitled to vote at said election. On each ticket, the voter shall write or cause to be written or printed: "For removal to _____" (inserting the name of the place); or, should the voter be in favor of the county seat remaining where it is, he shall write or cause to be written or printed on his ticket: "For remaining at _____" (inserting the name of the place.) [Id.]

Art. 1599. [1393] [815] **Election.**—The county judge or commissioners shall order said election in each voting precinct in said county, which shall be conducted as near as may be, as elections for county officers. The officers holding the elections shall make return thereof to the authority ordering said election within ten days after the same was held, who shall then proceed to open said returns and count the same, and declare the result, which shall be entered upon the records of said commissioners court, and shall also state the name of the place from which, and the name of the place to which, the same is removed. A certified copy of such entry shall thereupon be recorded in the proper record deeds of such county. [Id.]

Art. 1600. [1394] [816] **County seats removed, when.**—When such entry has been made, the county seat, if the election be held to move the county seat from a point within five miles of the geographical center, to a point more or less than five miles from the geographical center, or from a point more than five miles from the geographical center, to any other point more than five miles from such center, shall be removed to the place receiving the votes of two-thirds of all the electors voting on the subject; and such place shall thereafter be the county seat

of such county. If the election be held to move the county seat from a point more than five miles from the geographical center to a point within five miles of such center, then the county seat shall be moved to the place receiving a majority of all the electors in the county voting at such election, and such place shall thereafter be the county seat of such county. [Id.]

Art. 1601. [1395] [817] **Subsequent election.**—Whenever an election for the location or removal of a county seat has been voted on by the electors of any county and the question settled, it shall not be lawful for a like application to be made for the same purpose within five years thereafter. [Id.]

Art. 1602. [1396] [818] [704] **Courts shall hold at seat.**—All terms of the district, county and commissioners court shall be held at the county seat.

Art. 1603. [1397] [819] [705] **Buildings to be provided.**—The county commissioners court of each county, as soon as practicable after the establishment of a county seat, or after its removal from one place to another, shall provide a court house and jail for the county, and offices for county officers at such county seat and keep the same in good repair. [R. S. 1879; 705.]

Art. 1604. [1398] [820] **Place of holding court.**—Until the county seats of new counties are established, as required under this chapter, the courts of such new counties shall be held at such place as may be appointed by the commissioners court of such county. [Acts 1879, p. 84; G. L. Vol. 8, p. 1354.]

Art. 1605. [1399] **Location of officers.**—The county judge, sheriff, clerks of the district and of the county courts, county treasurer, assessor of taxes, collector of taxes, county surveyor and county attorney of the several counties of this State shall keep their offices at the county seats of their respective counties, provided, however, that in all counties having a city or cities, other than the county seats, within their boundaries, having a population of 20,000 and over, the assessor of taxes and the collector of taxes when authorized by order of the commissioners' court may maintain a branch office in said city or cities, and may appoint one or more deputies for said offices, and the salaries to be paid said deputies together with the office rent and other expenses incidental to maintaining said offices shall be considered as a part of the necessary expenses of the assessor of taxes and collector of taxes, respectively, and shall be paid in the manner now provided by law for the payment of the expenses of the assessor of taxes and collector of taxes. [Acts 1925, p. 508.]

CHAPTER SIX.

COUNTY BOUNDARIES.

Art. 1606. [1400] [822] **Boundaries as established, adopted, and acts creating continued in force.**—The county boundaries of the counties in this State as now recognized and established are adopted as the true boundaries of such counties, and the acts creating such counties and defining the boundaries are continued in force.

TITLE 34.
COUNTY FINANCES.

1. General Provisions.

| | Article | | Article |
|--|---------|-------------------------------------|---------|
| Finance ledger..... | 1607 | Claim register..... | 1625 |
| Quarterly statement..... | 1608 | Claims classified..... | 1626 |
| Exhibit published..... | 1609 | Registering claims..... | 1627 |
| Account with tax collector..... | 1610 | Classification of county funds..... | 1628 |
| Receipt for tax rolls..... | 1611 | Other classes of funds..... | 1629 |
| Collectors credits..... | 1612 | Transfer of funds..... | 1630 |
| Indigent and delinquent tax ac- counts..... | 1613 | Report of claims..... | 1631 |
| Shall deliver tax rolls to success- or..... | 1614 | Receipt of payee..... | 1632 |
| Occupation tax..... | 1615 | Report of claims collected..... | 1633 |
| Account with sheriff..... | 1616 | Accounts of treasurer..... | 1634 |
| Officers to report collections..... | 1617 | Claim canceled..... | 1635 |
| Collections: form of report..... | 1618 | To inspect treasurers accounts..... | 1636 |
| Accounts of justice..... | 1619 | To examine finance accounts..... | 1637 |
| Report of attorneys..... | 1620 | Finance committee..... | 1638 |
| Judgment sold..... | 1621 | Report of committee..... | 1639 |
| Collections: report to clerk..... | 1622 | Pay of committee..... | 1640 |
| Estray account..... | 1623 | Audit by accountant..... | 1641 |
| Account with county treasurer..... | 1624 | Requisites of reports..... | 1642 |
| | | Warrants attested..... | 1643 |
| | | Compensation of clerk..... | 1644 |

Art. 1607. [1401-2-6-52] **Finance ledger.** — Each commis-
sioners court shall procure a well-bound ledger and index, to be
known as the finance ledger, and shall cause to be entered there-
in a full and orderly statement of the condition of the county
finances. The county clerk shall open and keep in said book an
account with each officer of the county, district or State, who
may be authorized or required by law to receive or collect all
money or other property for the use of, or belonging to the
county, and shall state at the top of each page of said account
the name of such officer and his office. The clerk shall keep
such other accounts as may be necessary to carry out the pur-
poses of this title, and shall conveniently index each. And items
shall be entered daily under their respective heads. All reports
and vouchers shall be filed with said clerk and carefully pre-
served, and briefly noted in the proper account upon the ledger.
Said finance ledger shall be at all times subject to the inspec-
tion of the public. [Acts 1893, p. 160; G. L. Vol. 10, p. 590.]

Art. 1608. [1403] [824a] [935a] **Quarterly statement.** —
Said clerk shall balance each account so kept, and make a sworn
tabular statement at each regular term of the commissioners'
court for the three months preceding the month when such
court meets in regular session, to be presented to said court
during the second day of its term, specifying therein the names
of the creditors of said county, and the items of indebtedness,
with their respective dates of accrual, and also the names of
persons to whom moneys have been paid, with the amounts
paid each, the names of persons from whom moneys have been
received, with the date of receipt and for what account received,
during the quarter for which such statement is prepared; said
statement shall also separately show the amount to the credit
or debit of each fund. [Id.]

Art. 1609. [1404] **Exhibit published.** — Immediately after
the first regular term of said court in each year said clerk shall
publish once in some weekly newspaper published in his county,

or if there be no paper published therein, then by posting four copies of such exhibit, one in each commissioners precinct, one of which shall be at the court house door, the other three at public places in such precincts, an exhibit showing the aggregate amount paid out of each fund for the four preceding quarters, and the balance to the credit or debit of each fund; also the amount of indebtedness of said county, with their respective dates of accrual, and to whom and for what due; also the amount to the debit or credit of each officer or other persons with whom an account is kept. The cost for publishing the same shall be paid by order of said court out of the general fund of the county. [Id.]

Art. 1610. [1407-12] **Account with tax collector.**—The accounts of the tax collector shall be kept as follows: A separate account shall be kept for each separate fund that may be upon the tax rolls; each account shall state the name of the collector, the character of the fund entered therein, and the year for which the same is assessed; and the taxes assessed for each year shall be kept separate and distinct.

Art. 1611. [1408] [827] [938] **Receipts for tax rolls.**—Whenever the tax rolls are ready for delivery to the tax collector, the court or officer having control of the same shall take from the collector a written receipt for the same, specifying the amount therein assessed and due the county, stating separately the amount assessed to each fund, and shall deliver said receipt to the county clerk, who shall charge the collector with the amount stated in said receipt in the proper account; and said amounts shall be treated as debts due the county by the collector.

Art. 1612. [1409] [828] [939] **Collector's credits.**—The collector shall discharge said indebtedness within the time prescribed by law, by filing with said clerk receipts for the same, as follows:

1. The commission due the collector.
2. The assessor's receipt for commissions due such assessor, if any are to be paid by the county.
3. Proper vouchers for such payments as he may be required to pay out of any money on hand.
4. The county treasurer's receipt for the money paid into the treasury.

Art. 1613. [1410-11] **Indigent and delinquent tax accounts.**—The collector shall make separate lists of the indigent and delinquent taxpayers, showing their names, and the amount due by each taxpayer. The court shall carefully examine said list, and shall make an order and enter the same upon its minutes, stating the names and amounts that are adjudged uncollectible; and the collector shall have credit for the amounts included in said order in the proper accounts, only after said order has been made and entered.

Art. 1614. [1413] [832] [943] **Shall deliver tax rolls to successor.**—On leaving office the tax collector shall deliver to his successor the tax rolls in his possession, and shall receive

from his successor a written receipt for the amount of taxes due on the tax rolls so delivered, specifying the amount of each fund and each year separately, and also the amount due on the indigent and delinquent list; and deliver said receipts to the county clerk, who shall enter those allowed by the court to the credit of the collector presenting them, and shall charge the amounts so credited to the successor in office of such collector, in the proper accounts.

Art. 1615. [1414-15-16-17-18] Occupation tax.—Said collector shall collect all occupation taxes due the county without assessment and give the party paying the tax a written receipt, stating his name, the occupation paid for, the time such occupation is to be pursued, and the amount collected for the State and for the county. On presentation of such receipt, the county clerk shall issue to the payee therein a license in the name of the State or county or both, in accordance with the tax so paid, authorizing said payee to pursue such occupation during the time for which the tax is paid. The clerk shall keep an occupation tax account with the collector of the county, in which he shall charge the collector with all licenses issued for the county. The collector shall have credit in said account for his commissions, and the amount paid into the treasury upon filing the proper receipt of the county treasurer with such clerk. Said clerk shall, at the end of every month, make two reports, one of licenses issued on taxes paid to the State which he shall forward to the Comptroller by mail; the other of licenses issued on taxes paid to the county and file the same in his office. Such reports shall recite the information contained in the tax collector's receipt for such tax, and shall be dated and signed under the clerk's official seal.

Art. 1616. [1419-20] Account with sheriff.—An account shall be kept with the sheriff charging him with all judgments, fines, forfeitures and penalties, payable to and rendered in any court of the county, the collection of which he is by law made chargeable. The sheriff may free himself from liability from such charge, by:

1. Producing the receipt of the county treasurer showing the payment of such judgment, fine, forfeiture or penalty.
2. Showing to the satisfaction of the commissioners court that the same cannot be collected, or that the same has been discharged by imprisonment or labor, or by escape, without his fault or neglect, and obtaining an order from said court allowing the same.

Art. 1617. [1421] [840] [951] Officers to report collections.—Each district clerk, county clerk, county judge, county treasurer, sheriff, district and county attorney, constable and justice of the peace, who shall collect or handle any money for the use of the county, shall make a full report to the commissioners court, at each regular term thereof, of all fines imposed and collected and all judgments rendered and collected for the use of the county, and all jury fees collected in their respective courts in favor of, or for the use of the county; and at the same

time present their receipts and vouchers showing what disposition has been made of the money collected, fines imposed and judgments rendered. Said court shall carefully examine said reports, receipts and vouchers and, if found correct, shall cause the clerk to enter the same on the finance ledger, and, if found to be incorrect, shall summon said officer before them, and have the same corrected. Said reports, receipts, and vouchers shall be filed in the county clerk's office. [Acts 1887, p. 36; G. L. Vol. 9, p. 834.]

Art. 1618. [1422] [841] [952] Collections: form of report.—The reports required by the preceding article shall state fully:

1. The name of the party fined and the amount of the fine, or the name of the party against whom judgment was rendered and the amount of such judgment.

2. The style and number of the cases in which fines have been imposed or judgments rendered, and the date thereof.

3. The amount of jury fees collected, and the style and number of the case in which each jury fee was collected and from whom collected.

Art. 1619. [1423] [842] [953] Accounts of justice.—Fines imposed and judgments rendered by justices of the peace shall be charged against the justice imposing or rendering the same. He may discharge said indebtedness by filing with the county clerk the treasurer's receipt for the amount thereof, or by showing to the satisfaction of the commissioners court that he has used due diligence to collect the same without avail, or that the same have been satisfied by imprisonment or labor.

Art. 1620. [1424-5] Report of attorneys.—The district attorney of each district shall, at each term of the district court for each county in his district, make a report to the county clerk, of all moneys received by him since the last term of the district court for such county for the use of such county. Each county attorney shall make a similar report to the said clerk at the end of each month.

Art. 1621. [1426] [845] Judgment sold.—Whenever the proceeds of any judgment revert to and belong to any county, if the principal and sureties thereon are insolvent so that under any existing process of law said judgment or any part thereof cannot be collected, the commissioners court is hereby constituted a board to dispose of such judgment, and may offer for sale, by such advertising as it deems necessary and to the best interests of the county, all the right of the county to such judgment. If the amount bid on same at public sale shall not be deemed sufficient, said court shall refuse to accept the same, and shall dispose of said judgment in any manner deemed most advantageous to the interest of the county. Upon sale said court shall make a proper assignment of said judgment to the purchaser. [Acts 1st C. S. 1879, p. 9; G. L. Vol. 9, p. 40.]

Art. 1622. [1427-8] Collections: report to clerk.—When any officer collects money belonging to, and for the use of, any county, he shall, except where otherwise provided in this title, forthwith report the same to the proper county clerk stating

fully from whom collected, the amount collected, the time when collected, and by virtue of what authority or process collected. On making such report, such amount shall be charged to such officer, and he may discharge himself therefrom by producing the receipt of the proper county treasurer therefor.

Art. 1623. [1429-30] **Estray account.**—When an application to estray an animal is filed with the county clerk, said clerk shall keep an estray account on the debit side of said finance ledger showing, the date of the application, the name of the person estraying, and a brief description of the animal to be estrayed. The amount of such charge shall be left blank until said person shall file his account of the sale thereof. Upon the filing of said account, the net amount due the county from such sale shall be entered in the blank. When the receipt of the county treasurer is presented to the clerk, showing any amount paid into the treasury on account of such sale, the same shall be entered on the credit side of the account, showing the date, name of payer, amount paid and a brief description of the estray, and such amount shall be charged on the debit side of the county treasurer's account.

Art. 1624. [1431] [850] [960] **Account with county treasurer.**—An account with the county treasurer shall be kept in said ledger, in which such treasurer shall be charged separately with the amount of each fund for which he gives a receipt to the sheriff, collector, or other person paying the same into the treasury; and such treasurer shall have credit for all moneys paid out by him, when the commissioners court has approved his reports of the same and for his legal commissions.

Art. 1625. [1432-6-7] **Claim registers.**—Each county treasurer shall keep a well-bound book in which he shall register all claims against his county in the order of presentation, and if more than one is presented at the same time he shall register them in the order of their date. He shall pay no such claim or any part thereof, nor shall the same, or any part thereof, be received by any officer in payment of any indebtedness to the county, until it has been duly registered in accordance with the provisions of this title. All claims in each class shall be paid in the order in which they are registered.

Art. 1626. [1433] [852] [962] **Claims classified.**—Claims against a county shall be registered in three classes, as follows:

1. All jury scrip and scrip issued for feeding jurors.
2. All scrip issued under the provisions of the road law or for work done on roads and bridges.
3. All the general indebtedness of the county, including feeding and guarding prisoners, and paupers' claims.

Art. 1627. [1434-5] **Registering claims.**—Said treasurer shall enter each claim in the register, stating the class to which it belongs, the name of the payee, the amount, the date of the claim, the date of registration, the number of such claim, by what authority issued, and for what service the same was issued, and shall write on the face of the claim its registration number,

the word, "registered", the date of such registration, and shall sign his name officially thereto.

Art. 1628. [1438] [857] [967] **Classification of county funds.**—The funds received by the county treasurer shall be classed as follows, and shall be appropriated, respectively, to the payment of all claims registered in the first, second and third classes:

1. All jury fees, all money received from the sale of estrays, and all occupation taxes.

2. All money received under any of the provisions of the road and bridge law, including the penalties recovered from railroads for failing to repair crossings, and all fines and forfeitures.

3. All money received, not otherwise appropriated herein or by the commissioners court. [Const. Art. 16, Sec. 24.]

Art. 1629. [1439] [858] [968] **Other classes of funds.**—The commissioners court may cause such other accounts to be kept, creating other classes of funds, as it may deem proper, and require the scrip to be issued against the same and registered accordingly.

Art. 1630. [1440] [859] [969] **Transfer of funds.**—The commissioners court by an order to that effect may transfer the money in hand from one fund to another, as it may deem necessary and proper, except that the funds which belong to class first shall never be diverted from the payment of the claims registered in class first, unless there is an excess of such funds.

Art. 1631. [1441-2] **Report of claims.**—At the end of each month the county treasurer shall file in the office of the county clerk a report showing the total amount of claims registered by him during said months stating each class separately. He shall enter the same upon the ledger under the head of "Registered indebtedness of the county", keeping a separate account of each class of indebtedness, and, from the reports of the treasurer of disbursements made, credit said accounts with the total amount of vouchers of each class of claims paid.

Art. 1632. [1443] [862] [972] **Receipt of payee.**—The county treasurer or any other officer disbursing money for the county, or receiving county claims in payment of dues of any kind, shall require the party receiving payment of, or credit for the same, his agent or attorney, to receipt in writing upon the face of such claim for the amount so paid or received thereon.

Art. 1633. [1444-5] **Report of claims collected.**—Every officer who shall collect any fine, penalty, forfeiture, judgment, tax or other indebtedness due the county in claims against the county, shall keep a descriptive list of such claims, and shall when he reports such collection, file with his report a list stating the party in whose favor each claim was issued, the class and register number thereof, the name of the party paying in such claim, and the amount received, and for what purpose received. Such claims and report shall be turned over to the county treasurer who shall give a proper receipt for the same, and he shall file said list with his report in the office of the county clerk.

Art. 1634. [1446] [865] [975] **Accounts of treasurer.**—The county treasurer shall keep accurate detailed accounts showing all the transactions of his office. And all warrants by him paid off shall be punched at the time he pays them; and the vouchers relating to and accompanying each report shall be presented to the commissioners court with the corresponding report, when said court shall compare the vouchers with the report, and all proper vouchers shall be allowed and the treasurer credited with the amount thereof. [Acts 1889, p. 6; G. L. Vol. 9, p. 6.]

Art. 1635. [1447] [866] [976] **Claim canceled.**—When a claim presented as a voucher has been found by the court to be correct, the court shall cause the same to be cancelled by writing or stamping upon the fact thereof the word, "canceled", and the clerk shall attest the same by his official signature.

Art. 1636. [1448-9-50] **To inspect treasurer's accounts.**—When the commissioners court has compared and examined the quarterly report of the treasurer, and found the same correct, it shall cause an order to be entered upon the minutes of the court, stating the approval thereof, and reciting separately the amount received and paid out of each fund by the treasurer since the preceding treasurer's quarterly report, and the balance of such fund, if any, remaining in the treasurer's hands and the court shall cause the proper credit to be made in the accounts of the treasurer, in accordance with said order. Said court shall actually inspect and count all the actual cash and assets in the hands of the treasurer belonging to the county at the time of the examination of his said report. Prior to the adjournment of each regular term of the court, the county judge and each commissioner shall make affidavit that the requirements of this article have been in all things fully complied with by them at said term of said court, and that the cash and other assets mentioned in said county treasurer's quarterly report made by said treasurer to said court, and held by him for the county, have been fully inspected and counted by them giving the amount of said money and other assets in his hands. Such affidavits shall be filed with the county clerk and recorded in the minutes of said court the term at which the same were filed; and the same shall be published in some newspaper published in the county if there be a newspaper published in the county, for one time. [Acts 1897, p. 27; G. L. Vol. 10, p. 1081.]

Art. 1637. [1451] [868] [978] **To examine finance accounts.**—The commissioners court shall, at each regular term, examine all accounts and reports relating to the finances of the county, and compare the same with the vouchers accompanying them, and cause such corrections to be made as are necessary, in order to make said accounts and reports correct, and shall cause all orders made by them, appertaining to said accounts and reports, to be properly entered upon the minutes of said court and noted upon said accounts and reports.

Art. 1638. [1453-4] **Finance committee.**—At each term of

the district court, the district judge, upon request of the grand jury, may appoint a committee consisting of three citizens of the county, men of good moral character and intelligence, and experienced accountants, to examine into the condition of the finances of the county. Said committee shall examine all the books, accounts, reports, vouchers and orders of the commissioners court relating to the finances of the county that have not been examined and reported upon by a previous committee; count all the money in the office of the county treasurer belonging to the county, and make such other examination as it deems necessary and proper in order to ascertain the true condition of the finances of the county. The court shall, if necessary, upon the application of said committee, send for persons and evidence to aid in such investigation.

Art. 1639. [1455] [872] [982] **Report of committee.**— Said committee shall, at the earliest practicable day after its appointment, make to said district court a detailed written report stating whether the books and accounts required to be kept by the provisions of this title are correctly kept in accordance with said provisions, and setting forth fully the condition of the finances of the county, the state of each officer's account, and specifying all irregularities, omissions and malfeasance of any kind that they may discover. Said report shall be signed and sworn to by said committee and filed in the office of the district clerk, and the attention of the grand jury called thereto as soon after the filing of the same as practicable.

Art. 1640. [1456] [873] [983] **Pay of committee.**— Said committeemen shall each be entitled to receive for their services three dollars for each day, not to exceed five days, that they may be engaged in the performance of their duties as such, to be paid out of the county treasury upon the certificate of the district judge stating the number of days served.

Art. 1641. **Audit by accountant.**— Any commissioners court, when in its judgment an imperative public necessity exists therefor, shall have authority to employ a disinterested, competent and expert public accountant to audit all or any part of the books, records, or accounts of the county; or of any district, county or precinct officers, agents or employes, including auditors of the counties, and all governmental units of the county, hospitals, farms, and other institutions of the county kept and maintained at public expense, as well as for all matters relating to or affecting the fiscal affairs of the county. The resolution providing for such audit shall recite the reasons and necessity existing therefor such as that in the judgment of said court there exists official misconduct, wilful omission or negligence in records and reports, misapplication, conversion or retention of public funds, failure in keeping accounts, making reports and accounting for public funds by any officer, agent or employe of the district, county or precinct, including depositories, hospitals, and other public institutions maintained for the public benefit, and at public expense; or that in the judgment of the court, it

is necessary that it have the information sought to enable it to determine and fix proper appropriation and expenditure of public moneys, and to ascertain and fix a just and proper tax levy. The said resolution may be presented in writing at any regular or called session of the commissioners court, but shall lie over to the next regular term of said court, and shall be published in one issue of a newspaper of general circulation published in the county; provided if there be no such newspaper published in the county, then notice thereof shall be posted in three public places in said county, one of which shall be at the court house door, for at least ten days prior to its adoption. At such next regular term said resolution shall be adopted by a majority vote of the four commissioners of the court and approved by the county judge. Any contract entered into by said commissioners court for the audit provided herein shall be made in accordance with the statutes applicable to the letting of contracts by said court, payment for which may be made out of the public funds of the county in accordance with said statutes. The authority conferred on county auditors contained in this title as well as other provisions of statutes relating to district, county and precinct finances and accounts thereof shall be held subordinate to the powers given herein to the commissioners' court. [Acts 1923, p. 170.]

Art. 1642. [1457-8] **Requisites of report.**—All reports required under any provision of this title shall be in writing and sworn to by the officer making the same, before some officer authorized to administer oaths; and all such monthly reports shall be filed within five days after the end of each month.

Art. 1643. [1459] [876] [986] **Warrants attested.**—All warrants or scrip issued against the county treasurer by any judge or court shall be signed and attested by the clerk or judge of the court issuing the same, under his official seal. No justice of the peace shall have authority to issue warrants against the treasury for any purpose whatever, except as provided in the Code of Criminal Procedure.

Art. 1644. [1405] **Compensation of clerk.**—The clerk shall receive annually as compensation for the labor performed in keeping the finance ledger and making the quarterly statement required by this title, the sum of five dollars for each one thousand dollars tax assessed as due the county, to be paid quarterly on order of the commissioners court out of the general fund of the county; provided, the same be not less than one hundred nor more than two hundred and fifty dollars per annum. [Acts 1893, p. 160; G. L. Vol. 10, p. 590.]

2. County Auditor.

| | Article | | Article |
|-----------------------------------|---------|---|---------|
| Appointment authorized..... | 1645 | Register of warrants..... | 1662 |
| Auditors for other counties..... | 1646 | Accounts with officers..... | 1663 |
| County auditors..... | 1646a | General accounts..... | 1664 |
| Appointment..... | 1647 | Reports to commissioners..... | 1665 |
| Qualifications..... | 1648 | Budget..... | 1666 |
| Bond and oath..... | 1649 | Improvement district finances..... | 1667 |
| Organization..... | 1650 | Improvement districts: supplies..... | 1668 |
| General duties..... | 1651 | Improvement districts: expendi- tures..... | 1669 |
| School ledger..... | 1652 | Improvement districts: forms..... | 1670 |
| To examine accounts..... | 1653 | Improvement districts: reports..... | 1671 |
| To examine reports..... | 1654 | Improvement districts: compensa- tion..... | 1672 |
| To count cash..... | 1655 | Pay of assistants..... | 1673 |
| To prescribe forms and rules..... | 1656 | Provisions controlling..... | 1674 |
| Deposits..... | 1657 | County clerks duties..... | 1675 |
| Bids for supplies..... | 1658 | Removal of auditor..... | 1676 |
| Bids for materials..... | 1659 | | |
| Approval of claims..... | 1660 | | |
| Requisites of approval..... | 1661 | | |

Art. 1645. [1460] **Appointment authorized.**—In any county having a population of thirty-five thousand inhabitants, or over, according to the preceding Federal census, or having a tax valuation of fifteen million dollars or over, according to the last approved tax rolls, there shall be biennially appointed an auditor of accounts and finances, the title of said officer to be county auditor, who shall hold his office for two years, and who shall receive as compensation for his services one hundred and twenty-five dollars for each million dollars, or major portion thereof, of the assessed valuation, the annual salary to be computed from the last approved tax rolls, said annual salary from county funds shall not exceed thirty-six hundred dollars, to be paid monthly out of the general funds of the county upon an order of the commissioners court. [Acts 1905, p. 381; Acts 1907, p. 315; Acts 1915, p. 203; Acts 1917, p. 337; Acts 1923, p. 391.]

Art. 1646. **Auditors for other counties.**—When the commissioners court of a county, not mentioned and enumerated in the preceding article shall determine that an auditor is a public necessity in the dispatch of the county business and shall enter an order upon the minutes of said court fully setting out the reasons and necessity of an auditor, and shall cause said order to be certified to the district judges having jurisdiction in the county, said judges shall, if such reason be considered good and sufficient, appoint a county auditor, as provided in the succeeding article, who shall qualify and perform all the duties required of county auditors by the laws of this State; provided said judge shall have the power to discontinue the office of such county auditor at any time after the expiration of one year when it is clearly shown that such auditor is not a public necessity and his services are not commensurate with his salary received. [Acts 1917, p. 338.]

Art. 1646a. **County auditors.**—The commissioners' court of any county under twenty-five thousand population according to the last United States census may make an arrangement or agreement with one or more other counties whereby all counties, parties to the arrangement or agreement, may jointly employ and compensate a special auditor or auditors for the purposes specified in Articles 1645 and 1646. The county commissioners' court of every county affected by this article may have an

audit made of all the books of the county, or any of them, at any time they may desire whether such arrangements can be made with other counties or not; provided the district judge or grand jury may order said audit if either so desires. [Acts 1925, p. 220.]

Art. 1647. [1461] **Appointment.**—The district judges having jurisdiction in the county, shall appoint the county auditor at a special meeting held for that purpose, a majority ruling; provided, that if a majority of such judges fail to agree upon the selection of some person as auditor, then either of said judges shall certify such fact to the Governor, who shall thereupon appoint some other district judge to act and vote with the aforesaid judges in the selection of such auditor. The action shall then be recorded in the minutes of the district court of the county and the clerk thereof shall certify the same to the commissioners court, which shall cause the same to be recorded in its minutes together with an order directing the payment of the auditor's salary. [Id.; Acts 1905, p. 381; Acts 1915, p. 182.]

Art. 1648. [1462] **Qualification.**—Said auditor shall be a citizen of the county of at least two years residence, and must be a man of unquestionable good moral character and intelligence, thoroughly competent in public business details; and he must be a competent accountant of at least two years experience in auditing and accounting. The judges making such appointments must first carefully investigate and consider the qualifications of said person. If no such qualified citizen of the county can be procured, said judges may appoint a qualified citizen from another county. [Id.]

Art. 1649. [1463] **Bond and oath.**—The auditor shall, within twenty days of his appointment, and before he enters upon the duties of his office, make a bond with two or more good and sufficient sureties, in the sum of five thousand dollars, payable to the county judge, conditioned for the faithful performance of his duties, to be approved by the commissioners court. He shall also take the official oath and an additional one in writing, stating that he is in every way qualified under the provisions and requirements of this title, and giving fully the positions of private or public trust he has heretofore held, and the length of service under each. He shall further include in his oath that he will not personally be interested in any contract with the county. [Acts 1905, p. 381.]

Art. 1650. [1464-5-6] **Organization.**—The auditor may at any time with the consent of the county judge appoint an assistant to act in his stead, who may discharge the duties of the auditor during his absence or unavoidable detention. The county judge shall require said assistant to take the usual oath of office for faithful performance of duty. The auditor with the consent of the county judge or of the commissioners court may appoint additional clerical help when needed. He shall provide himself with all necessary ledgers, books, records, blanks and stationery at the county's expense. [Id.]

Art. 1651. [1467-73] **General duties.**—The auditor shall have a general oversight of all the books and records of all the officers of the county, district or State, who may be authorized or required by law to receive or collect any money, funds, fees or other property for the use of, or belonging to, the county; and he shall see to the strict enforcement of the law governing county finances. [Id.]

Art. 1652. **School ledger.**—The auditor shall install in his office a school ledger showing an accurate account of all funds received and disbursed by the common school districts of his county; a bond register showing all the school bonds issued by the common school districts of his county, their rate of interest, date issued and maturity date; and he shall also keep an interest and sinking fund account of such school bonds. [Acts 1917, p. 337.]

Art. 1653. [1468] **To examine accounts.**—He shall have continual access to and shall examine all the books, accounts, reports, vouchers and other records of any officer, the orders of the commissioners court, relating to finances of the county, and all vouchers given by the trustee of all common school districts of the county and shall inquire into the correctness of same. [Id.; Acts 1905, p. 381.]

Art. 1654. [1469-70-71] **To examine reports.**—All reports of collections of money for the county required to be made to the commissioners court shall also be carefully examined and reported on by him. He shall at least once in each quarter check the books and examine all the reports of the tax collector, the treasurer and all other officers, in detail, verifying the footings and correctness of same, and shall stamp his approval thereon, or note any differences, errors or discrepancies. He shall carefully examine the quarterly report of the treasurer, of all the disbursements, together with the canceled warrants which have been paid, and shall verify the same with the register of warrants issued as shown on the books of the auditor. [Id.]

Art. 1655. [1472-4-5] **To count cash.**—The auditor, without giving any notice beforehand, shall examine fully into the condition of, or inspect and count the cash in the hands of the county treasurer, or in the bank in which he may have placed same for safe keeping, not less than once in each quarter, and oftener if desired, and shall see that all balances to the credit of the various funds are actually on hand in cash, and that none of said funds are invested in any manner, except as the law may authorize. [Id.]

Art. 1656. [1476-7] **To prescribe forms and rules.**—He shall prescribe and prepare the forms to be used by all persons in the collection of county revenues, funds, fees and all other moneys, and the mode and manner of keeping and stating their accounts, and the time, mode and manner of making their reports to the auditor, also the mode and manner of making their annual report of office fees collected and disbursed, and the amount refunded to the county in excess of those allowed under the gen-

eral fee bill law. He shall have power to adopt and enforce such regulations not inconsistent with the constitution and laws, as he may deem essential to the speedy and proper collection, checking and accounting of the revenues and other funds and fees belonging to the county. [Id.]

Art. 1657. [1478] **Deposits.**—All deposits that are made in the county treasury shall be upon a deposit warrant issued by the county clerk in triplicate; said warrants shall authorize the treasurer to receive the amount named, for what purpose, and to which fund the same shall be applied. The treasurer shall retain the original; and the duplicate shall be signed and returned to the county clerk for the county auditor, and the triplicate signed and returned to the depositor. The auditor shall then enter same upon his books, charging the amounts to the county treasurer and crediting the party depositing same. The treasurer shall not, under any circumstances, receive any money in any other manner than that named herein. [Id.]

Art. 1658. [1479] **Bids for supplies.**—Bids shall be asked for all supplies of stationery, books, blanks, records, and other supplies for the various officers for which the county is required to pay, and the purchase made from the lowest bidder, after filing said bid with the auditor for record. [Id.]

Art. 1659. [1480] **Bids for material.**—Supplies of every kind, road and bridge material, or any other material, for the use of said county, or any of its officers, departments, or institutions must be purchased on competitive bids, the contract to be awarded to the party who, in the judgment of the commissioners court, has submitted the lowest and best bid. The county auditor shall advertise for a period of two weeks in at least one daily newspaper, published and circulated in the county, for such supplies and material according to specifications, giving in detail what is needed. Such advertisement shall state where the specifications are to be found, and shall give the time and place for receiving such bids. All such competitive bids shall be kept on file by the county auditor as a part of the records of his office, and shall be subject to inspection by any one desiring to see them. Copies of all bids received shall be furnished by the county auditor to the county judge and to the commissioners court; and when the bids received are not satisfactory to the said judge or county commissioners, the auditor shall reject said bids and re-advertise for new bids. In cases of emergency, purchases not in excess of one hundred and fifty dollars may be made upon requisition to be approved by the commissioners court, without advertising for competitive bids. [Id.; Acts 1921, p. 185.]

Art. 1660. [1481-2-3] **Approval of claims.**—All claims, bills and accounts against the county must be filed in ample time for the auditor to examine and approve same before the meetings of the commissioners court. No claim, bill or account shall be allowed or paid until it has been examined and approved by the county auditor. The auditor shall examine the same and stamp

his approval thereon. If he deems it necessary, all such accounts, bill, or claims must be verified by affidavit touching the correctness of the same. The auditor is hereby authorized to administer oaths for the purposes of this law. [Acts 1905, p. 381.]

Art. 1661. [1484-5] **Requisites of approval.**—He shall not audit or approve any such claim unless it has been contracted as provided by law, nor any account for the purchase of supplies or materials for the use of said county or any of its officers, unless, in addition to other requirements of law, there is attached thereto a requisition signed by the officer ordering same and approved by the county judge. Said requisition must be made out and signed and approved in triplicate by the said officers, the triplicate to remain with the officer desiring the purchase, the duplicate to be filed with the county auditor, and the original to be delivered to the party from whom said purchase is to be made before any purchase shall be made. All warrants on the county treasurer, except warrants for jury service, must be countersigned by the county auditor. [Id.]

Art. 1662. [1486] **Register of warrants.**—He shall keep a register of all warrants issued by the judges or the district or county clerks on the county treasurer, and their dates of payment by the treasurer. Such clerks or judges shall daily furnish the auditor an itemized report specifying the warrants that have been issued, their numbers, their several amounts, the names of the persons to whom payable, and for what purpose, on forms prepared by the auditor. [Id.]

Art. 1663. [1487-8] **Accounts with officers.**—He shall keep an account with each person named in the preceding articles and in doing so he shall relieve the county clerk of keeping the finance ledger. His books shall show the detailed items of the indebtedness against all of said officers and the manner of discharging same. He shall require all persons who shall have received any moneys belonging to the county, or having the disposition or management of any property of the county to render statements to him. [Id.]

Art. 1664. [1489-90] **General accounts.**—He shall keep a general set of books showing all the transactions of the county relating to accounts, contracts, indebtedness of the county, and its receipts and disbursements of all kinds, and shall make tabulated reports of said funds and accounts for each regular meeting of the commissioners court. [Id.]

Art. 1665. [1491] **Reports to commissioners.**—He shall make quarterly and annual reports to the commissioners court, setting forth all the facts of interest, and showing the aggregate amounts received and disbursed out of each fund, the condition of each account on the books, the amount of bonded and other indebtedness of the county, together with such other information and suggestions as he may deem proper, or said court may require. Said annual report shall be made to include all transactions during the year ending July 31 of each year, and

shall be completed and filed at a special term of the commissioners court in September. [Id.]

Art. 1666. [1492-3-4] **Budget.**—He shall prepare an estimate of all the revenues and expenses, and annually submit it to the commissioners court, which court shall carefully make a budget of all appropriations to be set aside for the various expenses of the county government in each branch and department. He shall open an account with each appropriation in said budget, and all warrants drawn against same shall be entered to said account. He shall carefully keep an oversight of same to see that the expenses of any department do not exceed said budget appropriations, and keep said court advised of the condition of said appropriation accounts from time to time. [Id.]

Art. 1667. **Improvement district finances.**—In all counties which have or may have a county auditor, and containing a population of 110,000 or more, as shown by the preceding Federal census, in which there exists or in which there may be created any improvement, navigation, drainage, road or irrigation district, or any other character of district having for its purpose the expenditure of public funds for improvement purposes, or for improvements of any kind, whether derived from the issuance of bonds or through any character of special assessment, the county auditor shall exercise such control over the finances of said districts as hereinafter provided. [Acts 1915, p. 17.]

Art. 1668. **Improvement districts: supplies.**—All purchases for supplies and materials, and all contracts for labor on behalf of any such districts shall be made in accordance with the law governing such districts, provided, that the commissioners or other governing body be authorized, without the taking of bids in cases of emergency to make purchases or contracts not to exceed the sum of fifty dollars, upon requisition signed by at least two members of the governing body of such district. A requisition shall be issued therefor, executed in triplicate, one copy to be delivered to the person or corporation from whom the purchase is made, one to be delivered to the county auditor, and one to remain on file with the governing body of such district before any purchase shall be made. [Id.]

Art. 1669. **Improvement districts: expenditures.**— All bills for supplies, materials, labor, work or anything necessary to the carrying out of the purposes of any such district shall be contracted in accordance with the law creating and governing such district, except as may be otherwise provided herein. The proper officers of said districts shall file all bills with the county auditor before payment, and he shall audit and approve the same, provided said bills have been contracted in accordance with law and are found by him to be correct, and no bill shall be paid until the same has been audited and approved by the county auditor as provided by this article. All warrants in payment of bills of any such districts shall be drawn and signed in accordance with the law governing the issuance of warrants of such district, and shall be countersigned by the county auditor,

and no treasurer or other depository of any such districts shall pay out any money except upon warrants so duly countersigned. He shall countersign warrants for the investment of funds only when invested in the manner authorized by law. He shall keep an accurate account of all balances on hand in the various district funds. [Id.]

Art. 1670. Improvement districts: forms.—The county auditor from time to time shall prescribe and prepare all necessary forms for the use of any of such districts in the payment of bills, collection and disbursements of money, keeping of accounts, and the making of reports; the expense of necessary printing and stationery used therefor shall be paid by the district. [Id.]

Art. 1671. Improvement districts: reports.—The county auditor shall check all reports required by law to be filed by any district officer, and within thirty days after the filing thereof shall make a detailed report to the commissioners court showing his finding thereon and the condition of such district as shown by said report, and as shown by the records of his office. He shall keep a set of books, showing all receipts and expenditures of the funds of such districts. It shall not be lawful for the treasurer or other depository to receive money for said district without executing proper receipts upon forms to be provided by the county auditor. All books, accounts, records, bills and warrants in the possession of any officer of any such district, or in the possession of any other person legally charged with their custody, shall at all times be subject to the inspection of the county auditor.

Art. 1672. Improvement districts: compensation.—The county auditor shall receive for his services in auditing the affairs of such districts, such compensation as the commissioners court may prescribe, which shall be paid by the county out of the general fund and repaid to the county by such districts by warrants drawn upon the proper funds of such district. In such counties which have or may have as many as five such districts, the compensation allowed the county auditor for his services on behalf of such districts shall be not less than the sum of twelve hundred dollars per annum, to be prorated among the districts in such proportion as the commissioners court may determine. [Id.]

Art. 1673. Pay of assistants.—In all counties having a population of one hundred and ten thousand or more, as shown by the preceding Federal census, the county auditor may appoint two assistants. He may also appoint a stenographer. The rate of pay for said assistants and stenographer shall be the same as fixed by general law for the payment of deputies or assistants to other officers. In addition to the assistants provided for in this article, the county auditor may appoint, by and with the consent of the county judge, or of the commissioners' court, such additional assistants as may be necessary to the proper conduct of his office. All of said assistants shall take the official oath,

and shall be paid out of the general fund of the county upon the order of the commissioners' court. [Id.]

Art. 1674. [1495] **Provisions controlling.**—The provisions of this subdivision are cumulative, and, where conflicting with any existing law, the provisions of this subdivision shall control. [Acts 1905, p. 381.]

Art. 1675. [1496] **County clerk's duties.**—Where the provisions of this subdivision impose upon the auditor like duties as are required of the county clerk, the provisions of this law shall prevail, and to such extent only is the county clerk relieved of his duties. [Id.]

Art. 1676. [1497] **Removal of auditor.**—An auditor appointed under the provisions of law, who has been sufficiently proven guilty of official misconduct, or has proven to be incompetent to faithfully discharge the duties required of him, after due investigation by the same power which appointed him, may be removed, and his successor appointed. [Id.]

TITLE 35.

COUNTY LIBRARIES.

1. County Free Libraries.

| | Article | | Article |
|-----------------------------|---------|--|---------|
| Authority to establish..... | 1677 | Supervision of library..... | 1687 |
| Territory..... | 1678 | Use of library..... | 1688 |
| Tax for maintenance..... | 1679 | Funds for library..... | 1689 |
| Gifts and bequests..... | 1680 | Joinder with city..... | 1690 |
| Existing libraries..... | 1681 | Contract with city..... | 1691 |
| Board of examiners..... | 1682 | Withdrawal of city..... | 1692 |
| County libraries..... | 1683 | Contract with another county..... | 1693 |
| Salary and expenses..... | 1684 | Contract with established library..... | 1694 |
| Duty of librarian..... | 1685 | Combined counties..... | 1695 |
| Report of librarian..... | 1686 | Termination of library..... | 1696 |

Art. 1677. Authority to establish.—The commissioners court of any county may establish, maintain, and operate within their respective counties, county free libraries in the manner and with the functions prescribed in this title. The said court shall also have the power and authority to establish in co-operation with another county or counties a joint free county library for the benefit of the co-operative counties. [Acts 2nd C. S. 1919, p. 219.]

Art. 1678. Territory.—The commissioners court of any county may establish county free libraries for that part of such county lying outside of the incorporated cities and towns already maintaining free public libraries and for such additional parts of such counties as may elect to become a part of or to participate in such county free library system. On their own initiative, or when petitioned to do so by a majority of the voters of that part of the county to be affected, said court shall proceed to establish and provide for the maintenance of such library according to the further provisions of this title. The county library shall be located at the county seat in the court house, unless more suitable quarters are available. [Id.]

Art. 1679. Tax for maintenance.—After a county free library has been established, the commissioners court shall annually set aside from the general tax fund of the county, a sum sufficient for the maintenance of said library, but not to exceed five cents on the hundred dollars valuation of all property in such county outside of all incorporated cities and towns already supporting a free public library, and upon all property within all incorporated cities and towns already supporting a free public library, and upon all property within all incorporated cities and towns already supporting a free public library which have elected to become a part of such free library systems provided in this title for the purpose of maintaining county free libraries and for purchasing property therefor. [Id.]

Art. 1680. Gifts and bequests.—The commissioners court is authorized and empowered to receive on behalf of the county any gift, bequest, or devise for the county free library, or for any branch or subdivision thereof. The title to all property belonging to the county free library shall be vested in the county, but where the gifts or bequests shall be made for the benefit of any branch or branches of the county free library,

such gifts or bequests shall be administered as designed by the donor. [Id.]

Art. 1681. **Existing libraries.**—In any county where a farmers' county library has been established as provided by former laws the same shall continue to operate as a farmers' county library, unless a county free library shall be established as provided for in this title, in which case the former shall merge with and become a part of the latter. [Id.]

Art. 1682. **Board of examiners.**—A commission is hereby created to be known as the State Board of Library Examiners, consisting of the State Librarian, who shall be ex-officio chairman of the Board; the Librarian of the State University, who shall be an ex-officio member; and three other well trained librarians of the State who shall at first be selected by the State Librarian and the Librarian of the State University. The term of each shall be for six years, one of the appointive members retiring every two years. His successor shall be chosen by the remaining members of the Board in executive session. The members of said board shall receive no compensation for their services except actual and necessary traveling expenses paid out of the State library fund. Said Board shall arrange for an annual meeting and for such other meetings as may be necessary in the pursuance of its duties. Said board shall pass upon the qualifications of all persons desiring to become county librarians in the State of Texas, and may in writing adopt rules and regulations not inconsistent with the law for its government and for carrying out the purposes of this title [Id.]

Art. 1683. **County librarian.**—Upon the establishment of a county free library the commissioners court shall biennially appoint a county librarian who shall hold office for a term of two years subject to removal for cause after a hearing by said court. No person shall be eligible to the office of county librarian unless prior to his appointment he has received from the State Board of Library Examiners a certificate of qualification for office. The county librarian shall prior to entering upon the duties of his office, file with the county clerk the official oath and make a bond conditioned upon the faithful performance of his duties with sufficient sureties approved by the county judge of the county of which the librarian is to be the county librarian, in such sum as the commissioners court may determine. [Id.]

Art. 1684. **Salary and expenses.**—The salary of the librarian and assistants shall be fixed by said court at the time they fix the salary of the appointive county officers. The county librarian and assistants shall be allowed actual and necessary traveling expenses incurred in the business of the library. [Id.]

Art. 1685. **Duty of librarian.**—The librarian shall endeavor to give an equal and complete service to all parts of the county through branch libraries and deposit stations in schools and other locations where suitable quarters may be obtained, thus distributing printed matter, books, and other educational matter as quickly as circumstances will permit. The county libra-

rian shall have the power to make rules and regulations for the county free library, to establish branches and stations throughout the county, to determine the number and kind of employes of such library, and, with the approval of the commissioners' court, to appoint and dismiss such employes. The county librarian shall, subject to the general rules adopted by the commissioners' court, build up and manage according to accepted rules of library management, a library for the people of the county and shall determine what books and other library equipment shall be purchased. [Id.]

Art. 1686. Report of librarian.—The librarian of each county library shall, on or before the first day of October in each year, report to the commissioners court and to the State Librarian the operation of the county library during the year ending August 31st preceding. Such report shall be made on blanks furnished by the State librarian, and shall contain a statement of the condition of the library, its operation during the year, and such financial and book statistics as are kept in well regulated libraries. [Id.]

Art. 1687. Supervision of library.—The county library shall be under the general supervision of the commissioners court. Such libraries shall also be under the supervision of the State Librarian, who shall, from time to time, either personally or by one of his assistants, visit the county free libraries and inquire into their condition, advising with the librarians and said court and rendering such assistance in all matters as he may be able to give. [Id.]

Art. 1688. Use of library.—Any white person of such county may use the county free library under the rules and regulations prescribed by the commissioners court and may be entitled to all the privileges thereof. Said court shall make proper provision for the negroes of said county to be served through a separate branch or branches of the county free library, which shall be administered by custodian of the negro race under the supervision of the county librarian. [Id.]

Art. 1689. Funds for library.—All funds of the county free library shall be in the custody of the county treasurer, or other county official, who may discharge the duties commonly delegated to the county treasurer. They shall constitute a separate fund to be known as the county free library fund, and shall not be used for any other purposes except those of a county free library. Each claim against the county free library shall be authorized and approved by the county librarian, or in his absence from the county, by his assistant. It shall then be acted upon in the same manner as are all other claims against the county. [Id.]

Art. 1690. Joinder with city.—After the establishment of a county free library the governing body of any incorporated city or town in the county, maintaining a free public library, may notify the commissioners court that such city or town desires to become a part of the county free library system, and thereafter such city or town shall be a part thereof, and its inhabi-

tants shall be entitled to the benefits of such county free library, and the property within such town or city shall be included in computing the amount to be set aside as a fund for county free library purposes. [Id.]

Art. 1691. Contract with city.—The commissioners court wherein a county free library has been established under the provisions of this title, shall have full power and authority to enter into contracts with any incorporated city or town maintaining a public free library, and such incorporated city or town shall through its governing body, have full power to enter into contracts with such county to secure to the residents of such incorporated city or town the same privileges of the county free library as are enjoyed by the residents of such county outside of such incorporated city or town, or such privileges as may be agreed upon in such contract, upon such consideration to be named in the contract as may be agreed upon, the same to be paid into the county library fund, and thereupon the residents of such incorporated city or town shall have the same privileges with regard to said county free library as are had by the residents of such county outside of such incorporated city or town, or such privileges as may be agreed upon by contract. [Id.]

Art. 1692. Withdrawal of city.—The governing body of such incorporated city or town may at any time after two years notify the commissioners court that such city or town no longer desires to be a part of the county free library system and thereafter such city or town shall cease to participate in the benefits of such county free library system, and the property situated in said city or town shall no longer be assessed in computing the fund to be set aside for county free library purposes. The governing body of such city or town shall give the commissioners court six months notice and publish at least once a week for six successive weeks prior to either giving or withdrawing such notice in a county newspaper designated by the governing body, and circulated throughout such city or town, notice of such contemplated action, giving date and place of meeting at which such contemplated action is proposed to be taken. [Id.]

Art. 1693. Contract with another county.—The commissioners court of any county, wherein a county free library has been established under the provisions of this title, shall have full power and authority to enter into contracts or agreements with the commissioners court of any other county to secure to the residents of such other county such privileges of such county free library as may, by such contract, be agreed upon, the same to be paid into the county free library fund, and thereupon the inhabitants of such other county shall have the privilege of such county free library as may by such contract be agreed upon; and the commissioners court shall have full power and authority to enter into a contract with the commissioners court of another county wherein a county free library has been established, under the provisions of this title and shall have power to provide for and to set aside a county free library fund, in the

manner already set out, for the purpose of carrying out such contract. But the making of such contract shall not bar the commissioners court of such county from establishing a county free library therein, and upon the establishment of such county free library such contract may be terminated upon such terms as may be agreed upon by the parties thereto, or may continue for the term thereof. [Id.]

Art. 1694. Contract with established library.— Instead of establishing a separate county free library, upon petition of a majority of the voters of the county, the commissioners court may contract for library privileges from some already established library. Such contract shall provide that such established library shall assume the functions of a county free library within the county with which the contract is made, including incorporated cities and towns therein, and shall also provide that the librarian of such established library shall hold or secure a county librarian's certificate from the State Board of Library Examiners. Said court may contract to pay annually into the library fund of said established library such sum as may be agreed upon, to be paid out of the county library fund. Either party to such contract may terminate the same by giving six months notice of intention to do so. Property acquired under such contract shall be subject to division at the termination of the contract upon such terms as are specified in such contract.

Art. 1695. Combined counties.— Where found to be more practicable, two or more adjacent counties may join for the purposes of this law and establish and maintain a free library under the terms and provisions above set forth for the establishment and maintenance of a county free library. In such cases the combined counties shall have the same powers and be subject to the same liabilities as a single county as provided in this law. The commissioners courts of the counties which have combined for the establishment and maintenance of a free library shall operate jointly in the same manner as does the commissioners court of a single county in carrying out the provisions of this law. If any county desires to withdraw from such combination it shall be entitled to a division of property in such proportion as agreed upon in the terms of combination at the time such joint action was taken. [Id.]

Art. 1696. Termination of library.— A county free library may be disestablished upon petition of a majority of the voters of that part of the county maintaining a county free library, asking that said library system be no longer maintained. The commissioners court upon the termination of existing contracts shall call in all books and movable property of the defunct county free library, and have same inventoried and stored under lock and seal in some dry and suitable place in the county court house. [Id.]

2. Law Library.

| | | | |
|--------------------------------|--------------|-------------------------|--------------|
| Establishment of library..... | Article 1697 | Custodian | Article 1700 |
| Appropriation for library..... | 1698 | Gifts and bequests..... | 1701 |
| Rules and regulations..... | 1699 | Funds of library..... | 1702 |

Art. 1697. **Establishment of library.**—A county law library may be established at the county seat by the commissioners court of any county containing a city of over 160,000 population according to the preceding Federal census. [Acts 1st C. S. 1921, p. 21.]

Art. 1698. **Appropriation for library.**—The commissioners court of any such county may establish and provide for the maintenance of such law library on its own initiative and appropriate therefor the sum of \$20,000.00 or such part thereof as it deems necessary, and shall appropriate each such sum as may be necessary to properly maintain and operate such library. [Id.]

Art. 1699. **Rules and regulations.**—Said court may make all rules and regulations necessary or proper for the establishment, maintenance, operation and use of said library not in conflict with the laws of this State. [Id.]

Art. 1700. **Custodian.**—Upon the establishment of a county law library the commissioners court shall employ a custodian or custodians of such library, who shall receive such pay as said court may fix. Each custodian shall execute a bond in the sum fixed by the court payable to and to be approved by the county judge of said county, conditioned that such custodian will faithfully perform his duties. [Id.]

Art. 1701. **Gifts and bequests.**—The commissioners court may receive on behalf of the county any gift or bequest for such library. The title to all such property shall be vested in the county. Where any gift or bequest is made with certain conditions, and accepted by the county, these conditions shall be administered as designated by the donor. [Id.]

Art. 1702. **Funds of library.**—All funds of such library shall be in custody of the county treasurer of such county. They shall be a separate fund and shall be used for no purpose other than for such library. Each claim against the county law library shall be acted upon in like manner as other claims against the county. [Id.]

TITLE 36.

COUNTY TREASURER.

| | Article | | Article |
|-------------------------------|---------|--|---------|
| Election and term..... | 1703 | Moneys belonging to county..... | 1709 |
| Bond..... | 1704 | Accounts..... | 1710 |
| New bond..... | 1705 | Report to commissioners court..... | 1711 |
| Office declared vacant..... | 1706 | Deliver money, etc. to successor..... | 1712 |
| Vacancy, how filled..... | 1707 | Shall not pay out money except..... | 1713 |
| Appointee: oath and bond..... | 1708 | To examine dockets, accounts, etc..... | 1714 |

Art. 1703. [1499] [919] [987] **Election and term.**—A county treasurer shall be elected at each regular general election for a term of two years. [Const. Art. 16, Sec. 44; Acts 1876, p. 199; G. L. Vol. 8, p. 1035.]

Art. 1704. [1500] [920] [988] **Bond.**—The county treasurer before entering upon the duties of his office, and within twenty days after he has received his certificate of election, shall give a bond payable to the county judge of his county, to be approved by the commissioners court, in such sum as such court may deem necessary, conditioned that such treasurer shall faithfully execute the duties of his office and pay over according to law all moneys which shall come into his hands as county treasurer, and render a true account thereof to said court at each regular term of said court. [Acts 1846, p. 338; P. D. 1096; G. L. Vol. 2, p. 1644.]

Art. 1705. [1501] [922] [990] **New bond.**—The commissioners court, whenever they may consider the bonds, or either of the bonds, of a county treasurer, from any cause, insufficient or doubtful, shall require such treasurer to give another bond or bonds, or to give additional bond or bonds, as the case may be.

Art. 1706. [1502] [823] [991] **Office declared vacant.**—If the person elected treasurer fails to give the bonds required by this title and take the official oath within twenty days after receiving his certificate of election, it shall be the duty of the county judge to declare the said office vacant; and, should a treasurer fail to give another or an additional bond or bonds when required to do so, as provided in the preceding article, within twenty days after notice of such requirement, he shall be removed from said office in the manner provided by law.

Art. 1707. [1503] [924] [992] **Vacancy, how filled.**—In case of vacancy in the office of the county treasurer, the commissioners court of the county in which such vacancy occurs shall fill such vacancy by appointment, such appointment to be made by a majority vote of the commissioners present, at a regular or special term of such court. Such appointment shall continue in force until the next general election. [Acts 1876, p. 217; G. L. Vol. 8, p. 1053.]

Art. 1708. [1504] [925] [993] **Appointee: oath and bond.**—The person appointed to fill the vacancy, as provided in the preceding article, shall, before entering upon the discharge of the duties of such office, and within twenty days after he has been notified of such appointment, take the oath and give the bonds required, as in the case of an election to such office. [Id.]

Art. 1709. [1505] [926] [994] **Moneys belonging to county.**—The county treasurer shall receive all moneys belonging to the county from whatever source they may be derived, and pay and apply the same as required by law, in such manner as the commissioners court of his county may require and direct. [Acts 1846, p. 338; G. L. Vol. 2, p. 1644; P. D. 1097.]

Art. 1710. [1506] [927] [995] **Accounts.**—The county treasurer shall keep a true account of the receipts and expenditures of all moneys which shall come into his hands by virtue of his office, and of the debts due to and from his county; and direct prosecutions according to law for the recovery of all debts that may be due his county, and superintend the collection thereof. [Id; P. D. 1098.]

Art. 1711. [1507] [928] [996] **Report to commissioners court.**—He shall render a detailed report at every regular term of the commissioners court of his county of all the moneys received and disbursed by him, of all debts due to and from his county, and of all other proceedings in his office, and shall exhibit to said court at every such term all his books and accounts for their inspection and all vouchers relating to the same, to be audited and allowed. [Id; P. D. 1099.]

Art. 1712. [1508] [929] [997] **Deliver money, etc., to successor.**—He shall deliver the moneys, securities, and all other property of the county in his hands, together with all documents, instruments of writing, papers and books belonging to, or for the use of the county, to his successor in office, and perform all such other acts as may be required of him by said commissioners court. [Id; P. D. 1100.]

Art. 1713. [1509] [930] [998] **Shall not pay out money, except.**—The county treasurer shall not pay any money out of the county treasury except in pursuance of a certificate or warrant from some officer authorized by law to issue the same; and, if such treasurer shall have any doubt of the legality or propriety of any order, decree, certificate or warrant presented to him for payment, he shall not pay the same, but shall make report thereof to the commissioners court for their consideration and direction. [P. D. 1101.]

Art. 1714. [1510] [931] [999] **To examine docket, accounts, etc.**—He shall examine the accounts, dockets and records of the clerks, sheriff, justices of the peace, constables and tax collector of his county, for the purpose of ascertaining whether any moneys of right belonging to his county are in their hands which have not been accounted for and paid over according to law, and shall report the same to the commissioners court at their next term, to the end that suit may be instituted for the recovery thereof. [Id; P. D. 1102.]

TITLE 37.

COURT—SUPREME.

| | | | |
|--------------------------------------|------|-------------------------------|------|
| Chapter | Page | Chapter | Page |
| 1 Judges | 494 | 5 Proceedings | 501 |
| 2 Clerk, employes and reporter | 494 | 6 Judgment | 503 |
| 3 Terms and Jurisdiction | 496 | 7 Commission of Appeals | 506 |
| 4 Writ of Error | 499 | | |

CHAPTER ONE.

JUDGES.

| | | | |
|----------------------|--------------|------------------------|--------------|
| Judges | Article 1715 | Disqualification | Article 1717 |
| Qualifications | 1716 | | |

Art. 1715. [1512-13] **Judges.**—The Supreme Court shall consist of a Chief Justice and two Associate Justices, any two of whom shall be a quorum. The concurrence of two judges shall be necessary to the decision of a case. One Justice of said Court shall biennially be elected for a term of six years, the classification to be as now constituted by law. In case of a vacancy in the Supreme Court, the Governor shall fill such vacancy until the next general election, and at such election the vacancy for the unexpired term shall be filled by election by the qualified voters of the State. [Const. Art. 5, Sec. 2; Acts 1892, p. 19; G. L. Vol. 10, p. 383.]

Art. 1716. [1514] [935] [1003] **Qualifications.**—No person shall be eligible to be a Justice of the Supreme Court, unless he be, at the time of his election, at least thirty years of age, a citizen of the United States and of this State, and has been a practicing lawyer or a judge of a court in this State, or such lawyer and judge together, at least seven years. [Id.]

Art. 1717. [1516-17] **Disqualification.**—When the Court or any two of its members shall be disqualified to hear and determine any cause in said Court, or when the Judges of said Court shall be equally divided in opinion by reason of the absence or disqualification of one of its members, the same shall be certified by the presiding Judge to the Governor who shall immediately commission the requisite number of persons possessing the qualifications prescribed for Judges of the Supreme Court to try and determine said cause. [Const. Art. 5, Sec. 11; Acts May 12, 1846; P. D. 1575; G. L. Vol. 2, p. 1561.]

CHAPTER TWO.

CLERK, EMPLOYES AND REPORTER.

| | | | |
|----------------------------|--------------|---------------------------------|--------------|
| Appointment of clerk | Article 1718 | Library | Article 1722 |
| Vacancy in vacation | 1719 | Stenographers and balliff | 1723 |
| Duties of clerk | 1720 | Reporter | 1724 |
| Deputy clerks | 1721 | Reports | 1725 |

Art. 1718. [1530-32] **Appointment of Clerk.**—The Supreme Court shall appoint for a term of four years one clerk who shall reside at Austin. Such appointment shall be recorded in the

proceedings of the Court. Such appointee shall first give bond in the sum of five thousand dollars, to be approved by the Court, payable to the Governor and conditioned for the faithful performance of the duties of his office. He may be removed by the Court for neglect of duty or misconduct in office, after ten days' previous notice of the motion specifying the particular charges of negligence or misconduct in office preferred, and the Court shall determine the law and facts. The Court may whenever necessary appoint a clerk pro tempore. [Acts 1892, p. 19; G. L. Vol. 10, p. 383.]

Art. 1719. [1531] [951] [1018] **Vacancy in vacation.**—If the office of clerk becomes vacant in vacation, an appointment shall be made by the Chief Justice and one of the Associates. The appointee shall give the prescribed bond and oath, the bond to be approved by any judge of the Court. Such appointment shall continue until a regular appointment shall be made. [Acts 1846, p. 250; G. L. Vol. 2, p. 1557.]

Art. 1720. [1532 to 1535] **Duties of clerk.**—The clerk shall:

1. Collect and pay into the State Treasury all fees and costs collected by him over and above the salaries allowed him and his deputies, under rules prescribed by the Comptroller and approved by the Judges of the Supreme Court and recorded in the minutes of the Court.

2. Procure a seal for the use of the Court, which shall have a star of five points, with the words, "Supreme Court of the State of Texas" engraved thereon.

3. File and carefully preserve the transcripts of all records certified to said Court, and all papers relative thereto, and shall docket all causes in the order in which the Court shall direct, and shall faithfully record the proceedings and decisions of said Court, and certify its judgments to the courts from which the cases were brought.

Art. 1721. [1536] [1023] **Deputy clerks.**—When authorized by the Court by an order recorded in the minutes, the clerk may appoint one or more deputies who may discharge the duties required by law of the clerk, and who shall give bond in like sum and conditions required of the clerk, to be approved by the Court. The compensation of such deputies shall be unanimously agreed upon by the Judges and their action recorded in the minutes of the Court, such compensation not to exceed two thousand dollars a year for the first deputy and one thousand dollars a year for the second deputy, to be paid out of the fees collected. The Court in its discretion may dispense with the services of one or both such deputies temporarily or permanently. [Acts 1903, p. 115.]

Art. 1722. [1537-8] **Library.**—The library of the Supreme Court shall be open to the public under such rules as the Court may prescribe. The books shall not be removed from the library room, except by the Judges of the Courts and by members of the Legislature during its sessions, upon their receipt for the same.

The clerk of the Supreme Court shall be librarian in charge of the library of said Court. The Chief Justice shall appoint an assistant librarian who may also act as marshal for said Court when required by the Court. The assistant librarian shall have immediate charge of the library and shall keep it open, except Sundays and holidays, from eight a. m. to five p. m., and shall make catalogs of the books and keep them in order. [Acts 1892, p. 19; G. L. Vol. 10, p. 383; Acts 1st C. S. 1905, p. 462.]

Art. 1723. [1520-39] **Stenographers and bailiff.**—The Court may appoint not more than three stenographers, at a salary to be fixed by the Court, not exceeding one hundred and fifty dollars per month, and may appoint a bailiff to attend the sitting of the Court. [Acts 1915, p. 119.]

Art. 1724. [1572-74] **Reporter.**—The Court shall appoint to serve at the will of the Court one or more licensed attorneys to report the decisions of the Supreme Court. The reporter shall obtain from the proper clerk the records of cases to be reported, with the briefs and opinions therein, as soon as such cases are finally disposed of and the opinions are recorded, which shall be returned after the report thereof is completed. He shall under the direction of the Court, without delay, prepare for publication such decisions with appropriate syllabus and statements when necessary, with proper index, table of cases cited and cases reported, and shall, from time to time, deliver the same to the Board of Control for publication. [Acts 1919, p. 60.]

Art. 1725. [1575-77] **Reports.**—The Court shall designate the cases to be reported; and only those designated shall be reported and published. Only the main propositions made in the briefs and considered by the Court in the opinion, with the authorities cited in support of such propositions, shall be incorporated in the report. Each volume shall be copyrighted in the name of the reporter, who shall immediately on delivery of the edition transfer and assign the same to the State. It shall be electrotyped, and the plates shall be owned by the State and preserved by the Board of Control. [Id.]

CHAPTER THREE.

TERMS AND JURISDICTION.

| | | | |
|-----------------------------------|--------------|-------------------------------------|--------------|
| Terms of Supreme Court..... | Article 1726 | May issue writs..... | Article 1733 |
| Adjournment..... | 1727 | May issue mandamus, etc..... | 1734 |
| Appellate jurisdiction..... | 1728 | To issue only by Supreme Court..... | 1735 |
| Writ of error or certificate..... | 1729 | May punish for contempt..... | 1736 |
| Court to make rules..... | 1730 | Habeas corpus..... | 1737 |
| Rules of practice..... | 1731 | Transfer of causes..... | 1738 |
| Jurisdictional facts..... | 1732 | | |

Art. 1726. [1518] [937] [1005] **Terms of Supreme Court.**—The Supreme Court shall hold one term each year at the city of Austin, commencing on the first Monday in October, and ending on the last Saturday in the next June. [Acts 1892, p. 19; G. L. Vol. 10, p. 383; Const. Art. 5, Sec. 2.]

Art. 1727. [1519] [938] [1010] **Adjournment.**—The Court may adjourn from day to day, or for such period as it deems necessary to the ends of justice and the determination of the

business before them; and there shall be no discontinuance of any suit, process or matter returned to, or pending in, the Supreme Court, although a quorum of the Court may not be in attendance at the commencement or on any other day of the term. If a sufficient number of the judges shall not attend on any day of the term, any judge of the Court, or the bailiff attending, may adjourn the Court from time to time. [Acts 1846, p. 254; P. D. 1574; G. L. Vol. 2, p. 1560.]

Art. 1728. [1521] [940] [1011] **Appellate jurisdiction.**—

The Supreme Court shall have appellate jurisdiction co-extensive with the limits of the State, extending to all questions of law arising in the following cases when same have been brought to the Courts of Civil Appeals from final judgment of trial courts:

1. Those in which the judges of the Courts of Civil Appeals may disagree upon any question of law material to the decision.
2. Those in which one of the Courts of Civil Appeals holds differently from a prior decision of its own, or of another Court of Civil Appeals, or of the Supreme Court upon any such question of law.
3. Those involving the construction or the validity of statutes.

4. Those involving the revenues of the State.

5. Those in which the Railroad Commission is a party.

6. In any other case in which it is made to appear that an error of law has been committed by the Court of Civil Appeals of such importance to the jurisprudence of the State as in the opinion of the Supreme Court requires correction, but excluding those cases in which the jurisdiction of the Court of Civil Appeals is made final by statutes. Upon the showing of such an error the Supreme Court may in its discretion grant a writ of error for the purpose of revising the decision upon such question alone and of conforming its judgment to the decision thereof made by it. [Acts 1892, p. 19; Acts 1913, p. 107; Acts 1917, p. 140; G. L. Vol. 10, p. 383.]

Art. 1729. [1522] [941] [1011] **Writ of error or certificate.**—All causes mentioned in the preceding article may be carried to the Supreme Court either by writ of error or by certificate from the Court of Civil Appeals, but the Court of Civil Appeals may certify any question of law arising in any such case at any time they may choose, whether before or after the decision of the case in said Court. [Acts 1892, p. 19; Acts 1895, p. 145; Acts 1913, p. 107; Acts 1917, p. 140; G. L. Vol. 10, pp. 383, 875.]

Art. 1730. [1523] [944] [1011] **Court to make rules.**—The Supreme Court shall from time to time make and promulgate suitable rules, forms and regulations for carrying into effect the articles in this title relating to the jurisdiction and practice of said Court. [Acts 1892, p. 19; G. L. Vol. 10, p. 383.]

Art. 1731. [1524] [947] [1014] **Rules of practice.**—The Court may make and enforce all necessary rules of practice and procedure, not inconsistent with the law, for the government of said Court and all other courts of the State, so as to expedite the dispatch of business in said courts. [Id.]

Art. 1732. [1525] [945] [1011] **Jurisdictional facts.**—It

shall have the power, upon affidavit or otherwise, as the Court may determine, to ascertain such matters of fact as may be necessary to the proper exercise of its jurisdiction. [Id.]

Art. 1733. [1526] **May issue writs.**—The Supreme Court or any Justice thereof, shall have power to issue writs of procedendo, certiorari and all writs of quo warranto or mandamus agreeable to the principles of law regulating such writs, against any district judge, or Court of Civil Appeals or judges thereof, or any officer of the State Government, except the Governor. [Id; Acts 1913, p. 107; Acts 1917, p. 140.]

Art. 1734. [1528] [949] [1016] **May issue mandamus, etc.**—Said Court or any judge thereof in vacation may issue the writ of mandamus to compel a judge of the district court to proceed to trial and judgment in a cause agreeably to the principles and usages of law, returnable to the Supreme Court on or before the first day of the term, or during the session of the same, or before any judge of the said Court as the nature of the case may require. [P. D. 1579.]

Art. 1735. [5732] [4861] **To issue only by Supreme Court.**—The Supreme Court only shall have power, authority or jurisdiction to issue the writ of mandamus or injunction or any other mandatory or compulsory writ or process against any of the officers of the executive departments of the government of this State to order or compel the performance of any act or duty which, by the laws of this State, they, or either of them, are authorized to perform, whether such act or duty be judicial, ministerial or discretionary. [Acts 1881, p. 7; Acts 1917, p. 141.]

Art. 1736. [1527] [948] **May punish for contempt.**—The Supreme Court shall have power to punish any person for a contempt of such Court according to the principles and usages of law in like cases, not to exceed a fine of one thousand dollars and imprisonment in jail not exceeding twenty days. [Acts 1846, p. 255; P. D. 1577; G. L. Vol. 2, p. 1561.]

Art. 1737. [1529] **Habeas corpus.**—The Supreme Court or any of the Justices thereof, either in term time or in vacation, may issue writs of habeas corpus in any case where any person is restrained in his liberty by virtue of any order, process or commitment issued by any court or judge on account of the violation of any order, judgment or decree theretofore made, rendered or entered by such court or judge in any civil cause. Said Court or any Justice thereof, either in term time or in vacation, pending the hearing of application for such writ, may admit to bail any person to whom the writ of habeas corpus may be so granted. [Acts 1905, p. 20.]

Art. 1738. [1587] **Transfer of causes.**—The Supreme Court shall at least once a year equalize, as nearly as practicable, the amount of business upon the dockets of the different Courts of Civil Appeals, by directing the transfer of cases from such of said Courts as may have the greater amount of business upon their dockets to those having a less amount. And Courts of Civil Appeals, to which such cases shall be transferred, shall have

jurisdiction of all such cases transferred without regard to the districts in which cases were originally tried and returnable on appeal; cases transferred from any Court of Civil Appeals shall be taken from cases appealed from the counties nearest the place where the Court to which the cases are transferred is held. [Acts 1909, p. 38; Acts 1895, p. 79; G. L. Vol. 10, p. 809.]

CHAPTER FOUR.

WRIT OF ERROR.

| | | | |
|---------------------------------|------|---|---------|
| Good cause to be shown..... | 1739 | Designation of Civil Appeals Jus- | Article |
| Petition for writ of error..... | 1740 | ices..... | 1748 |
| Requisites of application..... | 1741 | Justices to assemble..... | 1749 |
| Filing..... | 1742 | Effect of granting or denying writ..... | 1750 |
| Petition with record..... | 1743 | Disqualification of Justices..... | 1751 |
| Reply to application..... | 1744 | Supreme Court may also act..... | 1752 |
| May refer case back..... | 1745 | Powers..... | 1753 |
| Court shall decide..... | 1746 | Expenses of designated Justices..... | 1754 |
| Bond..... | 1747 | | |

Art. 1739. [1545] **Good cause to be shown.**—The Supreme Court may review final judgments of Courts of Civil Appeals upon writ of error, when good cause therefor be shown by application for such writ, as hereinafter required, the sufficiency of such cause to be determined as herein provided. [Acts 1917, p. 140.]

Art. 1740. [1540] [942] **Petition for writ of error.**—A writ of error before the Supreme Court may be applied for by petition addressed to said Court, stating the nature of the case and the grounds upon which the writ of error is prayed for, and showing that the Supreme Court has jurisdiction thereof; and the petition shall contain such other requisites as may be prescribed by the Supreme Court. [Acts 1892, p. 22; Acts 1895, p. 144; G. L. Vol. 10, p. 386.]

Art. 1741. [1521-40] **Requisites of application.**— Until otherwise provided by rule of the Supreme Court, the application for a writ of error shall concisely state the question decided by the Court of Civil Appeals in which error is asserted. This shall be followed by only such brief and general statements as may be necessary to show that the question was involved in the cause and in the decision of the Court of Civil Appeals. More than one question may be presented in the same application. [Id.; Acts 1917, p. 140.]

Art. 1742. [1541] [942] **Filing.**—The petition shall be filed with the clerk of the Court of Civil Appeals within thirty days from the overruling of the motion for rehearing. [Acts 1895, p. 144.]

Art. 1743. [1542] [942] **Petition with record.**—The petition with the original record in the case, and the opinions of the Court of Civil Appeals, and the motion filed therein, and certified copies of the judgments and orders of the Court of Civil Appeals and copy of the appeal or supersedeas bond shall be filed with the Supreme Court. The party applying for the writ of error shall deposit with the clerk of the Court of Civil Appeals a sum sufficient to pay the expressage or carriage of the record

to and from the clerk of the Supreme Court, which sum shall be charged as costs in the suit. [Id.]

Art. 1744. **Reply to application.**—Within ten days after the filing of the record in the Supreme Court the defendant in error may file a reply to the application for writ of error controverting the grounds alleged for granting the said writ, and may state reasons why the writ of error should not be granted. The Supreme Court may prescribe and enforce rules governing the proceedings by both parties under this law. If the defendant in error shall file such reply, the Supreme Court may finally dispose of the cause upon such application in the same manner and to the same extent as if the application had been granted and the cause set down for hearing, and its judgment shall be announced in open Court as in other cases, and an opinion may be filed as in the regular proceedings of the Court. [Acts 1st C. S. 1911, p. 108.]

Art. 1745. [1543] [943] **May refer case back.**—If a Court of Civil Appeals shall fail to file conclusions of fact, or to comply with the requirements of the law in filing such conclusions of fact, and such conclusions are necessary to enable the Supreme Court to properly determine the rights of the parties, the Court may suspend action on the petition for writ of error and return the record to the Court of Civil Appeals with instructions to make and return conclusions of fact upon the points indicated by the Supreme Court. [Acts 1901, p. 122; Acts 1892, p. 19; Acts 1913, p. 107; Acts 1917, p. 141; G. L. Vol. 10, p. 384.]

Art. 1746. [1544] [943] **Court shall decide.**—If the Supreme Court shall find the case to be one of which it may take jurisdiction, it shall grant or refuse the writ of error or answer the questions certified by the Court of Civil Appeals, as the case may be. [Id; Acts 1913, p. 107; Acts 1917, p. 141.]

Art. 1747. [1545] [942] **Bond.**—When a writ of error is granted and the plaintiff in error has given no bond, the Supreme Court in granting the writ shall specify what bond shall be given; and the plaintiff in error shall file such bond in the trial court, to be approved by the clerk of said court, and a certified copy thereof shall be at once sent to the Supreme Court. Upon the filing of said certified copy, the clerk of the Supreme Court shall issue the proper citation in error. [Acts 1895, p. 144; G. L. Vol. 10, p. 874.]

Art. 1748. **Designation of Civil Appeals Justices.**—The Chief Justice of the Supreme Court or any two Justices thereof may, by a writing recorded in the minutes of the Supreme Court, designate three of the Justices of the Courts of Civil Appeals to act as hereinafter provided. Such powers may be exercised from time to time in the same manner as long as reason therefor may exist, and the personnel of the designated Justices of the Courts of Civil Appeals may be changed as often as may be advisable, by relieving one, or more, and designating another, or others, in order to interfere as little as possible with the work of the Courts of Civil Appeals. Not more than one Justice shall

be designated to serve at any one time from any one of these courts. [Acts 1917, p. 142.]

Art. 1749. Justices to assemble.—The Justices of the Courts of Civil Appeals so designated, upon receiving notice thereof, shall assemble together at the State Capitol and take up, consider and act upon applications for writs of error as may be so referred to them, by granting, refusing or dismissing the same in accordance with the practice of the Supreme Court; and then such designated Justices may make such orders and give such directions, incidental to the consideration and disposition of the application. [Id.]

Art. 1750. Effect of granting or denying writ.—The granting of an application shall admit the cause into the Supreme Court to be proceeded with by the Court as provided by law. The refusal or dismissal of an application shall have the effect of denying the admission of the cause into the Supreme Court, except that motions for rehearing may be made to such designated Justices in the same way as such motions to the Supreme Court have been heretofore allowed. The refusal or dismissal of any application shall not be regarded as a precedent or authority. [Id.]

Art. 1751. Disqualification of Justice.—No one of such Justices shall participate in acting upon an application in a cause decided during his incumbency by the court of which he is a member. [Id.]

Art. 1752. Supreme Court may also act.—The Supreme Court shall still have power to act upon applications for writs of error, when deemed by it expedient. In any cause in which the Judges of the Courts of Civil Appeals shall have disagreed or shall have declared void a statute of the State, the application for writ of error shall be passed upon by the Supreme Court. [Id.]

Art. 1753. Powers.—The powers herein conferred upon the Justices of the Supreme Court and of the Courts of Civil Appeals are declared to be incidental to the offices held by them respectively. [Id.]

Art. 1754. Expenses of designated Justices.—Such designated Justices shall have all actual and necessary expenses incurred in the discharge of such additional duties, paid out of the State Treasury from warrants drawn by the Comptroller, upon itemized accounts of such expenses, verified by the affidavit of the claimant. [Id.]

CHAPTER FIVE.

PROCEEDINGS IN THE SUPREME COURT.

| | | | |
|------------------------------------|--------------|-------------------------------|--------------|
| Order of trial of causes..... | Article 1755 | Process..... | Article 1761 |
| Trial on questions of law..... | 1756 | Motion for rehearing..... | 1762 |
| Briefs..... | 1757 | Notice to opposing party..... | 1763 |
| Certified question..... | 1758 | Service and return..... | 1764 |
| Answer to question..... | 1759 | When motion heard..... | 1765 |
| Death of parties no abatement..... | 1760 | | |

Art. 1755. [1548] [971] [1042] Order of trial of causes.—Causes may be tried in such order as the Judges of said court

may deem to the best interest and convenience of the parties or their attorneys. [Acts 1850, p. 171; P. D. 1585; G. L. Vol. 3, p. 609.]

Art. 1756. [1546] [967] [1033] **Trial on questions of law.**—Trials in the Supreme Court shall be only upon the questions of law upon which the writ of error was allowed, or which were certified to the Supreme Court from a Court of Civil Appeals. The Supreme Court may require the original transcript to be sent up. [Acts 1892, p. 19; G. L. Vol. 10, p. 384.]

Art. 1757. [1547] [968] [1033] **Briefs.**—In all cases taken to the Supreme Court by writ of error, the briefs and arguments filed in the Courts of Civil Appeals shall be submitted to the Supreme Court; and, in addition thereto, the attorney for either party may file additional briefs, under such rules and regulations as the Supreme Court may prescribe.

Art. 1758. [1621-24] [1041] **Certified question.**—When a question of law has been certified by a Court of Civil Appeals to the Supreme Court upon receipt of the record from the lower court, the Supreme Court shall cause the clerk to docket the case and set it down for argument, and notice shall be given to the attorneys of record of the setting of the case at least fifteen days before the date of the hearing. [Acts 1893, p. 89.]

Art. 1759. [1622-25] **Answer to question.**—The Supreme Court, on receiving such record, and certified question of law, from the Court of Civil Appeals transmitting the same, shall examine such record and certified question of law, and render an opinion as in other cases; which opinion, when so rendered by the Supreme Court on the record and question of law presented therein, shall be final and shall be the law on the question involved until said opinion shall have been overruled by the Supreme Court or abrogated by legislative enactment, and the Court of Civil Appeals shall be governed thereby. After the question is decided, the Supreme Court shall immediately notify the lower court of its decision. [Acts 1893, p. 89; Acts 1899, p. 170.]

Art. 1760. [1549] [973] [1044] **Death of parties no abatement.**—If any party to the record in a cause pending in the Supreme Court dies after the writ of error has been served and before such cause has been decided by the Supreme Court, such cause shall not abate by such death; but the court shall proceed to adjudicate such cause and render judgment therein as if all the parties thereto were living, and such judgment shall have the same force and effect as if rendered in the life time of all the parties thereto. [Id.]

Art. 1761. [1566] [982] [1056] **Process.**—All writs and process issuing from the Supreme Court shall bear the test of the Chief Justice or presiding Judge of said court, and be under the seal of said court and signed by the clerk thereof, and may be directed to the sheriff or any constable of any county in the State, and shall be by such officer executed and returned according to the demand thereof. Whenever such writs or process shall not be executed, the clerk of said court is authorized and

required to issue another like process or writ, upon the application of the party suing out the former writ or process to the same or any other county. [Acts 1892, p. 16; G. L. Vol. 10, p. 383.]

Art. 1762. [1561] [977] [1051] **Motion for rehearing.**—A motion for rehearing may be filed with the clerk of the court within fifteen days after the date of entry of the judgment or decision of the court, and not later. Should the court adjourn within less time than fifteen days after the rendition of the judgment, it may make such rules and regulations with reference to the filing of the motion as it may deem proper. The grounds relied upon for the rehearing shall be distinctly specified in the motion. The motion shall give the name and residence of the counsel of the opposing party if known, and if not known, the name and residence as shown in the record.

Art. 1763. [1562] [978] [1052] **Notice to opposing party.**—Upon the filing of such motion, the clerk shall make and transmit a certified copy of the same by mail to the sheriff or any constable of the county in which the attorney, or opposing party, as the case may be, is alleged in said motion to reside, together with a precept commanding him to deliver such copy to the person named in such precept. [Id.]

Art. 1764. [1563-4] **Service and return.**—Upon the receipt of such precept and copy of motion by the officer, it shall be his duty to deliver the copy of the motion to the person named in said precept, if found in his county, and to return said precept to the clerk by mail, stating thereon at what time and to whom he delivered the copy of the motion, or that the party named in the precept is not found in his county. Service of said motion on any one of several parties to a cause or their attorneys shall be sufficient service on all. [Id.]

Art. 1765. [1565] [981] [1055] **When motion heard.**—The Supreme Court may hear and determine such motion for rehearing at any time after five days from the return of such precept served. [Id.]

CHAPTER SIX.

JUDGMENT.

| | Article | | Article |
|------------------------------|---------|--------------------------------------|---------|
| Judgments in open court..... | 1766 | Affidavit of inability to pay..... | 1774 |
| Judgment on affirmance..... | 1767 | Mandate barred..... | 1775 |
| Judgment enforced, how..... | 1768 | Mandate recalled..... | 1776 |
| May remand..... | 1769 | Execution..... | 1777 |
| Want of form..... | 1770 | Execution returnable..... | 1778 |
| Decision..... | 1771 | Officer failing to make returns..... | 1779 |
| Judgment becomes final..... | 1772 | Money due other clerk..... | 1780 |
| Mandate to issue..... | 1773 | | |

Art. 1766. [1550] [974] [1047] **Judgments in open court.**—In all cases decided by the Supreme Court, its judgments or decrees shall be pronounced in open court; and the opinion of the court shall be reduced to writing in such cases as the court may deem of sufficient importance to be reported. [Acts 1866, p. 134; P. D. 6417; G. L. Vol. 5, p. 1052.]

Art. 1767. [1551] [975] [1049] **Judgment on affirmance.**—Whenever the Supreme Court shall affirm a judgment or decree of a Court of Civil Appeals, it shall render such judgment

or decree as should have been rendered by the Court of Civil Appeals, and shall render judgment against the plaintiff in error and the sureties, on his appeal or supersedeas bond, for the performance of said judgment or decree, and shall make such disposition as to the costs as they may order. [Acts 1892, p. 23; Acts 1907, S. S. p. 467; Acts 1921, p. 54; G. L. Vol. 10, p. 387.]

Art. 1768. [1567] [983] [1057] **Judgment enforced.**—Upon the rendition by the Supreme Court of any such judgment or decree as is contemplated by the preceding article, it shall not be necessary for the lower court from which the cause was removed to make any further order or decree therein, but the clerk of said lower court, on receipt of the mandate of the Supreme Court or Court of Civil Appeals, shall proceed to issue execution thereon as in other cases. [Id.]

Art. 1769. [1552] [975] [1049] **May remand.**—If the judgment of a Court of Civil Appeals shall be reversed, the Supreme Court may remand the case either to the Court of Civil Appeals from which it came or to the district court, for another trial. [Id.]

Art. 1770. [1553] [972] [1043] **Want of form.**—There shall be no reversal or dismissal for want of form if the requirements of the law and the rules of the court be sufficiently complied with in presenting the case to enable the court to determine the same upon its merits. [Acts 1892, p. 19; G. L. Vol. 10, p. 383.]

Art. 1771. [1553] [972] [1043] **Decision.**—In each case, the Supreme Court shall either affirm the judgment, or reverse and render such judgment as the Court of Civil Appeals should have rendered; or reverse the judgment and remand the case to the lower court, if it shall appear that the justice of the case demands another trial. [Id.]

Art. 1772. [1554] [976] [1050] **Judgment becomes final.**—The judgment of the Supreme Court shall be final at the expiration of fifteen days from the rendition thereof, when no motion for rehearing has been filed. [Acts 1897, p. 200; Acts 1892, p. 19; Acts 1901, p. 122; G. L. Vol. 10, p. 1254; G. L. Vol. 10, p. 383.]

Art. 1773. [1555-6-8]. **Mandate to issue.**—Upon the rendition of final judgment, the clerk, upon payment of costs, shall issue the mandate in the case. The clerk of the Supreme Court shall not deliver a mandate until all costs of said court and of the Court of Civil Appeals shall have been paid, except as further herein provided. Mandates shall issue to the court in which the original judgment was rendered. [Acts 1892, p. 19; G. L. Vol. 10, p. 383; Acts 1901, p. 123.]

Art. 1774. [1557] [976] [1050] **Affidavit of inability to pay.**—If the party against whom the costs are adjudged by the Supreme Court shall make affidavit of his inability to pay, or give security therefor, he may apply to the Supreme Court for an order to require the clerk of the court to issue the mandate in the cause; which motion shall be sustained unless the clerk

of the court, or a party to the record, shall successfully controvert the truth of such affidavit. [Acts 1897, p. 200; Acts 1901, p. 122, G. L. Vol. 10, p. 1254.]

Art. 1775. [1559] **Mandate barred.**—When a case is reversed and remanded, no mandate shall issue after twelve months from the rendition of final judgment of the Supreme Court, or the overruling of a motion for rehearing. When a cause is reversed and remanded by the Supreme Court, and the mandate is not taken out within twelve months as hereinbefore provided, then, upon the filing in the court below of a certificate of the clerk of the Supreme Court or Court of Civil Appeals, that no mandate has been taken out, the case shall be dismissed from the docket of said lower court. [Acts 1901, p. 123.]

Art. 1776. [1560] [976] [1050] **Mandate recalled.**—Should the Supreme Court set aside its judgment after the mandate has issued, the clerk shall at once notify the party to whom the mandate was directed to return it. [Acts 1897, p. 200; Acts 1901, p. 123; G. L. Vol. 10, p. 1254.]

Art. 1777. [1568] [984] [1058] **Execution.**—If the costs have not been paid at the end of fifteen days from the date of judgment or from the overruling of a motion for rehearing, the clerk may issue an execution for the costs of the Supreme Court and the Court of Civil Appeals, specifying the amount of each, and attach to said execution a correct list of all costs accruing in each of said courts. The execution shall be directed to the sheriff or any constable of the county from which the cause was removed, or to any county in which the person or persons, or either of them, liable under such execution, may have property. It shall be the duty of every sheriff or constable receiving such execution to execute and return the same under the same rules, regulations and liabilities as provided for executions from the district court. [Acts 1892, p. 23; G. L. Vol. 10, p. 387.]

Art. 1778. [1569] [985] [1059] **Execution returnable.**—All executions for costs of the Supreme Court shall be returned by the officer to whom they are directed within four months from the date thereof. [Acts 1875, p. 70; G. L. Vol. 8, p. 442.]

Art. 1779. [1570] [986] [1060] **Officer failing to make return.**—In case any officer shall fail or refuse to make such return with the amount of such costs, if he has collected the same within the time prescribed herein, or shall make a false or fraudulent return of any such execution, the clerk of the Supreme Court may issue citation returnable forthwith to such officer to appear before the Supreme Court, and show cause why he has not collected and returned such costs and execution; and failing to show cause, said court may enter judgment against such officer and the sureties on his official bond for the amount of said costs, together with the cost of such proceeding. [Id.; Acts 1892, p. 19; G. L. Vol. 10, p. 383.]

Art. 1780. [1571] [986] [1060] **Money due other clerk.**—When the Clerk of the Supreme Court receives any money due a clerk of the Court of Civil Appeals he shall pay it over to the proper clerk. If he refuses to do so upon demand, the clerk

to whom the same is due may file in the Supreme Court a motion against him, and, upon ten days' notice to him, the Supreme Court may enter judgment against him and the sureties on his official bond for said amount. [Id.]

CHAPTER SEVEN.

COMMISSION OF APPEALS.

| | Article | | Article |
|-------------------------------|---------|-----------------------------|---------|
| Commission of Appeals | 1781 | Report to Supreme Court | 1791 |
| Vacancy | 1782 | Refilng papers; costs | 1792 |
| Sections of commission; clerk | 1783 | Sessions | 1793 |
| Two judges must concur | 1784 | Stenographers | 1794 |
| Making rules | 1785 | Clerk | 1795 |
| Reference of causes | 1786 | Seal | 1796 |
| Notice to parties | 1787 | Dockets and records | 1797 |
| Causes referred by consent | 1788 | Writs and process; contempt | 1798 |
| Report on causes referred | 1789 | Practice and procedure | 1799 |
| Opinions | 1790 | Term of office | 1800 |

Art. 1781. **Commission of Appeals.**—A board of Arbitration and Appeals which shall be styled the Commission of Appeals of the State of Texas, to consist of six persons learned in the law, shall be appointed by the Governor, by and with the advice and consent of the Senate, if in session, be and the same is hereby created. The members of said Commission of Appeals of the State of Texas shall have the same qualifications as are now prescribed by law for the judges of the Supreme Court of the State of Texas, and shall receive for their services the same salary to be paid in the same manner as are the salaries of the judges of the Supreme Court. [Acts 1925, p. 193.]

Art. 1782. **Vacancy.**—In case of a vacancy on said Commission of Appeals by the death, resignation or removal of any member thereof during vacation of the Legislature, it shall be the duty of the Governor to fill the same by appointment and the person so appointed shall continue in office until the next regular session of the Legislature after the appointment. In case of a vacancy on either section by the death, resignation or removal of any member thereof during the term of office, the Governor shall fill the same by appointment for the unexpired portion of the term for which the commissioner so vacating his office had been appointed. [Acts 1925, p. 193.]

Art. 1783. **Sections of commission; clerk.**—The Commission of Appeals shall be divided into and sit in two sections to be known as Section A. and Section B., each of which shall consist of three members. Each section shall be a complete entity in and of itself and shall have all the authority hereinafter conferred upon the Commission of Appeals; but there shall be only one clerk for said Commission of Appeals. [Acts 1918, 4th C. S., p. 171.]

Art. 1784. **Concurrence of two members.**—The concurrence of two of the judges of any section shall be necessary to decision of any question or matter referred to them. [Acts 1925, p. 193.]

Art. 1785. **Making rules.**—The Commission of Appeals shall make rules regulating the hearing of causes submitted to them.

The entire Commission of Appeals shall sit and act together in making and formulating of the rules of procedure hereinafter provided for. [Id.]

Art. 1786. **Reference of causes by Supreme Court.**—The Supreme Court is authorized to refer to either section of the Commission of Appeals any case pending before said Court, for examination and report thereon; and it shall be the duty of the Supreme Court, from time to time to refer to said Commission so many of the cases pending in said Court as may be reasonably considered and acted upon by the same at the several sessions thereof, having respect in such reference to the length of time such cases have been pending, as well as to promote an early disposition of the cases on the docket. [Id.]

Art. 1787. **Notice to parties.**—When any case is referred by the Supreme Court to said Commission, counsel for both parties shall have notice thereof, and shall have the right to be heard upon the same as if said cause were tried in the Supreme Court. [Id.]

Art. 1788. **Causes referred by consent.**—The Commission shall have power to hear and pronounce award upon all civil cases pending in the Supreme Court, wherein the parties or their attorneys may file written consent to the reference thereof to said Commission. [Id.]

Art. 1789. **Report on causes referred.**—It shall report its conclusions or award to the Supreme Court in the cases and its opinion thereon; and the conclusion or award aforesaid shall be the judgment of said Supreme Court, and said Court shall make and render such further order, judgment, or decree thereon as may be necessary or proper to make said award effective. [Id.]

Art. 1790. **Opinions.**—The opinion of the Commission in the cases so referred to it by consent shall not be published in the reports of the decisions of the Supreme Court, nor shall it have any further or other effect than to determine the particular causes wherein rendered, and shall have no force, effect or authority as precedent in other causes, unless otherwise decided by the Supreme Court. The opinion of the Commission in cases so referred to it, when adopted by said Court may be published as the opinion thereof, as in other cases. [Id.]

Art. 1791. **Report to Supreme Court.**—When the Commission has determined upon the proper disposition of any case referred to it, their opinion shall be submitted to the Supreme Court together with a brief synopsis of the case, and the record shall be returned therewith to be used by said Supreme Court. [Id.]

Art. 1792. **Refiling papers; costs.**—In cases referred to the Commission the papers shall not be re-filed with said Commission, and only such additional costs as may be essential to carry into effect the provision hereof shall be incurred by the parties to such cases by reason of the reference thereof. [Id.]

Art. 1793. **Sessions.**—The Commission shall hold its sessions in Austin at the same time and place as the Supreme Court, but it shall continue work during the vacation of the Supreme

Court in mid-summer. The Judges of the Commission may take a vacation, not to exceed eight weeks, during said period. [Id.]

Art. 1794. **Stenographers.**—They shall appoint stenographers not exceeding four, each of whom shall receive an annual salary not to exceed fifteen hundred dollars, to be paid in monthly installments, on warrants approved by the Chief Justice of the Supreme Court. [Id.]

Art. 1795. **Clerk.**—The Clerk of the Supreme Court shall perform the duties of Clerk of said Commission and shall be allowed for services rendered said Commission by him and his deputies, an additional compensation of fifteen hundred dollars per annum, to be paid out of the fees of his office. [Id.]

Art. 1796. **Seal.**—Said Commission of Appeals shall have a seal, being a star with five points and the words "Commission of Appeals of the State of Texas" around the same. [Id.]

Art. 1797. **Dockets and records.**—Regular dockets and minutes of all proceedings by or before said Commission of Appeals shall be kept, and the records and proceedings of courts of record, and all cases shall be docketed in the order in which they are transferred or referred by the Supreme Court. [Id.]

Art. 1798. **Writs and process; contempt.**—Said Commission shall have the right to issue writs of certiorari to perfect the record, and such process as the Supreme Court might issue to make parties, and shall have the power to punish for contempt. [Id.]

Art. 1799. **Practice and Procedure.**—All laws and rules regulating practice and procedure in the Supreme Court shall be of force in the practice and proceedings of the Commission of Appeals so far as applicable. All applications for rehearing in cases referred to said Commission shall be made before and determined by it. [Id.]

Art. 1800. **Term of office.**—The term for which said Commissioners of Appeals shall exist shall be from the last Saturday in June, 1925, to and including the last Saturday in June, 1931. The names of the persons so appointed shall be submitted to the Senate for confirmation if in session when such appointments are made. If not, then at the first session of the Senate thereafter; provided that for the term beginning the last Saturday in June, 1925, one judge on each section of the commission shall be appointed for two years, one judge on each section for four years, and one judge on each section for six years from the last Saturday in June, 1925. Upon the expiration of the term of any member of either section his successor shall be appointed by the Governor for a term ending the last Saturday in June, 1931, when the Commission of Appeals itself shall expire under and by virtue of the terms of this Act. [cts 1925, p. 193.]

TITLE 38.
COURT OF CRIMINAL APPEALS.

| | | | |
|---------------------------------|--------------|-----------------------------------|--------------|
| Judges | Article 1801 | Mandate | Article 1807 |
| Presiding judge | 1802 | Clerk | 1808 |
| Disqualification of judge | 1803 | Deputy clerk | 1809 |
| Term of court | 1804 | Reporter and reports | 1810 |
| Seal of court | 1805 | State Prosecuting Attorneys | 1811 |
| May ascertain facts | 1806 | | |

Art. 1801. [1652] [1044] **Judges.**—The Court of Criminal Appeals shall consist of three judges, two of whom shall be a quorum. The concurrence of two judges shall be necessary to a decision of said court. Said judges shall have the same qualifications as judges of the Supreme Court. At each biennial general election one judge for said court shall be elected for a term of six years, the division into classes to remain as now provided by law. [Acts 1892, p. 34.]

Art. 1802. [1654] [1046] **Presiding judge.**—The judges of said court shall choose a presiding judge from their number at such times as they deem proper. All writs and processes issuing from said court shall bear test in the name of said presiding judge and the seal of the court. [Id.]

Art. 1803. [1655] [1047] **Disqualification of judge.**—When any member thereof shall be disqualified under the Constitution and laws of this State to hear and determine any case in said court, the same shall be certified to the Governor who shall immediately commission a person learned in the law to act instead. [Id.]

Art. 1804. [1658] [1050] **Term of Court.**—Said court shall hold one term each year at the city of Austin, commencing on the first Monday in October of each year, and shall continue until the last Saturday in June next succeeding. [Acts 1909, p. 51.]

Art. 1805. [1666] [1059] **Seal of court.**—The court shall use a seal having thereon a star with five points with the words, "Court of Criminal Appeals of Texas" engraved thereon. [Id.]

Art. 1806. [1661] [1054] **May ascertain facts.**—Said court shall have power upon affidavit or otherwise to ascertain such matters of fact as may be necessary to the exercise of its jurisdiction.

Art. 1807. [1669] [1062] **Mandate.**—When the court from which an appeal has or may be taken has been or shall be deprived of jurisdiction over any case pending such appeal, and when such case has or may be determined by the Court of Criminal Appeals, the mandate of said appellate court shall be directed to the court to which jurisdiction has been, or may be, given over such case. [Id.]

Art. 1808. [1162-3-4] **Clerk.**—Said court shall appoint a clerk for said court, who shall:

1. Hold his office for four years unless sooner removed by the court for good cause, entered in its minutes.
2. Take and subscribe the official oath and give the same bond to be approved by said court as may be required of the clerk of the Supreme Court.

3. Perform as such clerk the like duties and be subject to the same liabilities as may be required of or prescribed for the clerk of the Supreme Court.

Art. 1809. **Deputy clerk.**—The court, or such clerk with the approval of the court, may designate any stenographer employed by said court to act as deputy clerk during the absence, illness or disability of said clerk. Such stenographer shall receive no extra compensation for such services, and shall discharge the duties of the clerk in the name of his principal as deputy clerk, signing his name after that of said principal as deputy clerk. [Acts 1923, p. 17.]

Art. 1810. [1667-8] **Reporter and reports.**—Said court shall appoint a reporter of such of its decisions as the law requires to be published, and may remove him for inefficiency or neglect of duty. The clerk shall deliver to the reporter the original opinions when recorded and the record in each case to be reported, taking receipt therefor, and the reporter shall return them when he finishes using them. The volumes of such decisions shall be numbered in continuation of the present reports, styled Texas Criminal Reports, and be printed and disposed of in like manner as the reports of the Supreme Court.

Art. 1811. **State Prosecuting Attorneys.**—The Governor, with the consent of the Senate, shall biennially appoint two attorneys to represent the State in all proceedings before the Court of Criminal Appeals, one of whom shall be styled "State Prosecuting Attorney", and the other "Assistant State Prosecuting Attorney", each said attorney to hold office for two years, and each of whom shall have had not less than four years experience as a practicing attorney or shall have been a district judge for not less than four years before his appointment. [Acts 1923, p. 335.]

TITLE 39.

COURTS OF CIVIL APPEALS.

| Chapter | Page | Chapter | Page |
|-----------------------------------|------|--|------|
| 1 Terms and jurisdiction..... | 511 | 6 Conclusions of fact and law..... | 521 |
| 2 Clerks and employes..... | 514 | 7 Rehearing | 522 |
| 3 Proceedings | 515 | 8 Writ of error to Supreme Court | 523 |
| 4 Certification of questions..... | 518 | | |
| 5 Judgment | 519 | | |

CHAPTER ONE.

TERMS AND JURISDICTION.

| | Article | | Article |
|----------------------------------|---------|-----------------------------------|---------|
| Three justices..... | 1812 | Judgment conclusive on facts..... | 1820 |
| Election and term of office..... | 1813 | Judgment conclusive on law..... | 1821 |
| Qualifications of judges..... | 1814 | Inquiry into jurisdiction..... | 1822 |
| Special judge..... | 1815 | Writs of mandamus, etc..... | 1823 |
| Terms of court..... | 1816 | May mandamus district courts..... | 1824 |
| Location of courts..... | 1817 | Issuance of process..... | 1825 |
| Adjournment | 1818 | May punish for contempt..... | 1826 |
| Jurisdiction defined..... | 1819 | | |

Art. 1812. [1580] [987] **Three Justices.**—Each Court of Civil Appeals shall consist of a Chief Justice and two Associate Justices. A majority shall be a quorum for the transaction of business, and the concurrence of two Justices shall be necessary to a decision. [Acts 1st C. S. 1892, p. 25; G. L. Vol. 10, p. 389.]

Art. 1813. [1581] [988] **Election and term of office.**—The Justices of each Court of Civil Appeals shall be elected at the general election by the qualified voters of their respective districts. Upon their qualification, after the first election after the creation of any Court of Civil Appeals, the Justices shall draw lots for the terms of office; those drawing number one shall hold for the term of two years; those drawing number two shall hold for a term of four years, and those drawing number three shall hold office for six years. Each of said offices shall be filled by election at the next general election before the respective terms expire; and the person elected shall thereafter hold his office for six years. [Id.]

Art. 1814. [1582] [989] **Qualifications of Judges.**—No person shall be eligible to the office of Justice of a Court of Civil Appeals, unless he be at the time of his election thirty years of age or over, a resident of the district from which he is elected, and has been a practicing lawyer or a judge of a court of this State, or such lawyer and judge together, at least seven years. [Id.]

Art. 1815. [1584] [1021] **Special judge.**—If all or any two members of any Court of Civil Appeals shall be disqualified to determine any cause in such court, that fact shall be certified to the Governor, who shall immediately commission the requisite number of persons, learned in the law, to try and determine said cause. [Id.]

Art. 1816. [1585] **Terms of Court.**—The term of each Court of Civil Appeals shall begin on the first Monday in October of each year and continue in session until the first Monday in July of each succeeding year. [Acts 1897, p. 132; G. L. Vol. 10, p. 1186.]

Art. 1817. [1586] [993] **Location of courts.**—A Court of Civil Appeals shall be held at the following places, respectively:

1. In the First Supreme Judicial District, in the City of Galveston.

2. In the Second Supreme Judicial District, in the City of Fort Worth.

3. In the Third Supreme Judicial District, in the City of Austin.

4. In the Fourth Supreme Judicial District, in the City of San Antonio.

5. In the Fifth Supreme Judicial District, in the City of Dallas. [Acts 1892, S. S. p. 25; G. L. Vol. 10, p. 389.]

6. In the Sixth Supreme Judicial District, in the City of Texarkana. [Acts 1907, p. 324.]

7. In the Seventh Supreme Judicial District, in the City of Amarillo. [Acts 1911, p. 269; Acts 1915, p. 121.]

8. In the Eighth Supreme Judicial District, in the City of El Paso. [Id.]

9. In the Ninth Supreme Judicial District, in the City of Beaumont. [Id.]

10. In the Tenth Supreme Judicial District, in the City of Waco. [Id; Acts 1923, p. 152.]

11. The Eleventh Supreme Judicial District in the City of Eastland. [Acts 1925, p. 258.]

12. The cities of Beaumont, Waco and Eastland, respectively, shall furnish and equip suitable rooms for the Court of Civil Appeals therein, and for the justices thereof, without cost or expense to the State. [Id.]

Art. 1818. [1588] [955] **Adjournment.**—Such courts may adjourn from day to day or for such time as they may deem proper. If a quorum is not present at the first or any day of the term, any judge of the court or the bailiff thereof may adjourn the court from time to time until a quorum shall be in attendance, but the court shall not be finally adjourned for the term. [Acts 1895, p. 79; G. L. Vol. 10, p. 809.]

Art. 1819. [1589] [996] **Jurisdiction defined.**—The appellate jurisdiction of the Courts of Civil Appeals shall extend to civil cases within the limits of their respective districts:

1. Of which the district courts have original or appellate jurisdiction.

2. Of which the county court has original jurisdiction, or of which the county court has appellate jurisdiction when the amount in controversy or the judgment rendered shall exceed one hundred dollars, exclusive of interest and costs. [Acts 1895, p. 79; G. L. Vol. 10, p. 809.]

Art. 1820. [1590] [996] **Judgment conclusive on facts.**—The judgments of the Courts of Civil Appeals shall be conclusive in all cases on the facts of the case. [Id.]

Art. 1821. [1591] [996] **Judgment conclusive on law.**—The judgments of the Courts of Civil Appeals shall be conclusive on the law and facts, nor shall a writ of error be allowed thereto from the Supreme Court in the following cases, to-wit:

1. Any civil case appealed from the county court or from a district court, when, under the Constitution, a county court would have had original or appellate jurisdiction to try it, except in probate matters and in cases involving the revenue laws of the State or the validity of construction of a statute, or cases involving conflicts between decisions of the Courts of Civil Appeals or between a decision of a Court of Civil Appeals and a decision of the Supreme Court.

2. All cases of boundary.

3. All cases of slander.

4. All cases of divorce.

5. All cases of contested elections of every character other than for State officers, except where the validity of the statute is attacked by the decision.

6. In all appeals from interlocutory orders appointing receivers or trustees, or such other interlocutory appeals as may be allowed by law.

7. In all other cases as to law and facts, except where appellate jurisdiction is given to the Supreme Court and not made final in said courts of Civil Appeals. [Acts 1st C. S. 1892, p. 25; Acts 1923, p. 110.]

Art. 1822. [1593] [998] **Inquiry into jurisdiction.**—Said courts shall have power, upon affidavit or otherwise as by the courts may be thought proper, to ascertain such matters of fact as may be necessary to the proper exercise of their jurisdiction. [Id.]

Art. 1823. [1592] [997] **Writs of mandamus, etc.**—Said courts and the judges thereof may issue writs of mandamus and all other writs necessary to enforce the jurisdiction of said courts. [Id.]

Art. 1824. [1595] [1000] **May mandamus district courts.**—Said courts, or any judge thereof, in vacation, may issue the writ of mandamus to compel a judge of the district court to proceed to trial and judgment in a cause, returnable as the nature of the case may require. [Id.]

Art. 1825. [1645] [1034] **Issuance of process.**—Any writ or process issuing from any Court of Civil Appeals shall bear the test of the Chief Justice under the seal of said court and signed by the clerk thereof, and be directed to the sheriff or any constable of any county in the State, and be, by such officer, executed according to the command thereof and returned to the court from which it emanated. Whenever such writ or process shall not be executed, the clerk of said court shall issue another like process or writ upon the application of the party suing out the former writ or process to the same or any other county. [Acts 1st C. S. 1892, p. 25; G. L. Vol. 10, p. 389.]

Art. 1826. [1594] [999] **May punish for contempt.**—They may punish any person for a contempt of said courts, not to exceed one thousand dollars fine or imprisonment not exceeding twenty days. [Id.]

CHAPTER TWO.

CLERKS AND EMPLOYES.

| | Article | | Article |
|-----------------------|---------|---------------------------|---------|
| Appointment of Clerk | 1827 | Librarian | 1832 |
| Bond | 1828 | Deputy clerks | 1833 |
| Removal | 1829 | Disposition of costs | 1834 |
| Seal of court | 1830 | Report of costs collected | 1835 |
| Records and judgments | 1831 | Stenographers | 1836 |

Art. 1827. [1596-7] **Appointment of clerk.**—Each Court of Civil Appeals shall appoint for a term of two years one clerk who shall reside at the place of holding Court. If the office becomes vacant in vacation, the appointment shall be made by the Chief Justice and one Associate. Each appointment shall be noted in the minutes of the Court. Whenever the necessity occurs, the Court may appoint a clerk pro tem. [Acts 1st C. S. 1892, p. 25.]

Art. 1828. [1596] **Bond.**—The clerk shall first make a bond for five thousand dollars payable to the Governor, conditioned for the faithful performance of the duties of his office, to be approved by any judge of his court. [Id.]

Art. 1829. [1598] [1003] **Removal.**—The clerk may be removed by the court for neglect of duty or malfeasance in office on motion specifying the particular charge preferred. In such case the court shall determine the law and the facts after having given such clerk ten days previous notice of the hearing. [Id.]

Art. 1830. [1599] [1004] **Seal of court.**—Each clerk shall procure a seal for the use of the court, which shall have a star of five points with "Court of Civil Appeals of the State of Texas" engraved thereon. [Id.]

Art. 1831. [1600-1] **Records and judgments.**—Each clerk shall file and carefully preserve all records certified to his court and all papers relative thereto, docket all causes in the order in which they are filed, record the proceedings and decisions of said court, and certify their judgments to the proper court. [Id.]

Art. 1832. [1603-4] **Librarian.**—Each clerk shall be librarian in charge of the library of his court, and shall take charge of, keep in good order and make catalogs of the books thereof. [Id.]

Art. 1833. [1602] [1007] **Deputy clerks.**—Each clerk may appoint one chief deputy. With the approval of the court he may appoint additional deputies who shall be paid out of the fees collected by the clerk, not to exceed one hundred dollars a month. Each deputy shall give bond to the clerk for the faithful discharge of his duty. [Id.]

Art. 1834. **Disposition of costs.**—Each clerk of a Court of Civil Appeals shall collect and pay into the State Treasury all costs collected by him, under such regulations as the Comptroller may prescribe and the judges of said Court approve. [Acts 1923, p. 129.]

Art. 1835. [1605] [1010] **Report of costs collected.**—Each clerk shall, within ten days after the first day of January and July, make a sworn report to his court showing the amount of costs collected by him during the previous six months, the causes

in which the same were collected, and the disposition made of such costs. This report shall be filed and recorded in the minutes of said court. [Acts 1st C. S. 1892, p. 25.]

Art. 1836. [1606] [1012] **Stenographers.**—Each court may appoint one stenographer who shall be sworn to keep secret all matters which may come to his knowledge as such stenographer, and who shall give bond for two thousand dollars payable to the State of Texas, conditioned for the faithful performance of his duties, to be approved by the Chief Justice of said Court. [Acts 2nd C. S. 1919, p. 100.]

CHAPTER THREE.

PROCEEDINGS.

| Article | Article | | |
|--|---------|-------------------------------|------|
| Trial..... | 1837 | Assignments of error..... | 1844 |
| Unapproved bills of exceptions..... | 1838 | Docket of causes..... | 1845 |
| Time to file transcript..... | 1839 | Appearance by brief, etc..... | 1846 |
| New appeal bond allowed..... | 1840 | Service of notice..... | 1847 |
| Certificate of affirmance..... | 1841 | Order of hearing..... | 1848 |
| Cause heard after affirmance on certificate..... | 1842 | Order of deciding cases..... | 1849 |
| Filing transcript after adjournment..... | 1843 | Death does not abate..... | 1850 |

Art. 1837. [1607] [1014] **Trial.**—A trial in a Court of Civil Appeals shall be:

1. On a statement of facts.
2. Or on statement of the pleadings and proof as agreed upon by the parties or their attorneys.
3. Or upon the conclusions of law and findings of fact certified by the judge of the trial court.
4. Or upon a statement of facts certified by the judge of the trial court.
5. Or upon a bill of exceptions to the opinion of the judge.
6. Or upon a special verdict.
7. Or upon an error in law either assigned or apparent upon the face of the record.

If none of the foregoing exists, the case shall be dismissed with costs alone or with costs and damages, in the discretion of the court. [Acts 1st C. S. 1892, p. 25; G. L. Vol. 10, p. 389.]

Art. 1838. [1607] [1014] **Unapproved bills of exceptions.**—Where it appears to the satisfaction of the court that the facts stated in a bill of exceptions are fairly stated and that said bill was prepared in accordance with the law governing the preparation of such bills, and that the judge trying the cause refused to sign the same, the court shall admit, as part of the record, such unsigned bill of exception; and the truth of any such bill of exceptions shall be determined by the court on the copies of the affidavits required by law to be made in such case, such copies to be contained in, and to form a part of the record sent to the Court of Civil Appeals. [Id.]

Art. 1839. [1608] [1015] **Time to file transcript.**—In appeal or writ of error, the appellant or plaintiff in error shall file the transcript with the clerk of the Court of Civil Appeals within ninety days from the perfection of the appeal or service

of the writ of error; provided, that for good cause, the court may permit the transcript to be thereafter filed upon such terms as it may prescribe. [Id.]

Art. 1840. [1609] [1025] **New appeal bond allowed.**—When there is a defect of substance or form in any appeal or writ of error bond, then on motion to dismiss the same for such defect, the appellate court may allow the same to be amended by filing in such appellate court a new bond, on such terms as the court may prescribe. [Id.]

Art. 1841. [1610] [1016] **Certificate of affirmance.**—If the appellant or plaintiff in error shall fail to file a transcript of the record, as directed in this chapter, then the appellee or defendant in error may file with the clerk of said court a certificate of the clerk of the district or county court in which such appeal or writ of error may have been taken, attested by the seal of his court, stating the time when and how such appeal was perfected or such citation was served; whereupon the Court of Civil Appeals shall affirm the judgment of the Court below, unless good cause can be shown why such transcript was not so filed. If a copy of the bond accompanies such certificate of the district or county clerk, the judgment shall, in like manner, be affirmed against the sureties on such bond. [Id.]

Art. 1842. [1611] [1017] **Cause heard after affirmance on certificate.**—In all cases where a Court of Civil Appeals has affirmed the judgment, under the provisions of the preceding article, said Court may, at any time within fifteen days after such affirmance, permit the transcript to be filed by the appellant or plaintiff in error, and the case to be tried on its merits; provided appellant or plaintiff in error shall show to the court good cause why the transcript was not filed by him as provided in this chapter, and shall also show to said court that he has given the appellee or defendant in error notice of his intention to apply for such permission to file said transcript. [Id.]

Art. 1843. [1611] [1017] **Filing transcript after adjournment.**—Where the court shall adjourn within fifteen days after judgment was affirmed on certificate, it may permit the appellant or plaintiff in error to file his transcript at such time as may be deemed proper, and have the cause tried on its merits; provided, said appellant or plaintiff in error shall show good cause why said transcript was not filed as herein directed, and shall show to the court that he has given the appellee or defendant in error notice of his intention to apply for permission to file said transcript. [Id.]

Art. 1844. [1612] [1018] **Assignments of error.**—Before he takes the transcript from the clerk's office, the appellant or plaintiff in error shall file with the Clerk of the Court below all assignments of error, distinctly specifying the grounds on which he relies. Where a motion for new trial has been filed, the assignments therein shall constitute the assignments of error and need not be repeated by filing separate assignments of error. All errors not distinctly specified are waived, but an assignment

shall be sufficient which directs the attention of the Court to the error complained of. [Id; Acts 1913, p. 276.]

Art. 1845. [1613] [1022] **Docket of causes.**—When a cause is carried to a Court of Civil Appeals by writ of error, it shall be docketed in the order received. The clerk shall transfer said cause to the trial docket within thirty days after the same has been received and docketed. For good cause shown after notice to the adverse party, the Court may upon motion of either party extend the time for placing said cause on the trial docket. [Acts 1892, p. 25.]

Art. 1846. [1614] [1019] **Appearance by brief, etc.**—The attorneys for both the plaintiff and defendant may file written, typewritten or printed briefs or argument, if written not to exceed fifteen pages; and the Court shall be required to notice the same as if it were the personal appearance of said attorney, and shall not dismiss any suit or cause where such brief or argument is filed with the papers for want of further prosecution. [Acts 1st C. S. 1909, p. 270; Acts 1921, p. 210.]

Art. 1847. [1615] [1020] **Service of notice.**—All notices required herein to be given to parties or their attorneys of record shall be served by the clerk sending said notice to the attorneys by registered letter through the mail properly directed. Registration receipts shall be filed and kept by the clerk with the record of the cause.

Art. 1848. [1616] [1022] **Order of hearing.**—Causes on the trial docket of said court shall be submitted in the order of the date of filing, except as otherwise provided, unless continued to some future time for good cause shown; and the clerk shall notify the parties or their attorneys of record of the date set for hearing. [Acts 1st C. S. 1892, p. 30.]

Art. 1849. [1617] [1023] **Order of deciding cases.**—Cases shall be decided in the order in which they are filed at each term of the court, but the following cases shall have precedence of all others in the order named:

1. Cases in which the Railroad Commission is a party.
 2. Cases in which the State is a party.
 3. Cases submitted on oral argument for all parties to the cause.
 4. Such other cases as the court, by order or rule, may direct.
- [Id.]

Art. 1850. [1618] [1026] **Death does not abate.**—If any party to the record in a cause pending in a Court of Civil Appeals shall die after the appeal bond is filed and approved or after the writ of error has been served, and before the cause has been decided, such cause shall not abate, but the court shall proceed to adjudicate the case and render judgment therein as if all parties thereto were still living. Such judgment shall have the same force and effect as if rendered in the lifetime of all the parties thereto. [Id.]

CHAPTER FOUR.

CERTIFICATION OF QUESTIONS.

| | | | |
|-----------------------------------|-----------------|--------------------------------|-----------------|
| Questions of law certified..... | Article 1851 | Decision of Supreme Court..... | Article 1854 |
| Certifying dissent..... | 1852 | What questions certified..... | 1855 |
| Papers sent to Supreme Court..... | 1853 | | |

Art. 1851. [1619] [1043] **Questions of law certified.**—Whenever there shall arise an issue of law which a Court of Civil Appeals should deem advisable to present to the Supreme Court for adjudication, the presiding judge shall certify the question to be decided by the Supreme Court. Pending the decision of the Supreme Court, the cause in which the issue is raised shall be retained for judgment in harmony with the decision of the Supreme Court upon the issue submitted. [Acts 1893, p. 100; G. L. Vol. 10, p. 530.]

Art. 1852. [1620] [1040] **Certifying dissent.**—When a dissenting opinion is rendered by one judge as to a conclusion of law material to a decision of the case, the grounds of his dissent shall be entered of record by the dissenting member. Upon motion of a party or upon its own motion the court shall certify the point or points of dissent to the Supreme Court. The provisions hereof shall apply to cases appealed from the county court as well as from the district court. [Acts 1893, p. 89; G. L. Vol. 10, p. 519; Acts 1923, p. 72.]

Art. 1853. [1621] [1041] **Papers sent to Supreme Court.**—When a certificate of dissent is sent up by any Court of Civil Appeals, the clerk shall send up a certified copy of the conclusions of fact and law as found by the court, and the questions of law upon which there is a division, also the original transcript, if so ordered by the Supreme Court. [Id.]

Art. 1854. [1622] [1042] **Decision of Supreme Court.**—When the Supreme Court decides a question certified to it by a Court of Civil Appeals, such decision shall be binding upon the Court of Civil Appeals. [Id.]

Art. 1855. [1623] **What questions certified.**—Where a decision of a Court of Civil Appeals is in conflict with an opinion rendered by the Supreme Court of Texas or by some other Court of Civil Appeals in this State on any question of law, and such Court of Civil Appeals refuses to concur with the opinion rendered by the Supreme Court or such Court of Civil Appeals, the court refusing to concur with the conflicting opinion shall transmit the question of law involved in the cause wherein said conflict of opinion has arisen, duly certified, together with the record or transcript in such cause, to the Supreme Court for adjudication by the Supreme Court. [Acts 1899, p. 170; Acts 1923, p. 94.]

CHAPTER FIVE.

JUDGMENT OF THE COURT.

| | | | |
|--|---------|--|---------|
| | Article | | Article |
| If judgment reversed..... | 1856 | Mandate issued, when..... | 1864 |
| Judgment on affirmance or ren- diti- on..... | 1857 | No mandate until costs paid..... | 1865 |
| Judgment enforced, etc..... | 1858 | Affidavit of inability..... | 1866 |
| No reversal for want of form..... | 1859 | Mandate to issue in twelve months..... | 1867 |
| Affirmance with damages for de- lay..... | 1860 | When judgment set aside..... | 1868 |
| Remittitur..... | 1861 | Execution on failure to pay costs..... | 1869 |
| Suggestion of remittitur..... | 1862 | Appellant on reversal to recover costs..... | 1870 |
| Refusal to remit not to be alluded to..... | 1863 | Return of execution, when..... | 1871 |
| | | Officer failing to make return..... | 1872 |

Art. 1856. [1626] [1027] **If judgment reversed.**—When the judgment or decree of the court below shall be reversed, the court shall proceed to render such judgment or decree as the court below should have rendered, except when it is necessary that some matter of fact be ascertained or the damage to be assessed or the matter to be decreed is uncertain, in either of which cases the cause shall be remanded for a new trial. [Acts 1st C. S. 1892, p. 25; G. L. Vol. 10, p. 389.]

Art. 1857. [1627] [1028] **Judgment on affirmance or rendition.**—When a court of civil appeals affirms the judgment or decree of the court below, or proceeds to render such judgment or decree as should have been rendered by the court below, and such judgment shall be for the same or a greater amount or of the same nature as rendered in the court below, said court shall render judgment against the appellant or plaintiff in error and his sureties on the appeal bond, subject to such disposition as to costs on said appeal as said court may order. Said appellate courts shall in their discretion include in their said judgment or decree such damages, not exceeding ten per cent on the amount of the original judgment as they may deem proper; and the judgment or decree of said courts rendered as contemplated in this article shall be final. [Id; Acts 1921, p. 54.]

Art. 1858. [1646] [1035] **Judgment enforced, etc.**—Upon the rendition by any court of civil appeals of any such judgment or decree as is contemplated in the preceding article, the lower court from which the cause was removed need not make any further order or decree therein; but the clerk of said lower court, on receipt of the mandate of the Supreme Court or Court of Civil Appeals, shall proceed to issue execution thereon as in other cases. [Acts 1st C. S. 1892, p. 25; G. L. Vol. 10, p. 389.]

Art. 1859. [1628] [1024] **No reversal for want of form.**—There shall be no reversal on appeal or writ of error, nor shall the same be dismissed for want of form, provided sufficient matter or substance be contained in the record to enable the court to decide the cause upon its merits. [Id.]

Art. 1860. [1629] [1024] **Affirmance with damages for delay.**—Where the court shall find that an appeal or writ of error has been taken for delay, and that there was no sufficient cause for taking such appeal, then the appellant or plaintiff in error, if he be the defendant in the court below, shall pay ten per cent on the amount in dispute as damages, together with the judgment, interest and cost of suit thereon accruing. [Id.]

Art. 1861. [1630] [1024] **Remittitur.**—If, in any judgment rendered in the district or county court, there shall be an excess of damages rendered, and before the plaintiff has entered a release of same in such court in the manner provided by law, such judgment shall be removed to the Court of Civil Appeals. It shall be lawful for the party in whose favor such excess of damages has been rendered to make such remittitur in the Court of Civil Appeals in the same manner as such release is required to be made in the district or county court. Upon such release being filed in said court, after revising said judgment, said Court of Civil Appeals shall proceed to give such judgment as the court below ought to have given if the release had been filed therein. [Id.]

Art. 1862. [1631] [1029] **Suggestion of remittitur.**—In civil cases appealed to a Court of Civil Appeals, if such court is of the opinion that the verdict and judgment of the trial court is excessive and that said cause should be reversed for that reason only, then said appellate court shall indicate to such party, or his attorney, within what time he may file a remittitur of such excess. If such remittitur is so filed, then the court shall reform and affirm such judgment in accordance therewith; if not filed as indicated, then to be reversed. [Acts 1893, p. 89; G. L. Vol. 10, p. 519.]

Art. 1863. [1632] [1029] **Refusal to remit not to be alluded to.**—Whenever a Court of Civil Appeals shall indicate that a verdict is excessive, and no remittitur shall be filed, no evidence shall be allowed, nor allusion made in a subsequent trial to the action of such appellate court in reference to the amount of excess of such verdict. [Id.]

Art. 1864. [1633] [1029] **Mandate issued when.**—If no writ of error be sued out, or motion for rehearing be filed, within thirty days after the decision of the court has been entered in a Court of Civil Appeals, the clerk of the court shall, upon application of either party and the payment of all costs, issue a mandate upon said judgment. [Id.]

Art. 1865. [1634] [1036] **No mandate until costs paid.**—On the rendition of a final judgment or decree in the Court of Civil Appeals, the clerk of said court shall not issue and deliver the mandate of the court, nor certify the proceedings to the lower court, until all costs accruing in the case in such appellate court have been paid, subject, however, to the provisions of the succeeding article. [Acts 1897, p. 18; G. L. Vol. 10, p. 1072.]

Art. 1866. [1635] [1036] **Affidavit of inability.**—If the party against whom the costs are adjudged shall make affidavit of his inability to pay the same or give security therefor, he may apply to the Court of Civil Appeals in which the case is pending for an order to require the clerk to issue the mandate or to certify the proceedings, as the case may be; which motion shall be granted by said court, unless the clerk or a party to the record shall controvert the truth of such affidavit and satisfy the court that such motion should not be granted. [Id.]

Art. 1867. [1559] **Mandate to issue in twelve months.**—In cases which have been reversed and remanded by a court of

civil appeals, if no mandate shall have been taken out and filed in the court where the cause originated within one year after the motion for a rehearing was overruled or final judgment rendered, then upon the filing in the court below of a certificate of the clerk of the Court of Civil Appeals where the cause was pending that no mandate has been taken out, the case shall be dismissed from the docket. [Acts 1901, p. 123.]

Art. 1868. [1560] **When judgment set aside.**—If a Court of Civil Appeals sets aside its judgment after the mandate has been issued, the clerk shall at once notify the party to whom the mandate was directed to return it. [Acts 1897, p. 200; Acts 1901, p. 123; G. L. Vol. 10, p. 1254.]

Art. 1869. [1647] [1036] **Execution on failure to pay costs.**—If neither party shall pay the costs and take out the mandate within thirty days after the time when the same can be issued by law, then the clerk shall issue execution for the costs accruing in his court against the party or parties against whom such costs have been adjudged, and shall send such execution by mail to the proper officer for collection; but he shall retain the mandate until the costs have been paid or collected, subject, however, to the provisions of the third preceding article. [Acts 1897, p. 18; G. L. Vol. 10, p. 1072.]

Art. 1870. [1648] [1029] **Appellant on reversal to recover costs.**—In any cause reversed by a Court of Civil Appeals, the appellant shall be entitled to an execution against the appellee for costs occasioned by such appeal, said costs to be taxed by the clerk of the said court. [Acts 1893, p. 89; G. L. Vol. 10, p. 519.]

Art. 1871. [1649] [1037] **Return of execution, when.**—All executions for costs of the Courts of Civil Appeals, as authorized by law, shall be returned by the sheriff or constable to whom they are directed within four months from the date thereof. [Id.; Acts 1892, p. 25.]

Art. 1872. [1650] [1038] **Officer failing to make return.**—If any officer shall fail or refuse to make such return with the amount of such costs, if he has collected the same, within the time prescribed herein, or shall make a false or fraudulent return of any such execution, the clerk of said court may issue citation returnable forthwith to such officer to appear before said court and show cause, if any he can, why he has not collected and returned said costs and execution; and failing to show cause, said court may enter judgment against such officer and the sureties on his official bond for said costs, together with the costs of such proceedings. [Id.]

CHAPTER SIX.

CONCLUSIONS OF FACT AND LAW.

| | | | |
|-----------------------------|--------------|-----------------------|--------------|
| Conclusions of fact and law | Article 1873 | Supplemental findings | Article 1875 |
| Reason to be stated | Article 1874 | Decision and opinion | Article 1876 |

Art. 1873 [1636] [1639] **Conclusions of fact and law.**—In all cases decided by the Courts of Civil Appeals, in which the

Supreme Court has jurisdiction of an application for writ of error, the Court of Civil Appeals, within thirty days after the decision of the case, shall make and file a conclusion of fact and law upon each material point assigned as error in that court. The evidence need not be stated, except when necessary to determine upon the correctness of some ruling of the court. Such findings of fact and conclusions of law may be included in the opinion of the court.

Art. 1874. [1637] [1039] **To state reason for reversal.**—In cases where the judgment of the trial court shall be reversed and the cause remanded, the Court of Civil Appeals shall state its reason for the judgment. [Acts 1901, p. 121; Acts 1892, p. 25; G. L. Vol. 10, p. 389.]

Art. 1875. [1638] **Supplemental findings.**—If either party to a case, decided by a Court of Civil Appeals, shall be of the opinion that the findings of fact are insufficient upon any material issue assigned in that court as error, such party may, in his motion for rehearing specify the point upon which there is no finding of fact, or upon which the finding made by the court is insufficient, and ask said Court to make and file conclusions of fact upon the points indicated in the motion. If the court refuses to make such findings, or if the finding made be insufficient, such action may be assigned as error in application to the Supreme Court for a writ of error. [Acts 1901, p. 121.]

Art. 1876. [1639] **Decision and opinion.**—The Courts of Civil Appeals shall decide all issues presented to them by proper assignments of error by either party, whether such issues be of fact or of law and announce in writing their conclusions so found. [Acts 1905, p. 71.]

CHAPTER SEVEN.

REHEARING.

| | | | |
|----------------------|---------|------------------------------|---------|
| | Article | | Article |
| Motion for rehearing | 1877 | Service of notice and return | 1879 |
| Notice, how given | 1878 | When motion determined | 1880 |

Art. 1877. [1641] [1030] **Motion for rehearing.**—Any party desiring a rehearing of any matter determined by any Court of Civil Appeals, may, within fifteen days after the date of entry of the judgment or decision of the court, or the filing of the findings of fact and conclusions of law, file with the clerk of said court his motion in writing for a rehearing thereof, in which the ground relied upon for the rehearing shall be distinctly specified, and the name and residence of the counsel of the opposing party if known, and if not known then the name and residence of the opposing party as shown in the record. If the court adjourns within less than fifteen days after the rendition of the judgment, the motion may be made at such time and in such manner as may be prescribed by rules to be made by the Supreme Court. [Acts 1892, p. 25; G. L. Vol. 10, p. 389.]

Art. 1878. [1642] [1031] **Notice, how given.**—Upon the filing of such motion with the clerk, he shall mail a certified copy thereof to the sheriff or any constable of the county in

which the attorney or opposing party is alleged in said motion to reside, together with a precept commanding him to deliver the copy of the motion to the person named in such precept.

Art. 1879. [1643] [1032] **Service of notice and return.**—Upon receiving such precept and copy of motion the officer shall deliver the copy of the motion to the person named in said precept, if found in his county, and return by mail said precept to the court from which it issued stating thereon how he executed the same or that the party named in the precept is not to be found in his county. [Id.]

Art. 1880. [1644] [1033] **When motion determined.**—At any time, after five days from the return of such precept served, said courts may hear and determine motion for rehearing, and not sooner. [Id.]

CHAPTER EIGHT.

WRIT OF ERROR TO SUPREME COURT.

| | | | |
|---------------------------------|-----------------|-------------------------------|-----------------|
| Filing copy of application..... | Article 1881 | Forward to Supreme Court..... | Article 1883 |
| Copy to defendant in error..... | 1882 | | |

Art. 1881. [1542] **Filing copy of application.**—When an application for a writ of error from a Court of Civil Appeals to the Supreme Court is filed in the Court of Civil Appeals, the applicant shall at the same time deposit with the clerk of said Court of Civil Appeals a true copy of the application and shall notify the attorney of record of the defendant in error of the deposit of said copy. [Acts 1st C. S. 1911, p. 108.]

Art. 1882. **Copy to defendant in error.**—On request of the defendant in error or his attorney, the clerk shall deliver the copy of the application to the defendant in error or his attorney of record and forward the record of the cause with the application for a writ of error to the clerk of the Supreme Court within the time prescribed by law. [Id.]

Art. 1883. [1541-2] **Forward to Supreme Court.**—When a petition for a writ of error to the Supreme Court is filed with the Clerk of a Court of Civil Appeals, he shall note upon his record the filing of said petition, and promptly forward the same to the clerk of the Supreme Court with the original record in the case and the opinion of the Court of Civil Appeals, the motions filed therein, certified copies of the judgment and orders of the Court of Civil Appeals, and a copy of the appeal or the supersedeas bond of the plaintiff in error. [Acts 1895, p. 144, G. L. Vol. 10, p. 874.]

TITLE 40.

COURTS—DISTRICT.

| | | | |
|-----------------------|------|--------------------------------|------|
| Chapter | Page | Chapter | Page |
| 1 The judge..... | 524 | 3 Powers and jurisdiction..... | 527 |
| 2 District clerk..... | 525 | 4 Terms of court..... | 529 |

CHAPTER ONE.

THE JUDGE.

| | | | |
|----------------------------------|---------|--|---------|
| | Article | | Article |
| Election and qualifications..... | 1884 | Election for special judge..... | 1889 |
| If judge is disqualified..... | 1885 | Failure of officers to act..... | 1890 |
| Record of agreement..... | 1886 | Record of the election..... | 1891 |
| Special judge, when..... | 1887 | Effect of such record..... | 1892 |
| Voting for special judge..... | 1888 | Other elections for special judge..... | 1893 |

Art. 1884. [1671-1672] **Election and qualification.**—For each judicial district there shall be elected at the general election for a term of four years a judge who shall be at least twenty-five years of age, a practicing attorney or a judge of a court in this State for four years and a resident of the district in which he is elected for two years next before his election. He shall reside in his district during his term of office. [Const., Art. 5, Sec. 7; Art. 16, Sec. 17.]

Art. 1885. [1676] [1069] **Disqualification.**—No change of venue shall be necessary because of the disqualification of a district judge, but he shall immediately certify his disqualification to the Governor, whereupon the Governor shall designate some district judge in an adjoining district to exchange and try such case or cases, and he shall notify both of said judges of such order; and such judges shall exchange districts for the purpose of disposing of such case or cases. If said judges be prevented from exchanging districts, the parties or their counsels may agree upon an attorney of the court for the trial thereof, and failing to agree, such fact shall be certified to the Governor by the district judge, or the special judge, whereupon the Governor shall appoint a person legally qualified to act as judge in the trial of the case. [Acts 1st C. S. 1897, p. 39; Acts 1915, p. 86; G. L. Vol. 10, p. 1479.]

Art. 1886. [1677] [1070] **Record of agreement.**—Whenever a special judge is agreed upon for the trial of a particular cause, the clerk shall enter in the minutes of the court, as a part of the proceedings in such cause, a record showing:

1. That the judge of the court was disqualified to try the cause; and

2. That such special judge (naming him) was, by consent agreed upon by the parties to try the cause; and

3. That the oath prescribed by law has been duly administered to him. [Acts 1897, S. S. p. 39; Acts 1876, p. 141; G. L. Vol. 8, p. 976; G. L. Vol. 10, p. 1479.]

Art. 1887. [1678] [1071] [1094] **Special judge, when.**—Should the judge of a district court on the first or any future day of a term, fail or refuse to hold the court, the practicing lawyers of the court present may elect from among their num-

ber a special judge who shall hold the court and proceed with the business thereof. [Acts 1876, p. 140; G. L. Vol. 8, p. 976.]

Art. 1888. [1679] [1072] [1095] **Voting for special judge.**—Such election shall be by ballot, and each practicing lawyer in attendance at such court shall be entitled to participate in such election and shall be entitled to one vote. A majority of the votes of the lawyers participating shall be necessary to the election of such special judge. [Id.]

Art. 1889. [1680] [1073] [1096] **Election for special judge.**—The election shall be conducted as follows: The sheriff or constable shall make proclamation at the court house door that the election of a special judge of the court is about to be made by the practicing lawyers present; the clerk shall then make a list of the practicing lawyers present; and such lawyers shall then organize and hold the election. [Id.]

Art. 1890. [1681] [1074] [1097] **Failure of officers to act.**—Should the sheriff, constable, and clerk, or either of them, fail or refuse to act, the said practicing lawyers may nevertheless proceed to organize themselves into such electoral body, and appoint a sheriff and clerk pro tempore to do the duties of such officers respectively. [Id.]

Art. 1891. [1682] [1075] [1098] **Record of the election.**—The clerk shall enter upon the minutes of the court a record of the election of such special judge, showing;

1. The names of all the practicing lawyers present and participating in such election.

2. The fact that the public proclamation was made at the court house door that such election was about to take place.

3. The number of ballots polled at such election and the number polled for each person, and the result of the election.

4. That the oath prescribed by law has been duly administered to the special judge. [Id.]

Art. 1892. [1683] [1076] [1099] **Effect of such record.**—The record of such proceedings, substantially complying with the requirements of the law, shall be conclusive evidence of the election and qualification of such special judge. [Id.]

Art. 1893. [1684] [1077] [1100] **Other elections for special judge.**—Like elections may be held from time to time during the term of the court to supply the absence, failure or inability of the judge, or of any special judge, to perform the duties of the office. [Id.]

CHAPTER TWO.

DISTRICT CLERK.

| | | | |
|----------------------------|--------------|------------------------------------|--------------|
| Election and term..... | Article 1894 | Report of fines and jury fees..... | Article 1900 |
| Vacancy..... | 1895 | Custody and care of records..... | 1901 |
| Clerk pro tem..... | 1896 | Indexes to judgments..... | 1902 |
| Bond and oath..... | 1897 | Joint clerk..... | 1903 |
| Deputies..... | 1898 | Use of court seal..... | 1904 |
| To record proceedings..... | 1899 | Seal of the court..... | 1905 |

Art. 1894 [1685] [1078] [1100] **Election and term.**—A clerk for the district court of each county shall be elected at each general election for a term of two years. [Const. Art. 5, Sec. 9; Art. 16, Sec. 17.]

Art. 1895. [1686] [1079] [1101] **Vacancy.**—Whenever a vacancy occurs in the office of district clerk, it shall be filled by the district judge of such county; and such appointee shall give bond and qualify and may hold his office until the next general election. Where a vacancy occurs in a county having two or more district courts, the vacancy shall be filled by the judges of such courts; and if they fail to agree, the Governor, upon the certificate of such judges, shall order a special election to fill such vacancy. [Id; Acts 1876, p. 233; Acts 1891, p. 5; G. L. Vol. 8, p. 1069.]

Art. 1896. [1687-8] **Clerk pro tem.**—Where a district clerk is a party to any pending or proposed suit, motion or proceeding in his court, the district judge in whose court the same may be pending or proposed, shall, on application of any person interested, or on his own motion, appoint a clerk pro tempore for the purposes of such suit, motion or proceeding. Such temporary clerk shall take an oath to faithfully and impartially perform the duties of such appointment, and shall also enter into bond, payable to the State of Texas, in an amount to be fixed by the judge and to be approved by him, conditioned for the faithful performance of his duties under such appointment. Such appointee shall perform each duty required by law of the clerk in the particular suit, motion or proceeding in which he may be appointed. [Acts 1887, p. 102; G. L. Vol. 9, p. 900.]

Art. 1897. [1689] [1082] [1102] **Bond and oath.**—Each district clerk, before entering upon his official duties, shall give bond, to be approved by the commissioners court of the county, payable to the Governor, in the sum of five thousand dollars, conditioned for the faithful discharge of the duties of his office, and shall also take and subscribe the official oath which shall be indorsed upon the bond. Such bond and oath shall be filed and recorded in the office of the county clerk. [Acts 1846, p. 203; P. D. 500; G. L. Vol. 2, p. 1510.]

Art. 1898. [1690-92] **Deputies.**—The district clerk may appoint one or more deputies by a written appointment under his hand and the seal of his court, which shall be filed and recorded in the office of the county clerk. When the clerk does not reside at the county seat he shall have a deputy or deputies residing there. [Id.]

Art. 1899. [1694] [1087] [1107] **To record proceedings.**—Such clerks shall keep a fair record of all the acts done, and proceedings had, in their respective courts; enter all judgments of the court, under direction of the judge, and keep a record of all executions issued and the returns thereon, in record books to be kept for the purpose.

Art. 1900. [1696] [1089] [1109] **Report of fines and jury fees.**—On the last day of each term of the court, the clerk shall make a written statement showing all moneys received by him for jury fees and fines, with the name of each party from whom received, up to the date of such statement, and since his previous statement; and also the name of each juror who has served at such term, the number of days he served, and the amount due him for such services. Such statement shall be ex-

amined, corrected, approved, and signed by the presiding judge. Such statement, when so approved and signed shall be recorded in the minutes of the court. [Acts 1846, p. 206; P. D. 4014; G. L. Vol. 2, p. 1511.]

Art. 1901. [1700] [1093] [1112] **Custody and care of records.**—District clerks shall have the custody of records pertaining to or lawfully deposited in their offices, and shall carefully attend to the arrangement and preservation of the same. [Id; P. D. 502.]

Art. 1902. [1701] [1094] [1113] **Indexes to judgments.**—They shall provide and keep in well bound books, as part of the records, full and complete alphabetical indexes of the names of the parties to all suits filed in their courts; showing in full the names of all the parties, indexed and cross-indexed, so as to show the name of each party under the proper letter; and a reference shall be made opposite each name to the page of the minute book upon which is entered the judgment in each case. [Acts 1876, p. 25.]

Art. 1903. [1703] [1096] **Joint Clerk.**—In counties having a population of less than eight thousand persons only one clerk shall be elected, who shall perform the duties of district and county clerks. He shall take the oath and give the bond required of clerks of both the district and county courts, and shall have the powers and perform the duties of such clerks respectively. The population shall be estimated by multiplying by five the number of votes cast for Governor in such county at the preceding general election. [Const. Art. 5, Sec. 20; Acts 1879, p. 47.]

Art. 1904. [1704] [1097] [1116] **Use of court seal.**—When a joint clerk has been elected, he shall, in performing the duties of district clerk use the seal of said court to authenticate his official acts as clerk of the district court.

Art. 1905. [1729] [1122] [1131] **Seal of the court.**—Each district court shall be provided with a seal, having engraved thereon a star of five points in the center and the words, "District Court of _____ County, Texas." The impress of which shall be attached to all process, except subpoenas, issued out of such court, and shall be kept by the clerk and used to authenticate his official acts. [Acts 1846, p. 201; P. D. 1411; G. L. Vol. 2, p. 1508.]

CHAPTER THREE.

POWERS AND JURISDICTION.

| | | | |
|----------------------------------|--------------|----------------------------------|---------|
| Original Jurisdiction..... | Article 1906 | Judgments transferred and en- | Article |
| Matters of probate..... | 1907 | forced..... | 1912 |
| Over Commissioners Court..... | 1908 | Other jurisdiction..... | 1913 |
| General jurisdiction..... | 1909 | To grant all remedial writs..... | 1914 |
| Motions against sheriffs, attor- | | Powers in vacation..... | 1915 |
| neys, etc..... | 1910 | May alternate, etc..... | 1916 |
| May punish for contempt..... | 1911 | Appointing attorney..... | 1917 |
| | | Minutes read and signed..... | 1918 |

Art. 1906. [1705] [1098] [1117] **Original jurisdiction.**—The district court shall have original jurisdiction in civil cases of:

1. Suits in behalf of the State to recover penalties, forfeitures and escheats.
2. Cases of divorce and dissolution of marriage.
3. Suits to recover damages for slander or defamation of character.
4. Suits for the trial of title to land and for the enforcement of liens thereon.
5. Suits for trial of right to property levied on by virtue of any writ of execution, sequestration or attachment, when the property levied on shall be equal to or exceed in value five hundred dollars.
6. Suits, complaints or pleas, without regard to any distinction between law and equity, when the matter in controversy shall be valued at or amount to five hundred dollars exclusive of interest.

7. Contested elections. [Const., Art. 5.]

Art. 1907. [1706] [1099] [1118] **Matters of probate.**—District courts shall have appellate jurisdiction and general control in probate matters over the county courts, for appointing guardians, granting letters testamentary and of administration, probating wills, settling accounts of executors, administrators and guardians, and for the transaction of business appertaining to estates. The district court shall also have such original jurisdiction and general control over executors, administrators, guardians and minors as provided by law. [Const., Art. 5, Sec. 8; Acts 1846, p. 200; P. D. 1406; Amendment 1891.]

Art. 1908. [1706] [1099] [1118] **Over commissioners court.**—Such court shall also have appellate jurisdiction and general supervisory control over the commissioners court, with such exceptions and under such regulations as may be prescribed by law. [Id.]

Art. 1909. [1706] [1099] [1118] **General jurisdiction.**—Such court shall have general original jurisdiction over all causes of action, for which a remedy or jurisdiction is not provided by law or the constitution, and such other jurisdiction, original and appellate as may be provided by law. [Const., Art. 5, Sec. 8; Acts 1846, p. 22; P. D. 1406.]

Art. 1910. [1707] [1100] [1119] **Motions against sheriffs, attorneys, etc.**—The district court shall have power to hear and determine all motions against sheriffs and other officers of the court for failure to pay over moneys, collected under the process of said court, or other defalcation of duty in connection with such process and of motions against attorneys for moneys collected by them and not paid over. [Acts 1846, p. 201, Sec. 5; P. D. 1408; G. L. Vol. 2, p. 1507.]

Art. 1911. [1708] [1101] [1120] **May punish for contempt.**—The district court may punish any person guilty of contempt of such court by fine not exceeding one hundred dollars, and by imprisonment not exceeding three days. [Acts 1846, p. 201; P. D. 1409; G. L. Vol. 2, p. 1507.]

Art. 1912. [1711] [1105] **Judgments transferred and enforced.**—When a district clerk shall receive from the county clerk a certified copy of a judgment rendered in any civil or

criminal case in the county court where the civil and criminal jurisdiction, or either, of the county court has been transferred to the district court, he shall immediately record such judgments in the minutes of the district court; and the said district court shall enforce said judgments by execution or otherwise, as other judgments rendered in said district court are enforced. [Acts 1879, p. 11; G. L. Vol. 8, p. 847.]

Art. 1913. [1712] [1106] [1122] **Other jurisdiction.**—Subject to the limitations stated in this chapter, the district court is authorized to hear and determine any cause which is cognizable by courts, either of law or equity, and to grant any relief which could be granted by said courts, or either of them. [Acts 1846, p. 201; P. D. 1410; G. L. Vol. 2, p. 1507.]

Art. 1914. [1713] [1107] [1123] **To grant all remedial writs.**—Judges of the district courts may either in term time or in vacation, grant writs of mandamus, injunction, sequestration, attachment, garnishment, certiorari and supersedeas, and all other writs necessary to the enforcement of the jurisdiction of the court. [Acts 1846, p. 200; P. D. 1407; G. L. Vol. 2, p. 1507.]

Art. 1915. [1714] **Powers in vacation.**—Judges of the district courts may in vacation, by consent of the parties, exercise all powers, make all orders, and perform all acts, as fully as in term time, and may, by consent of the parties, try any civil case, except divorce cases, without a jury and enter final judgment. All such proceedings shall be conducted under the same rules as if done in term time; and the right of appeals and writ of error shall apply as if the acts had been done in term time. [Acts 1909, S. S. p. 352.]

Art. 1916. [1715] [1108] [1124] **May alternate, etc.**—A judge of the district court may hold court for or with any other district judge; and the judges of such courts may exchange districts whenever they deem it expedient. [Acts 1846, p. 202; P. D. 1418; G. L. Vol. 2, p. 1509.]

Art. 1917. [1716] [1109] [1125] **Appointing attorney.**—Judges of district courts may appoint counsel to attend to the cause of any party who makes affidavit that he is too poor to employ counsel to attend to the same. [Id; P. D. 1414.]

Art. 1918. [1127-1128] **Minutes read and signed.**—The minutes of the proceedings of each preceding day of the session shall be read in open court on the morning of the succeeding day, except on the last day of the session, on which day they shall be read, corrected and signed in open court by the judge. Each special judge shall sign the minutes of such proceedings as were had before him. [Acts 1846, p. 202; P. D. 1415; G. L. Vol. 2, p. 1509.]

CHAPTER FOUR.

TERMS OF COURT.

| | | | |
|--------------------------|--------------|-----------------------------------|--------------|
| Terms of court..... | Article 1919 | Extension of term..... | Article 1923 |
| Special terms..... | 1920 | Etension in certain counties..... | 1924 |
| Summoning juries..... | 1921 | Effect of extension of term..... | 1925 |
| Adjournment of term..... | 1922 | Citation by publication, etc..... | 1926 |

Art. 1919. [1718] [1111] [1127] **Terms of Court.**—Each judge of the district courts shall hold the regular terms of his

court at the county seat of each county in the district twice in each year, unless additional terms should be prescribed by law, and shall hold such special terms as may be required by law. [Const. Art. 5, Sec. 7.]

Art. 1920. [1720-3] **Special terms.**—Whenever a district judge deems it advisable to hold a special term of the district court in any county in his district, such special term may be held; and such judge may convene such term at any time which may be fixed by him. Such district judge may appoint jury commissioners, who may select and draw grand and petit jurors in accordance with the law. Such jurors may be summoned to appear before such district court at such time as may be designated by the judge thereof. In the discretion of the district judge, a grand jury need not be drawn or empaneled. No new civil cases can be brought to a special term of the district court. [Id; Acts 1879, p. 42; Acts 1905, p. 116; G. L. Vol. 8, p. 879.]

Art. 1921. [1724] [1118] **Summoning juries.**—The juries for a special term shall be summoned in accordance with the law regulating juries at regular terms of court. At a special term all proceedings may be had in any case which could be had at any regular term of such court. All process issued to a previous regular term or to such special term, and all orders, judgments and decrees, and all proceedings had in any case, civil or criminal, which would be lawful if had at a regular term, shall have the same force and effect; and any proceeding had may be appealed from as if the case were tried at a regular term. [Id.]

Art. 1922. [1725] [1119] [1128] **Adjournment of term.**—Should the judge of a district court not appear at the time appointed for holding the same, and should no election of a special judge be had, the sheriff of the county, or in his default any constable of the county, shall adjourn the court from day to day for three days; and if the judge should not appear on the morning of the fourth day, and should no special judge have been elected, the sheriff or constable, shall adjourn the court until the next regular term thereof. [Acts 1846, p. 203; P. D. 1412; G. L. Vol. 2, p. 1510.]

Art. 1923. [1726] **Extension of term.**—Whenever a district court shall be in the midst of the trial of a cause when the time for the expiration of the term of said court arrives, the judge presiding shall have the power and may, if he deems it expedient, extend the term of said court until the conclusion of such pending trial. The extension of such term shall be shown in the minutes of the court before they are signed. If the term is extended as herein provided, no term of court in any other county shall fail because thereof, but the term of court therein may be opened and held as provided by law when the district judge fails to appear at the opening of a term of court. [Acts 1909, p. 114.]

Art. 1924. **Extension in certain counties.**—A district court in a judicial district composed of more than one county and having terms of court fixed by law in counties in which there is a city of one hundred and thirty-five thousand population, or

over, according to the preceding Federal census, may, by an order of the judge thereof made and entered of record in the minutes of said court, have any of such terms of court in such last described counties extended for such length of time as such judge may deem advisable for the transaction of the business of such court. [Acts 1923, p. 25.]

Art. 1925. **Effect of extension.**—If any term of court is extended as provided in the preceding article, no term of such court as fixed by law shall fail, but same shall be opened and held as provided by law. When a new term shall run concurrently in time and in the same county with an extended term, the minutes of both such terms may be recorded together during the time such terms so run concurrently. While such new term is open, each entry made in the minute records of said court during such time shall be presumed to be the minutes of proceedings of such new term unless otherwise shown in such minutes. [Id.]

Art. 1926. **Citation by publication, etc.**—Any citation by publication that may be issued out of any district court described in the two preceding articles shall be made returnable and be served as prescribed by law, but if there be insufficient time after the issuance thereof to allow the publication thereof the number of times prescribed by law before the first day of the next succeeding regular term of such court, then such citation shall be made returnable to the succeeding regular term of such court, and shall command the officer to summon defendant to appear and answer plaintiff's petition at such term, by making publication thereof as prescribed by law. [Id.]

TITLE 41.

COURTS—COUNTY.

| Chapter | Page | Chapter | Page |
|--------------------------------|------|---------------------------------|------|
| 1 The county judge..... | 532 | 4 Terms of court..... | 537 |
| 2 County clerk..... | 533 | 5 Miscellaneous provisions..... | 538 |
| 3 Powers and jurisdiction..... | 536 | | |

CHAPTER ONE.

THE COUNTY JUDGE.

| | Article | | Article |
|---------------------------------|---------|--------------------------------------|---------|
| Election and qualification..... | 1927 | Governor may appoint..... | 1931 |
| Bond..... | 1928 | Special judge in probate matter..... | 1932 |
| Absence from office..... | 1929 | Appointment by wire..... | 1933 |
| Special county judge..... | 1930 | Election of special judge..... | 1934 |

Art. 1927. [1731] [1124] [1133] **Election and qualification.**—A county judge who shall be well-informed in the law of this State shall be elected in each county by the qualified voters thereof, at each general election, and shall hold his office for two years. [Const. Art. 5, Sec. 15; Art. 16, Sec. 17; Acts 1876, p. 17, Sec 1; G. L. Vol. 8, p. 853.]

Art. 1928. [1732] [1125] [1134] **Bond.**—The county judge shall, before entering upon the duties of his office, execute a bond payable to the treasurer of his county to be approved by the commissioners court of his county, in a sum of not less than one thousand nor more than ten thousand dollars, the amount to be fixed by the commissioners court, conditioned that he will pay over to the person or officer entitled to receive it, all moneys that may come into his hands as county judge, and that he will pay over to his county all moneys illegally paid to him out of county funds, as voluntary payments or otherwise, and that he will not vote or give his consent to pay out county funds except for lawful purposes. [Acts 1883, p. 50; Acts 1923, p. 13; G. L. Vol. 9, p. 356.]

Art. 1929. [1733] [1126] [1135] **Absence from office.**—He shall attend at his office from day to day, and not absent himself from the county or the State without the permission of the commissioners court, to be entered on its minutes, nor shall he be absent with such permission for a longer period than ninety days. [Acts 1883, p. 8; G. L. Vol. 9, p. 314.]

Art. 1930. [1737] [1130] **Special county judge.**—When a judge of the county court is disqualified, the parties may, by consent, appoint a proper person to try such case. [Acts 1893, p. 75.]

Art. 1931. [1738] [1131] **Governor may appoint special judge.**—Whenever a judge of the county court is disqualified to try a civil case pending in the county court, and the parties shall fail at the first term of the court to agree upon a special judge, the judge shall certify his disqualification to the Governor and the failure to agree upon another to try the same, whereupon the Governor shall appoint some person, learned in the law to try such case. [Id.]

Art. 1932. [1738] [1131] **Special judge in probate matter.**

—When a county judge is disqualified to act in any probate matter, he shall forthwith certify his disqualification therein to the Governor, whereupon the Governor shall appoint some person to act as special judge in said case, who shall act from term to term until such disqualification ceases to exist. [Id.]

Art. 1933. [1739] [1132] **Appointment by wire.**—Whenever the county judge or the special judge shall be disqualified from trying a case, the parties or their counsel may agree upon an attorney for the trial thereof; and, if they shall fail to agree upon an attorney at or before the time it is called for trial, or if the trial of the case is pending and the county judge should become unable to act, or is absent, and a special judge is selected who is disqualified to proceed with the trial, and the parties then fail to select or agree upon a special judge who is qualified, the county judge or special judge presiding shall certify the fact to the Governor immediately, whereupon the Governor shall appoint a special judge, qualified to try same. Such appointment may be made by telegram or otherwise. The special judge shall proceed to the trial or disposition of such case. Any special judge agreed upon or appointed to try cases shall receive the same pay for his services as is provided by law for county judges. [Id.]

Art. 1934. [1741-2] **Election of judges.**—If a county judge fails to appear at the time appointed for holding the court, or should he be absent during the term or unable or unwilling to hold the court, a special county judge may be elected in like manner as is provided for the election of a special district judge. The special county judge so elected shall have all the authority of the county judge while in the trial and disposition of any case pending in said court during the absence, inability, or such refusal of the county judge. Similar elections may be held at any time during the term, to supply the absence, failure or inability of the county judge, or any special judge, to perform the duties of the office. When a special county judge shall have been so elected, the clerk shall enter upon the minutes of the court, a record such as is provided for in like cases in the district court. [Acts 1897, p. 7.]

CHAPTER TWO.

COUNTY CLERK.

| | Article | | Article |
|-----------------------------------|---------|----------------------------------|---------|
| Election and term..... | 1935 | Custody of records..... | 1942 |
| Clerk pro tem..... | 1936 | Keep record of proceedings..... | 1943 |
| Bond and oath..... | 1937 | Index to judgments..... | 1944 |
| Deputies..... | 1938 | Other dockets, indexes, etc..... | 1945 |
| Soldiers' records..... | 1939 | Report fines and jury fees..... | 1946 |
| Clerk of commissioners court..... | 1940 | Jury fees and fines..... | 1947 |
| Recorders..... | 1941 | Shall use seal..... | 1948 |

Art. 1935. [1743] [1133] [1142] **Election and term.**—A clerk of the county court for each county shall be elected at each general election by the qualified voters of such county, and shall hold his office for two years. [Const. Art. 5, Sec. 20; Art. 16, Sec. 17.]

Art. 1936. [1745-6] **Clerk pro tem.**—Where a county clerk shall be a party to any motion or proceeding in his court, the

county judge shall, on his own motion, or on application of any person interested, appoint a clerk pro tempore for the purposes of such suit, motion or proceeding. The person so appointed shall take the oath to faithfully and impartially perform the duties of such appointment, and shall also enter into bond, payable to the State of Texas, in such amount as may be required by the judge, to be approved by him, and conditioned for the faithful performance of his duties under such appointment. The person so appointed shall perform all the duties required by law of the clerk in the particular suit, motion or proceeding in which he may be appointed. [Acts 1887, p. 102; G. L. Vol. 9, p. 900.]

Art. 1937. [1747] [1137] [1144] **Bond and oath.**—Each county clerk shall, before entering upon the duties of his office give bond with two or more good and sufficient sureties, to be approved by the commissioners court of the county, payable to the Governor in a sum to be fixed by the commissioners court, not less than two thousand nor more than ten thousand dollars conditioned for the safekeeping of the records and the faithful discharge of the duties of his office, and further conditioned that said clerk will pay over to his county all moneys illegally paid to him out of the county funds, as voluntary payments or otherwise. Said clerk shall also take and subscribe the official oath which shall be indorsed upon the bond, and the bond and oath so taken and approved shall be recorded in the county clerk's office, and deposited in the office of the clerk of the district court. A certified copy of such bond may be put in suit in the name of the Governor for the use of the party injured. [Acts 1876, p. 10; G. L. Vol. 8, p. 846; Acts 1923, p. 24.]

Art. 1938. [1748-9-50] **Deputies.**—The county clerk may in writing, appoint one or more deputies under his hand and the seal of his court, which shall be recorded in the office of such clerk, and shall be deposited in the office of the district clerk. Deputies shall take the official oath and shall act in the name of their principal, and may do and perform all such official acts as may be lawfully done and performed by such clerk in person. When the clerk does not reside at the county seat, he shall have a deputy residing there. [Acts 1876, p. 10; P. D. 500; G. L. Vol. 8, p. 846.]

Art. 1939. **Soldiers' records.**—Each county clerk shall record in a well bound book the official discharge of each soldier, sailor or other person resident in the county who served at home or abroad in the army or navy forces of the United States in the late World War. For such services said clerk shall be allowed by the commissioners court, out of the general fund of the county, not to exceed fifteen cents for each one hundred words so recorded. [Acts 1919, p. 154.]

Art. 1940. [1753] [1143] [1150] **Clerk of commissioners court.**—They shall be ex-officio clerks of the commissioners court.

Art. 1941. [1754] [1144] [1151] **Recorders.**—They shall be ex-officio recorders for their several counties, and as such shall record in suitable books to be procured for that purpose all

deeds, mortgages and other instruments required or permitted by law to be recorded; they shall be the keepers of such record books, and shall keep the same properly indexed, arranged and preserved. [Id.]

Art. 1942. [1755] [1145] [1152] **Custody of records.**—They shall be keepers of the records, books, papers and proceedings of their respective courts in civil and criminal cases and in matters of probate, and see that the same are properly indexed, arranged and preserved, and shall perform such other duties in that behalf as may be by law imposed on them. [Id.]

Art. 1943. [1756] [1146] [1153] **Keep record of proceedings.**—They shall keep a fair record of all the acts done and proceedings had in their respective courts, and enter all judgments of the court, under the direction of the judge, and shall keep a record of each execution issued, and of the returns thereon. [Id. P. D. 504.]

Art. 1944. [1757] [1147] [1154] **Index to judgments.**—They shall provide and keep in their respective offices, as part of the records thereof, full and complete alphabetical indexes of the names of the parties to all suits filed in their courts, which indexes shall be kept in well bound books, and shall state in full the names of all the parties to such suits, which shall be indexed and cross indexed, so as to show the name of each party under the proper letter; and a reference shall be made opposite each name to the page of the minute book upon which is entered the judgment in each case. [Acts 1876, p. 25; G. L. Vol. 8, p. 861.]

Art. 1945. [1758] [1148] [1155] **Other dockets, indexes, etc.**—The clerk shall keep such other dockets, books and indexes as may be required by law; and all books, records and filed papers belonging to the office of county clerks shall at all reasonable times be open to the inspection and examination of any citizen, who shall have the right to make copies of the same. [Acts 1905, p. 114.]

Art. 1946. [1759] [1149] [1156] **Report fines and jury fees.**—On the last day of each term of the county court, the clerk shall make a written statement showing all moneys received by him for jury fees and fines since his last statement, with the names of the parties from whom received; and the name of each juror who has served at such term; the number of days he served, and the amount due him for such service. Such statement shall be examined and corrected by the presiding judge, and be approved and signed by him. When so approved and signed it shall be recorded in the minutes of the court. [Acts 1876, p. 23; G. L. Vol. 8, p. 859.]

Art. 1947. [1760] [1150] [1157] **Jury fees and fines.**—The clerk shall pay to the county treasurer all jury fees and fines received by him to the use of the county.

Art. 1948. [1762] [1153] [1160] **Shall use seal.**—Where in any county a joint clerk shall have been elected, he shall, in performing the duties of county clerk, use the seal of said court to authenticate his official acts as such clerk.

CHAPTER THREE.

POWERS AND JURISDICTION.

| | | | |
|---------------------------------------|--------------|---|--------------|
| Exclusive original jurisdiction..... | Article 1949 | Law and equity powers..... | Article 1956 |
| Concurrent original jurisdiction..... | 1950 | To grant remedial writs..... | 1957 |
| No jurisdiction..... | 1951 | Appointing attorneys..... | 1958 |
| Appellate jurisdiction..... | 1952 | Additional authority..... | 1959 |
| Certiorari to justice courts..... | 1953 | Changed jurisdiction; eminent domain..... | 1960 |
| Motions against officers..... | 1954 | | |
| To punish for contempt..... | 1955 | | |

Art. 1949. [1763] [1154] [1161] **Exclusive original jurisdiction.**—The county court shall have exclusive original jurisdiction in civil cases when the matter in controversy shall exceed in value two hundred dollars, and shall not exceed five hundred dollars, exclusive of interest. [Const. Art. 5, Sec. 16; Acts 1876, p. 172; G. L. Vol. 8, p. 1008.]

Art. 1950. [1764] [1155] [1162] **Concurrent original jurisdiction.**—The county court shall have concurrent jurisdiction with the district court when the matter in controversy shall exceed five hundred and not exceed one thousand dollars, exclusive of interest. [Id.]

Art. 1951. [1766] [1157] [1164] **No jurisdiction.**—The county court shall not have jurisdiction of any suit to recover damages for slander or defamation of character, nor of suits of the recovery of lands, nor suits for the enforcement of liens upon land, nor of suits in behalf of the State for escheats, nor of suits for divorce, nor of suits for the forfeiture of the charters of corporations and incorporated companies, nor of suits for the trial of the right to property levied on by virtue of any writ of execution, sequestration or attachment, when the property levied on shall be equal to or exceed in value five hundred dollars. [Id.]

Art. 1952. [1767] [1158] [1165] **Appellate jurisdiction.**—The county court shall have appellate jurisdiction in civil cases over which the justice courts have original jurisdiction when the judgment appealed from or the amount in controversy shall exceed twenty dollars, exclusive of costs. [Id.]

Art. 1953. [1768] [1159] [1166] **Certiorari to justice courts.**—The county court shall also have jurisdiction in cases brought up from the justice courts by certiorari.

Art. 1954. [1769] [1160] [1167] **Motions against officers.**—The county court may hear and determine all motions against sheriffs and other officers of the court for failure to pay over moneys collected under the process of said court, or other defalcation of duty in connection with such process. [Acts 1876, p. 23; G. L. Vol. 8, p. 859.]

Art. 1955. [1770] [1161] [1168] **To punish for contempt.**—The county court may punish, by fine not exceeding one hundred dollars, and by imprisonment not exceeding three days, persons guilty of contempt of such court. [Acts 1846, p. 200; P. D. 1409; G. L. Vol. 2, p. 1506.]

Art. 1956. [1771] [1169] **Law and equity powers.**—Subject to the limitation stated in this chapter, the county court is authorized to hear and determine any cause which is cognizable

by courts, either of law or equity, and to grant any relief which could be granted by said courts, or either of them. [Id; P. D. 1410.]

Art. 1957. [1772] [1163] [1170] **To grant remedial writs.**—The county judge, either in term time or vacation, may grant writs of mandamus, injunction, sequestration, attachment, garnishment, certiorari and supersedeas, and all other writs necessary to the enforcement of the jurisdiction of the court. [Const. Art. 5, Sec. 16; Acts 1876, p. 19; G. L. Vol. 8, p. 855.]

Art. 1958. [1773] [1164] [1171] **Appointing attorneys.**—The county judge may appoint counsel to attend to the cause of any party who makes affidavit that he is too poor to employ counsel to attend to the same. [Acts 1846, p. 200, Sec. 11; P. D. 1414; G. L. Vol. 2, p. 1506.]

Art. 1959. [1774] [1165] [1172] **Additional authority.**—The county court and the county judge shall also have such authority as may be vested in them by law.

Art. 1960. [1775] [1166] **Changed jurisdiction; eminent domain.**—Where the jurisdiction of a county court has been taken away, altered or changed by existing laws, the same shall remain as established, until otherwise provided by law. Jurisdiction shall obtain in all matters of eminent domain over which the county courts have jurisdiction by the general laws of this State. [Acts 1885, p. 77; G. L. Vol. 9, p. 697.]

CHAPTER FOUR.

TERMS OF COURT.

| | | | |
|---------------------|---------|------------------------------|---------|
| Terms of court..... | Article | Probate business..... | Article |
| Other terms..... | 1961 | Judge failing to appear..... | 1963 |
| | 1962 | | 1964 |

Art. 1961. [1776] [1167] **Terms of court.**—The county court shall hold at least four terms for both civil and criminal business annually, and such other terms each year as may be fixed by the commissioners court. After having fixed the times and number of the terms of a county court, they shall not change the same until the expiration of one year. Until, or unless otherwise provided, the term of the county court shall be held on the first Monday in February, May, August and November, and may remain in session three weeks. [Const. amendment 1883, Art. 5, Sec. 29.]

Art. 1962. [1176-1177] **Other terms.**—The commissioners court may, at a regular term thereof, by an order entered upon its records, provide for more terms of the county court for the transaction of civil, criminal and probate business, and fix the times at which each of the four terms required by the Constitution, and the terms exceeding four, if any, shall be held, not to exceed six annually, and may fix the length of each term. When the number of the terms of the county court has been fixed, the court shall not change the order before one year from the date of entry of the original order fixing such terms. [Acts 1885, p. 53.]

Art. 1963. [1776] [1167] **Probate business.**—Said court

shall dispose of probate business either in term time or vacation under such regulations as may be prescribed by law. [Id.]

Art. 1964. [1178] [1169] **Judge failing to appear.**—If the county judge fails to appear at the time appointed for holding his court and no election of a special judge is had, the sheriff of the county, or, in his default, any constable of the county, shall adjourn the court from day to day for three days. If the judge should not appear on the fourth day and no special judge is elected, the sheriff or constable as the case may be, shall adjourn the court until the next regular term thereof. [Acts 1846, p. 200; P. D. 1412; G. L. Vol. 2, p. 1506.]

CHAPTER FIVE.

MISCELLANEOUS PROVISIONS.

| | | | |
|-----------------------------|---------|-------------------------------|---------|
| | Article | | Article |
| Minutes | 1965 | When case is transferred..... | 1968 |
| Seal of the court..... | 1966 | Jurisdiction taken away..... | 1969 |
| Probate day designated..... | 1967 | County courts at law..... | 1970 |

Art. 1965. [1779-1780] [1170] [1175] **Minutes.** — The minutes of the proceedings of each preceding day of the session shall be read in open court on the morning of the succeeding day, except on the last day of the session, on which day they shall be read, and if necessary be corrected, and signed in open court by the county judge. Each special judge shall sign the minutes of such proceedings as were had before him. [Acts 1846, p. 200; G. L. Vol. 2, p. 1506.]

Art. 1966. [1781] [1172] [1177] **Seal of the court.**—Each county court shall be provided with a seal, having engraved thereon a star of five points in the center, and the words, "County Court of _____ County, Texas," the impress of which shall be attached to all process, except subpoenas, issued out of such court, and shall be used to authenticate the official acts of the clerk and of the county judge. [Id.]

Art. 1967. [1783] [1174] [1179] **Probate day designated.**—On the first day of the term for civil business, the county judge shall, by an order entered on the minutes, designate a day for taking up the probate business; and the probate docket shall thereupon be called in its regular order unless otherwise ordered by the court. [Acts 1876, p. 22; G. L. Vol. 8, p. 858.]

Art. 1968. [1784] [1175] [1180] **When case is transferred.**—Whenever a cause shall be transferred from the county court to the district court, the clerk shall immediately make out a transcript of all the proceedings had in said cause in the county court, and shall transmit the same, duly certified as such, together with a bill of the costs which have accrued in said court, and all the original papers in the cause, to the clerk of the district court. [Acts 1876, p. 19; G. L. Vol. 8, p. 855.]

Art. 1969. [1785] [1176] **Jurisdiction taken away.**—Each clerk of the county court where the civil and criminal jurisdiction, or either, of the county courts has been transferred to the district court, shall make out a certified copy of all judgments remaining unsatisfied, which have been rendered in civil or criminal cases in the county court, and transmit the same to the

clerk of the district court of their respective counties. [Acts 1879, p. 10; G. L. Vol. 9, p. 42.]

Art. 1970. **County courts at law.**—All county courts at law and all similar courts by whatever name known, which now exist, shall be continued in force, together with their organization, jurisdiction, duties, powers, procedure and emoluments that now exist by law, until otherwise changed by law.

TITLE 42.

COURTS—PRACTICE IN DISTRICT AND COUNTY.

| Chapter | Page | Chapter | Page |
|----------------------------------|------|--|------|
| 1 Institution, parties and venue | 540 | 8 Trial of causes | 583 |
| 2 Pleading | 547 | 9 Judgment and remittur | 593 |
| 3 Citation | 552 | 10 New trial and arrest of judgment | 597 |
| 4 Costs and security therefor | 557 | 11 Bills of exception and statement of facts | 598 |
| 5 Abatement and discontinuance | 561 | 12 Appeal and writ of error | 602 |
| 6 In certain district courts | 563 | 13 General provisions | 609 |
| 7 Formation of jury | 570 | | |

CHAPTER ONE.

INSTITUTION, PARTIES AND VENUE.

1. INSTITUTION OF SUITS.

| | Article | | Article |
|-----------------------|---------|----------------------|---------|
| Commenced by petition | 1971 | Clerk's file docket | 1973 |
| Duty of clerk | 1972 | Instituted on Sunday | 1974 |

Art. 1971. [1812] [1177] [1181] Commenced by petition.—Civil suits in the district and county courts shall be commenced by petition filed in the office of the clerk. [Acts 1846, p. 363; P. D. 1425; G. L. Vol. 2, p. 1669.]

Art. 1972. [1813-14] Duty of clerk.—When a petition is filed with the clerk he shall indorse thereon the number of the suit, the day on which it was filed, and sign his name officially thereto. [Id.]

Art. 1973. [1815] [1179] [1183] Clerk's file docket.—Each clerk shall keep a file docket which shall show in convenient form the number of the suit, the names of the attorneys, the names of the parties to the suit, and the object thereof, and, in brief form, the officer's return on the process, and all subsequent proceedings had in the case with the dates thereof. [Id.]

Art. 1974. [1816] [1180] [1184] Suits commenced on Sunday.—No civil suit shall be commenced nor process issued or served on Sunday except in cases of injunction, attachment, garnishment, sequestration, or distress proceedings. [Id; Acts 1897, p. 84; P. D. 1424; G. L. Vol. 10, p. 1138; Acts 1919, p. 157.]

2. SUITS AGAINST NON-RESIDENTS.

| | Article | | Article |
|---------------------------------|---------|------------------------|---------|
| Actions maintainable | 1975 | No judgment by default | 1978 |
| Actual possession not necessary | 1976 | To extinguish lien | 1979 |
| Requisites of pleadings | 1977 | | |

Art. 1975. [2172] [1504] Actions maintainable.—Persons claiming a right to or interest in property in this State may bring and prosecute to final decree, judgment or order, actions against non-residents of this State, or persons whose place of residence is unknown, or who are transient persons, who claim an adverse estate, or interest in, or who claim any lien or incumbrance on said property, for the purpose of determining such estate, interest, lien, or incumbrance, and granting the title to said property, or settling the lien or incumbrance thereon. [Acts 1893, p. 77; G. L. Vol. 10, p. 507.]

Art. 1976. [2173] [1504] **Actual possession not necessary.**—Such action may be maintained by any such person whether or not he is in actual possession of such property. Service on the defendant or defendants may be made by publication as is or may be provided by law for publication of citation against such defendants. [Id.]

Art. 1977. [2174] [1504] **Requisites of pleadings.**—The pleadings in such case shall set forth the title of the complainant, and such proceedings shall be had in such action as may be necessary to fully settle and determine the question of right or title in and to said property between the parties to said suit, and to decree the title or right of the party entitled thereto; and the court may issue the appropriate order to carry such decree, judgment or order into effect. [Id.; Acts 1919, p. 98.]

Art. 1978. [2175] [1504] **No judgment by default.**—No judgment by default shall be taken in such case, but the facts entitling the plaintiff to judgment shall be exhibited to the court on the trial; and a statement of the facts shall be filed as provided by law in suits against non-residents of this State where no appearance has been made by them. [Acts 1893, p. 77.]

Art. 1979. [2176] [1504] **Suit to extinguish lien.**—If said suit shall be for the extinguishment of a lien or claim for money on said property that may be held by the defendant, the amount thereof, with interest, shall be ascertained by the court; and the same deposited in the registry of the court, subject to be drawn by the parties entitled thereto; but in such case no decree shall be entered until said sum is deposited; which fact shall be noted in said decree. [Id.]

3. PARTIES TO SUITS.

| | Article | | Article |
|-----------------------------------|---------|---------------------------------------|---------|
| By or against counties..... | 1980 | Parties conditionally liable..... | 1987 |
| By executors, etc..... | 1981 | Against Sheriff, etc..... | 1988 |
| For lands against decedents..... | 1982 | Sureties on official bonds..... | 1989 |
| Wife's separate property..... | 1983 | Different officials and bondsmen..... | 1990 |
| Against husband and wife for | | Suit in name of State..... | 1991 |
| necessaries..... | 1984 | Additional parties..... | 1992 |
| For wife's debts, etc..... | 1985 | May appear by attorney..... | 1993 |
| Several obligors to contract..... | 1986 | May appear by next friend..... | 1994 |

Art. 1980. [1835] [1196] [1200] **Suits by or against counties.**—Suits by or against a county or incorporated city, town or village shall be in its corporate name.

Art. 1981. [1836] [1197] [1201] **By executors, etc.**—Suits for the recovery of personal property, debts or damages, and suits for title or possession of lands, or for any right attached to, or growing out of the same, or for injury or damage done thereto, may be instituted by executors, administrators or guardians appointed in this State; and judgment in such cases shall be conclusive, but may be set aside by any person interested for fraud or collusion on the part of such executor or administrator. [Acts 1846, p. 363; F. D. 1447; G. L. Vol. 2, p. 1669.]

Art. 1982. [1837] [1198] [1202] **For lands against decedents.**—In every suit against the estate of a decedent involving the title to real estate, the executor or administrator, if any, and the heirs shall be made parties defendant. [Acts 1870, p. 173; G. L. Vol. 6, p. 347; P. D. 5697.]

Art. 1983. [1839] [1200] [1204] **For wife's separate property.**—The husband may sue either alone or jointly with his wife for the recovery of the separate property of the wife; and, in case he fails or neglects so to do, she may sue alone by authority of the court. [Acts 1840, p. 3; G. L. Vol. 2, p. 177; P. D. 4636.]

Art. 1984. [1840] [1201] [1205] **Against husband and wife for necessaries.**—The husband and wife shall be jointly sued for all debts contracted by the wife for necessaries furnished herself or children, and for expenses which may have been incurred by the wife for the benefit of her separate property. [Acts 1848, p. 77; G. L. Vol. 3, p. 78; P. D. 4643.]

Art. 1985. [1841] [1202] [1206] **For wife's debts, etc.**—The husband shall be joined in suits for separate debts and demands against the wife, but no personal judgment shall be rendered against the husband. [Acts 1846, p. 363; G. L. Vol. 2, p. 1669; P. D. 9.]

Art. 1986. [1842] [1203] [1207] **Several obligors to contract.**—The acceptor of a bill of exchange, or a principal obligor in a contract, may be sued either alone or jointly with any other party who may be liable thereon; but no judgment shall be rendered against a party not primarily liable on such bill or other contract, unless judgment be also rendered against such acceptor or other principal obligor, except where the plaintiff may discontinue his suit against such principal obligor as hereinafter provided. [Id; Acts 1840, p. 144; G. L. Vol. 2, p. 318; P. D. 1426, 1448-9.]

Art. 1987. [1843] [1204] [1208] **Parties conditionally liable.**—The assignor, indorser, guarantor and surety upon a contract, and the drawer of a bill which has been accepted, may be sued without suing the maker, acceptor or other principal obligor, when the principal obligor resides beyond the limits of the State, or where he cannot be reached by the ordinary process of law, or when his residence is unknown and cannot be ascertained by the use of reasonable diligence, or when he is dead, or actually or notoriously insolvent.

Art. 1988. [1844] [1204] [1208] **Against sheriff, etc.**—Whenever a sheriff, constable or a deputy or either has been sued for damages for any act done in his official character, and has taken an indemnifying bond for the acts upon which the suit is based, he may make the principal and surety on such bond parties defendant in such suit, and the cause may be continued to obtain service on such parties. [Id; Acts 1835, p. 90; G. L. Vol. 9, p. 710.]

Art. 1989. [1845] [1205] **On official bonds.**—In suits brought by the State or any county, city or independent school district against any officer who has held an office for more than one term, or against any depository which has been such depository for more than one term, or has given more than one official bond, the sureties on each and all such bonds may be joined as defendants in the same suit whenever it is difficult to determine when the default sued for occurred and which set of sureties on such bonds is liable therefor. [Acts 1891, p. 86; G. L. Vol. 10, p. 314; Acts 1919, p. 34.]

Art. 1990. [1846] [1206] **Different officials and bondsmen.**—In suits by the State upon the official bond of a State officer, any subordinate officer who has given bond, payable either to the State or such superior officer, to cover all or part of the default sued for, together with the sureties on his official bond, may be joined as defendants with such superior officer and his bondsmen whenever it is alleged in the petition that both of such officers are liable for the money sued for. [Acts 1891, p. 86; G. L. Vol. 10, p. 314.]

Art. 1991. [1847] [1207] **Suit in name of State.**—Whenever an official bond is made payable to the State of Texas, or any officer thereof, and a recovery thereon is authorized by, or would inure to the benefit of parties other than the State, suit may be brought on such bond in the name of the State alone for the benefit of all parties entitled to recover thereon. [Id.]

Art. 1992. [1848] [1208] [1209] **Additional parties.**—Before a case is called for trial, additional parties, necessary or proper parties to the suit, may be brought in, either by the plaintiff or the defendant, upon such terms as the court may prescribe; but not at a time nor in a manner so as to unreasonably delay the trial of the case.

Art. 1993. [1849] [1209] [1210] **May appear by attorney.**—Any party to a suit may appear and prosecute or defend his rights therein, either in person or by an attorney of the court.

Art. 1994. [2167-71]. **May appear by next friend.**—Minors, lunatics, idiots or non compos mentis who have no legal guardian may sue and be represented by "next friend" under the following rules:

1. Such next friend shall have the same rights concerning such suits as guardians have, but shall give security for costs, or affidavits in lieu thereof, when required.

2. Such next friend or his attorney of record may with the approval of the court compromise suits and agree to judgments, and such judgments, agreements and compromises, when approved by the court, shall be forever binding and conclusive upon the party plaintiff in such suit.

3. In such cases when a judgment is recovered for money or other personal property the value of which does not exceed five hundred dollars, the court may by order entered of record, authorize such next friend or other person to take charge of such money or other property for the use and benefit of the plaintiff when he has executed a proper bond in a sum at least double the value of the property, payable to the county judge, conditioned that he will pay said money with lawful interest thereon or deliver said property and its increase to the person entitled to receive the same when ordered by the court to do so, and that he will use such money or property for the benefit of the owner under the direction of the court.

4. The judge of the court in which the judgment is rendered upon an application and hearing, in term time or vacation, may provide by decree for an investment of the funds accruing under such judgment. Such decree, if made in vacation, shall be recorded in the minutes of the succeeding term of the court.

5. The person who takes such money or property shall receive such compensation as the court may allow and shall make such disposition thereof as the court may order; and he shall return such money or property into court upon the order of the court.

6. If any person has an interest in such recovery, the court may hear evidence as to such interest, and order such claim, or such part as is deemed just, to be paid to whoever is entitled to receive the same. [Acts 1893, p. 3; G. L. Vol. 10, p. 433; Acts 1909, p. 176.]

4. VENUE.

| | | | |
|--------------------------|-----------------|---|-----------------|
| Venue, general rule..... | Article 1995 | When water course or highway is county boundary..... | Article 1996 |
|--------------------------|-----------------|---|-----------------|

Art. 1995. [1830] [1194] [1198] **Venue, general rule.**—No person who is an inhabitant of this State shall be sued out of the county in which he has his domicile except in the following cases:

1. Married women.—A married woman may be sued in the county in which her husband has his domicile. [Acts 1863, p. 10; G. L. Vol. 5, p. 664; Acts 1889, p. 48; G. L. Vol. 9, p. 1075; P. D. 1423; Acts 1913, p. 424.]

2. Transient persons.—A transient person may be sued in any county in which he may be found.

3. Non-residents; residence unknown.—If one or all of several defendants reside without the State or if their residence is unknown, suit may be brought in the county in which the plaintiff resides.

4. Defendants in different counties.—If two or more defendants reside in different counties, suit may be brought in any county where one of the defendants resides. The transfer or assignment of a note or chose in action shall not entitle any subsequent holder to sue thereon in any other county than that in which such suit could have been prosecuted if no assignment or transfer had been made.

5. Contract in writing.—If a person has contracted in writing to perform an obligation in a particular county, suit may be brought either in such county or where the defendant has his domicile.

6. Executors, administrators, etc.—If the suit is against an executor, administrator or guardian, as such, to establish a money demand against the estate which he represents, the suit may be brought in the county in which such estate is administered.

7. Fraud and defalcation.—In all cases of fraud and defalcation of public officers, suit may be brought in the county in which the fraud was committed or defalcation occurred or where the defendant has his domicile.

8. Attachment, sequestration, etc.—A suit for damages resulting from the suing out of a writ of attachment or sequestration, or for levying any such writ, may be brought in the county from which such writ was issued, or in any county where such levy was made in whole or in part.

9. Crime or trespass.—A suit based upon a crime, offense, or trespass may be brought in the county where such crime, offense, or trespass was committed, or in the county where the defendant has his domicile.

10. Personal property.—Suit for the recovery of personal property may be brought in any county where the property may be or where the defendant resides.

11. Inheritances.—If the defendant has inherited an estate concerning which the suit is commenced, suit may be brought in the county where such estate principally lies.

12. Lien.—A suit for the foreclosure of a mortgage or other lien may be brought in the county where the property or any part thereof subject to such lien is situated.

13. Partition.—Suits for the partition of land or other property may be brought in the county where such land or other property, or a part thereof, may be, or in the county in which one or more of the defendants reside, or in the county of the residence of any defendant who may assert an adverse claim to or interest in such property, or seeks to recover the title to the same. Nothing herein shall be construed to fix venue of a suit to recover the title to land. [Id; Acts 1919, p. 152.]

14. Lands.—Suits for the recovery of lands or damages thereto, or to remove incumbrances upon the title to land, or to quiet the title to land, or to prevent or stay waste on lands, must be brought in the county in which the land, or a part thereof, may lie.

15. Breach of warranty.—Suits for breach of warranty of title to lands may be brought in any county where either vendor resides, and all other vendors may be joined in the same suit.

16. Divorce.—Suits for divorce shall be brought in the county in which the plaintiff shall have resided for six months next preceding the bringing of the suit.

17. Injunctions.—Suits to enjoin the execution of a judgment or to stay proceedings in any suit shall be brought in the county in which such judgment was rendered or in which such suit is pending.

18. Revision of probate.—Suits to revise the proceedings of the county court in matters of probate must be brought in the district court of the county in which such proceedings were had.

19. Suits against counties.—Suits against a county shall be brought within such county.

20. Heads of departments.—Suits for mandamus against the head of any department of the State Government shall be brought in Travis County.

21. Corporations: charters.—Suits brought by the State for the purpose of forfeiting the charter of a private corporation chartered by Act of the Legislature, or organized under the laws of this State, and for the purpose of canceling the permit authorizing a foreign corporation to transact business in this State, and for the purpose of restraining corporations from exercising powers not conferred upon them by the laws of this State, and for the purpose of preventing persons from engaging

in business in this State contrary to the laws thereof, may be brought in Travis County.

22. Railway lands.—Suits on behalf of the State to forfeit land fraudulently or colorably alienated by railway companies in fraud of the rights of the State, under the laws granting lands to railway companies, shall be brought in Travis County.

23. Corporations and associations.—Suits against a private corporation, association or joint stock company may be brought in any county in which the cause of action, or a part thereof, arose, or in which such corporation, association or company has an agency or representative, or in which its principal office is situated. Suits against a railroad corporation, or against any assignee, trustee or receiver operating its railway, may also be brought in any county through or into which the railroad of such corporation extends or is operated. Suits against receivers of persons and corporations may also be brought as otherwise provided by law.

24. Carriers.—Suits arising from damage or loss to any passenger, freight, baggage or other property, by reason of its transportation, or contract in relation thereto, in whole or in part by one or more common carriers or the assignees, lessees, trustees or receivers thereof, operating or doing business as such in this State, or having agents or representatives in this State, may be brought against one or more of those so doing business, in any county where either does business or has an agent or representative.

25. Railway personal injuries.—Suits against railroad corporations, or against any assignee, trustee or receiver operating any railway in this State, for damages arising from personal injuries, resulting in death or otherwise, shall be brought either in the county in which the injury occurred, or in the county in which the plaintiff resided at the time of the injury. If the defendant railroad corporation does not run or operate its railway in, or through, the county in which the plaintiff resided at the time of the injury, and has no agent in said county, then said suit shall be brought either in the county in which the injury occurred, or in the county nearest that in which the plaintiff resided at the time of the injury, in which the defendant corporation runs or operates its road, or has an agent. If the plaintiff is a non-resident of this State, then such suit may be brought in any county in which the defendant corporation may run or operate its railroad, or have an agent. When an injury occurs within one-half mile from the boundary line dividing two counties, suit may be brought in either of said counties.

26. Railroad wages.—Suits by mechanics, laborers and operatives, for their wages due by railroad companies, may be instituted and prosecuted in any county in this State where such labor was performed, or in which the cause of action, or part thereof, accrued, or in the county in which the principal office of such railroad company is situated.

27. Foreign corporations.—Foreign corporations, private or public, joint stock companies or associations, not incorporated by the laws of this State, and doing business within this State,

may be sued in any county where the cause of action or a part thereof accrued, or in any county where such company may have an agency or representative, or in the county in which the principal office of such company may be situated; or, when the defendant corporation has no agent or representative in this State, then in the county where the plaintiffs, or either of them, reside.

28. Insurance.—Suits against fire, marine or inland insurance companies may also be commenced in any county in which the insured property was situated. Suits on policies may be brought against any life insurance company, or accident insurance company, or life and accident, or health and accident, or life, health and accident insurance company, in the county where the home office of such company is located, or in the county where loss has occurred or where the policyholder or beneficiary instituting such suit resides.

29. Libel or slander.—A suit for damages for libel or slander shall be brought, and can only be maintained, in the county in which the plaintiff resided at the time of the accrual of the cause of action, or in the county where the defendant resided at the time of filing suit, or in the county of the residence of defendants, or any of them, or the domicile of any corporate defendant, at the election of the plaintiff. [Acts 1919, p. 138.]

30. Special venue.—Whenever in any law authorizing or regulating any particular character of action, the venue is expressly prescribed, the suit shall be commenced in the county to which jurisdiction may be so expressly given.

Art. 1996. [1834] [1195] [1199] **When water course or highway is boundary.**—Where any part of a river, water course, highway, road or street is the boundary line between two counties, the several courts of each of said counties shall have concurrent jurisdiction in all cases over such parts of said river, water course, highway, road or street as shall be the boundary of such county in the same manner as if such parts of said river, water course, highway, road or street were within the body of such county.

CHAPTER TWO.

PLEADING.

I. PLEADING IN GENERAL.

| | | | |
|-----------------------------|---------|-------------------------|---------|
| | Article | | Article |
| Definition and system..... | 1997 | Special Act or law..... | 2000 |
| Of intervenor..... | 1998 | Amendments..... | 2001 |
| Alleging a corporation..... | 1999 | Bill of discovery..... | 2002 |

Art. 1997. [1817-18-19] **Definition and system.**—Pleadings in civil suits in the district and county courts shall:

1. Be by petition and answer.
2. Consist of a statement in logical and legal form of the facts constituting the plaintiff's cause of action or the defendant's ground of defense.
3. Contain any other matter which may be required by any law authorizing or regulating any particular action or defense.

4. Be in writing, signed by the party or his attorney and be filed with the clerk.

Art. 1998. [1820-24] **Of intervenor.**—Any party may intervene in vacation, subject to be stricken out by the court for sufficient cause at the next term on the motion of the opposite party; and such intervenor shall, within five days from the filing of same, notify the opposite party or his attorney of the filing of such pleadings. When court is in session such pleadings shall be filed under the rules governing amendments to pleadings. So far as applicable, pleadings of an intervenor shall conform to the requirements of pleadings of the plaintiff and defendant respectively.

Art. 1999. [1822] [1186] [1190] **Alleging a corporation.**—An allegation that a corporation was duly incorporated shall be taken as true, unless denied by the affidavit of the adverse party, his agent or attorney, whether such corporation is a public or private corporation and however created.

Art. 2000. [1823] [1187] [1191] **Special Act or Law.**—A pleading founded wholly or in part on any private or special Act or law of this State or of the Republic of Texas need only recite the title thereof, the date of its approval, and set out in substance so much of such act or laws as may be pertinent to the cause of action or defense.

Art. 2001. [1824-25-26] **Amendments.**—Parties may amend their pleadings, file suggestions of death and make representatives parties, make new parties, and file such other pleas as they may desire:

1. In vacation, by filing such pleas with the clerk of the court in which the suit is pending.

2. When court is in session, under leave of the court upon such terms as the court may prescribe before the parties announce ready for trial, and at such time as not to operate as a surprise to the opposite party.

3. When because of the insufficiency of the pleadings of the successful party, the judgment has been arrested or a new trial granted.

Art. 2002. **Bill of discovery.**—All trial courts shall entertain suits in the nature of bills of discovery, and grant relief therein in accordance with the usages of courts of equity. Such remedy shall be cumulative of all other remedies. [Acts 1923, p. 31.]

2. PLEADINGS OF THE PLAINTIFF.

| | | | |
|------------------------|-----------------|-----------------------|-----------------|
| The petition..... | Article 2003 | Special defenses..... | Article 2005 |
| Defensive matters..... | 2004 | | |

Art. 2003. [1827] [1191] [1195] **The petition.**—The petition shall state the names of the parties and their residences, if known, with a concise statement of the cause of action, and such other allegations pertinent to the cause, as the plaintiff may deem necessary to sustain his suit, without any distinction between suits at law and in equity, and shall also state the nature of the relief sought. [Acts 1846, p. 363; P. D. 1427; Acts 1913, p. 256; Acts 1915, p. 155; G. L. Vol. 2, p. 1669.]

Art. 2004. [1828] [1192] [1196] **Defensive matters.**—When the defendant sets up a counter claim, the plaintiff may plead thereto under rules prescribed for pleadings of defensive matter by the defendant, so far as applicable. Whenever the defendant is required to plead any matter of defense under oath, the plaintiff shall be required to plead such matters under oath when relied on by him. [Id.]

Art. 2005. [1829] [1193] [1197] **Special defenses.**—The plaintiff need not deny any special matter of defense pleaded by the defendant, but the same shall be regarded as denied unless expressly admitted. [Id.]

3. PLEADINGS OF THE DEFENDANT.

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|---|-----------------|---|-----------------|
| Answer may include several mat- ters, etc..... | Article 2006 | Pleas determined during term at which filed..... | Article 2013 |
| Plea of privilege..... | 2007 | Plea of payment, counter claim..... | 2014 |
| Hearing on plea..... | 2008 | Plea of counter claim..... | 2015 |
| Answer filed..... | 2009 | No discontinuance..... | 2016 |
| Certain pleas to be verified..... | 2010 | Set off..... | 2017 |
| General denial..... | 2011 | Plea not waived..... | 2018 |
| Pleas to be filed in due order..... | 2012 | Transferred if plea sustained..... | 2019 |
| | | Record transmitted..... | 2020 |

Art. 2006. [1902] [1262] [1262] **Answer may include several matters; etc.**—The defendant in his answer may plead as many several matters, whether of law or fact, as he shall think necessary for his defense, and which may be pertinent to the cause; provided, that he shall file them all at the same time and in due order of pleading. A general denial of matters pleaded by the adverse party which are not required to be sworn to, shall be sufficient to put the same in issue. [Acts 1846, p. 3631; P. D. 1441; Acts 1913, p. 256; Acts 1915, p. 155; G. L. Vol. 2, p. 1669.]

Art. 2007. [1903] **Plea of privilege.**—A plea of privilege to be sued in the county of one's residence shall be sufficient if it be in writing and sworn to, and shall state that the party claiming such privilege was not, at the institution of such suit, nor at the time of the service of process thereon, nor at the time of filing such plea, a resident of the county in which such suit was instituted and shall state the county of his residence at the time of such plea, and that "no exception to exclusive venue in the county of one's residence provided by law exists in said cause"; and such plea of privilege when filed shall be prima facie proof of the defendant's right to change of venue. If the plaintiff desires to controvert the plea of privilege, he shall within five days after appearance day file a controverting plea under oath, setting out specifically the fact or facts relied upon to confer venue of such cause on the court where the cause is pending. [Acts 1907, p. 248, Acts 1917, p. 388.]

Art. 2008. [1903] **Hearing on plea.**—Upon the filing of such controverting plea, the judge or justice of the peace shall note on same a time for a hearing on the plea of privilege. Such hearing, unless the parties agree upon the date, shall not be had until a copy of such controverting plea, including a copy of such notation thereon, shall have been served on each defendant, or his attorney, for at least ten days exclusive of the day of service and the date of hearing, after which the court shall promptly hear such plea of privilege and enter judgment thereon. Either

party may appeal from the judgment sustaining or over-ruling the plea of privilege, and if the judgment is one sustaining the plea of privilege and an appeal is taken, such appeal shall suspend the transfer of the venue and a trial of the cause pending the final determination of such appeal. [Id.]

Art. 2009. [1904-5] **Answer filed.**—Where citation has been personally served at least ten days before the first day of the term to which it is returnable, exclusive of the day of service and return, the answer of the defendant shall be filed on or before the second day of the return term, and before the call of the appearance docket on said second day. Where service of citation has been made by publication, the answer of the defendant shall be filed on or before the appearance day of the term to which the citation is made returnable. [Acts 1893, p. 31; G. L. Vol. 10, p. 401; Acts 1st C. S. 1909, p. 324; Acts 1917, p. 24.]

Art. 2010. [1906] [1265] [1265] **Certain pleas to be verified.**—An answer setting up any of the following matters, unless the truth of the pleadings appear of record, shall be verified by affidavit:

1. That the suit is not commenced in the proper county.
2. That the plaintiff has not legal capacity to sue.
3. That the plaintiff is not entitled to recover in the capacity in which he sues.
4. That there is another suit pending in this State between the same parties for the same cause of action.
5. That there is a defect of parties, plaintiff or defendant.
6. A denial of partnership as alleged in the petition, whether the same be on the part of the plaintiff or defendant.
7. That the plaintiff or the defendant, alleged in the petition to be duly incorporated, is not duly incorporated as alleged.
8. A denial of the execution by himself or by his authority of any instrument in writing, upon which any pleading is founded, in whole or in part, and charged to have been executed by him or by his authority, and not alleged to be lost or destroyed. Where such instrument in writing is charged to have been executed by a person then deceased, the affidavit will be sufficient if it state that the affiant has reason to believe and does believe that such instrument was not executed by the decedent or by his authority.
9. A plea denying the genuineness of the indorsement or assignment of a written instrument as required by article 573.
10. That a written instrument upon which a pleading is founded is without consideration, or that the consideration of the same has failed in whole or in part.
11. That an account which is the foundation of the plaintiff's action, and supported by an affidavit, is not just; and, in such case, the answer shall set forth the items and particulars which are unjust.
12. That the contract sued upon is usurious. [Acts 1846, p. 363; P. D. 1, Id; P. D. 288, Id; P. D. 1443; Acts 1840, p. 144; P. D. 224; Acts 1874, p. 52; P. D. 6828c; Acts 1883, p. 4; G. L. Vol. 2, p. 1669.]

Art. 2011. [1908] [1267] [1267] **General denial.**—Where the defendant has pleaded a general denial, and the plaintiff

shall afterward amend his pleading, such original denial shall be presumed to extend to all matters subsequently set up by the plaintiff.

Art. 2012. [1909] [1268] [1268] **Pleas to be filed in due order.**—Pleas shall be filed in the due order of pleading, and shall be heard and determined in such order under the direction of the court. [Acts 1846, p. 363; G. L. Vol. 2, p. 1669.]

Art. 2013. [1910] [1269] [1269] **Pleas determined during term at which filed.**—Pleas to the jurisdiction, pleas in abatement, and other dilatory pleas and demurrers, not involving the merits of the case, shall be determined during the term at which they are filed, if the business of the court will permit. [Id.]

Art. 2014. [1907] [1266] [1266] **Pleas of payment, counter claim.**—When a defendant shall desire to prove payment, counter claim or set-off, he shall file with his plea an account stating distinctly the nature of such payment, counter claim or set-off, and the several items thereof; failing to do so, he shall not be allowed to prove the same, unless it be so plainly and particularly described in the plea as to give the plaintiff full notice of the character thereof. [Acts 1840, p. 62; P. D. 3444; G. L. Vol. 2, p. 236.]

Art. 2015. [1325-6] **Pleas of counter claim.**—Whenever any suit is brought for the recovery of any debt due by judgment, bond, bill or otherwise, the defendant shall be permitted to plead therein any counter claim he may have against the plaintiff, subject to such limitations as may be prescribed by law. The plea setting up such counter claim shall state distinctly the nature and the several items thereof, and shall conform to the ordinary rules of pleading. [Id.]

Art. 2016. [1900] [1260] [1260] **No discontinuance.**—Where the defendant has filed a counter claim seeking affirmative relief, the plaintiff shall not be permitted, by a discontinuance of his suit, to prejudice the right of the defendant to be heard on such counter claim.

Art. 2017. [1329-30] **Set-off.**—If the plaintiff's cause of action be a claim for unliquidated or uncertain damages, founded on a tort or breach of covenant, the defendant shall not be permitted to set off any debt due him by the plaintiff. If the suit be founded on a certain demand, the defendant shall not be permitted to set off unliquidated or uncertain damages founded on a tort or breach of covenant on the part of the plaintiff. However, the defendant may plead in set off any counter claim founded on a cause of action arising out of or incident to, or connected with, the plaintiff's cause of action.

Art. 2018. [1831] **Plea not waived.**—Issuing process for witnesses and taking depositions shall not constitute a waiver of a plea of privilege, but depositions taken in such case may be read in evidence in any subsequent suit between the same parties concerning the same subject-matter in like manner as if taken in such subsequent suit. [Acts 1907, p. 248.]

Art. 2019. [1832] **Transferred if plea is sustained.**—If a plea of privilege is sustained, the cause shall not be dismissed, but the court shall transfer said cause to the court having juris-

diction of the person of the defendant therein; and the costs incurred prior to the time such suit is filed in the court to which said cause is transferred shall be taxed against the plaintiff. [Id.]

Art. 2020. [1833] **Record transmitted.**—When a plea of privilege is sustained, the court shall order the venue to be changed to the proper court of the county having jurisdiction of the parties and the cause. The clerk shall make up a transcript of all the orders made in said cause, certifying thereto officially under the seal of the court, and send it with the original papers in the cause to the clerk of the court to which the venue has been changed. [Id.]

CHAPTER THREE.

CITATION.

| | Article | | Article |
|--|---------|--|---------|
| Issuance | 2021 | Defendant without State..... | 2037 |
| Requisites | 2022 | Notice served..... | 2038 |
| Out-county defendant..... | 2023 | Citation by publication..... | 2039 |
| If sheriff is a party..... | 2024 | Unknown heirs of defunct corporation..... | 2040 |
| Duty of officer receiving..... | 2025 | Form of published citation..... | 2041 |
| Service of citation..... | 2026 | Publication of citation in land suits..... | 2042 |
| Against counties..... | 2027 | Return of citation by publication..... | 2043 |
| Against cities and towns..... | 2028 | Mistake in return..... | 2044 |
| Against corporations and associations..... | 2029 | Acceptance of service..... | 2045 |
| Receiver of railroad company..... | 2030 | Entering appearance..... | 2046 |
| Foreign corporations..... | 2031 | Answer is appearance..... | 2047 |
| Foreign railway corporations..... | 2032 | Constructive appearance..... | 2048 |
| Against partners..... | 2033 | Reversal of judgment..... | 2049 |
| Return of citation..... | 2034 | No judgment without service..... | 2050 |
| Alias process..... | 2035 | | |
| Time of service..... | 2036 | | |

Art. 2021. [1850-51-76] **Issuance.**—When a petition is filed with the clerk, he shall promptly issue a citation for the defendant. If there be several defendants residing in different counties, citation shall issue to each county. All citations and notices mentioned in this chapter shall contain the requisites prescribed in this title for writs. [Acts 1854, p. 53; P. D. 1430; G. L. Vol. 3, p. 1497.]

Art. 2022. [1852] [1213] [1314] **Requisites.**—Citations shall be directed to the sheriff or any constable of the county where the defendant is alleged to reside or be, and command him to summon the defendant to appear and answer the plaintiff's petition at the next regular term of the court, stating the time and place of holding the same. It shall state the date of the filing of the petition, its file number and the names of all the parties and the nature of the plaintiff's demand; but the nature of plaintiff's demand need not be stated in cases where by law it is required to accompany a citation with a certified copy of plaintiff's petition. [Id; Acts 1846, p. 363; G. L. Vol. 2, p. 1669; Acts 1866, p. 199; G. L. Vol. 5, p. 1117; Acts 1919, p. 212.]

Art. 2023. [1853] [1215] [1216] **Out-county defendant.**—Each defendant to be served without the county in which the suit is pending, shall have a certified copy of the plaintiff's petition accompany the citation.

Art. 2024. [1854] [1216] [1217] **If sheriff is a party.**—If the sheriff is a party to or interested in a suit, the citation shall be addressed to any constable of his county. [Acts 1846, p. 363; P. D. 1437; G. L. Vol. 2, p. 1669.]

Art. 2025. [1856] [1857] **Duty of officer receiving.**—The officer to whom citation is delivered shall endorse thereon the day and hour on which he received it, and shall execute and return the same without delay. [Id. Sec. 14; P. D. 1433.]

Art. 2026. [1856] [1218] [1219] **Service of citation.**—Unless it otherwise directs, the citation shall be served by the officer delivering to each defendant, in person, a true copy of the citation and a certified copy of the petition when served without the county in which the suit is pending. [Id.]

Art. 2027. [1858] [1220] [1221] **Against counties.**—In suits against a county, the citation shall be served on the county judge of such county. [Id. p. 320; P. D. 1048; G. L. Vol. 2, p. 1626.]

Art. 2028. [1859] [1221] [1222] **Against cities and towns, etc.**—In suits against an incorporated city, town or village, the citation may be served on the mayor, clerk, secretary or treasurer thereof. [Acts 1854, p. 53; P. D. 1430; G. L. Vol. 3, p. 1497.]

Art. 2029. [1860] [1222] [1223] **Against corporations and joint stock associations.**—In suits against any incorporated company or joint stock association, the citation may be served on the president, secretary or treasurer of such company or association, or upon the local agent of such company or association in the county where suit is brought, or by leaving a copy of the same at the principal office of the company during office hours. If neither the president, secretary or treasurer reside in the county in which suit is brought, and such company or association has no agent in the county, then the citation may be served upon any agent representing such company or association in the State. [1903, p. 66; Acts 1874, p. 31, p. 108; G. L. Vol. 8, pp. 34, 110; Acts 1854, p. 53; G. L. Vol. 3, p. 1497; P. D. 1430; 4888; Acts 1887, p. 119; G. L. Vol. 9, p. 917.]

Art. 2030. [1860] [1222] [1223] **Receiver of railroad company.**—In suits against receivers of railroad companies, service may be had either upon the receiver, the general or division superintendent, or any agent of the receiver who resides in the county in which suit is brought. If there be no agent of the receiver in the county in which suit is brought, then service may be had upon any agent of the receiver in the State. [Id.]

Art. 2031. [1861] [1223] **Foreign corporations.**—In suits against a foreign corporation, joint stock company or association, or acting corporation or association, process may be served on the president, vice president, secretary, treasurer, or general manager, and in any cause of action arising within this State, process may also be served upon any local or traveling agent, or traveling salesman of such corporation, joint stock company or association, or acting corporation or association in this State. [Acts 1885, p. 79; Acts 1919, p. 181; G. L. Vol. 9, p. 699.]

Art. 2032. [1862] **Foreign railway corporations.**—Service may also be had on foreign railway corporations by serving citation upon any train conductor who is engaged in handling trains for two or more railway corporations where one is a for-

foreign railway corporation, and the other a domestic corporation, if said conductor handles and operates trains over such foreign and domestic corporation's tracks across the State line of Texas and on the track of the domestic corporation within this State or upon any agent who has an office in Texas who sells tickets or makes contracts for the transportation of passengers or property over any line of railway, or part thereof, of such foreign railway corporation or company. Conductors who are engaged in handling trains and employed by a foreign railway corporation and a domestic corporation, and who operate such trains across the State line of Texas, and agents engaged in selling tickets or making contracts for the transportation of property, are hereby designated as agents of such foreign corporation or companies upon whom service of citation may be had. [Acts 1905, p. 30; Acts 1919, p. 288.]

Art. 2033. [1863] [1224] [1224] **Against partners.**—Citation served upon one member of a partnership or firm shall be sufficient to authorize a judgment against the firm and the partner actually served. [Acts 1858, p. 110; P. D. 1514; G. L. Vol. 4, p. 982.]

Art. 2034. [1864-5] **Return of citation.**—The return of the officer executing the citation shall be indorsed on or attached to the same; it shall state when the citation was served and the manner of service, conforming to the command of the writ, and be signed by him officially. When the citation has not been served, the return shall show the diligence used by the officer to execute the same and the cause of failure to execute it, and where the defendant is to be found, if he can ascertain. [Acts 1848, p. 106; P. D. 1507; G. L. Vol. 3, p. 106.]

Art. 2035. [1866] [1227] [1227] **Alias process.**—When any process has not been returned, or has been returned without service, or has been improperly served, the clerk shall, upon the application of any party to the suit, his agent or attorney, issue other process to the same or any other county as the applicant may direct. [Acts 1846, p. 363; P. D. 1435; G. L. Vol. 2, p. 1669.]

Art. 2036. [1867-1868] **Time of service.**—Citations shall be served before the return day thereof; and, the defendant shall not be required to plead at the return term of the court, unless citation be served at least ten days before the first day of such term, exclusive of the days of service and return, but when a citation is served before return day thereof and less than ten days before the first day of such term, exclusive of the day of service and return, such service shall compel the defendant to plead at the next succeeding term of the court. [Acts 1891, p. 94; G. L. Vol. 10, p. 96.]

Art. 2037. [1869] [1230] [1230] **Defendant without State.**—Where the defendant is absent from the State, or is a non-resident of the State, upon application of the plaintiff, his agent or attorney, the clerk shall address a notice to the defendant requiring him to appear and answer the plaintiff's petition at the time and place of holding court, naming such time and place.

It shall give the date of the filing of the petition, the file number of the suit, the names of all the parties, and shall state that a copy of the plaintiff's petition accompanies the notice, but shall not be required to state plaintiff's cause of action. It shall be dated, filed and attested by the clerk with the seal of the court impressed thereon; and the date of its issuance shall be noted thereon; a certified copy of the plaintiff's petition shall accompany the notice. [Acts 1875, p. 170; G. L. Vol. 8, p. 542; Acts 1919, p. 250.]

Art. 2038. [1870 to 1873] **Notice served.**—Such notice may be served by any disinterested person competent to make oath of the fact by delivering to the defendant in person a true copy of such notice, together with the certified copy of the plaintiff's petition. The return of service in such cases shall be indorsed on or attached to the original notice, and shall state when it was served and the manner of service, and be signed and sworn to by the party making such service before some officer authorized by the laws of this State to take affidavits, under the hand and official seal of such officer. A defendant served with such notice shall be required to appear and answer in the same manner and under the same penalties as if he had been personally served with a citation within this State. [Acts 1875, p. 170; G. L. Vol. 8, p. 542.]

Art. 2039. [1874] [1235] [1235] **Citation by publication.**—Where a party to a suit, his agent or attorney, shall make oath when the suit is instituted, or at any time during its progress, that any party defendant therein is a non-resident of the State, or that he is absent from the State, or that he is a transient person, or that his residence is unknown to affiant, the clerk shall issue a citation for such defendant addressed to the sheriff or any constable of the county in which such suit is pending. Such citation shall contain a brief statement of the cause of action, and shall command the officer to summon the defendant by making publication of such citation in some newspaper published therein, but if not, then in the nearest county where a newspaper is published, once in each week for four consecutive weeks previous to the return day thereof. [Id; Acts 1848, p. 106; G. L. Vol. 3, p. 106; Acts 1879, p. 103; G. L. Vol. 8, p. 1403; Acts 1917, p. 23; Acts 1919, p. 168.]

Art. 2040. [1875] [1236] [1236] **Unknown heirs of defunct corporation.**—Where property in this State has been granted or has accrued to the heirs as such, of any deceased person, or to the stockholders of defunct corporation, any party having a claim or cause of action against them relative to such property, if their names be unknown to him, may bring an action against them, their heirs or legal representatives, describing them as the heirs of such named ancestor or unknown stockholder of such corporation. If the plaintiff, his agent, or attorney, shall make oath that the names of such heirs or stockholders are unknown to the affiant, the clerk shall issue a citation for such heirs or stockholders, addressed to the sheriff or any constable of the county in which such suit is pending. Such

citation shall contain a brief statement of the cause of action, and shall command the officer to summon the defendant by making publication of such citation as provided in the preceding article. [Acts 1866, p. 125; G. L. Vol. 5, p. 1043; Acts 1848, p. 106; G. L. Vol. 3, p. 106; P. D. 5460; Acts 1917, p. 23; Acts 1919, p. 168.]

Art. 2041. [1875] [1236] [1236] **Form of published citation.**—In cases of citation by publication as provided for in the two preceding articles, it need not contain the details and particulars of the cause of action; provided that in suits by publication involving land, it shall be sufficient in making the brief statement of the cause of action in such citation to state the kind of suit, the number of acres of land involved in the suit, or the number of the lot and block, or any other plat description that may be of record if the land is situated in a city or town, the survey on which and the county in which the land is situated, and any special pleas which are relied upon in such suit. [Id.]

Art. 2042. [1877] [1264] [1264] **Publication of citation in land suits.**—In all suits involving title to land, wherein service of citation is by publication, such publication shall be made in the county in which the land is situated. If there be no newspaper published in such county, then in the county nearest that wherein the land is situated. [Acts 1846, p. 363; G. L. Vol. 2, p. 1669; Acts 1909, S. S. p. 324.]

Art. 2043. [1878] [1238] [1238] **Return of citation by publication.**—The return of the officer executing such citation shall be indorsed or attached to the same, and show how and when the citation was executed, specifying the dates of such publication, be signed by him officially and shall be accompanied by a printed copy of such publication.

Art. 2044. [1879] [1239] [1239] **Mistake in return.**—Any mistake or informality in a return may be corrected by the officer at any time under the direction of the court. [Acts 1846, p. 363; G. L. Vol. 2, p. 1669; P. D. 53.]

Art. 2045. [1880] [1240] [1240] **Acceptance of service.**—The defendant may accept service of process, or waive the issuance or service thereof by a written memorandum signed by him, or by his duly authorized agent or attorney, and filed among the papers of the cause; and such waiver or acceptance shall have the same force and effect as if the citation had been issued and served as provided by law. [Id. P. D. 1508, 1432.]

Art. 2046. [1881] [1241] [1241] **Entering appearance.**—The defendant may, in person, or by attorney, or by his duly authorized agent, enter an appearance in open court. Such appearance shall be noted by the judge upon his docket and entered in the minutes, and shall have the same force and effect as if the citation had been duly issued and served as provided by law. [Id.]

Art. 2047. [1882] [1242] [1242] **Answer is appearance.**—An answer shall constitute an appearance of the defendant so as to dispense with the necessity for the issuance or service of citation upon him. [Id.]

Art. 2048. [1883] [1243] [1243] **Constructive appearance.**—If the citation or service thereof is quashed on motion of the defendant, the case may be continued for the term, but the defendant shall be deemed to have entered his appearance to the succeeding term of the court.

Art. 2049. [1884] [1244] [1244] **Reversal of judgment.**—Where the judgment is reversed on appeal or writ of error taken by the defendant for the want of service, or because of defective service of process, no new citation shall be issued or served, but the defendant shall be presumed to have entered his appearance to the term of the court at which the mandate shall be filed.

Art. 2050. [1885] [1245] [1245] **No judgment without service.**—In no case shall judgment be rendered against any defendant unless upon service, or acceptance or waiver of process, or upon an appearance by the defendant, as prescribed in this chapter, except where otherwise expressly provided by law. [Acts 1846, p. 6, G. L. Vol. 2, p. 1671.]

CHAPTER FOUR.

COSTS AND SECURITY THEREFOR.

| Article | Article | | |
|-------------------------------------|---------|--|------|
| Parties responsible..... | 2051 | On appeal and certiorari..... | 2065 |
| Parties liable for other costs..... | 2052 | Court may otherwise adjudge costs..... | 2066 |
| May demand payment..... | 2053 | Security..... | 2067 |
| How costs collected..... | 2054 | Rule for costs..... | 2068 |
| Officer to levy..... | 2055 | Judgment on cost bond..... | 2069 |
| Successful party to recover..... | 2056 | Affidavit of inability..... | 2070 |
| Fees of only two witnesses..... | 2057 | Deposit for costs..... | 20 |
| Costs of motions..... | 2058 | No security required..... | 2072 |
| On exception to pleadings..... | 2059 | Intervenor or defendant..... | 2073 |
| Of several suits..... | 2060 | Secured by other bond..... | 2074 |
| Demand reduced by payments..... | 2061 | Taxing stenographers' fees..... | 2075 |
| In assault and battery..... | 2062 | Taxing interpreters' fees..... | 2076 |
| Cost of new trials..... | 2063 | Execution for costs..... | 2077 |
| On arrest at judgment..... | 2064 | | |

Art. 2051. [2030] [1421] [1420] **Parties responsible.**—Each party to a suit shall be liable to the officers of the court for all costs incurred by himself. No sheriff or constable shall be compelled to execute any process in civil cases coming from any county other than the one in which he is an officer, unless the fees allowed him by law for the service of such process shall be paid in advance; except when affidavit is filed, as provided by law. The clerk issuing the process shall indorse thereon the words, "pauper oath filed", and sign his name officially below them; and the officer in whose hands such process is placed for service shall serve the same. [Acts 1887, p. 102; G. L. Vol. 9, p. 900.]

Art. 2052. [2031] [2491] [2427] **Parties liable for other costs.**—Each party to a suit shall be liable for all costs incurred by him. If the costs cannot be collected from the party against whom they have been adjudged, execution may issue against any party in such suit for the amount of costs incurred by such party, but no more.

Art. 2053. [2032] [1422] [1420] **May demand payment.**—Officers may demand payment of all costs due in each and every case pending in their respective courts, up to the adjournment

of each term of said courts. [Acts 1879, p. 9; G. L. Vol. 8, p. 1390.]

Art. 2054. [2033] [1423] [1420] **How costs collected.**—If any party responsible for costs fails or refuses to pay the same within ten days after demand for payment, the clerk or justice of the peace may make certified copy of the bill of costs then due, and place the same in the hands of the sheriff or constable for collection. All taxes imposed on law proceedings shall be included in the bill of costs. Such certified bill of costs shall have the force and effect of an execution. The removal of a case by appeal shall not prevent the issuance of an execution for costs at the end of the term. [Id.]

Art. 2055. [2034] [1424] [1420] **Officer to levy.**—The sheriff or constable upon demand and failure to pay said bill of costs, may levy upon a sufficient amount of property of the person from whom said costs are due to satisfy the same, and sell such property according to the law governing sales under execution. Where such party is not a resident of the county where such suit is pending, the payment of such costs may be demanded of his attorney of record; and neither the clerk nor justice of the peace shall be allowed to charge any fee for making out such certified bill of costs, unless he is compelled to make a levy. [Id.]

Art. 2056. [2035] [1425] [1421] **Successful party to recover.**—The successful party to a suit shall recover of his adversary all costs incurred therein, except where otherwise provided. [Id; P. D. 1483.]

Art. 2057. [2037] [1427] [1423] **Fees of only two witnesses.**—In no cause shall there be allowed the fees of more than two witnesses to any one fact. [Id; P. D. 1487.]

Art. 2058. [2038] [1428] [1424] **Costs of motions.**—The court may give or refuse costs on motions at its discretion, except where otherwise provided by law. [Id; P. D. 1482.]

Art. 2059. [2039-40] **On exception to pleadings.**—If an exception to a pleading is sustained, all the costs of such exception and of the pleading adjudged to be insufficient, shall be taxed against the party filing such insufficient pleadings. If such exception be overruled, all costs of such exception shall be taxed against the party taking the exception. [Id.]

Art. 2060. [2041] [1431] [1427] **Of several suits.**—Where any plaintiff shall bring in the same court several suits against the same defendant for causes of action which should have been joined, he shall recover the costs of one action only; and the costs of the other actions shall be adjudged against him, unless sufficient reasons appear to the court for instituting several actions. [Id; P. D. 1452.]

Art. 2061. [2042] [1432] [1428] **Demand reduced by payments.**—Where the plaintiff's demand is reduced by payment to an amount which would not have been within the jurisdiction of the court, the defendant shall recover his costs. [Acts 1860, p. 15; P. D. 3446; G. L. Vol. 4, p. 1377.]

Art. 2062. [2043] [1433] [1429] **In assault and battery,**

etc.—In civil actions for assault and battery, slander and defamation of character, if the verdict or judgment shall be for the plaintiff, but for less than twenty dollars, the plaintiff shall not recover his costs, but each party shall be taxed with the costs incurred by him in such suit. [Acts 1846, p. 363; P. D. 1467; G. L. Vol. 2, p. 1669.]

Art. 2063. [2044] [1434] [1430] **Cost of new trials.**—The costs of new trials may either abide the result of the suit or may be taxed against the party to whom the new trial is granted, as the court may adjudge when he grants such new trial. [Id; P. D. 1474.]

Art. 2064. [2045] [1435] [1431] **On arrest of judgment.**—When the judgment is arrested or the verdict is set aside because of the insufficiency of the pleadings of the party in whose favor the verdict or judgment was rendered, the cost thereof shall be taxed against the party filing such insufficient pleadings. [Id; P. D. 1475.]

Art. 2065. [2046-47] **On appeal and certiorari.**—When a case is appealed, if the judgment of the higher court be against the appellant, but for less amount than the original judgment, such party shall recover the costs of the higher court but shall be adjudged to pay the costs of the court below; if the judgment be against him for the same or a greater amount than in the court below, the adverse party shall recover the costs of both courts. If the judgment of the court above be in favor of the party appealing and for more than the original judgment, such party shall recover the costs of both courts; if the judgment be in his favor, but for the same or a less amount than in the court below, he shall recover the costs of the court below and pay the cost of the court above.

Art. 2066. [2048] [1438] [1434] **Court may otherwise adjudge costs.**—The court may, for good cause, to be stated on the record, adjudge the costs otherwise than as provided in this chapter.

Art. 2067. [2049] [1439] [1436] **Security.**—The clerk may require from the plaintiff security for costs before issuing any process, but shall file the petition and enter the same on the docket. [Acts 1848, p. 184; P. D. 3833.]

Art. 2068. [2050] [1440] [1436] **Rule for costs.**—The plaintiff may be ruled to give security for costs at any time before final judgment, upon motion of the defendant or any officer of the court interested in the costs accruing in such suit, and, if such rule be entered against the plaintiff and he fail to comply therewith on or before the first day of the next term of the court, the suit shall be dismissed. [Acts 1848, p. 106; G. L. Vol. 3, p. 106.]

Art. 2069. [2051] [1441] [1437] **Judgment on cost bond.**—All bonds given as security for costs shall authorize judgment against all the obligors in such bond for the said costs, to be entered in the final judgment of the cause. [Id.]

Art. 2070. [2052] [1442] [1438] **Affidavit of inability.**—A

party who is required to give security for costs may file with the clerk or justice of the peace an affidavit that he is too poor to pay the costs of court and is unable to give security therefor; and the clerk or justice shall issue process and perform all other services required of him, in the same manner as if the security had been given. Any party to the suit, or the clerk or justice, shall have the right to contest such affidavit. Such contest may be tried before the trial of the cause, at such time as the court may fix and notice thereof shall be given by noting it on the docket at the term of the court at which the affidavit is filed. [Acts 1907, p. 4.]

Art. 2071. [2053] [1442] [1438] **Deposit for costs.**—In lieu of a bond for costs, the party required to give the same may deposit with the clerk or the justice such sum as the court or justice from time to time may designate as sufficient to pay the accrued costs. [Acts 1907, p. 4.]

Art. 2072. [768-2054-5] **No security required.**—No security for costs shall be required of the State or of any incorporated city or town in any action, suit or proceeding, or of an executor, administrator or guardian appointed by a court of this State in any suit brought by him in his fiduciary character.

Art. 2073. [2056] **Intervenor or defendant.**—The rules in this chapter as to security for costs by a plaintiff shall also apply to an intervenor and to a defendant who seeks a judgment against the plaintiff on a counter claim after the plaintiff has discontinued his suit.

Art. 2074. [1446-2057] **Secured by other bond.**—No further security shall be required if the costs are secured by the provisions of an attachment or other bond filed by the party required to give security for costs.

Art. 2075. [1927] **Taxing stenographers' fees.**—The clerks of all courts having official reporters shall tax as costs in each civil case where an answer is filed, except suits to collect delinquent taxes, a stenographer's fee of three dollars, which shall be paid as other costs in the case, and paid by said clerk, when collected, into the general funds of the county in which said court sits. [Acts 1911, p. 264.]

Art. 2076. **Taxing interpreters' fees.**—In each civil suit wherein the services of an interpreter are used, three dollars shall be charged and collected as part of the costs as interpreters' fees, to be paid when collected into the general funds of the county. [Acts 4th C. S. 1918, p. 26.]

Art. 2077. [3918 to 3922] **Execution for costs.**—When costs have been adjudged against a party and are not paid, the clerk or justice of the court in which the suit was determined may issue execution, accompanied by an itemized bill of costs, against such party to be levied and collected as in other cases; and said officer, on demand of any party to whom any such costs are due, shall issue execution for costs at once. This article shall not apply to executors, administrators or guardians in cases where costs are adjudged against the estate of a deceased person or of a ward. No execution shall issue in any case for

costs until after judgment rendered therefor by the court. [Acts 1876, p. 285; G. L. Vol. 8, p. 1120; Acts 1879, p. 93; G. L. Vol. 8, p. 1393.]

CHAPTER FIVE.

ABATEMENT AND DISCONTINUANCE OF SUIT.

| | | | |
|---|--------------|---|--------------|
| Death of plaintiff..... | Article 2078 | Suit for injuries resulting in death..... | Article 2086 |
| Scire facias..... | 2079 | Where some defendants not served..... | 2087 |
| Death of defendant..... | 2080 | Discontinuance as to principal obligor..... | 2088 |
| Where executor, etc. dies..... | 2081 | Discontinuance in vacation..... | 2089 |
| Surviving parties..... | 2082 | Discontinuance as to defendants served..... | 2090 |
| Death between verdict and judgment..... | 2083 | Requisites of scire facias..... | 2091 |
| Marriage not to abate suit..... | 2084 | | |
| Suit for the use of another..... | 2085 | | |

Art. 2078. [1886] [1246] [1246] **Death of plaintiff.**—Where the cause of action is one which survives, no suit shall abate because of the death of any party thereto before the verdict or decision of the court is rendered, but such suit may proceed to judgment as hereinafter provided. If the plaintiff dies, the heirs, or the administrator or executor of such decedent may appear and upon suggestion of such death being entered of record in open court, may be made plaintiff, and the suit shall proceed in his or their name. [Id.]

Art. 2079. [1887] [1247] [1247] **Scire facias.**—If no such appearance and suggestion be made at the first term of the court after the death of the plaintiff, the clerk upon the application of defendant, his agent or attorney, shall issue a scire facias for the heirs or the administrator or executor of such decedent, requiring him to appear and prosecute such suit. After service of such scire facias, should such heir or administrator or executor fail to enter appearance on or before appearance day of the succeeding term of the court, the defendant may have the suit discontinued. [Id.]

Art. 2080. [1888] [1248] [1248] **Death of defendant.**—Where the defendant shall die, upon the suggestion of death being entered of record in open court, or upon petition of the plaintiff, the clerk shall issue a scire facias for the administrator or executor or heir requiring him to appear and defend the suit, and upon the return of such service, the suit shall proceed against such administrator or executor or heir. [Id. P. D. 7.]

Art. 2081. [1889] [1249] [1249] **Where executor, etc., dies.**—Where an executor or administrator shall be a party to any suit, whether as plaintiff or defendant, and shall die or cease to be such executor or administrator, the suit may be continued by or against the person succeeding him in the administration, or by or against the heirs, upon like proceedings being had as provided in the two preceding articles, or the suit may be discontinued, as provided in the second preceding article. [P. D. 6, 7.]

Art. 2082. [1890] [1250] [1250] **Surviving parties.**—Where there are two or more plaintiffs or defendants, and one or more of them die, upon suggestion of such death being entered upon the record, the suit shall at the instance of either party

proceed in the name of the surviving plaintiffs or against the surviving defendants, as the case may be. [Id. P. D. 4.]

Art. 2083. [1891] [1251] [1251] **Death between verdict and judgment.**—Where either party dies between verdict and judgment, the judgment shall be entered as if both parties were living. [Id. P. D. 5.]

Art. 2084. [1892-1893] **Marriage not to abate suit.**—A suit by or against a feme sole shall not abate by her marriage, but upon suggestion of such marriage being entered on the record, the husband may make himself a party plaintiff, or if she be a defendant, the clerk shall upon such suggestion or upon petition issue a scire facias to the husband; and the case, after the service and return thereof, shall thereupon proceed to judgment. [Id. P. D. 8, 9.]

Art. 2085. [1894] [1254] **Suit for the use of another.**—When a plaintiff suing for the use of another shall die before verdict, the person for whose use such suit was brought, upon such death being suggested on the record in open court, may prosecute the suit in his own name, and shall be as responsible for costs as if he brought the suit. [Id. Sec. 42; P. D. 10.]

Art. 2086. [1895] [1255] [1255] **Suit for injuries resulting in death.**—In cases arising under the provisions of the title relating to injuries resulting in death, the suit shall not abate by the death of either party pending the suit, but in such case, if the plaintiff dies, where there is only one plaintiff, some one or more of the parties entitled to the money recovered may be substituted and the suit prosecuted to judgment in the name of such party or parties, for the benefit of the persons entitled; if the defendant dies, his executor, administrator or heir may be made a party, and the suit prosecuted to judgment. [Acts 1860, p. 32; P. D. 18; G. L. Vol. 4, p. 1395.]

Art. 2087. [1896] [1256] [1256] **Where some defendants not served.**—Where some of the several defendants in a suit are served with process in due time and others not so served, the plaintiff may either discontinue as to those not so served and proceed against those that are, or he may continue the suit until the next term of the court and take new process against those not served. No defendant against whom any suit may be so discontinued shall be thereby exonerated from any liability under which he was, but may at any time be proceeded against as if no such suit had been brought and no such discontinuance entered. [Acts 1846, p. 363; P. D. 1448; G. L. Vol. 2, p. 1669.]

Art. 2088. [1897] [1257] [1257] **Discontinuance as to principal obligor.**—Where a suit is discontinued as to the principal obligor, no judgment can be rendered therein against an indorser, guarantor, surety or drawer of an accepted bill who is jointly sued, unless it is alleged and proved that such principal obligor resides beyond the limits of the State, or in such part of the same that he cannot be reached by the ordinary process of law, or that his residence is unknown and cannot be ascertained by the use of reasonable diligence, or that he is dead or actually or notoriously insolvent. [Id. P. D. 1449, 1426, 225.]

Art. 2089. [1898] [1258] [1258] **Discontinuance in vacation.**—The plaintiff may enter a discontinuance on the docket in vacation, in any suit wherein the defendant has not answered, on the payment of all costs that have accrued thereon. [Id. Sec. 28; P. D. 1440.]

Art. 2090. [1899] [1259] [1259] **Discontinuance as to defendants served, etc.**—When it would not operate to the prejudice of the other defendants the court may permit the plaintiff to discontinue his suit as to one or more of several defendants who were served with process, or who have answered, but no such discontinuance shall, in any case, be allowed as to a principal obligor, except in the cases provided for in the second preceding article.

Art. 2091. [1901] [1261] [1261] **Requisites of scire facias.**—The scire facias and returns thereon, provided for in this chapter, shall conform to the requisites of citations and the returns thereon, under the provisions of chapter 4 of this title.

CHAPTER SIX.

CERTAIN DISTRICT COURTS.

Art. 2092. **Rules of practice and procedure.**—The following rules of practice and procedure shall govern and be followed in the civil district courts in counties having two or more district courts with civil jurisdiction only, whose terms continue for three months or longer, to-wit:

1. Citation.—Citations issued for personal service in the county in which the suit is pending shall command the officer to summon the defendant to appear and answer the plaintiff's petition at or before ten o'clock a. m. of the Monday next following the expiration of the twenty-five days from the date of citation and shall be executed and returned by the officer twenty days after the date of issuance.

2. Execution and return.—Citations or notices issued for personal service on a defendant to appear at or before ten o'clock a. m. of the Monday next after the expiration of fifty-five days from the date the citation or notice is issued, shall be executed or served on or before thirty-five days from the date of issue and shall be made returnable thirty-five days after such date.

3. Out-county citation.—Citation for defendants alleged to reside or be outside of the county in which the suit is pending, but within this State, shall be directed to the Sheriff or any constable of the county where the defendant is alleged to reside or be and shall command him to summon the defendant to appear and answer the plaintiff's petition at or before ten o'clock a. m. of the Monday next following the expiration of thirty days from the date the citation is issued and shall be executed and returned to the officer within twenty days after the date of issue.

4. Time for appearance.—Citations or notices issued for personal service on a defendant alleged to reside or be outside

of the State but within the United States, shall notify the defendant to appear at or before ten o'clock a. m. of the Monday next after the expiration of fifty-five days from the date the citation or notice is issued and shall be executed or served on or before thirty-five days from the date of issue and shall be made returnable thirty-five days after date of issue.

5. Citation shall specify day.—In each of said cases the citation or notice shall specify the day of the week, the day of the month and the time of day the defendant is required to appear and answer, and if any defendant so served does not appear and answer at or before the time specified in such citation or notice, judgment by default may be rendered against such defendant.

6. Citation by publication.—If citation is to be served by publication it shall be returnable forty-two days after the date of issue and shall command the defendant to appear at or before ten o'clock a. m. of the Monday next following the expiration of forty-two days after the citation was issued, and shall specify the day of the week, the day of the month and the time of day the defendant is required to appear and answer, and shall be served by being published in the manner and for the length of time required by law for citations by publication in the same kind of cases or matters in other district courts at the time the publication is made and the first publication shall be at least twenty-eight days before the return day of the citation.

7. Service in foreign country.—If citation is issued to be served personally on any defendant or party in any foreign country it shall be made returnable at such time as the plaintiff or person procuring its issuance shall direct, which shall not be less than thirty days nor more than one hundred and twenty days after the date of issue and shall notify and command the defendant or person to be served to appear and answer at or before ten o'clock a. m. of the Monday next following the expiration of twenty days after the return day of the citation or notice and shall specify the day of the week, the day of the month and the time of day the defendant is required to appear and answer, and shall be served on or before the return day, and if any defendant so served does not appear and answer at or before the time specified in the citation or notice, judgment by default may be rendered against such defendant.

8. Where citation or service is quashed.—If the citation or service thereof is quashed on motion of the defendant, such defendant shall be deemed to have entered his appearance at ten o'clock a. m. on the Monday next after the expiration of twenty days after the day on which the citation or service is quashed, and such defendant shall be deemed to have been duly served so as to require him to appear and answer at that time, and if he fails to do so, judgment by default may be rendered against him.

9. Writs of attachment.—Writs of attachment shall be executed immediately after their issuance. Every such writ shall be made returnable, on or before ten o'clock a. m. of the Monday

next after the expiration of fifteen days from the issuance of the writ, and the officer executing the writ shall return the same at or before that time with his action indorsed thereon or attached thereto, signed by him officially, showing how he has executed the writ.

10. Writs of garnishment.—Writs of garnishment shall be executed immediately after their issuance and every such writ shall command the officer to summon the garnishee to appear at or before ten o'clock a. m. of the Monday next following the expiration of twenty-five days from the date the writ was issued and the writ shall specify when and where the garnishee is required to answer and the officer receiving the writ of garnishment shall within fifteen days after the issuance of the writ make his return showing how he has executed the writ.

11. Failure of garnishee to answer.—If the garnishee fails to make answer to the writ on or before ten o'clock a. m. of the Monday next following the expiration of twenty-five days from the date of the writ, he shall be in default and it shall be lawful for the court, at any time after judgment shall have been rendered against the defendant, to render judgment by default against such garnishee for the full amount of such judgment against the defendant, with all accruing interest and costs. The plaintiff in garnishment shall have fifteen days after the garnishee's answer is filed within which to controvert the same if he so desires.

12. Other writs and process.—All other writs and process not expressly otherwise provided for in this article and which under the general law are now returnable to the first day of the next term of court after the issuance thereof, and which require the defendant or person served to appear on the first day of the next succeeding term, shall be returnable fifteen days after the date thereof and shall be executed and returned at or before the expiration of fifteen days from the date thereof and shall require the defendant or party served to appear and answer at or before ten o'clock a. m. of the Monday next after the expiration of twenty-five days after such writ or process was issued, and all such writs or process shall so specify.

13. Appealed cases.—In cases appealed to said district courts from inferior courts, the appeal, including transcript, shall be filed in the district court within thirty days after the rendition of the judgment or order appealed from, and the appellee shall enter his appearance on the docket or answer to said appeal on or before ten o'clock a. m. of the Monday next after the expiration of twenty days from the date the appeal is filed in the district court.

14. Pleas of privilege.—Pleas of privilege shall be filed at or before the time the defendant is required to answer and a contest thereof if any, shall be filed within twenty days after the appearance day, and if a contest is filed, the same shall, when filed, be set for hearing by the court within not exceeding thirty days after being filed and shall be determined by the court with-

in not exceeding ten days after the date for which the same is set unless postponed or continued without prejudice, by order or leave of the court, by agreement of the parties, and shall not be postponed longer than sixty days after being filed unless by order of the court entered by agreement of the parties.

15. Amended pleadings.—Whenever any party files a pleading of any character, he shall at the same time either deliver to the adverse party, or deposit with the clerk for the adverse party, a copy of such pleading, which copy shall not be filed by the clerk. All filed pleadings shall remain at all times in the clerk's office or in the court or in custody of the clerk, except that the court may by order entered on the minutes allow a filed pleading to be withdrawn for a limited time whenever necessary on leaving a certified copy on file. The party withdrawing such pleading shall pay the costs of such order and certified copy.

16. Where more than one adverse party.—If there is more than one adverse party and the adverse parties are represented by different attorneys, one copy of each pleading shall on request be furnished to each attorney representing the adverse parties, but a firm or attorneys associated in the case shall count as one. Not more than four copies of any pleading shall be required to be furnished to adverse parties and they shall be delivered to the first four applicants entitled thereto. After a copy of a pleading is furnished to an attorney or deposited with the clerk for him, he cannot require another copy of the same pleading to be furnished to him.

17. Failure to furnish copy.—If any party fails to furnish the adverse party with a copy of any pleading in accordance with this provision, he may be required to do so by order of the court on motion made and given, and if he fails to comply with any such order within five days after its date, he may be punished as for contempt of court, and a certified copy may be ordered to be furnished by the clerk and the costs thereof charged to the party who had failed to comply with the order to furnish the same.

18. Setting cases for trial, etc.—On the first Monday in each calendar month the judge of each court may, and as far as practicable shall, set for trial during the calendar month next after the month during which the setting is made, all contested cases which are requested to be set, and by agreement of the parties, or on motion of either party, or on the courts own motion with notice to the parties, the court may set any case for trial at any time so as to allow the parties reasonable time for preparation. Non-contested cases may be tried or disposed of at any time whether set or not, and may be set at any time for any other time.

19. Postponement or continuance.—Cases may be postponed or continued by agreement with the approval of the court, or upon the court's own motion or for cause. When a case is called for trial and only one party is ready, the court may for good

cause either continue the case for the term or postpone and reset it for a later day in the same or succeeding term.

20. Cases may be reset.—A case that is set and reached for trial may be postponed for a later day in the term or continued and reset for a day certain in the succeeding term on the same grounds as an application for continuance would be granted in other district courts. After any case has been set and reached in its due order and called for trial two or more times and not tried, the court may dismiss the same unless the parties agree to a postponement or continuance but the court shall respect written agreements of counsel for postponement and continuance if filed in the case when or before it is called for trial unless to do so will unreasonably delay or interfere with other business of the court.

21. Exchange and transfer.—The judges of such courts may, in their discretion, exchange benches or districts from time to time, and may transfer cases and other proceedings from one court to another, and any of them may in his own court room try and determine any case or proceeding pending in another court without having the case transferred, or may sit in any other of said courts and there hear and determine any case there pending, and every judgment and order shall be entered in the minutes of the court in which the case is pending and at the time the judgment or order is rendered, and two or more judges may try different cases in the same court at the same time, and each may occupy his own court room or the room of any other court. The judge of any such court may issue restraining orders and injunctions returnable to any other judge or court, and any judge may transfer any case or proceeding pending in his court to any other of said courts, and the judge of any court to which a case or proceeding is transferred shall receive and try the same, and in turn shall have power in his discretion to transfer any such case to any other of said courts and any other judge may in his court room try any case pending in any other of such courts.

22. Cases transferred to judges not occupied.—When the judge of any such court shall become disengaged, he shall notify the presiding judge, and the presiding judge shall transfer to the court of the disengaged judge the next case which is ready for trial in any of said courts. Any judge not engaged in his own court may try any case in any other court.

23. Judge disqualified.—If a judge of any court is disqualified in any case pending in his court, and his disqualification is certified to the Governor, the Governor may require the judge of any other of such courts to exchange benches or districts with the disqualified judge, and may, at any time, require any of such judges to exchange districts with each other or with any other district judge. In case of the absence, sickness or disqualification of any judge, any other of said judges may hold court for him or may transfer from his court to any other of

said courts any case or proceeding then pending in the court of said absent, sick or disqualified judge.

24. Judge may hear only part of case.—Any judge may hear any part of any case or proceeding pending in any of said courts and determine the same, or may hear and determine any question in any case, and any other judge may complete the hearing and render judgment in the case.

25. Any judge may hear dilatory pleas, etc.—Any judge may hear and determine demurrers, motions, petitions for injunction, applications for appointment of receivers, interventions, pleas of privilege, pleas in abatement, all dilatory pleas, motions for new trial and all preliminary matters, questions and proceedings and may enter judgment or order thereon in the court in which the case is pending without having the case transferred to the court of the judge acting, and the judge in whose court the case is pending may thereafter proceed to hear, complete and determine the case or other matter, or any part thereof, and render final judgment therein. Any judgment rendered or action taken by any judge in any of said courts in the county, shall be valid and binding.

26. Selection of presiding judge.—The judges of such courts shall twice a year, in January and July select one of their number as presiding judge and may at any time cancel and annul such selection and select any other judge as presiding judge. Each such proceeding shall be by majority vote. Each judge shall enter on his minutes an order reciting the selection of the presiding judge. The presiding judge may assign any case in his court or any of such courts in the county to any other judge or court, or may assign any judge to try any case in any of the courts, and the judge in whose court an assigned case is pending shall transfer the case to the court to which it is assigned, and the judge of the court to which it is assigned shall receive and try the case, and such judge shall hold any other court or try any case which he is requested by the presiding judge to try.

27. Judges may make rules.—The judges may by majority vote make rules for the calling of the docket, for the setting and postponement of cases, for the hearing and acting upon motions, questions of law, applications for injunctions and receivers, and for classifying and distributing cases and for having one calendar for all set cases in all courts and for prescribing when the different courts shall have jury trials and when they shall have non-jury trials, and such other rules as they deem advisable to facilitate the dispatch of business. All rules made by said judges shall be adopted by order of each judge and spread upon the minutes of his court, but such rules shall not be inconsistent with any rule adopted or prescribed by the Supreme Court, nor in conflict with any law of this State.

28. Motion for new trial.—A motion for new trial filed during one term of court may be heard and acted on at the next term of court. If a case or other matter is on trial or in process of

hearing when the term of court expires, such trial, hearing or other matter may be proceeded with at the next term of the court. No motion for new trial or other motion or plea shall be considered as waived or over-ruled, because not acted on at the term of court at which it was filed, but may be acted on at the succeeding term or at any time which the judge may fix or to which it may have been postponed or continued by agreement of the parties with leave of the court. All motions and amended motions for new trials shall be presented within thirty days after the original motion or amended motion is filed and shall be determined within not exceeding forty-five days after the original or amended motion is filed, unless by written agreement of the parties filed in the case, the decision of the motion is postponed to a later date.

29. Time to file motion for new trial.—A motion for new trial where required shall be filed within ten days after the judgment is rendered or other order complained of is entered, and may be amended by leave of the court at any time before it is acted on within twenty days after it is filed.

30. Judgment final, when.—Judgments of such civil district courts shall become as final after the expiration of 30 days after the date of judgment or after a motion for a new trial is overruled as if the term of court had expired. After the expiration of thirty days from the date the judgment is rendered or motion for new trial is overruled, the judgment cannot be set aside except by bill of review for sufficient cause, filed within the time allowed by law for the filing of bills of review in other district courts.

31. Appeal bonds filed, when.—In appeals from such civil district courts the appeal bond shall be filed within thirty days after the judgment or order appealed from is rendered, if no motion for new trial is filed, and if a motion for new trial is filed, the appeal bond shall be filed within thirty days after the motion for new trial is overruled. In such appeals the statement of facts and bills of exception shall be filed within ninety days after the judgment is rendered if there is no motion for new trial, but if there is a motion for new trial then ninety days after motion for new trial is overruled. When a statement of facts or bills of exception is presented to the adverse party or his attorney it shall be returned within five days signed by the attorney of such adverse party if found correct, and if found incorrect shall be returned within that time with a written statement of the objections thereto. [Acts 1923, p. 215.]

Art. 2093. Rules in other courts apply.—All inconsistent laws and rules of practice and procedure shall be inoperative in the civil district courts of the class included within this chapter, but shall not be affected by this law in so far as they relate to other district courts. All laws and rules of practice and procedure provided for other district courts shall continue in effect and operate and be observed in the civil district courts of the class covered by this law. In all trials and proceedings not provided for herein, the general rules of practice and procedure

provided for in other district courts shall be the rules of practice and procedure in the civil district courts of the class included herein. [Id.]

CHAPTER SEVEN.

THE JURY.

1. JURIES IN CERTAIN COUNTIES.

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|--------------------------------|--------------|---------------------------------------|--------------|
| Selecting names for wheel..... | Article 2094 | Cards to be used again..... | Article 2099 |
| Cards put in wheel..... | 2095 | Loss of wheel..... | 2100 |
| Cards drawn from wheel..... | 2096 | Interchangeable juries..... | 2101 |
| List certified..... | 2097 | Jury quarters..... | 2102 |
| List delivered to clerk..... | 2098 | Reducing number in general panel..... | 2103 |

Art. 2094. [5151] Selecting names for wheel.—Between the first and fifteenth days of August of each year, in all counties having therein a city containing a population aggregating twenty thousand or more people, as shown by the preceding Federal census, the tax collector or one of his deputies, together with the tax assessor or one of his deputies, together with the sheriff or one of his deputies, and the county clerk or one of his deputies, shall meet at the court house of their county and select from the list of qualified jurors of such county as shown by the tax lists in the tax assessor's office for the current year, the jurors for service in the district and county courts of such county for the ensuing year in the manner hereinafter provided. [Acts 1907, p. 269; Acts 1911, p. 150.]

Art. 2095. [5152-3] Cards put in wheel.—Said officers shall write the names of all men who are known to be qualified jurors under the law, residing in their respective counties, on separate cards of uniform size and color, writing also on said cards, whenever possible, the post-office address of each juror so selected. The cards containing said names shall be deposited in a circular hollow wheel, to be provided for such purpose by the commissioners court of the county. Said wheel shall be made of iron or steel and shall be so constructed as to freely revolve on its axle; and shall be kept locked at all times, except when in use as hereinafter provided, by the use of two separate locks, so arranged that the key to one will not open the other lock; and said wheel, and the clasps thereto attached into which the locks shall be fitted, shall be so arranged that said wheel cannot be opened unless both of said locks are unlocked at the time the wheel is opened. The keys to such locks shall be kept, one by the sheriff and the other by the district clerk. The sheriff and the clerk shall not open such wheel, nor permit the same to be opened by any person, except at the time and in the manner and by the persons herein specified; but said sheriff and clerk shall keep such wheel, when not in use, in a safe and secure place, where the same cannot be tampered with. [Acts 1907, p. 269.]

Art. 2096. [5154] Cards drawn from wheel.—Not less than ten days prior to the first day of a term of court, the district clerk or one of his deputies, and the sheriff, or one of his deputies, in the presence and under the direction of the district judge, if the jurors are to be drawn for

the district court, or the clerk of the county court, or one of his deputies, and the sheriff, or one of his deputies, in the presence and under the direction of the county judge, if the jurors are to be drawn for the county court, shall draw from the wheel containing the names of jurors, after the same has been well turned so that the cards therein are thoroughly mixed, one by one the names of thirty-six jurors, or a greater or less number where such judge has so directed, for each week of the term of the district or county courts for which a jury may be required, and shall record such names as they are drawn upon as many separate sheets of paper as there are weeks for such term or terms for which jurors will be required. At such drawing, no person other than those above named shall be permitted to be present. The officers attending such drawing shall not divulge the name of any person that may be drawn as a juror to any person. [Id.]

Art. 2097. [5155] **List certified.**—The several lists of names so drawn, shall be certified under the hand of the clerk or the deputy doing the drawing, and the district or county judge in whose presence said names were drawn from the wheel, to be the list drawn by said clerk for the said several weeks, and shall be sealed up in separate envelopes indorsed, "List of petit jurors for the _____ week of the _____ term of the _____ court of _____ county," (filling in the blanks properly) and the clerk doing the drawing shall write his name across the seals of the envelopes and shall then immediately deliver the same to the judge in whose presence such names were drawn, or to his successor in office in case such judge dies before such delivery can be made to him. [Id.]

Art. 2098. [5156] **List delivered to clerk.**—The judge shall deliver such envelopes to the clerk, or one of his deputies, and shall in his discretion instruct the clerk to indorse on any of such envelopes that the jury for that week shall be summoned for some other day than Monday of said week, and the judge shall, at the same time, administer to the clerk and to each of his deputies an oath in substance as follows: "You and each of you do solemnly swear that you will not open the jury lists now delivered to you, nor permit them to be opened, until the time prescribed by law, nor communicate to any one the name or names of the men appearing on any of the jury lists, that you will not, directly or indirectly, converse or communicate with any one selected as juror concerning any case pending for trial in this court at its next term. So help you God." [Id.]

Art. 2099. [5157] **Cards to be used again.**—When the names are drawn for jury service, the cards containing such names shall be sealed in separate envelopes, indorsed, "Cards containing the names of jurors for the _____ week of the _____ term of the _____ court of _____ county," (filling in the blanks properly); and said envelopes shall be retained securely by the clerk, unopened, until after the jury has been impaneled for such week; and, after such jurors so impaneled have served four or more days, the envelopes containing

the cards bearing the names of the jurors for that week shall then be opened by the clerk, or his deputy, and those cards bearing the names of men who have not been impaneled and who have not served as many as four days, shall be immediately returned to the wheel by the clerk, or his deputy; and the cards bearing the names of the men serving as many as four days shall be put in a box provided for that purpose for the use of the officers who shall next select the jurors for the wheel. [Id.]

Art. 2100. [5158] **Loss of wheel.**—If the wheel containing the names of jurors be lost or destroyed, with the contents thereof, or if all the cards in said wheel be drawn out, such wheel shall immediately be refurnished, and cards bearing the names of jurors shall be placed therein immediately in accordance with this law, and the judge desiring jurors for a regular or special term of his court may have the same selected in accordance with the general jury laws if such new wheel cannot be furnished in time to comply with the provisions of the jury wheel law. [Id.]

Art. 2101. **Interchangeable juries.**—The provisions of this article shall be applicable only to such counties of this State as may now maintain three or more district courts, or in which three or more district courts may be hereafter established. A criminal court in any county with jurisdiction in felony cases shall be considered a district court within the meaning of this article. The "Interchangeable Jury Law" shall not apply to a selection of jurors in lunacy cases or in capital cases.

1. **Jury Wheel Law governs.**—The provisions of the seven preceding articles, commonly known as the "Jury Wheel Law", shall remain in full force in the counties which may be governed by this law, except as modified by the special provisions of this law.

2. **Organization and supervision.**—In each county under this law, the district judges shall meet together and determine approximately the number of jurors that are reasonably necessary for jury service in all the county courts at law, county courts and district courts of such county, for each week during the time said courts may hold during the year, and shall thereupon order the drawing of such number of jurors from the wheel for each of said weeks, said jury to be known as the general panel of jurors for service in all such courts of such county for the respective weeks for which they are designated to serve. A majority of said district judges are authorized to act in carrying out the provisions of this law; they may increase or diminish the number of jurors to be selected for any week, and shall order said jurors drawn for as many weeks in advance of service as they deem proper. From time to time they shall designate the judge to whom the general panel shall report for duty, and said judge, for such time as he is chosen to so act shall organize said juries and have immediate supervision and control of them. The said jurors so limited in number shall, after being regularly drawn from the wheel, be served by the sheriff to appear and report for jury service before said judge so designated, who shall hear the excuses of the said jury and swear them in for service

for the week that they are to serve to try all cases that may be submitted to them in any of said courts.

3. Used interchangeably.—Said jurors, when impaneled shall constitute a general panel for the week, for service as jurors in all county and district courts in said county, and shall be used interchangeably in all of the said courts. In the event of a deficiency of said jurors at any given time to meet the requirement of all said courts, the judge having control of said general panel for the week shall order such additional jurors to be drawn from the wheel as may be sufficient to meet such emergency, but such jurors shall act only as special jurors and shall be discharged as soon as their services are no further needed. Resort to the wheel shall be had in all cases to fill out the general panel, except where waived by the parties or their attorneys; provided that by written agreement entered into by all parties to any cause or suit, or the attorney of record in such suit or cause filed therein, the sheriff or other officer in attendance upon said court, may summon the jury needed, or any part of same, in such cause or suit by talesmen, without resorting to the jury wheel, and in such cause or suit said jurors so selected shall be paid as if regularly drawn from the jury wheel. [Acts 1917, p. 147; Acts 4th C. S. 1918, p. 136.]

Art. 2102. **Jury quarters.**—The commissioners court of each such county shall set apart for the use and convenience of said general panel some room or place in or near the court house, which shall be comfortably furnished and fitted up for them to stay when not required for actual jury service. Said quarters shall be occupied by said panel when not in service and they shall remain in or conveniently near thereto so as to be at all times subject to duty in any court when called for, without delaying the proceedings of such court. The sheriff shall assign one of his deputies to look after the said panel, call them when needed by the judges, provide for their wants and to have general custody and control of them when not in actual service. [Acts 1917, p. 147.]

Art. 2103. **Reducing number in general panel.**—When it becomes necessary to diminish the general panel for the week of its selection on account of lack of work in any court or for any other cause, the judge having supervision of said jury for the week shall designate the number to remain. He shall cause the clerk to draw from the names of the general panel the number required, and those jurors whose names are so drawn shall continue in service for the remainder of the week and the others excused. [Acts 1917, p. 147; Acts 4th C. S. 1918, p. 136.]

2. JURY COMMISSIONERS.

| | | | |
|--|--------------|----------------------------------|--------------|
| Appointment of jury commissioners..... | Article 2104 | Selecting jurors..... | Article 2110 |
| Failure to attend..... | 2105 | Drawing jurors..... | 2111 |
| Oath of jury commissioners..... | 2106 | Certified lists delivered..... | 2112 |
| Duties of jury commissioners..... | 2107 | Oath to clerk and deputies..... | 2113 |
| Failure to get jury..... | 2108 | List sent to county court..... | 2114 |
| Jury commissioners for county court..... | 2109 | List sent to district court..... | 2115 |
| | | Shall destroy lists..... | 2116 |

Art. 2104. [5122-23-24] **Appointment of jury commission-**

ers.—The district court of each county shall at each term thereof appoint three jury commissioners for said court, and shall cause the sheriff to notify them of their appointment and when and where they are to appear. Such commissioners shall possess the following qualifications:

1. Be intelligent citizens of the county and able to read and write.
2. Be qualified jurors and freeholders of the county.
3. Be residents of different portions of the county.
4. Have no suit in said court which requires the intervention of a jury.
5. The same person shall not act as jury commissioner more than once in the same year. [Acts 1876, p. 79; G. L. Vol. 8, p. 915.]

Art. 2105. [5125] [3148] [3020] **Failure to attend.**—One appointed jury commissioner who without reasonable excuse fails or refuses to attend and perform the duties required shall be fined by the court not less than twenty-five nor more than one hundred dollars. [Id.]

Art. 2106. [5126] [3149] [3021] **Oath of jury commissioners.**—When the appointees appear before the court, the judge shall administer to them the following oath: “You do swear faithfully to discharge the duties required of you as jury commissioners; that you will not knowingly elect any man as a jurymen whom you believe to be unfit and not qualified; that you will not make known to any one the name of any jurymen selected by you and reported to the court; that you will not, directly or indirectly, converse with any one selected by you as a jurymen concerning the merits of any case to be tried at the next term of this court until after such cause may be tried or continued, or the jury discharged.” [Id.]

Art. 2107. [5128-29-30-31] **Duties of jury commissioners.**—The judge shall instruct said commissioners as to their duties and designate to them for what weeks they shall select petit jurors and the number for each week. They shall retire in charge of the sheriff to some suitable room and be kept free from intrusion during their session, and shall not separate until they complete their duties. The clerk shall furnish them with all necessary stationery, and with a list of those appearing from the records of the court to be exempt or disqualified from serving on the petit jury at each term, and shall also deliver to them the envelope required by law for the placing therein of the names selected, and take their receipt therefor showing whether or not the seal remained unbroken. The last assessment roll of the county shall be furnished them by the legal custodian of the same. [Id.]

Art. 2108. [5127] [3150] [3022] **Failure to get jury.**—If from any cause, the jury commissioners should not be appointed at the time prescribed, or should fail to select jurors as required, or should the panels selected to be set aside, or the jury lists returned into the court be lost or destroyed, the court shall forth-

with proceed to supply a sufficient number of jurors for the term, and when deemed necessary may appoint jury commissioners for that purpose. [Id.]

Art. 2109. [5132-3-4] **Jury commissioners for county court.**—The county court shall, at its first term after the last day of December and the last day of June of each year, appoint three jury commissioners for said court, having the same qualifications as jury commissioners for the district court. The same proceedings shall be had in the county court by its officers and said commissioners to procure jurors as are required by this title for similar proceedings in the district court, except as modified by the provisions of this article.

1. Oath.—The oath to be administered to said commissioners shall be: “You swear faithfully to discharge the duties required of you as jury commissioners; that you will not knowingly elect any man as a jurymen whom you believe to be unfit and not qualified; that you will not make known to any one the name of any jurymen selected by you and reported to the court; that you will not, directly or indirectly, communicate with any one selected by you as a jurymen concerning the merits of any case to be tried by this court within the next six months, until said case shall have been tried or otherwise disposed of.”

2. To select jurors.—Said commissioners shall select jurors for all the terms of the county court to be held within six months after the adjournment of the first week of said court after the dates first named. The county judge shall designate the number of jurors to be so selected for each term and week. [Acts 1876, p. 81; G. L. Vol. 8, p. 917; Acts 1884, p. 27; G. L. Vol. 9, p. 559.]

Art. 2110. [5135] [3158] **Selecting jurors.**—The jury commissioners shall select from the citizens of the different portions of the county, liable to serve as jurors, one hundred persons, or a greater or less number if so directed by the court, free from all legal exceptions, of good moral character, of sound judgment, well-informed, and, so far as practicable, able to read and write, to serve as petit jurors at the next term, if in the district court, and for the next six months, if in the county court, and shall write the names of such persons on separate pieces of paper, as near the same size and appearance as may be, and fold the same so that the names cannot be seen. [Id.]

Art. 2111. [5136] [3159] [3031] **Drawing jurors.**—The names of the persons so written and folded shall be deposited in a box, and after being well shaken and mixed, the commissioners shall draw therefrom the names, one by one, of thirty-six persons, or a greater or less number where the judge has so directed, for each week of the term of the district court or terms of the county court for which a jury may be required, and shall record such names as they are drawn upon as many separate sheets of paper as there are weeks of such term or terms for which juries will be required. [Id.]

Art. 2112. [5138-39] **Certified lists delivered.**—The several lists of names drawn shall be certified under the hands of

the commissioners to be the lists drawn by them for the said several weeks, and shall be sealed in separate envelopes, indorsed, "List of petit jurors for the _____ week of the _____ term of the _____ court of _____ county," (filling in the blanks). The commissioners shall write their names across the seals of the envelopes and deliver them to the judge, who shall deliver them to the clerk, or to one of his deputies in open court, and the court may instruct the clerk to indorse on any of such envelopes that the jury for that week shall be summoned for some other day than Monday of said week. [Id.]

Art. 2113. [5140-41] **Oath to clerk and deputies.**—The judge shall at the same time administer to the clerk and each of his deputies an oath in substance as follows: "You do solemnly swear that you will not open the jury lists now delivered to you, nor permit them to be opened, until the time prescribed by law; that you will not directly or indirectly, converse or communicate with any one selected as a juror concerning any case pending for trial in this court at its next term," if in the district court; or if in the county court, "within the next six months." If for any reason such oath should not be administered to any of the deputies, or should the clerk subsequently appoint a deputy, the clerk shall administer to such deputy a like oath. [Id.]

Art. 2114. [5142-3-4-5] **List sent to county court.**—The district court commissioners shall make out for the use of the county court commissioners a complete list of the names of all persons selected by them as grand and petit jurors, and shall place said list in an envelope and seal the same and write their names across the seal; and shall address said envelope to the jury commissioners of the county court of the proper county and shall deliver the same to the district judge in open court. The judge shall immediately deliver said envelope to the county clerk or one of his deputies, at the same time administering to him this oath: "You do solemnly swear that you will, to the best of your ability, safely keep this envelope and that you will neither open the same nor allow it to be opened, except as provided by law; and that you will cause it to be delivered to the jury commissioners of the county court next hereafter appointed in and for this county." At the first term of the county court thereafter held, at which jury commissioners are appointed, said clerk shall deliver said envelope to the jury commissioners or one of them appointed at said term, and take a receipt therefor; and said receipt shall state whether the seal of said envelope be broken or not. After the jury commissioners appointed by said court have assembled for business, they shall open said envelope and read said list of names, and no person named on said list shall be selected as a juror by said commissioners. [Id.]

Art. 2115. [5146-7-8-9] **List sent to district court.**—The jury commissioners for the county court shall make out for the use of the jury commissioners of the district court a complete list of the names of all persons selected by them as jurors, and shall place said list in an envelope and seal the same, and write

their names across the seal, and address said envelope to the jury commissioners of the district court of the proper county, and shall deliver the same to the county judge in open court. The county judge shall immediately deliver said envelope to the district clerk, or one of his deputies, at the same time administering to him this oath: "You do solemnly swear that you will, to the best of your ability, safely keep this envelope and that you will neither open the same nor allow it to be opened, except as provided by law, and that you will cause it to be delivered to the jury commissioners of the district court next hereafter appointed in and for this county." At the first term of the district court thereafter held, said clerk shall deliver said envelope to the jury commissioners or one of them appointed at said term, and take a receipt therefor showing whether the seal of said envelope be broken or not. After the jury commissioners appointed at said term of the district court have assembled for business, they shall open said envelope and read said list of names, and no person named on said list shall be selected as juror by said commissioners. [Id.]

Art. 2116. [5150] [3173] [3045] **Shall destroy lists.**—The jury commissioners in both the district and county courts, before leaving the apartment in which they have selected jurors, shall destroy said list of names, and it shall be unlawful for them, or any of them, to make known to any person the name of any juror on said lists. [Id.]

3. JURY FOR THE WEEK.

| | Article | Article | |
|-----------------------------------|---------|------------------------|------|
| Summoning jurors..... | 2117 | Excuses of jurors..... | 2120 |
| Jury for the week..... | 2118 | Defaulting juror..... | 2121 |
| Oath to sheriff for talesmen..... | 2119 | Pay of jurors..... | 2122 |

Art. 2117. [5159-60] **Summoning jurors.** — Within not more than thirty days and not less than ten days prior to each term of the court, the clerk of the district and county courts, respectively, shall open the list of jurors selected for such term and make out a copy of the same, duly certified under his hand and the seal of his office, and deliver the same to the sheriff. Where the judge has directed that the jurors for any week shall be summoned for some other day than Monday, the clerk shall note such order for the information of the sheriff. On receipt of such lists, the sheriff shall immediately notify the several persons named therein to be in attendance on the court on the day and week for which they were respectively drawn to serve as jurors for said week. [Acts 1876, p. 171; G. L. Vol. 8, p. 1007.]

Art. 2118. [5165-6-7-8-9] **Jury for the week.**—On Monday of each week of the court for which a jury shall be summoned, and for which there may be jury trials, or where the jury trials for the week have been set for some other day, then on such day the court shall select thirty qualified jurors, or a greater or less number, in its discretion, to serve as jurors for the week. If such selection is not from any cause then made, it may be made on any later day. Such jurors shall be selected from the names

included in the jury list for the week, if there be the requisite number of such in attendance who are not excused by the court; if such number be not in attendance at any time, the court shall direct the sheriff to summon a sufficient number of qualified men to make up the requisite number of jurors. The court may adjourn the whole number of jurors for the week or any part thereof, to any subsequent day of the term, but the jurors shall not be paid for the time they may stand adjourned. [Id.]

Art. 2119. [5170] [3184] [3056] **Oath to sheriff for talesmen.**—Whenever it may be necessary to summon jurors who have not been selected by jury commissioners under the provisions of this title, the court shall administer to the sheriff and each of his deputies the following oath: “You do solemnly swear that you will, to the best of your skill and ability, and without bias or favor toward any party, summon such jurors as may be ordered by the court; that you will select none but impartial, sensible and sober men, having the qualifications of jurors under the law; that you will not, directly or indirectly, converse or communicate with any juryman touching any case pending for trial; and that you will not by any means attempt to influence, advise or control any juryman in his opinion in any case which may be tried by him. So help you God.” [Id.]

Art. 2120. [5171] [3185] [3057] **Excuses of jurors.**—The court may hear any reasonable sworn excuse of a juror, and may release him entirely or until some other day of the term. [Id.]

Art. 2121. [5172] [3186] [3058] **Defaulting juror.**—Any defaulting juror lawfully notified who without reasonable excuse fails to be in attendance on the court in obedience to such notice shall be fined not less than ten nor more than one hundred dollars. [Id.]

Art. 2122. [5218-19-20] **Pay of jurors.**—Each juror in the district or county court or county court at law shall receive three dollars for each day or fraction of a day that he may attend as such juror, to be paid out of the jury fund of the county by the county treasurer upon the certificate of the clerk of the court in which such service is rendered, stating the service, when and by whom rendered, and the amount due therefor. Such certificates may be transferred by delivery and shall be receivable at par from the holder for all county taxes. [Acts 1866, p. 201; G. L. Vol. 5, p. 1119; Acts 1919, p. 35.]

4. THE JURY IN COURT.

| | Article | | Article |
|----------------------------------|---------|--------------------------------------|---------|
| Right to jury..... | 2123 | Filing of exemptions..... | 2137 |
| Demand and fee..... | 2124 | Jury list in certain counties..... | 2138 |
| Time to demand..... | 2125 | Preparing jury list..... | 2139 |
| Call of docket for demand..... | 2126 | Delivery of jury list..... | 2140 |
| Oath of inability..... | 2127 | Summoning talesmen..... | 2141 |
| Jury docket..... | 2128 | Challenge to juror..... | 2142 |
| Jury trial day..... | 2129 | Challenge for cause..... | 2143 |
| Withdrawing demand for jury..... | 2130 | “Challenge for cause”..... | 2144 |
| Challenge to the array..... | 2131 | Questions not to be asked..... | 2145 |
| When challenge is sustained..... | 2132 | Number reduced by challenge..... | 2146 |
| Qualifications..... | 2133 | Making peremptory challenge..... | 2147 |
| Disqualification..... | 2134 | Number of peremptory challenges..... | 2148 |
| Jury service..... | 2135 | Lists returned to clerk..... | 2149 |
| Where several fire companies in | | If jury is incomplete..... | 2150 |
| one town, etc..... | 2136 | Swearing jury..... | 2151 |

Art. 2123. [5173] [3187] [3059] **Right to jury.**—The right

to trial by jury shall remain inviolate, subject to the following rules and regulations. [Const. Art. 1, Sec. 15.]

Art. 2124. [5174-80] **Demand and fee.**—No jury trial shall be had in any civil suit, unless an application therefor be made in open court, and a jury fee of five dollars if in the district court, and three dollars if in the county court, be deposited by the applicant with the clerk to the use of the county. [Acts 1876, p. 171; G. L. Vol. 8, p. 1007.]

Art. 2125. [5175] [3189] [3061] **Time to demand.**—Any party to a civil suit in the district or county court desiring to have the same tried by jury, shall make an application therefor in open court on the first day of the term at which the suit is to be tried, unless the same be appearance day, in which event the application shall be made on default day. [Id.]

Art. 2126. [5178-9] **Call of docket for demand.**—On the first day of each term, the court shall call over the docket, except appearance cases, and shall note therein in each case whether or not a jury trial is applied for therein and by which party. On the call of the appearance docket, the court shall in like manner note in each appearance case whether or not and by whom a jury trial is applied for. [Id.]

Art. 2127. [5181-3] **Oath of inability.**—The deposit for a jury fee shall not be required when the party shall within the time for making such deposit, file with the clerk his affidavit to the effect that he is unable to make such deposit, and that he can not, by the pledge of property or otherwise, obtain the money necessary for that purpose; and the court shall then order the clerk to enter the suit on the jury docket. [Acts 1876, p. 171; G. L. Vol. 8, p. 1007.]

Art. 2128. [5184] [3198] [3070] **Jury docket.**—The clerks of the district and county courts shall each keep a docket, styled "The Jury Docket," in which shall be entered in their order the cases in which jury trials have been ordered by the court. [Id.]

Art. 2129. [5185] [3199] [3071] **Jury trial day.**—The court shall, by an order entered on the minutes, designate any day during the term for the taking up of the jury docket and the trial of the cases thereon. Such order may be revoked or changed at discretion. [Acts 1876, p. 78; G. L. Vol. 8, p. 914.]

Art. 2130. [5186-7] **Withdrawing demand for jury.**—When one party has applied for a jury trial, he shall not be permitted to withdraw such application without the consent of the parties adversely interested. If so permitted, the court in its discretion may by an order permit him to withdraw also his jury fee deposit. [Id.]

Art. 2131. [5188-89-90-91] **Challenge to the array.**—Any party to a suit which is to be tried by a jury may, before the jury is drawn, challenge the array upon the ground that the officer summoning the jury has acted corruptly, and has wilfully summoned jurors known to be prejudiced against the party challenging or biased in favor of the adverse party. All such challenges must be in writing setting forth distinctly the grounds of such challenge and supported by the affidavit of the party or

some other credible person. When such challenge is made, the court shall hear evidence and decide without delay whether or not the challenge shall be sustained. This article does not apply when the jurors summoned have been selected by jury commissioners. [Id.]

Art. 2132. [5192] [3206] [3078] **When challenge is sustained.**—If the challenge be sustained, the array of jurors summoned shall be discharged, and the court shall order other jurors summoned in their stead, and shall direct that the officer who summoned the persons so discharged, and on account of whose misconduct the challenge has been sustained, shall not summon any other jurors in the case. [Id.]

Art. 2133. [5114-15-16] **Qualifications.**—All men over twenty-one years of age are competent jurors, unless disqualified under some provision of this chapter. No man shall be qualified to serve as a juror who does not possess the following qualifications:

1. He must be a citizen of the State and of the county in which he is to serve, and qualified under the constitution and laws to vote in said county; provided, that his failure to pay poll tax as required by law shall not be held to disqualify him for jury service in any instance.

2. He must be a freeholder within the State, or a householder within the county.

3. He must be of sound mind and good moral character.

4. He must be able to read and write, except in cases provided for in the succeeding article.

5. He must not have served as a juror for six days during the preceding six months in the district court, or during the preceding three months in the county court.

6. He must not have been convicted of felony.

7. He must not be under indictment or other legal accusation of theft or of any felony. Whenever it shall be made to appear to the court that the requisite number of jurors able to read and write cannot be found within the county, the court may dispense with the exception provided for in the fourth subdivision and the court may in like manner dispense with the exception provided for in the fifth subdivision, when the county is so sparsely populated as to make its enforcement seriously inconvenient. [Acts 1905, p. 207; G. L. Vol. 8, p. 914.]

Art. 2134. [5117] [3141] [3012] **Disqualification.**—The following persons shall be disqualified to serve as jurors in any particular case:

1. Any witness in the case.

2. Any person interested, directly or indirectly, in the subject matter of the suit.

3. Any person related by consanguinity or affinity within the third degree to either of the parties to the suit.

4. Any person who has a bias or prejudice in favor of or against either of the parties.

5. Any person who has sat as a petit juror in a former trial

of the same, or of another case, involving the same questions of fact. [Acts 1876, p. 83; G. L. Vol. 8, p. 914.]

Art. 2135. [5118] [3142] [3013] **Jury service.**—All competent jurors are liable to jury service, except the following persons:

1. All persons over sixty years of age.
2. All civil officers of this State and of the United States.
3. All overseers of roads.
4. All ministers of the gospel engaged in the active discharge of their ministerial duties.
5. All physicians and attorneys engaged in actual practice.
6. All publishers of newspapers, school masters, druggists, undertakers, telegraph operators, railroad station agents, ferry-men, and all millers engaged in grist, flouring and saw mills.
7. All presidents, vice-presidents, conductors and engineers of railroad companies when engaged in the regular and actual discharge of their respective positions.
8. Any person who has acted as a jury commissioner within the preceding twelve months.
9. All members of the national guard of this State under the provisions of the title "Militia."
10. In cities and towns having a population of fifteen hundred or more inhabitants, according to the last preceding United States census, the active members of organized fire companies, not to exceed twenty to each one thousand of such inhabitants. [Id.]

Art. 2136. [5119] [3143] **Where several fire companies in one town.**—If there be more than one organized fire company in such town or city, the whole number of exemptions provided under Subdivision Ten of the preceding article shall be equally divided between such companies. Before such exemption of any of such fire company shall be made available, the members to be exempted shall be selected by their respective companies; and their names shall be handed in to the clerks of the district and county courts, respectively, by the chief of the fire department of such city or town, or in case there be no such officer, then by the foreman of the company. [Id.]

Art. 2137. [5121] **Filing of exemptions.**—All persons summoned as jurors in any court of this State, who are exempt by statutory law from jury service, may, if they so desire to claim their exemptions, make oath before any officer authorized by law to administer oaths, or before the officers summoning such persons, stating their exemptions, and file said affidavit at any time before the convening of said court with the clerk of said court, which shall constitute sufficient excuse without appearing in person. [Acts 1907, p. 216.]

Art. 2138. **Jury list in certain counties.**—In counties governed as to juries by the laws providing for interchangeable juries, the names of the panel shall be placed upon the general panel in the order in which they are drawn from the wheel, and jurors shall be assigned for service from the top thereof, in the order in which they shall be needed, and jurors returned to the

general panel after service in any of such courts shall be enrolled at the bottom of the list in the order of their respective return, provided, however, that the trial judge upon the demand of any party to any case reached for trial by jury, or of the attorney for any such party, shall cause the names of all the members of the general panel available for service as jurors in such case to be placed in a hat or other receptacle and well-shaken, and said trial judge shall draw therefrom the names of a sufficient number of jurors from which a jury may be selected to try such case, and such names shall be transcribed in the order drawn on the jury list from which the juror is to be selected to try such case. [Acts 1917, p. 147, Acts 1919, p. 6.]

Art. 2139. [5202-3] **Preparing jury list.**—When the parties have announced ready for trial, the clerk shall write the name of each regular juror entered of record for that week on separate slips of paper, as near the same size and appearance as may be, and shall place the slips in a box and mix them well. [Acts 1876, p. 78; G. L. Vol. 8, p. 914.]

Art. 2140. [5204] [3218] [3090] **Delivery of jury list.**—The clerk shall draw from the box, in the presence of the court, the names of twenty-four jurors, if in the district court, or so many as there may be, if there be a less number in the box; and the names of twelve jurors, if in the county court, or so many as there may be, and write the names as drawn upon two slips of paper and deliver one slip to each party to the suit or his attorney. [Id.]

Art. 2141. [5205] [3219] [3091] **Summoning talesmen.**—When there are not as many as twelve names drawn from the box, if in the district court, or if in the county court, as many as six, the court shall direct the sheriff to summon such number of qualified persons as the court deems necessary to complete the panel. The names of those thus summoned shall be placed in the box and drawn and entered upon the slips as provided in the preceding articles. [Id.]

Art. 2142. [5193-5200-1] **Challenge to juror.**—A challenge to a particular juror is either a challenge for cause or a peremptory challenge. The court shall decide without delay any such challenge, and if sustained, the juror shall be discharged from the particular case. Either such challenge may be made orally on the formation of a jury to try the case. [Id.]

Art. 2143. [5206] [3220] [3092] **Challenge for cause.**—When twelve or more jurors, if in the district court, or six or more, if in the county court, are drawn, and the lists of their names delivered to the parties, if either party desires to challenge any juror for cause, the challenge shall now be made. The name of a juror challenged and set aside for cause shall be erased from such lists. [Id.]

Art. 2144. [5194-5] **“Challenge for cause.”**—A challenge for cause is an objection made to a juror, alleging some fact which by law disqualifies him to serve as a juror in the case or in any case, or which in the opinion of the court, renders him an unfit person to sit on the jury. Upon such challenge the ex-

amination is not confined to the answers of the juror, but other evidence may be heard for or against the challenge. [Id.]

Art. 2145. [5196] [3210] [3082] **Certain questions not to be asked.**—In examining a juror, he shall not be asked a question the answer to which may show that he has been convicted of an offense which disqualifies him, or that he stands by some legal accusation with theft or any felony. [Id.]

Art. 2146. [5207] [3221] [3093] **Number reduced by challenge.**—If the challenges reduce the number of jurors to less than will constitute a legal jury, the court shall order other jurors to be drawn or summoned and their names written upon the list instead of those set aside for cause. [Id.]

Art. 2147. [5197-5208] **Making peremptory challenge.**—If there remain on such lists not subject to challenge for cause, twelve names, if in the district court, or six names if in the county court, the parties shall proceed to make their peremptory challenges. A peremptory challenge is made to a juror without assigning any reason therefor. [Id.]

Art. 2148. [5198-99] **Number of peremptory challenges.**—Each party to a civil suit shall be entitled to six peremptory challenges in a case tried in the district court, and to three in the county court. [Acts Dec. 1, 1871, p. 61; G. L. Vol. 7, p. 63.]

Art. 2149. [5209] [3223] [3095] **Lists returned to clerk.**—When the parties have made or declined to make their peremptory challenges, they shall deliver their lists to the clerk. The clerk shall, if the case be in the district court, call off the first twelve names on the lists that have not been erased; and if the case be in the county court, he shall call off the first six names on the lists that have not been erased; those whose names are called shall be the jury. [Acts 1876, p. 78; G. L. Vol. 8, p. 914.]

Art. 2150. [5210] [3224] [3096] **If jury is incomplete.**—When by peremptory challenges the jury is left incomplete, the court shall direct other jurors to be drawn or summoned to complete the jury; and such other jurors shall be impaneled as in the first instance. [Id.]

Art. 2151. [5211] [3225] [3097] **Swearing jury.**—When the jury has been selected, such of them as have not been previously sworn for the trial of civil cases, shall be sworn by or under the direction of the court.

CHAPTER EIGHT.

TRIAL OF CAUSES.

1. APPEARANCE AND PROCEDURE.

| | Article | | Article |
|--|---------|--------------------------------------|---------|
| Appearance day..... | 2152 | Guardian ad litem..... | 2159 |
| Call of appearance docket..... | 2153 | Consolidation of suits..... | 2160 |
| Judgment by default..... | 2154 | Suits called in order..... | 2161 |
| Where only some answer..... | 2155 | Tried when called..... | 2162 |
| Assessing damages on liquidated demands..... | 2156 | Day set for jury docket..... | 2163 |
| On unliquidated demands..... | 2157 | Jury cases..... | 2164 |
| On service by publication..... | 2158 | Call of non jury docket..... | 2165 |
| | | Issue of law and dilatory pleas..... | 2166 |

Art. 2152. [1934] [1280] [1280] **Appearance day.**—The second day of each term of the district or county court is termed appearance day. [Acts 1891, p. 94.]

Art. 2153. [1935] [1281] [1281] **Call of appearance docket.**—On appearance day of each term, or as soon thereafter as practicable, the court shall call, in their order, all the cases on the docket which are returnable to such term.

Art. 2154. [1936] [1282] [1282] **Judgment by default.**—Upon the call of the appearance docket, or at any time after appearance day, the plaintiff may take judgment by default against any defendant who has been duly served with process and who has not previously filed an answer. [Acts 1846, p. 363; P. D. 1508; G. L. Vol. 2, p. 1669.]

Art. 2155. [1937] [1283] [1283] **Where only some answer.**—Where there are several defendants, some of whom have answered and others have made default, an interlocutory judgment by default may be entered against those who have not answered and the cause may proceed against the others. [Id; P. D. 1450.]

Art. 2156. [1938] [1284] [1284] **Assessing damages on liquidated demands.**—Where a judgment by default is rendered against the defendant, or all of several defendants, if the cause of action is liquidated and proved by an instrument in writing, the damages shall be assessed by the court, or under its direction, and judgment final shall be rendered therefor, unless the defendant shall demand and be entitled to a trial by jury. [Id.]

Art. 2157. [1939-40] [1285-86] [1285-86] **On unliquidated demands.**—If the cause of action is unliquidated or be not proved by an instrument in writing, the court shall hear evidence as to damages and shall render judgment therefor, unless the defendant shall demand and be entitled to a trial by jury in which case the judgment by default shall be noted, a writ of inquiry awarded, and the cause entered on the jury docket. [Id.]

Art. 2158. [1941] [1346] [1212-1345] **On service by publication.**—Where service has been made by publication, and no answer has been filed nor appearance entered within the time prescribed by law, the court shall appoint an attorney to defend the suit in behalf of the defendant, and judgment shall be rendered as in other cases; but, in every such case, a statement of the evidence, approved and signed by the judge, shall be filed with the papers of the cause as a part of the record thereof. The court shall allow such attorney a reasonable fee for his services, to be taxed as part of the costs. [Acts 1846, p. 363; Acts 1866, p. 125; P. D. 1488, 26; G. L. Vol. 2, p. 1669; G. L. Vol. 5, p. 1143.]

Art. 2159. [1942] [1211] [1211] **Guardian ad litem.**—When a minor, lunatic, idiot or a non compos mentis may be a defendant to a suit, and such minor, lunatic, idiot or person non compos mentis has no guardian within the State, the court shall appoint a guardian ad litem for such person for the purpose of defending the suit, and allow him a reasonable fee for his services, to be taxed as a part of the costs. [Acts 1895, p. 80; Acts 1884, p. 374; P. D. 1446; G. L. Vol. 2, p. 1669.]

Art. 2160. [2182] [1454] [1450] **Consolidation of suits.**—Whenever several suits may be pending in the same court, by the same plaintiff, against the same defendant, for causes of action

which may be joined, or where several suits are pending in the same court, by the same plaintiff, against several defendants, which may be joined, the court in which the same are pending may, in its discretion, order such suits to be consolidated. [Acts 1846, p. 375; G. L. Vol. 2, p. 1681.]

Art. 2161. [1943] [1287] [1287] **Suits called in order.**—All cases in which final judgment has not been rendered by default shall be called for trial in the order in which they stand on the docket unless otherwise ordered by the court. [Acts 1846, p. 363; G. L. Vol. 2, p. 1669.]

Art. 2162. [1944] [1288] [1288] **Tried when called.**—Every suit shall be tried when it is called, unless it be continued or postponed to a future day of the term to be placed at the end of the docket to be called again for trial in its regular order. [Id.]

Art. 2163. [1945] [1289] [1289] **Day set for jury docket.**—The court shall, by an order entered on the minutes, designate a day of the term for calling for trial the causes on the jury civil docket at all subsequent terms, until changed by a like order; but, in case of change, it shall not take effect until the succeeding term of said court. [Acts 1881, p. 5; G. L. Vol. 9, p. 97.]

Art. 2164. [1945] [1289] [1289] **Jury cases.**—Where juries have been demanded, questions of law, demurrers, exceptions to pleadings, etc., shall, as far as practicable, be heard and determined by the court before the day designated for the trial, and jurors shall be summoned to appear on the day of the term so designated. [Id.]

Art. 2165. [1946] [1290] [1290] **Call of non-jury docket.**—The non-jury docket shall be taken up at such times as not unnecessarily to interfere with the dispatch of business on the jury docket.

Art. 2166. [1947] [1291] [1291] **Issue of law and dilatory pleas.**—When a case is called for trial, the issues of law arising on the pleadings, all pleas in abatement and other dilatory pleas remaining undisposed of shall be determined; and it shall be no cause for postponement of a trial of the issues of law that a party is not prepared to try the issues of fact. [Acts 1846, p. 363; G. L. Vol. 2, p. 1669.]

2. CONTINUANCE AND CHANGE OF VENUE.

| Article | Article |
|--|------------------------------------|
| Continuance _____ 2167 | Shall be granted _____ 2171 |
| Application for continuance _____ 2168 | To what county _____ 2172 |
| Change of venue by consent _____ 2169 | In case of new counties _____ 2173 |
| Granted on application _____ 2170 | Transcript on change _____ 2174 |

Art. 2167. [1917] [1276] [1276] **Continuance.**—No application for a continuance shall be heard before the defendant files his defense, nor shall any continuance be granted except for sufficient cause supported by affidavit, or by consent of the parties, or by operation of law. [Acts 1848, p. 109; P. D. 1509; G. L. Vol. 3, p. 109.]

Art. 2168. [1918] [1278] [1278] **Application for continuance.**—If the ground of such application be the want of testimony, the party applying therefor shall make affidavit that such

testimony is material, showing the materiality thereof, and that he has used due diligence to procure such testimony, stating such diligence, and the cause of failure, if known; that such testimony cannot be procured from any other source; and, if it be for the absence of a witness, he shall state the name and residence of the witness, and what he expects to prove by him; and also state that the continuance is not sought for delay only, but that justice may be done; provided that, on a first application for a continuance, it shall not be necessary to show that the absent testimony cannot be procured from any other source. [Acts 1897, p. 117; G. L. Vol. 10, p. 1171.]

Art. 2169. [1911] [1270] [1270] **Change of venue by consent.**—Upon the written consent of the parties filed with the papers of the cause, the court, by an order entered on the minutes, may transfer the same for trial to the court of any other county having jurisdiction of the subject matter of such suit. [Acts 1876, p. 25; G. L. Vol. 8, p. 861.]

Art. 2170. [1912] [1271] [1271] **Granted on application.**—A change of venue may be granted in civil causes upon application of either party, supported by his own affidavit and the affidavit of at least three credible persons, residents of the county in which the suit is pending, for any following cause:

1. That there exists in the county where the suit is pending so great a prejudice against him that he cannot obtain a fair and impartial trial.

2. That there is a combination against him instigated by influential persons, by reason of which he cannot expect a fair and impartial trial.

3. For other sufficient cause, to be determined by the court. [Acts 1874, p. 67; P. D. 5885a; G. L. Vol. 8, p. 69.]

Art. 2171. [1913] [1272] [1272] **Shall be granted.**—Where such application for a change of venue is duly made, it shall be granted, unless the credibility of those making such application, or their means of knowledge or the truth of the facts set out in the said application are attacked by the affidavit of a credible person; when thus attacked, the issue thus formed shall be tried by the judge, and the application either granted or refused. [Id; P. D. 5885d; Acts 1893, p. 2; G. L. Vol. 10, p. 432.]

Art. 2172. [1914] [1273] [1273] **To what county.**—If the application is granted, the cause shall be removed to an adjoining county, the court house of which is nearest the court house of the county in which the suit is pending, unless it appears in the application that such nearest county is subject to some objection sufficient to authorize a change of venue therefrom in the first instance; but the parties may, by consent, agree that it shall be changed to some other county, and the order of court shall conform to such agreement. [Id.]

Art. 2173. [1915] [1274] [1274] **In case of new counties.**—When a suit is pending in the district or county court of any county, out of the territory of which a new county has been or may be made, in whole or in part, if the defendants or any one of them, shall file a motion in the court where such

suit is pending, to transfer the same to such new county, naming it, together with an affidavit stating that neither he nor any one of the defendants now resides in the territorial limits of the county where such suit is pending, and that neither he nor any one of the defendants resided in said territorial limit at the time the suit was instituted, and further stating that at the date of the filing of such suit, said defendant was a resident citizen within the territorial limits of the new county, the court shall grant a change of venue to such new county, unless the suit could be properly brought in the county in which the same is pending under some provision of law. [Acts 1876, p. 74; G. L. Vol. 8, p. 910.]

Art. 2174. [1916] [1275] [1275] **Transcript on change.**—When a change of venue has been granted, the clerk shall immediately make out a correct transcript of all the orders made in said cause, certifying thereto officially under the seal of the court, and send the same, with the original papers in the cause, to the clerk of the court to which the venue has been changed.

3. THE TRIAL.

| | | | |
|---------------------------|--------------|--|--------------|
| Obsolete procedure..... | Article 2175 | Order of proceedings on trial by jury..... | Article 2180 |
| Trial by the court..... | 2176 | Additional testimony..... | 2181 |
| Agreed case..... | 2177 | Non-suit..... | 2182 |
| Appeal tried de novo..... | 2178 | Order of argument..... | 2183 |
| Oath to jury..... | 2179 | | |

Art. 2175. [2181] [1451] [1447] **Obsolete procedure.**—All vouchers, views, essoins, and also trials by wager of battle and wager of law are repealed. [Acts 1846, p. 363; G. L. Vol. 2, p. 1669.]

Art. 2176. [1948] [1292] [1292] **Trial by the court.**—The rules governing the trial of causes before a jury shall govern in trials by the court in so far as applicable.

Art. 2177. [1949] [1293] [1293] **Agreed case.**—Parties may submit matters in controversy to the court upon an agreed statement of facts filed with the clerk, upon which judgment shall be rendered as in other cases; and such agreed statement signed and certified by the court to be correct and the judgment rendered thereon shall constitute the record of the cause. [Acts 1858, p. 110; P. D. 1516; G. L. Vol. 4, p. 982.]

Art. 2178. [1950] [1294] [1294] **Appeal tried de novo.**—Cases brought up from inferior courts shall be tried de novo. [Acts 1846, p. 363; P. D. 1459, 1460; G. L. Vol. 2, p. 1669.]

Art. 2179. [5212-3] **Oath to jury.**—The jury shall be sworn by the court or under its direction, as follows: "You, and each of you, do solemnly swear that in all cases between parties which shall be to you submitted, you will a true verdict render, according to the law, as it may be given you in charge by the court, and to the evidence submitted to you under the rulings of the court. So help you God." [Acts 1858, p. 205; G. L. Vol. 4, p. 1077.]

Art. 2180. [1951] [1297] [1297] **Order of proceedings on trial by jury.**—The trial of cases before a jury shall proceed in the following order, unless the court should, for good cause, to be stated in the record, otherwise direct:

1. Plaintiff's petition shall be read to the jury.
2. Defendant's answer shall be read to the jury.
3. If there be any intervenor his pleadings shall be read.
4. The party upon whom rests the burden of proof on the whole case under the pleadings, shall be permitted to state to the jury briefly the nature of his claim or defense and facts relied upon in support thereof.
5. Such party shall then introduce his evidence.
6. The adverse party may then state briefly the nature of his defense or claim and the facts relied on in support thereof.
7. He shall then introduce his evidence.
8. The intervenor may, in like manner, make his statement, and shall then introduce his evidence.
9. The parties shall then be confined to rebutting testimony on each side.

Art. 2181. [1952] **Additional testimony.**—At any time before the conclusion of the argument the court may permit additional evidence to be offered to supply an omission where it clearly appears to be necessary to the due administration of justice.

Art. 2182. [1955] [1301] [1301] **Non-suit.**—At any time before the jury has retired, the plaintiff may take a non-suit, but he shall not thereby prejudice the right of an adverse party to be heard on his claim for affirmative relief. When the case is tried by the judge, such non-suit may be taken at any time before the decision is announced. [Acts 1853, p. 19; P. D. 1464; G. L. Vol. 3, p. 1302.]

Art. 2183. [1953] [1299] [1299] **Order of argument.**—After the evidence is concluded and the charge is read, the parties may argue the case to the jury. The party having the burden of proof on the whole case shall be entitled to open and conclude the argument; where there are several parties having separate claims or defenses, the court shall prescribe the order of argument between them.

4. CHARGE OF THE COURT.

| | | | | |
|----------------------------------|--------------|---|------------------------------|--------------|
| Charge to jury..... | Article 2184 | { | Refusal or modification..... | Article 2188 |
| Requisites..... | 2185 | | Special issues..... | 2189 |
| Special charges..... | 2186 | | Submission of issues..... | 2190 |
| Charge read before argument..... | 2187 | | | |

Art. 2184. [1970] [1316] [1316] **Charge to jury.**—Unless expressly waived by the parties, the judge shall prepare and in open court deliver a written charge to the jury on the law of the case, or if the case is submitted on special issues, he shall submit the issues of fact to the jury. [Acts 1913, p. 113.]

Art. 2185. [1971-2] **Requisites.**—The charge shall be in writing, signed by the judge, filed with the clerk, and shall be a part of the record of the cause. It shall be prepared after the evidence has been concluded and shall be submitted to the respective parties or their attorneys for inspection, and a reasonable time given them in which to examine and present objections thereto, which objections shall in every instance be presented to

the court before the charge is read to the jury, and all objections not so made and presented shall be considered as waived. Failure of the court to give reasonable time to the parties or their attorneys for examination of the charge shall be reviewable upon appeal upon proper exception. The judge shall so frame his charge as to distinctly separate questions of law from questions of fact, and not therein comment on the weight of the evidence, and so as to instruct the jury as to the law arising on the facts, and shall only submit controverted questions of fact. [Id.]

Art. 2186. [1973] [1319] [1319] **Special charges.**—Either party may present to the judge such written instructions as he desires to be given to the jury; and the judge may give such instructions, or a part thereof, or he may refuse to give them, as he may see proper. Such instructions shall be prepared and presented to the court and submitted to opposing counsel for examination and objection within a reasonable time after the charge is given to the parties or their attorneys for examination. [Id.]

Art. 2187. [1954-71-73] **Charge read before argument.**—Before the argument is begun, the judge shall read to the jury, in the precise words in which they were written, his charge and all special charges which he may give. [Id.]

Art. 2188. [1974] [1320] [1320] **Refusal or modification.**—When a special instruction is requested and the provisions of the law have been complied with and the trial judge refuses the same, he shall indorse thereon "Refused," and sign the same officially. If the trial judge modify a special charge, he shall indorse thereon "Modified as follows: (stating in what particular he has modified the charge) and given, and exception allowed" and sign the same officially. Such refused or modified charge when so indorsed shall constitute a bill of exceptions and it shall be conclusively presumed that the party asking said charge presented the same at the proper time, excepted to its refusal or modification, and that all the requirements of law have been observed, and the same shall entitle the party requesting such charge to have the action of the trial judge in refusing or modifying the same reviewed without preparing a formal bill of exceptions. [Id. Acts 1917, p. 389.]

Art. 2189. [1984-1992] **Special issues.**—In all jury cases the court may submit said cause upon special issues without request of either party, and, upon request of either party, shall submit the cause upon special issues raised by the pleadings and the evidence in the case. Such special issues shall be submitted distinctly and separately. Each issue shall be answered by the jury separately. In submitting special issues the court shall submit such explanations and definitions of legal terms as shall be necessary to enable the jury to properly pass upon and render a verdict on such issues. If the nature of the suit is such that it cannot be determined on the submission of special issues, the court may refuse the request to do so, but the action of the court

in refusing may be reviewed on proper exception in the appellate court, and this article shall be construed in connection with the succeeding article. [Acts 1913, p. 113.]

Art. 2190. [1985] [1331] [1331] **Submission of issues.**—When the court submits a case upon special issues, he shall submit all the issues made by the pleading. Failure to submit an issue shall not be deemed a ground for reversal of the judgment, unless its submission has been requested in writing by the party complaining of the judgment. Upon appeal or writ of error, an issue not submitted and not requested is deemed as found by the court in such manner as to support the judgment if there is evidence to sustain such finding. A claim that the testimony was insufficient to warrant the submission of an issue may be complained of for the first time after verdict. [Acts 1st C. S. 1897, p. 15; Id.]

5. CASE TO JURY.

| | Article | | Article |
|--------------------------------|---------|---------------------------------------|---------|
| Number of jurors..... | 2191 | Jury may communicate with | 2197 |
| Foreman of jury..... | 2192 | court..... | 2198 |
| Papers taken to jury room..... | 2193 | Jury may ask further instruction..... | 2199 |
| Jury kept together..... | 2194 | Disagreement as to evidence..... | 2200 |
| Officer shall attend jury..... | 2195 | Discharge of jury..... | 2201 |
| Judge to caution jury..... | 2196 | Court open for jury..... | |

Art. 2191. [5214-16] **Number of jurors.**—The jury in the district courts shall be composed of twelve men; but the parties may by consent agree, in a particular case, to try with a less number. In county courts the jury shall be composed of six men.

Art. 2192. [1956] [1302] [1302] **Foreman of jury.**—Each jury shall appoint one of their body foreman.

Art. 2193. [1957-75] **Papers taken to jury room.**—The jury may take with them in their retirement the charges and instructions, general or special, which were given and read to them, and any written evidence, except the depositions of witnesses, but shall not take with them any special charges which have been refused. Where part only of a paper has been read in evidence, the jury shall not take the same with them, unless the part so read to them is detached from that which was excluded.

Art. 2194. [1958] [1304] [1304] **Jury kept together.**—The jury may either decide a case in court or retire for deliberation. If they retire, they shall be kept together in some convenient place, under the charge of an officer, until they agree upon a verdict or are discharged by the court; but the court in its discretion may permit them to separate temporarily for the night and at their meals, and for other proper purposes.

Art. 2195. [1959] [1305] [1305] **Officer shall attend jury.**—The officer in charge of the jury shall not make nor permit any communication to be made to them, except to inquire if they have agreed upon a verdict, unless by order of the court; and he shall not before their verdict is rendered communicate to any person the state of their deliberations or the verdict agreed upon.

Art. 2196. [1960] [1306] [1306] **Judge to caution jury.**—If permitted to separate, either during the trial or after the case is submitted to them, the jury shall be admonished by the court that it is their duty not to converse with, or permit themselves to be addressed by, any other person, on any subject connected with the trial.

Art. 2197. [1961] [1307] [1307] **Jury may communicate with court.**—The jury may communicate with the court by making their wish known to the officer in charge, who shall inform the court, and they may then in open court, and through their foreman, communicate with the court, either verbally or in writing.

Art. 2198. [1962-75] **Jury may ask further instruction.**—After having retired, the jury may ask further instructions of the court touching any matter of law. For this purpose they shall appear before the judge in open court in a body and through their foreman state to the court, either verbally or in writing, the particular question of law upon which they desire further instruction; and the court shall give such instruction in writing, but no instruction shall be given except in conformity with the preceding rules and only upon the particular question on which it is asked.

Art. 2199. [1963-4] **Disagreement as to evidence.**—If the jury disagree as to the statement of any witness, they may, upon applying to the court, have such witness again brought upon the stand; and the judge shall direct him to repeat his testimony to the point in dispute, and no other, and as nearly as he can in the language used on the trial; and on their notifying the court that they disagree as to any portion of a deposition or other paper not carried with them in their retirement, the court may, in like manner, permit such portion of said deposition or paper to be again read to the jury.

Art. 2200. [1965-6-7-8] **Discharge of jury.**—The jury, after the cause is submitted to them, may be discharged:

1. By the court when they cannot agree and both parties consent to their discharge, or when they have been kept together for such time as to render it altogether improbable that they can agree.

2. By the court when any calamity or accident may, in the opinion of the court, require it.

3. By the court when by sickness or other cause their number is reduced below the number constituting the jury in such court.

4. By the final adjournment of the court before they have agreed upon the verdict.

5. Where a jury has been so discharged without having rendered a verdict, the cause may be again tried at the same or another term.

Art. 2201. [1969] [1315] [1315] **Court open for jury.**—The court, during the deliberations of the jury, may proceed with other business or adjourn from time to time, but shall be

deemed open for all purposes connected with the case before the jury.

6. VERDICT.

| | | | |
|-----------------------------|--------------|----------------------------|--------------|
| Verdict | Article 2202 | When jury have agreed..... | Article 2205 |
| Form of verdict | 2203 | Polling the jury..... | 2206 |
| Verdict by nine jurors..... | 2204 | Defective verdict..... | 2207 |

Art. 2202. [1977-82-83-84-85-86-87-88] Definition and substance.—A verdict is a written declaration by a jury of its decision of the issues submitted to them in the case.

1. It shall be signed by the foreman of the jury and shall comprehend the whole or all the issues submitted to it.

2. The verdict is either a general or special verdict.

3. The jury shall render a general or special verdict as the court may direct.

4. A general verdict is one whereby the jury pronounces generally in favor of one or more parties to the suit upon all or any of the issues submitted to it.

5. A special verdict is one wherein the jury finds the facts only on issues made up and submitted to them under the direction of the court.

6. A special verdict found under the provisions of this article shall, as between the parties, be conclusive as to the facts found. [Acts 1846, p. 363; Acts 1st C. S. 1897, p. 15; Acts 1913, p. 113; G. L. Vol. 2, p. 1669.]

Art. 2203. [1993-5217] Form of verdict.—No special form of verdict is required, and the judgment shall not be arrested or reversed for mere want of form therein if there has been substantial compliance with the requirements of the law in rendering a verdict. No verdict shall be rendered in any cause except upon the concurrence of all members of the jury trying the case. [Id.]

Art. 2204. [1977-5217-5219] Verdict by nine jurors.—Pending a trial of a civil case in the district court, where one or more jurors may die or be disabled from sitting, if there be as many as nine of the jurors remaining, those remaining may render and return a verdict; but in such case the verdict must be signed by each juror rendering it. [Acts 1876, p. 82; G. L. Vol. 8, p. 918.]

Art. 2205. [1976-9] When jury have agreed.—When the jury agree upon a verdict, they shall be brought into court by the proper officer, their names shall be called by the clerk, and they shall deliver their verdict to the clerk; and if they state that they have agreed, the verdict shall be read aloud by the clerk. If in proper form, and no juror dissent therefrom, and neither party requests a poll of the jury, the verdict shall be entered upon the minutes of the court.

Art. 2206. [1979] [1325] Polling the jury.—Either party shall have the right to have the jury polled, which is done by calling separately the name of each juror and asking him if it is his verdict. If any juror answer in the negative, the jury shall be retired for further deliberation.

Art. 2207. [1961-1980] Defective verdict.—If the verdict

is informal or defective, the court may direct it to be reformed at the bar. If not responsive to the issue submitted, the court shall call their attention thereto and send them back for further deliberation.

7. FINDINGS BY COURT.

| | | | |
|----------------------------------|-----------------|-----------------------------------|-----------------|
| Conclusions of fact and law..... | Article 2208 | Exceptions, etc., transcript..... | Article 2210 |
| Court to render judgment..... | 2209 | | |

Art. 2208. [1989] [1333] [1333] **Conclusions of fact and law.**—Upon a trial by the court, the judge shall, at the request of either party, state in writing the conclusions of fact found by him separately from the conclusions of law. Such findings of fact and conclusions of law shall be filed with the clerk and shall be a part of the record.

Art. 2209. [1990] [1333] [1333] **Court to render judgment.**—Where a special verdict is rendered, or the conclusions of fact found by the judge are separately stated, the court shall render judgment thereon unless set aside or a new trial is granted. [Acts 1899, p. 190.]

Art. 2210. [1991] [1333] [1333] **Exceptions, etc., transcript.**—It shall be sufficient for the party excepting to the conclusions of law or judgment of the court to cause it to be noted on the record in the judgment entry that he excepts thereto; and he may thereupon take his appeal or writ of error without a statement of facts or further exceptions in the transcript; but the transcript shall in such cases contain the special verdict or conclusions of fact and law aforesaid, and the judgment rendered thereon. [Id.]

CHAPTER NINE.

JUDGMENTS AND REMITTITUR.

1. JUDGMENTS.

| | | | |
|--------------------------------------|-----------------|-------------------------------------|-----------------|
| Judgments..... | Article 2211 | Writ of possession..... | Article 2219 |
| Contribution between tort feors..... | 2212 | On appeal from probate court..... | 2220 |
| Where several counts, etc..... | 2213 | On appeal from justice's court..... | 2221 |
| May pass title..... | 2214 | Against executors, etc..... | 2222 |
| On counter claim..... | 2215 | Against partners..... | 2223 |
| On counter claim for costs..... | 2216 | Contract to waive or confess..... | 2224 |
| Court shall enforce its decrees..... | 2217 | Confession of judgment..... | 2225 |
| Of foreclosure..... | 2218 | Attorney's fees..... | 2226 |

Art. 2211. [1994-5-7] **Judgments.**—The judgments of the court shall conform to the pleadings, the nature of the case proved and the verdict, if any, and shall be so framed as to give the party all the relief to which he may be entitled either in law or equity. Only one final judgment shall be rendered in any cause except where it is otherwise specially provided by law. Judgment may, in a proper case, be given for or against one or more of several plaintiffs, and for or against one or more of several defendants or intervenors. [Acts 1846, p. 363; P. D. 1476, 1410; G. L. Vol. 2, p. 1669.]

Art. 2212. **Contribution between tort feors.**—Any person against whom, with one or more others, a judgment is rendered

in any suit on an action arising out of, or based on tort, except in causes wherein the right of contribution or of indemnity, or of recovery, over, by and between the defendants is given by statute or exists under the common law, shall, upon payment of said judgment, have a right of action against his co-defendant or co-defendants and may recover from each a sum equal to the proportion of all of the defendants named in said judgment rendered to the whole amount of said judgment. If any of said persons co-defendant be insolvent, then recovery may be had in proportion as such defendant or defendants are not insolvent; and the right of recovery over against such insolvent defendant or defendants in judgment shall exist in favor of each defendant in judgment in proportion as he has been caused to pay by reason of such insolvency. [Acts 1917, p. 360.]

Art. 2213. [1996] [1453] [1449] **Where several counts, etc.**—Where there are several counts in the petition, and entire damages are given, the verdict or judgment, as the case may be, shall be good, notwithstanding one or more of such counts may be defective. [Acts 1846, p. 363; P. D. 1460; G. L. Vol. 2, p. 1669.]

Art. 2214. [1998] [1338] [1338] **May pass title.**—Where the judgment is for the conveyance of real estate, or for the delivery of personal property, the decree may pass the title to such property without any act to be done on the part of the party against whom the judgment is rendered. [Acts 1846, p. 363; P. D. 1481; G. L. Vol. 2, p. 1669.]

Art. 2215. [1327] [752] [647] **On counter claim.**—If the defendant establishes a demand against the plaintiff upon a counter claim exceeding that established against him by the plaintiff, the court shall render judgment for the defendant for such excess.

Art. 2216. [1328] [753] [648] **On counter claim for costs.**—Whenever a counter claim is pleaded, the party in whose favor final judgment is rendered shall also recover the costs, unless it be made to appear on the trial that the counter claim of the defendant was acquired after the commencement of the suit, in which case, if the plaintiff establishes a cause of action existing at the commencement of the suit, he shall recover his costs. [Acts 1860, p. 15; G. L. Vol. 4, p. 1377.]

Art. 2217. [1999] [1339] [1339] **Court shall enforce its decrees.**—The court shall cause its judgments and decrees to be carried into execution; and where the judgment is for personal property, and it is shown by the pleadings and evidence and the verdict, if any, that such property has an especial value to the plaintiff, the court may award a special writ for the seizure and delivery of such property to the plaintiff; and in such case may enforce its judgment by attachment, fine and imprisonment. [Acts 1846, p. 200; P. D. 1420; G. L. Vol. 2, p. 1506.]

Art. 2218. [2000] [1340] [1340] **Of foreclosure.**—Judgments for the foreclosure of mortgages and other liens shall be that the plaintiff recover his debt, damages and costs, with a foreclosure of the plaintiff's lien on the property subject thereto,

and, except in judgments against executors, administrators and guardians, that an order of sale shall issue to the sheriff or any constable of the county where such property may be, directing him to seize and sell the same as under execution, in satisfaction of the judgment; and, if the property cannot be found, or if the proceeds of such sale be insufficient to satisfy the judgment, then to make the money, or any balance thereof remaining unpaid, out of any other property of the defendant, as in case of ordinary executions. [Acts 1846, p. 394; P. D. 1480; G. L. Vol. 2, p. 1700.]

Art. 2219. [2001] [1341] [1340] **Writ of possession.**—When an order foreclosing a lien upon real estate is made in a suit having for its object the foreclosure of such lien, such order shall have all the force and effect of a writ of possession as between the parties to the foreclosure suit and any person claiming under the defendant to such suit by any right acquired pending such suit; and the court shall so direct in the judgment providing for the issuance of such order. The sheriff or other officer executing such order of sale shall proceed by virtue of such order of sale to place the purchaser of the property sold thereunder in possession thereof within thirty days after the day of sale. [Acts 1885, p. 10; G. L. Vol. 9, p. 630.]

Art. 2220. [2002] [1342] [1341] **On appeal from probate court.**—Judgment on appeal or certiorari from any county court sitting in probate shall be certified to such county court for observance. [Acts 1846, p. 363; P. D. 1460; G. L. Vol. 2, p. 1669.]

Art. 2221. [2003] [1343] [1342] **On appeal from justice's court.**—Judgments on appeal or certiorari from justice's court shall be enforced by the county court.

Art. 2222. [2004-5] **Against executors, etc.**—A judgment for the recovery of money against an executor, administrator or guardian, as such, shall state that it is to be paid in the due course of administration. No execution shall issue thereon, but it shall be certified to the county court, sitting in matters of probate, to be there enforced in accordance with law, but judgments against an executor appointed and acting under a will dispensing with the action of the county court in reference to such estate shall be enforced against the property of the testator in the hands of such executor, by execution, as in other cases. [Acts 1846, p. 393; G. L. Vol. 2, p. 1669.]

Art. 2223. [2006] [1347] [1346] **Against partners.**—Where the suit is against several partners jointly indebted upon contract, and the citation has been served upon some of such partners but not upon all, judgment may be rendered therein against such partnership and against the partners actually served, but no personal judgment or execution shall be awarded against those not served. [Acts 1858, p. 110; P. D. 1514; G. L. Vol. 4, p. 982.]

Art. 2224. [2008] [1349] [1347] **Contract to waive or confess.**—No acceptance of service and waiver of process, nor entry of appearance in open court, nor a confession of judgment shall be authorized in any case by the contract or writing sued on, or

any other instrument executed prior to the institution of such suit, nor shall such acceptance or waiver be made until after suit brought. [Acts 1885, p. 33; G. L. Vol. 9, p. 653.]

Art. 2225. [2007-9-10] **Confession of judgment.**—Any person against whom a cause of action exists may, without process, appear in person or by attorney, and confess judgment therefor in open court, as follows:

1. A petition shall be filed and the justness of the debt or cause of action be sworn to by the person in whose favor the judgment is confessed.

2. If the judgment is confessed by attorney, the power of attorney shall be filed and its contents be recited in the judgment.

3. Every such judgment duly made shall operate as a release of all errors in the record thereof, but such judgment may be impeached for fraud or other equitable cause. [Acts 1846, p. 393; G. L. Vol. 2, p. 1660.]

Art. 2226. [2178-9] **Attorney's fees.**—Any person having a valid claim against a person or corporation for personal services rendered, labor done, material furnished, overcharges on freight or express, lost or damaged freight or express or stock killed or injured, may present the same to such person or corporation or to any duly authorized agent thereof; and if, at the expiration of thirty days thereafter, the claim has not been paid or satisfied, and he should finally obtain judgment for the full amount thereof as presented for payment to such person or corporation, he may also recover, in addition to his claim and costs, a reasonable amount as attorney's fees, not to exceed twenty dollars, if represented by an attorney. [Acts 1909, p. 93; Acts 1923, p. 312.]

2. REMITTITUR AND CORRECTION.

| | Article | | Article |
|------------------------|---------|--------------------------|---------|
| Remittitur | 2227 | Correction in vacation | 2230 |
| Correction of mistakes | 2228 | Defective judgment cured | 2231 |
| Miscriticals corrected | 2229 | | |

Art. 2227. [2012-13-14] **Remittitur.**—Any party in whose favor a judgment has been rendered may remit any part thereof:

1. In open court, and such remittitur shall be noted on the docket and entered in the minutes.

2. In vacation, by executing and filing with the clerk a written release signed by him or his attorney of record, and attested by the clerk with his official seal. Such releases shall be a part of the record of the cause.

3. Execution shall issue for the balance only of such judgment. [Acts 1846, p. 397; G. L. Vol. 2, p. 1703.]

Art. 2228. [2015] [1356] [1354] **Correction of mistakes.**—Mistakes in the record of any judgment or decree may be amended by the judge in open court according to the truth or justice of the case after notice of the application therefor has been given to the parties interested in such judgment or decree, and thereafter the execution shall conform to the judgment as amended. [Acts 1846, p. 203; P. D. 49; G. L. Vol. 2, p. 1509.]

Art. 2229. [2016] [1357] [1355] **Misrecitals corrected.**—Where in the record of any judgment or decree of a court, there shall be any omission or mistake, miscalculation or misrecital of a sum or sums of money, or of any name or names, if there is among the records of the cause any verdict or instrument of writing whereby such judgment or decree may be safely amended, it shall be corrected by the court wherein such judgment or decree was rendered, or by the judge thereof in vacation, upon application of either party, according to the truth and justice of the case. The opposite party shall have reasonable notice of the application for such amendment. [Acts 1846, p. 396; P. D. 51; Revision 1879; G. L. Vol. 2, p. 1702.]

Art. 2230. [2017] [1358] [1356] **Correction in vacation.**—The judge making such correction in vacation shall embody the same in a judgment, and certify thereto and deliver it to the clerk who shall enter it in the minutes. Such judgment shall constitute a part of the record of the cause, and any execution thereafter issued shall conform to the judgment as corrected.

Art. 2231. [2018] [1359] [1357] **Defective judgment cured.**—A remittitur or correction made as provided in any of the four preceding articles shall from the making thereof cure any error in the verdict or judgment by reason of such error, omission, mistake or excess. [Acts 1846, p. 397, P. D. 52; G. L. Vol. 2, p. 1703.]

CHAPTER TEN.

NEW TRIALS AND ARREST OF JUDGMENT.

| | | | |
|-------------------------|---------|------------------------|---------|
| | Article | | Article |
| Motion | 2232 | If not equitable | 2235 |
| Not more than two | 2233 | Bill of review | 2236 |
| For misconduct | 2234 | | |

Art. 2232. [2019-20-23-25] **Motion.**—New trials may be granted and judgments arrested or set aside on motion for good cause, on such terms as the court shall direct. Each such motion shall:

1. Be made within two days after the rendition of verdict if the term of court shall continue so long, if not, then before the end of the term, and may be amended under leave of the court.

2. Be in writing and signed by the party or his attorney.

3. Specify each ground on which it is founded, and no ground not specified shall be considered.

4. Be determined at the term of the court at which it is made. [Acts 1846, p. 392; G. L. Vol. 2, p. 1698.]

Art. 2233. [2024] [1372] [1370] **Not more than two.**—Not more than two new trials shall be granted either party in the same cause, except when the jury have erred in matter of law or been guilty of some misconduct. [Id.]

Art. 2234. [2021] **For misconduct.**—Where the ground of the motion is misconduct of the jury or of the officer in charge of them, or because of any communication made to the jury or that they received other testimony, the court shall hear evidence

thereof from the jury or others in open court, and may grant a new trial if such misconduct proved, or the testimony received, or the communication made, be material. [Acts 1905, p. 21.]

Art. 2235. [2022] [1452] [1448] **If not equitable.**—New trials may be granted when the damages are manifestly too small or too large. [Acts 1846, p. 363; G. L. Vol. 2, p. 1669.]

Art. 2236. [2026-7-8-9] **Bill of review.**—In cases in which judgment has been rendered on service of process by publication, where the defendant has not appeared in person or by attorney of his own selection:

1. The court may grant a new trial upon petition of the defendant showing good cause, supported by affidavit, filed within two years after such judgment was rendered. The parties adversely interested in such judgment shall be cited as in other cases.

2. Execution on such judgment shall not be suspended unless the party applying therefor shall give a good and sufficient bond payable to the plaintiff in the judgment, in double the amount of the judgment or value of the property adjudged, to be approved by the clerk, and conditioned that the party will prosecute his petition for new trial to effect and will perform such judgment as may be rendered by the court should its decision be against him.

3. If property has been sold under the judgment and execution before the process was suspended, the defendant shall not recover the property so sold, but shall have judgment against the plaintiff in the judgment for the proceeds of such sale. [Id.]

CHAPTER ELEVEN.

BILLS OF EXCEPTION AND STATEMENT OF FACTS.

| | Article | | Article |
|---------------------------------|---------|-----------------------------------|---------|
| When taken; rules..... | 2237 | Substance and approval..... | 2243 |
| Transcript of the evidence..... | 2238 | Agreed statement of evidence..... | 2244 |
| Statement in duplicate..... | 2239 | Statement not filed in time..... | 2245 |
| When the parties disagree..... | 2240 | Time of filing..... | 2246 |
| Party unable to pay..... | 2241 | Time to file conclusions..... | 2247 |
| Independent statement..... | 2242 | Successor to trial judge..... | 2248 |

Art. 2237. [2058-67] **When taken; rules.**—If either party during the progress of a cause is dissatisfied with any ruling, opinion, or other action of the court, he may except thereto at the time the said ruling is made, or announced or such action taken, and at his request time shall be given to embody such exception in a written bill. The preparation and filing of bills of exception shall be governed by the following rules:

1. No particular form of words shall be required in a bill of exception; but the objection to the ruling or action of the court shall be stated with such circumstances, or so much of the evidence as may be necessary to explain, and no more, and the whole as briefly as possible.

2. Where the statement of facts contains all the evidence requisite to explain the bill of exception evidence need not be set out in the bill; but it shall be sufficient to refer to the same as it appears in the statement of facts.

3. The ruling of the court in the giving, refusing or qualifying of instructions to the jury shall be regarded as approved unless excepted to.

4. Where the ruling or other action of the court appears otherwise of record, no bill shall be necessary to reserve an exception thereto.

5. The party taking a bill of exception shall reduce the same to writing and present it to the judge for his allowance and signature.

6. The judge shall submit such bill to the adverse party or his counsel, if in attendance on the court, and if found to be correct, the judge shall sign it without delay and file it with the clerk.

7. If the judge finds such bill incorrect, he shall suggest to the party or his counsel, such corrections as he deems necessary therein, and if they are agreed to, he shall make such corrections, sign the bill and file it with the clerk.

8. Should the party not agree to such corrections, the judge shall return the bill to him with his refusal indorsed thereon, and shall prepare, sign and file with the clerk such bill of exception, as will, in his opinion, present the ruling of the court as it actually occurred.

9. Should the party be dissatisfied with said bill filed by the judge, he may, upon procuring the signatures of three respectable bystanders, citizens of this State, attesting to the correctness of the bill as presented by him, have the same filed as part of the record of the cause; and the truth of the matter in reference thereto may be controverted and maintained by affidavits, not exceeding five in number on each side, to be filed with the papers of the cause, within ten days after the filing of said bill and to be considered as part of the record relating thereto. [Acts 1846, p. 391; G. L. Vol. 2, p. 1697; Acts 1913, p. 113.]

Art. 2238. [1924-2079] **Transcript of evidence.**—When any party to any suit reported by any such reporter shall desire a transcript of the evidence in said suit, said party may apply for same and shall indicate whether he desires same in question and answer form or in narrative form. In the event such transcript should be ordered in question and answer form, then such reporter shall make the same up in duplicate in question and answer form, and shall receive as compensation therefor the sum of fifteen cents per hundred words for the original. In the event said transcript should be ordered made in narrative form, then such reporter shall make up same in duplicate in narrative form, and shall receive as compensation therefor the sum of twenty cents per hundred words for the original; provided, that in case any reporter charges more than the fees herein allowed he shall be liable to the person paying the same a sum equal to four times the excess so paid. [Id., 1925, p. 670.]

Art. 2239. [2070] **Statement in duplicate.**—When a transcript is ordered in question and answer form, and filed with the clerk, the party appealing shall prepare or have prepared from said transcript so filed, a statement of facts in duplicate,

which shall consist of the evidence adduced upon the trial, both oral and by deposition, stated in succinct manner and without unnecessary repetition, together with copies of such documents, sketches, maps and other matters used in evidence. Such statement of facts shall not be copied in the transcript of the clerk, but when agreed to by the parties and approved by the judge shall be filed in duplicate with the clerk, and the original thereof sent upon appeal as part of the record in the cause. Like procedure shall be followed if the statement of facts is prepared independently by the parties and agreed to and approved by the judge or prepared by the judge on the failure of the parties to agree. When a statement of facts is made at the request of a party by the official court reporter, the fees therefor shall not be taxed as costs. [Acts 1911, p. 264.]

Art. 2240. [2069] [1380] [1378] When the parties disagree.—

1. If the parties do not agree upon such statement of facts, or if the judge does not approve or sign it, the parties may submit their respective statements to the judge, who shall, from his own knowledge, with the aid of such statements, prepare and sign and file with the clerk a correct statement of the facts proved on the trial; and such statement shall constitute a part of the record.

2. The judge shall not be required to prepare such statement of facts unless the party appealing, by himself or attorney, within the time allowed for filing, shall present to the judge within fifteen days after adjournment of the court or after the entering of the final judgment, as the case may be, a statement of facts and shall certify thereon, over his signature, that to the best of his knowledge and belief, it is a full and fair statement of all the facts proved on the trial.

3. When the duty devolves upon the court to prepare the statement of facts, he shall have such time in which to do so as he deems necessary, but shall not postpone the preparation and filing of same, so as to delay the filing thereof, together with a transcript of the record in the appellate court within the time prescribed by law. [Acts 1892, p. 42; G. L. Vol. 10, p. 406; Acts 1911, p. 264.]

Art. 2241. [2071] Party unable to pay.—In any civil case where the appellant or plaintiff in error has made the proof required to appeal his case without bond, such party may make affidavit of such fact, and upon the making and filing of such affidavit, the court shall order the official reporter to make a transcript in narrative form in duplicate and to deliver the same to said party, but such reporter shall receive no pay for same.

Art. 2242. [2072] Independent statement.—Nothing in this chapter shall prevent parties from preparing a statement of facts on appeal independent of the transcript of the notes of the official court reporter. [Acts 1911, p. 264.]

Art. 2243. [2068] [1379] Substance and approval.—After

the trial of a cause, either party may make out a written statement of facts given in evidence on the trial, and submit the same to the opposite party or his attorney for inspection. If the parties or their attorneys agree upon such statement of facts, they shall sign the same; and it shall be submitted to the judge who shall, if he finds it correct, approve and sign it; and the same shall be filed with the clerk. [Acts 1892, p. 42; G. L. Vol. 10, p. 406.]

Art. 2244. [2068] [1379] [1377] **Agreed statement of evidence.**—Where it is agreed by the parties to the suit, or their attorney of record, that the evidence adduced upon the trial of the cause is sufficient to establish a fact or facts alleged by either party, the testimony of the witnesses and the deeds, wills, records, or other written instruments, admitted as evidence relating thereto, shall not be stated or copied in detail into a statement of facts; but the facts thus established shall be stated as facts provided in the case; provided, an instrument, such as a note or other contract, mortgage or deed of trust, that constitutes the cause of action on which the petition, or answer, or cross bill, or intervention, is founded may be copied once in the statement of facts. When there is any reasonable doubt of the sufficiency of the evidence to constitute proof of any one fact under the preceding rule, there may then be inserted such of the testimony of the witnesses and written instruments, or parts thereof, as relate to such facts. [Id.]

Art. 2245. [2074] [1382] **Statement not filed in time.**—Whenever a statement of facts has been filed after the time prescribed by law, and the party tendering the filing of same shall show to the satisfaction of the appellate court that he has used due diligence to obtain the approval and signature of the judge thereto, and to file the same within the time prescribed by law for filing the same, and that his failure to file the same within said time is not due to the fault or laches of said party or his attorney, and that such failure was the result of causes beyond his control, the appellate court shall permit said statement of facts to remain as part of the record and consider the same in the hearing and adjudication of said cause the same as if said statement of facts had been filed in time. [Acts 1887, p. 17; G. L. Vol. 9, p. 815.]

Art. 2246. [2073] **Time for filing.**—The time for filing statements of fact and bills of exception in the district and county courts and county courts at law shall be governed by the following rules:

1. When the appeal is taken from a judgment rendered in a civil cause tried in any of said courts, the party appealing shall have eighty days after the adjournment of the term of the court wherein the cause is tried within which to prepare and file his statement of facts and bills of exception in the trial court.

2. If the term of court may by law continue more than eight weeks, the statement of facts and bills of exception shall be

filed in the trial court within ninety days after final judgment is rendered.

3. Upon application of the party appealing, the judge before whom the cause is tried may, in term time or vacation for good cause shown, extend the time for filing such statements of fact and bills of exception; but the time shall not be extended in any case so as to delay the filing of the statement of facts together with the transcript of the record in the appellate court within ninety days after the date of filing the appeal or writ of error bond.

Art. 2247. [2075] **Time to file conclusions.**—When demand is made therefor, the judge of a district or county court shall have ten days after adjournment of the term at which the cause was tried in said court in which to prepare his findings of fact and conclusions of law in cases tried before the court. [Acts 1903, p. 32; Acts 1st C. S. 1907, p. 446.]

Art. 2248. [2076] **Successor to trial judge.**—Any judge of a district or county court whose term of office expires before the adjournment of the term of such court at which a cause may be tried, or during the period prescribed for the filing of the statement of facts and bills of exception, or conclusions of law and fact, may approve such statement of facts and bills of exception, or file such findings of fact and conclusions of law in such cause, as provided in this title, and where any such judge shall die before the time for such approval or filing, the same may be approved or filed by his successor, as provided by article 2288.

CHAPTER TWELVE.

APPEAL AND WRIT OF ERROR.

| Article | Article | | |
|--|---------|--|------|
| To Court of Civil Appeals..... | 2249 | Judgment not suspended..... | 2268 |
| Appeal from interlocutory order..... | 2250 | Revival against successor of offi- cer..... | 2269 |
| Appeals in injunctions..... | 2251 | Supersedeas bond..... | 2270 |
| Definitions..... | 2252 | Where judgment is for property..... | 2271 |
| Appeal perfected..... | 2253 | Additional bond..... | 2272 |
| No appeal bond required..... | 2254 | When party fails to comply..... | 2273 |
| Writ of error sued out..... | 2255 | Bond insufficient as cost bond..... | 2274 |
| By petition..... | 2256 | Judgment stayed..... | 2275 |
| Requisites of petition..... | 2257 | No bond required..... | 2276 |
| Error bond..... | 2258 | If party dies..... | 2277 |
| Citation in error..... | 2259 | Transcript delivered..... | 2278 |
| Form and requisites of citation..... | 2260 | Omissions..... | 2279 |
| Service and return of..... | 2261 | Agreed statement..... | 2280 |
| Alias citation..... | 2262 | Transcript must contain..... | 2281 |
| Service on attorney..... | 2263 | Clerk's certificate..... | 2282 |
| Service in other modes..... | 2264 | Briefs..... | 2283 |
| Cost bond..... | 2265 | Awaiting mandate..... | 2284 |
| Party unable to give cost bond..... | 2266 | Return of mandate..... | 2285 |
| Appeal or writ of error perfected..... | 2267 | | |

Art. 2249. **To Court of Civil Appeals.**—An appeal may be taken to the Court of Civil Appeals from every final judgment of the district court in civil cases, and from every final judgment in the county court in civil cases of which the county court has original jurisdiction, and from every final judgment of the county court in civil cases in which the court has appellate jurisdiction, where the judgment or amount in controversy exceeds one hun-

dred dollars exclusive of interest and costs. An appeal may be taken to the Court of Civil Appeals from every order of any district or county court in civil cases granting motions for new trials in any of the above mentioned cases and such appeal shall be taken within the same time and in the same manner as if the judgment was final. [Acts 1925, p. 45.]

Art. 2250. [2079] **Appeal from interlocutory order.**—An appeal shall lie from an interlocutory order of the district court if such appeal be taken within twenty days from the entry of such order in the following cases and shall take precedence in the appellate court, but the proceedings in the court below shall not be stayed during the pendency of the appeal, unless otherwise ordered by the appellate court:

1. Appointing a receiver or trustee in any cause.
2. Overruling a motion to vacate an order appointing a receiver or trustee in any case. [Acts 1917, p. 379.]

Art. 2251. [2080] **Appeals in injunctions.**—Appeals from orders of the district and county courts granting or dissolving temporary injunctions shall lie in the cases and in the manner provided in the title "Injunctions."

Art. 2252. [2081-2-3] **Definitions.**—The party taking an appeal is called the "appellant" and the adverse party the "appellee." The party suing out a writ of error is called the "plaintiff in error" and the adverse party the "defendant in error." The term "Appellate court" includes the Supreme Court or Court of Civil Appeals having jurisdiction of a cause appealed. The term "Court below" means the court from which the appeal or writ of error is taken. [Acts 1892, p. 42; G. L. Vol. 10, p. 406.]

Art. 2253. [2084] [1387] [1387] **Appeal perfected.**—In cases where an appeal is allowed, the appellant shall give notice of appeal in open court within two days after final judgment, or two days after judgment overruling a motion for a new trial, which notice shall be noted on the docket or record in the minutes of the court, and filed with the clerk together with an appeal bond or affidavit in lieu thereof as provided by law. Such bond or affidavit shall be filed with the clerk of the trial court within twenty days after the expiration of the term or after notice of appeal is given when the term continues by law more than eight weeks, if the party taking the appeal resides in the county, and within thirty days, if he resides out of the county. [Id.]

Art. 2254. [2085] [1388] [1388] **No appeal bond required.**—In cases where the appellant is not required by law to give bond on appeal, the appeal is perfected by the notice provided for in the preceding article.

Art. 2255. [2086] [1389] [1389] **Writ of error sued out.**—The writ of error, in cases where the same is allowed, may be sued out at any time within six months after the final judgment is rendered. [Acts 1892, p. 42; G. L. Vol. 10, p. 406; Acts 1919, p. 136.]

Art. 2256. [2087] [1390] [1390] **By petition.**—The party desiring to sue out a writ of error shall file with the clerk of the

court in which the judgment was rendered a written petition signed by him or by his attorney, and addressed to such clerk. [Acts 1846, p. 363; P. D. 1495; G. L. Vol. 2, p. 1669.]

Art. 2257. [2088] [1391] [1391] **Requisites of petition.**—The petition shall state the names and residences of the parties adversely interested, shall describe the judgment with sufficient certainty to identify it, and shall state that he desires to remove the same to the Court of Civil Appeals for revision and correction. Where the plaintiff in error desires the issuance of a supersedeas, he shall state the facts which entitle him thereto, and pray for the issuance thereof. [Acts 1892, p. 42; G. L. Vol. 10, p. 406.]

Art. 2258. [2089] [1392] [1392] **Error bond.**—The plaintiff at the time of filing such petition shall file with the clerk a writ of error bond, or affidavit in lieu thereof, as provided by law. [Acts 1846, p. 363; G. L. Vol. 2, p. 1669.]

Art. 2259. [2090] [1393] [1393] **Citation in error.**—Upon the filing of such petition and bond, the clerk shall forthwith issue a citation for the defendant in error and if there be several defendants residing in different counties, one citation shall issue to each of such counties. [Id.]

Art. 2260. [2091] [1394] [1394] **Form and requisites of citation.**—The citation shall be styled, dated and tested by the clerk as other writs, and the date of its issuance shall be noted thereon. It shall be directed to the sheriff or any constable of the county where the defendant is alleged to reside or be, and shall command him forthwith to summon the defendant to appear and defend such writ before the Court of Civil Appeals within sixty days from date of service of said citation, stating the place of holding the same, according to the provisions of the law regulating the returns of appeals and writs of error from the court in which the judgment was rendered. It shall state the date of the filing of the petition in error, the names of the parties, and the description of the judgment as therein given. Such citation shall be made returnable within ten days from the issuance of the same, if defendant resides in the county, and within twenty days, if he resides out of the county. [Acts 1892, p. 42; G. L. Vol. 10, p. 406.]

Art. 2261. [2092-3] **Service and return.**—The sheriff or constable receiving such citation shall indorse the day and hour on which he receives it, and execute and return it forthwith. Service shall be made by delivering to the defendant in error, and, if more than one, then, to each of them, in person, a true copy of such citation. The return of such officer shall state when and how the same was served, and shall be signed by him officially. If it has not been served, the return shall show the diligence used by the officer to execute the same, and a failure to execute the same, and where the defendant is to be found, so far as he has been able to ascertain. [Id.]

Art. 2262. [2094] [1397] [1397] **Alias citation.**—If the citation is returned not executed, the clerk shall forthwith issue an alias or pluries citation, as the case may be, which shall con-

form to the requisites prescribed for the issuance of citation in the first instance, and shall, in addition, indicate how many previous citations have been issued. [Acts 1846, p. 363; P. D. 1495; G. L. Vol. 2, p. 1669.]

Art. 2263. [2095] [1398] [1398] **Service on attorney.**—If it appears from the allegations in the papers of the cause that the party is a non-resident of the State, or if it appears from the return of the sheriff or constable that the party cannot be found in the county of his residence, the citation shall direct the officer to summon the defendant by making service on his attorney of record, if there be one. [Id.]

Art. 2264. [2096] [1399] [1399] **Service in other modes.**—Service of the citations may be also made in either mode provided in chapter three of this title, so far as the same are applicable.

Art. 2265. [2097] [1400] [1400] **Cost bond.**—The appellant or plaintiff in error, as the case may be, shall execute a bond to be approved by the clerk, payable to the appellee or defendant in error, in a sum at least double the probable amount of the costs of the court below, the Court of Civil Appeals, and the Supreme Court, to be fixed by the clerk, conditioned that such appellant or plaintiff in error shall prosecute his appeal or writ of error with effect, and shall pay all the costs which have accrued in the court below, and which may accrue in the Court of Civil Appeals and the Supreme Court. [Acts 1892, p. 42; G. L. Vol. 10, p. 406.]

Art. 2266. [2098] [1401] [1401] **Party unable to give cost bond.**—Where the appellant or plaintiff in error is unable to pay the costs of appeal, or give security therefor, he shall nevertheless be entitled to prosecute his appeal; but, to do so, he shall make strict proof of his inability to pay the costs, or any part thereof. Such proof shall be made before the county judge of the county where such party resides, or before the court trying the case, and shall consist of the affidavit of the party stating his inability to pay the costs; which affidavit may be contested by any officer of the court or party to the suit, whereupon the court trying the case, if in session, or the county judge of the county in which the suit is pending, shall hear evidence and determine the right of the party to his appeal. [Acts 1871, p. 74; Acts 1879, p. 90; P. D. 6180; G. L. Vol. 8, p. 1390.]

Art. 2267. [2099] [1402] [1402] **Appeal or writ of error perfected.**—When the bond, or affidavit in lieu thereof, provided for in the two preceding articles, has been filed and the previous requirements of this chapter have been complied with, the appeal or writ of error, as the case may be, shall be held to be perfected.

Art. 2268. [2100] [1403] [1403] **Judgment not suspended.**—The bond or affidavit in lieu thereof, provided in the three preceding articles, shall not have the effect to suspend the judgment, but execution shall issue thereon as if no such appeal or writ of error had been taken.

Art. 2269. Revival against successor of officer.—When a suit in mandamus or injunction is brought against a person holding a public office, in his official capacity, and after final trial and judgment in the trial court, and notice of appeal to the Court of Civil Appeals or Supreme Court has been given, if such person should vacate such office, the suit shall not abate, but his successor may be made a party thereto by a motion showing such facts and that he has demanded such successor to such office to do or to refrain from doing such official act as such suit is based upon and such successor has failed or refused to comply with such demand, duly verified by any party to such suit or his attorney. After service is duly perfected or waived by the parties, the court shall proceed to hear and determine same, and its judgment, order or decree shall be enforced by the court, and such successor shall be bound thereby. In such cases, the successor shall not be liable for any costs that have accrued prior to the time he was made a party. [Acts 1917, p. 367.]

Art. 2270. [2101] [1404] [1404] Supersedeas bond.—An appellant or plaintiff in error, desiring to suspend the execution of the judgment may do so by giving a good and sufficient bond to be approved by the clerk, payable to appellee or defendant in error, in a sum at least double the amount of the judgment, interest and costs, conditioned that such appellant or plaintiff in error shall prosecute his appeal or writ of error with effect; and in case the judgment of the Supreme Court or the Court of Civil Appeals shall be against him, he shall perform its judgment, sentence or decree, and pay all such damages as said court may award against him. [Acts 1892, p. 42; G. L. Vol. 10, p. 406.]

Art. 2271. [2102] [1405] [1405] Where judgment is for property.—Where the judgment is for the recovery of land or other property, the bond shall be further conditioned that the appellant or plaintiff in error shall, in case the judgment is affirmed, pay to the appellee or defendant in error the value of the rent or hire of such property in any suit which may be brought therefor. [Acts 1846, p. 363; P. D. 1492; G. L. Vol. 2, p. 1669.]

Art. 2272. Additional bond.—In all cases carried by appeal or writ of error from the district or county court to the Court of Civil Appeals or to the Supreme Court, in which a supersedeas bond shall be given, and whenever the said bond shall become insufficient by reason of the insolvency of the sureties on such bond, or from any other cause, the court in which the said appeal or writ of error is pending, shall, upon proper showing of such insufficiency being made, require the giving of additional supersedeas bond in like amount as the original, to be approved by the clerk of the court in which said appeal or writ of error is pending. [Acts 1921, p. 223.]

Art. 2273. When party fails to comply.—Upon failure to comply with the rule of the court ordering the execution of said additional supersedeas bond within a period of twenty days after such order is served, the court in which said appeal or

writ of error is pending shall issue an order to the trial court, directing or permitting the issuance of execution on the judgment appealed from; but said appeal or writ of error shall not be dismissed, but continued upon the docket as if said cause had been appealed or writ of error granted upon cost bond, provided the clerk of the court in which said appeal or writ of error is pending is satisfied that the original bond is still sufficient when considered as a cost bond. [Id.]

Art. 2274. **Bond insufficient as cost bond.**—Said clerk shall consider the said original supersedeas bond insufficient when considered as a cost bond, then the said appeal or writ of error shall be dismissed, unless the appellant or the plaintiff in error within twenty days after notice served by the clerk that the said bond is deemed insufficient for the purposes of the cost bond, shall execute a new bond satisfactory to said clerk, sufficient to secure the payment of the costs theretofore accrued, or that might thereafter accrue in the further prosecution of the said appeal or writ of error. The giving of said additional original bond or bonds shall not release the liability of the sureties on the original supersedeas bond. [Id.]

Art. 2275. [2103] [1406] [1406] **Judgment stayed.**—Upon the filing of a proper supersedeas bond, the appeal or writ of error shall be held to be perfected, and the execution of the judgment shall be stayed, and should execution have been issued thereon, the clerk shall forthwith issue a supersedeas. [Acts 1846, p. 363; G. L. Vol. 2, p. 1669; P. D. 1495.]

Art. 2276. [2105-6] **No bond required.**—Neither the State of Texas, nor any county in the State of Texas, nor the Railroad Commission of Texas, nor the head of any department of the State of Texas, prosecuting or defending in any action in their official capacity, shall be required to give bond on any appeal or writ of error taken by it, or either of them, in any civil case.

Executors, administrators and guardians appointed by the courts of this State shall not be required to give bond on any appeal or writ of error taken by them in their fiduciary capacity. [Acts 1848, p. 106; G. L. Vol. 3, p. 106; P. D. 1503; Acts 1897, p. 27; G. L. Vol. 10, p. 1081; Acts 1909, S. S. p. 284.]

Art. 2277. [2107] [1409] [1409] **If party dies.**—In case of the death of any party entitled to an appeal or writ of error, the same may be taken by his executor, administrator or heir.

Art. 2278. [2108-9-10] **Transcript delivered.**—When an appeal or writ of error has been perfected, the clerk of the court shall, upon the application of either party, make out, and deliver to him a transcript of the record of the cause, which shall, except in the cases hereinafter provided, contain a full and correct copy of all the proceedings had in the cause. If the pleadings or the judgment show an appearance of the defendant, in person or by attorney, the citation and returns shall not be copied into the transcript. [Acts 1846, p. 363; P. D. 1494; G. L. Vol. 2, p. 1669.]

Art. 2279. [2111] [1413] [1413] **Omissions.**—The parties may, by agreement in writing, with the approval of the judge,

direct the clerk to omit from the transcript any designated portion of the proceedings not deemed material to the disposition of the cause in the appellate court. [Acts 1858, p. 110; P. D. 1516; G. L. Vol. 4, p. 982.]

Art. 2280. [2112] [1414] [1414] **Agreed statement.**—The parties may agree upon a brief statement of the case and of the facts proven, with or without copies of any part of the proceedings as shall, in their opinion, enable the appellate court to determine whether there has been any error in the judgment; and, if the judge shall approve and sign such statement; it shall be filed among the papers of the cause and constitute a part of the record, and, on appeal or writ of error shall be copied into the transcript in lieu of such proceedings themselves. [Id.]

Art. 2281. [2113] [1415] [1415] **Transcript must contain.**—The transcript shall in all cases contain a copy of the final judgment, notice of appeal, petition for writ of error and citation in error, with return of service thereon, bond on appeal or writ of error, or affidavit in lieu thereof, assignments of error, and a statement of the accrued costs. [Id.]

Art. 2282. [2114] [1416] [1416] **Clerk's certificate.**—The clerk shall certify to the correctness of the transcript and sign the same officially with the seal of the court attached. Such certificate shall state whether the same be a transcript of all the proceedings in the cause, or a transcript agreed upon by the parties. [Acts 1846, p. 363; P. D. 1494; G. L. Vol. 2, p. 1669.]

Art. 2283. [2115] [1417] **Briefs.**—Not less than five days before the time of filing the transcript in the Court of Civil Appeals the appellant or plaintiff in error shall file with the clerk of the trial court a copy of his brief, which he shall deposit with the papers of the cause, with the date of filing indorsed thereon; and he shall forthwith give notice to the appellee or defendant in error, or his attorney of record, of the filing of such brief, and in twenty days after such notice the appellee or defendant in error shall file a copy of his brief with the clerk of said court below, and four copies with the clerk of the Court of Civil Appeals. [Acts 1st. C. S. 1892, p. 42; G. L. Vol. 10, p. 406.]

Art. 2284. [2116] [1418] [1417] **Awaiting mandate.**—Where a cause shall be removed by appeal or writ of error to the appellate court, the cause shall remain or be replaced on the docket to await the mandate of the appellate court.

Art. 2285. [2117] [1419] [1418] **Return of mandate.**—Upon the return of the mandate, if the judgment of the court below be reversed by the appellate court, the cause shall stand for trial in its order on the docket.

CHAPTER THIRTEEN.

GENERAL PROVISIONS.

1. MISCELLANEOUS.

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|----------------------------------|--------------|----------------------------|--------------|
| Writs and process..... | Article 2286 | Deposits pending suit..... | Article 2290 |
| Neglect by officers..... | 2287 | Motions..... | 2291 |
| When judge dies during term..... | 2288 | Audit..... | 2292 |
| Lost records and papers..... | 2289 | | |

Art. 2286. [2180] [1447] [1443] **Writs and process.**—The style of all writs and process shall be “The State of Texas;” and unless otherwise specially provided by law, every such writ and process shall be directed to the sheriff or any constable of the proper county, shall be made returnable on the first day of the next term of the court after the issuance thereof, and shall be dated and attested by the clerk with the seal of the court impressed thereon; and the date of its issuance shall be noted on the same. [Const. Art. 5, Sec. 12; Acts 1866, p. 199; Acts 1846, p. 363; G. L. Vol. 2, p. 1117.]

Art. 2287. [2183] [1455] [1451] **Neglect by officers.**—Any clerk, sheriff, or other officer who neglects or refuses to perform any duty required of him under any provision of this title shall be liable to damages at the suit of any person injured, and may be punished for contempt of court. [Acts 1846, p. 363; G. L. Vol. 2, p. 1669.]

Art. 2288. **When judge dies during term.**—If the judge dies during a session of court duly convened for the term and the time provided by law for holding said court has not expired, such death shall not operate to adjourn said court for the term, but the court shall be deemed at recess for not exceeding six days, and if no successor be appointed or elected during said recess, or if a person appointed or elected does not qualify and assume the duties of office during said recess, then the court shall be deemed to have adjourned. If a successor to such judge shall qualify and assume office during said recess, he may continue to hold said court for the term as provided, and all motions undisposed of shall be heard and determined by him, and statements of facts and bills of exception shall be approved by him. If the time for holding such court expire or the recess expire before a successor shall qualify, then all motions pending, including those in arrest of judgment or for new trial, shall stand as continued in force until such successor has qualified and assumed office, and he shall have power to act on them at the succeeding term, or on an earlier day in vacation on notice to all parties to the motion, and such orders shall have the same effect as if rendered in term time. The time of allowing statement of facts and bills of exception from such order shall date from the time the motion was decided. [Acts 1913, p. 260.]

Art. 2289. [2157-8-9-62-63] **Lost records and papers.**—When any papers or records are lost or destroyed during the pendency of a suit, the parties may, with the approval of the judge, agree in writing on a brief statement of the matters contained therein; or either party may supply such lost records or papers as follows:

1. After three days' notice to the adverse party or his attorney, make written sworn motion before the court stating the loss or destruction of such record or papers, accompanied by certified copies of the originals if obtainable, or by substantial copies thereof.

2. If the adverse party admit the correctness of such copies, and the court be satisfied that they are substantial copies of the originals, or on the approval of said brief statement an order shall be made substituting such copies or brief statement for the originals.

3. Such substituted copies or brief statement shall be filed with the clerk, constitute a part of the cause, and have the force and effect of the originals. [Acts 1850, p. 160, G. L. Vol. 3, p. 598, P. D. 4969.]

Art. 2290. [2164-5-6] **Deposits pending suit.**—The officer having custody of any money, debt, script, instrument of writing, or other article paid or deposited in court during the progress of any cause to abide the result of any legal proceeding, shall seal up in a secure package the identical money or other article so received and deposit it in some safe or bank vault, keeping it always accessible and subject to the control of the court; and he shall also keep in his office as a part of the records thereof a correct itemized statement of such deposit, on what account received, and the disposition made of the same. When his term of office expires, such officer shall turn over to his successor all of such trust funds and other property and the record book thereof, taking his receipt therefor. This article shall not exempt any officer or his surety from any liability on his official bond for any neglect or other default in regard to said property. [Acts 1876, p. 7; G. L. Vol. 8, p. 843.]

Art. 2291. [2118-19-20-21-22-23] **Motions.**—The clerk shall keep a motion docket in which he shall enter every motion filed in his court, the names of the parties and their attorneys, a brief statement of its nature, and the number of the suit in which it is made if it relates to a suit pending. Service of notice on a party may be made, when necessary, either by the proper sheriff or constable or by any person competent to testify, and may be served in like manner as an original writ, either on the party or his attorney of record. The return of such notice when made by such officer or person, verified by his affidavit, shall be prima facie evidence of the fact of service. If the time of service is not elsewhere prescribed, the adverse party is entitled to three day's notice of a motion not relating to a pending suit, and such motions shall be taken up and disposed of in their order as other suits are required to be. Notice of a motion in a suit pending is given by filing the motion and its entry in the motion docket during the term, and such motion which does not go into the merits of the case may be disposed of at any time before the trial of the case. [Acts 1846, p. 363; G. L. Vol. 2, p. 1669.]

Art. 2292. [2124-5-6-7] **Audit.**—When an investigation of accounts or examination of vouchers appears necessary for the

purpose of justice between the parties to any suit, the court shall appoint an auditor or auditors to state the accounts between the parties and to make report thereof to the court as soon as possible. The auditor shall verify his report by his affidavit stating that he has carefully examined the state of the account between the parties, and that his report contains a true statement thereof, so far as the same has come within his knowledge. Said report shall be admitted in evidence, but may be contradicted by evidence from either party where exceptions to such report or of any item thereof have been filed before the trial. The court shall award reasonable compensation to such auditor to be taxed as costs of suit. [Acts 1846, p. 389; G. L. Vol. 2, p. 1695.]

2. RECEIVERS.

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|---|--------------|---|--------------|
| Appointment | Article 2293 | Liability of receiver and person to whom property is delivered..... | Article 2307 |
| Qualifications | 2294 | Receiver to give bond on appeal..... | 2308 |
| Quo warranto | 2295 | Deposit of railroad funds..... | 2309 |
| Oath and bond..... | 2296 | Suit by or against..... | 2310 |
| Receiver's power..... | 2297 | Venue of suit against..... | 2311 |
| Investing funds..... | 2298 | Venue to appoint..... | 2312 |
| Application of funds..... | 2299 | Jurisdiction to appoint..... | 2313 |
| Discharge of receiver..... | 2300 | Inventory by receiver..... | 2314 |
| When property subject to execution..... | 2301 | Where there are betterments, etc..... | 2315 |
| Judgments first lien on property..... | 2302 | Preference claims..... | 2316 |
| Persons liable for debts..... | 2303 | Receivership of corporation limited..... | 2317 |
| Effect of discharge..... | 2304 | Application for receiver..... | 2318 |
| Property liable for debts..... | 2305 | Rules of equity shall govern..... | 2319 |
| Preference lien over mortgage..... | 2306 | Master in chancery..... | 2320 |

Art. 2293. [2128] [1465] **Appointment.**—Receivers may be appointed by any judge of a court of competent jurisdiction of this State, in the following cases:

1. In an action by a vendor to vacate a fraudulent purchase of property; or by a creditor to subject any property or fund to his claim; or between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff or any party whose right to or interest in the property or fund or the proceeds thereof is probable, and where it is shown that the property or fund is in danger of being lost, removed or materially injured.

2. In an action by a mortgagee for the foreclosure of his mortgage and sale of the mortgaged property, when it appears that the mortgaged property is in danger of being lost, removed or materially injured; or that the condition of the mortgage has not been performed and the property is probably insufficient to discharge the mortgage debt.

3. In cases where a corporation is insolvent or in imminent danger of insolvency; or has been dissolved or has forfeited its corporate rights.

4. In all other cases where receivers have heretofore been appointed by the usages of the court of equity. [Acts 1887, p. 119; G. L. Vol. 9, p. 917; Acts 1889, p. 55; G. L. Vol. 9, p. 1083.]

Art. 2294. [2129-30] **Qualifications.**—A receiver for property within or partly within and partly without this State must, when appointed, be a bona fide citizen and qualified voter of this State, and if so qualified and appointed he shall keep and maintain actual residence in this State during the pendency of such

receivership; if not so qualified, his appointment as such receiver shall be void in so far as the property within this State is concerned. No party, attorney, or any person interested in any way in an action for the appointment of a receiver shall be appointed receiver therein. [Id.]

Art. 2295. [2131] [1468] **Quo Warranto.**—Where a domestic corporation owning property in this State shall have a receiver of such property appointed who is not a bona fide citizen and qualified voter of this State, said corporation shall thereby forfeit its charter; and the Attorney General shall at once prosecute a suit by quo warranto against said corporation so offending to forfeit its charter. The court trying the cause shall forfeit the charter of said corporation upon proof that a person has been appointed receiver of its property situated in this State who is not so qualified. [Id.]

Art. 2296. [2132] [1369] **Oath and bond.**—When a receiver is appointed, he shall, before he enters upon his duties, be sworn to perform them faithfully, and shall execute a good and sufficient bond, to be approved by the court appointing him, in the sum fixed by the court, conditioned that he will faithfully discharge his duty as receiver in the action (naming it) and obey the orders of the court therein. [Acts 1887, p. 120.]

Art. 2297. [2133] [1470] **Receiver's power.**—The receiver shall have power, under the control of the court, to bring and defend actions in his own name as receiver, to take charge and keep possession of the property, to receive rents, collect, compound for, compromise demands, make transfers, and generally to do such acts respecting the property as the court may authorize. [Id.]

Art. 2298. [2134] [1471] **Investing funds.**—The funds in the hands of a receiver may be invested upon interest by order of the court, but no such order shall be made except upon consent of all the parties to the action. [Id.]

Art. 2299. [2135] [1472] **Application of funds.**—All moneys that come into the hands of a receiver as such receiver shall be applied as follows, to the payment:

1. Of all court costs of the suit.
2. Of all wages of employes due by the receiver.
3. Of all debts due by the receiver for materials and supplies purchased during receivership by the receiver for the improvement of the property in his hands as receiver.
4. Of all debts due for betterments and improvements done during receivership to the property in his hands as such receiver.
5. Of all claims and accounts against the receiver on contracts made by the receiver during the receivership, and of personal injury claims and claims for stock against said receiver accruing during said receivership, and all judgments rendered against said receiver for personal injuries and for stock killed.
6. Of all judgments recovered against persons or corporations in suits brought before the receiver in the action.

As to all money coming into the hands of a receiver which are the earnings of the property in his hands, said claims shall have a preference lien on the same, and the receiver shall pay the same on the claims against him in the order of preference named above, and the court shall see that he does so. [Id.]

Art. 2300. [2136] [1473] **Discharge of receiver.**—If a receiver is discharged pending suits against him for causes of action growing out of and arising during the receivership, the cause of action shall not abate, but may be prosecuted to final judgment against the receiver; and the plaintiff may make the party or corporation to whom the receiver has delivered the property a party to the suit. If judgment is finally rendered in favor of the plaintiff against the receiver, the court shall also enter judgment in favor of the plaintiff against the party to whom the property was delivered by the receiver. [Id.]

Art. 2301. [2137] [1472] **When property subject to execution.**—Where there is a judgment against a receiver and he shall have in possession moneys subject to the payment of such judgment, and the plaintiff owning the judgment shall apply to the court appointing the receiver for an order to pay said judgment, and if said court should refuse to order said judgment paid, when there is money in the hands of said receiver subject to the payment of the judgment, then the court rendering the judgment shall order an execution to issue on said judgment against said receiver upon the filing by the plaintiff in the court where the judgment was rendered an affidavit reciting that the plaintiff had applied to the court appointing the receiver for an order for said receiver to pay said judgment, and that it was shown to the court that there was money in the hands of the receiver at that time which was subject to the payment of the judgment, and that said court refused to order him to pay the judgment. Said execution when so issued shall be levied upon any property in the hands of the receiver and the same shall be sold as under ordinary execution; and a sale of the property will convey the title of the same to the purchaser. [Id.]

Art. 2302. [2138] [1475] **Judgments first lien on property.**—All judgments rendered against a receiver for causes of action arising during the receivership shall be a lien upon all property in the hands of the receiver superior to the mortgage lien. If the property should be turned back into the possession of the party or corporation owning same at the time of the appointment of a receiver, or any one for them, or to their assigns or purchasers, the party or corporation so receiving said property from said receiver shall take said property charged with all of the unpaid liabilities of the receiver occurring during the receivership, to the value of the property delivered by the receiver. [Id.]

Art. 2303. [2139] [1476] **Persons liable for debts.**—If a receiver is discharged by the court before all of the liabilities of the receiver arising during the receivership are settled in full,

then the person, persons, or corporation to whom the receiver delivers the property that was in his hands as receiver shall be liable to the persons having claims against said receiver for the full amount of the liabilities. [Id.]

Art. 2304. [2140] [1477] **Effect of discharge.**—The discharge of a receiver shall not work an abatement of the suit against a receiver nor in any way affect the right of the party to sue the receiver if he sees proper. [Id.]

Art. 2305. [2141] [1478] **Property liable for debts.**—When property has been returned to the original owner without any sale of said property, such owner shall be liable for all of the unpaid liabilities of the receiver in causes of action arising out of and during the receivership, and the plaintiff may make such owner to whom the property was delivered a party defendant along with the receiver; and, if judgment is rendered against the receiver upon a cause of action arising out of and during the receivership, then the court shall also, at the same time, render judgment against such defendants for the amount so found for plaintiff; and plaintiff shall have the right to foreclose his lien on the property so returned. [Id.]

Art. 2306. [2142] [1479] **Outstanding liabilities at discharge.**—If at the date of the discharge of a receiver there exists against him any judgments or unpaid claims not sued on which arose during the receivership, then such claims and judgments shall be a preference lien on all of the property that was in the receiver's hands as such at said date superior to the mortgage lien; and the person or corporation to whom the receiver has delivered such property shall be liable for such claims and judgments to the value of such property. [Id.]

Art. 2307. [2143] [1480] **Liability of receiver and person to whom property is delivered.**—Any person having a claim against a receiver not sued on at the date of the discharge of the receiver, shall have the right to sue said receiver, either alone or jointly, with the person or corporation to whom the receiver delivered said property that was in his hands as such receiver; and, if any judgment is rendered against said receiver, a judgment shall also be rendered against the person or corporation for the same amount that is rendered against the receiver, not to exceed the value of the property so received by said person or corporation. [Id.]

Art. 2308. [2144] [1481] **Receiver to give bond on appeal.**—In a suit against a receiver, if the receiver desires to appeal or apply for a writ of error from judgment rendered against him, before such appeal or writ of error shall be perfected or allowed, such receiver shall enter into bond with two or more good and sufficient sureties, to be approved by the clerk of the court or justice of the peace, payable to the appellee or the defendant in error, in a sum at least double the amount of the judgment, interest and costs, conditioned that such receiver shall prosecute his appeal or writ of error with effect; and, in case the judgment of the court to which such appeal or writ of error be taken shall be against him, that he will perform its

judgment, sentence, or decree, and pay all such damages and costs as said court may award against him. If the judgment of the appellate court shall be against such receiver, judgment shall, at the same time, be entered against the sureties on his said bond, and execution thereon may issue against such sureties within twenty days after such judgment is rendered. [Id.]

Art. 2309. [2145] [1482] **Deposit of railroad funds.**—When a line of railroad operated by a receiver lies wholly within this State, all money which comes into the hands of the receiver, whether from operating the road or otherwise, shall be kept and deposited in such place within this State as the court may direct, until properly disbursed; but, if any portion of the road lies in another State, the receiver shall be required to deposit in this State at least such share of the funds in his hands as is proportioned to the value of the property of the company within this State.

Art. 2310. [2146] [1483] **Suit by or against.**—When property within the limits of this State has been placed in the hands of a receiver who has taken charge of such property, such receiver may, in his official capacity, sue or be sued in any court of this State having jurisdiction of the cause of action, without leave of the court appointing him. If judgment is recovered against said receiver, the court shall order said judgment paid out of any funds in the hands of said receiver as such receiver. [Id.]

Art. 2311. [2147] [1484] **Venue of suit against.**—Actions may be brought against the receiver of the property of any person where said person resides; and against receivers of a corporation in the county where the principal office of said corporation may be located, and against receivers of railroad companies in any county through or into which the road is constructed. Service of summons may be had upon the receiver, or upon the general or division superintendent of the road, or upon any agent of said receiver who resides in the county where the suit is brought.

Art. 2312. [2150] [1488] **Venue to appoint.**—If the property sought to be placed in the hands of a receiver is a corporation whose property lies within this State, or partly within this State, then the action to have a receiver appointed shall be brought in this State in the county where the principal of said corporation is located. [Id.]

Art. 2313. [2149] [1487] **Jurisdiction to appoint.**—When a person resides in this State and a receiver is applied for, or if the property sought to be placed in the hands of a receiver is situated within the limits of this State, no court other than one within the limits of this State, shall have power to appoint any receiver of said property. [Id.]

Art. 2314. [2148] [1486] **Inventory by receiver.**—The receiver as soon after his appointment as possible, shall return to the court appointing him a true and correct inventory of all property received by him as such receiver. [Id.]

Art. 2315. [2151] [1489] **Where there are betterments, etc.**—When a receiver of a corporation has, under the order of the court appointing him, made improvements upon the property and purchased rolling stock, machinery, and made other improvements whereby the value of the property of said corporation has been increased, or has extended a road, or acquired any property in connection with said road, and has paid for same out of the current receipts of the corporation that came into his hands as receiver, then, if there be any floating debts against said corporation, said corporation shall be made to contribute to the floating indebtedness to the full value of the money so spent by said receiver as aforesaid. When there are liens of any kind upon the property of said corporation in the hands of such receiver, and said property is sold under the order of the court, and said liens foreclosed, then the court appointing such receiver, if there be any unpaid debts or judgments, or claims against the corporation itself, shall detain in the hands of the clerk of the court money to the full value of the improvements made by the receiver of the property sold, and pay the same over to whoever has or may have a claim. debt, or judgment against said corporation; and the court, in ordering the sale of the property, shall require sufficient cash to be paid in at date of sale to cover the full value of the improvements so made by said receiver out of the current funds received by him from the property while receiver. [Id.]

Art. 2316. [2152] [1490] **Preference claims.**—All judgments, claims, or causes of action when determined, existing against any corporation at the time of the appointment of a receiver, shall be paid out of the earnings of such corporation while in the hands of the receiver, to the exclusion of mortgage action; and the same shall be a lien on such earnings. [Id.]

Art. 2317. [2153] [1491] **Receivership of corporation limited.**—No corporation shall be administered in any court for more than three years from the date of such appointment; and within three years such court shall wind up the affairs of such corporation, unless prevented by appeal of litigation. [Id.]

Art. 2318. [2154] [1492] **Application for receiver.**—No receiver of a joint stock or incorporated company, co-partnership or private person shall ever be appointed on the petition of such joint stock or incorporated company, partnership or person. A stockholder or stockholders of such joint stock or incorporated company may have his or their action against such company, and may have a receiver appointed as in ordinary cases. Nothing herein shall prevent a member of any co-partnership from having a receiver appointed whenever a cause of action arises between the co-partners. [Id.]

Art. 2319. [2155] [1493] **Rules of equity shall govern.**—In all matters relating to the appointment of receivers, and to their powers, duties and liabilities, and to the powers of the court in relation thereto, the rules of equity shall govern when-

ever the same are not inconsistent with any provision of this chapter and the general laws of the State. [Id.]

Art. 2320. [2156] [1485] **Master in chancery.**—After a receiver has been appointed and qualified, the court shall, in every case, appoint a master in chancery who shall be a citizen of this State, and not an attorney for either party to the action, nor related to either party, who shall perform all of the duties required of him by the court, and shall be under orders of the court, and have such power as a master of chancery has in a court of equity. [Acts 1887, p. 121; G. L. Vol. 9, p. 919.]

3. OFFICIAL COURT REPORTER.

| | | | |
|----------------------------------|--------------|-------------------------|--------------|
| Appointment and examination..... | Article 2321 | Fees | Article 2325 |
| Oath | 2322 | Extra compensation..... | 2326 |
| Deputy reporter..... | 2323 | In county court..... | 2327 |
| Duty of reporter..... | 2324 | | |

Art. 2321. [1920-21] **Appointment and examination.**—Each district and criminal district judge shall appoint an official court reporter who shall be a sworn officer of the court and shall hold his office during the pleasure of the court. Before any person is so appointed, the judge shall assign three attorneys practicing in said court to examine said applicant as to his competency as follows: The applicant shall, in the presence of such committee, write at the rate of at least one hundred and seventy-five words per minute for five consecutive minutes from questions and answers submitted to him, not counting the words “question” and “answer,” and shall transcribe the same with accuracy. If the applicant passes this test satisfactorily a majority of the committee shall furnish him with a certificate of that fact, which shall be filed among the records of the court and be recorded by the clerk in the minutes thereof. As to subsequent appointments, the presentation of a certified copy from said clerk of said certificate shall be prima facie evidence of the applicant’s competency. No examination by any committee shall be required of an applicant who has been official stenographer of any district court in this State for not less than two years prior to his application. [Acts 1911, p. 264.]

Art. 2322. [1922] **Oath.**—Said reporter in addition to taking the official oath shall subscribe to an oath to be administered to him by the district clerk to the effect that he will well and truly in an impartial manner keep a correct record of all evidence offered in each case reported by him, together with the objections and exceptions made by the parties to such suit, and the rulings and remarks of the court in passing upon the admissibility of testimony. [Id.]

Art. 2323. [1928] **Deputy reporter.**—In case of illness, press of official work, or unavoidable disability of the official shorthand reporter to perform his duties in reporting proceedings in court, the judge of the court may, in his discretion, authorize a deputy shorthand reporter to act during the absence of said official shorthand reporter, and said deputy shorthand reporter shall receive, during the time he acts for said official

shorthand reporter, the same salary and fees as the official shorthand reporter of said court, to be paid in the manner provided for the official shorthand reporter; but the said official shorthand reporter shall also receive his salary in full during said temporary disability to act. The necessity for a deputy official shorthand reporter shall be left entirely within the discretion of the judge of the court. [Acts 1925, p. 670.]

Art. 2324. [1923-4-6] **Duty of reporter.**—Each official court reporter shall:

Attend all sessions of the court, take full shorthand notes of all oral testimony offered in every case tried in said court, together with all objections to the admissibility of the evidence, the rulings and remarks of the court thereon, and all exceptions thereto

Preserve all shorthand notes taken in said court for future use or reference for a full year, and furnish to any person a transcript in question and answer form or narrative form of all such evidence or other proceedings, or any portion thereof as such person may order, upon the payment to him of the fees provided by law.

When any party to any suit reported by any such reporter shall desire a transcript of the evidence in said suit, said party may apply for same and shall indicate whether he desires same in question and answer form or in narrative form. In the event such transcript should be ordered in question and answer form, then such reporter shall make the same up in duplicate in question and answer form, and shall receive as compensation therefor the sum of fifteen cents per hundred words for the original. In the event said transcript should be ordered made in narrative form, then such reporter shall make up same in duplicate in narrative form, and shall receive as compensation therefor the sum of twenty cents per hundred words for the original; provided, that in case any reporter charges more than the fees herein allowed he shall be liable to the person paying the same a sum equal to four times the excess so paid. [Acts 1925, p. 670.]

Art. 2325. [1925] **Fees.**—The official court reporter shall receive as fees for making a transcript of the evidence given in civil cases the sum of fifteen cents per one hundred words when made in question and answer form and twenty cents per one hundred words when made in narrative form. He shall also receive the sum of fifteen cents per one hundred words for preparing statements of facts. No charge shall be made in any case for duplicate copies. [Acts 1911, p. 264; Acts 3rd C. S. 1920, p. 88.]

Art. 2326. [1925] **Compensation.**—The official shorthand reporter of each judicial district in this State and the official shorthand reporter of any county court, either civil or criminal, in this State, shall receive a salary of two thousand one hundred dollars per annum, in addition to the compensation for transcript fees as provided for in this Act. Said salary shall be paid monthly by the commissioners' court of the county, out of the general fund of the county, upon the certificate of the district

judge. In judicial districts of this State composed of two or more counties said salary shall be paid monthly by the counties of the district in proportion to the number of weeks provided by law for holding court in the respective counties in the district; provided, that in a district wherein in any county the term may continue until the business is disposed of, each county shall pay in proportion to the time court is actually held in such county. [Acts 1925, p. 670.]

Art. 2327. [1932] **In county court.**—When either party to a civil case pending in the county court or county court at law applies therefor, the judge thereof shall appoint a competent stenographer, if one be present, to report the oral testimony given in such case. Such stenographer shall take the oath required of official court reporters, and shall receive not less than five dollars per day, to be taxed and collected as costs. In such cases the provisions of this title with respect to the preparation of the statement of facts, the time to be allowed therefor, and for the presentation to the opposite party, and the approving and filing thereof by the court, shall apply to all statements of facts in civil cases tried in said courts, and all provisions of law governing statement of facts and bills of exception to be filed in district courts and the use of same on appeal, shall apply to civil cases tried in said courts. [Acts 1911, p. 264.]

4. MANDAMUS.

On ex parte hearing.....2328

Art. 2328. [5731] [1450] [1446] **On ex parte hearing.**—No mandamus shall be granted on ex parte hearing; and any peremptory mandamus granted without notice shall be abated on motion. [Acts 1846, p. 300, Sec. 4; P. D. 1407.]

TITLE 43.

COURTS—JUVENILE.

| | Article | | Article |
|-------------------------------------|---------|-------------------------------|---------|
| Juvenile court..... | 2329 | Jury..... | 2334 |
| "Dependent or neglected child"..... | 2330 | Adjudication..... | 2335 |
| Who may institute proceedings..... | 2331 | Disposition of child..... | 2336 |
| Citation..... | 2332 | Custody of child..... | 2337 |
| Hearing..... | 2333 | Care of delinquent child..... | 2338 |

Art. 2329. [2185-2192] **Juvenile Court.**—When it is sought to have a child adjudged to be a "delinquent child," as that term is defined in Article 1083 of the Code of Criminal Procedure, the county courts, district courts, and the criminal district courts shall have original jurisdiction in all such proceedings. When disposing of such cases the court may be known as the Juvenile Court, and shall at all times be deemed in session for the purpose of disposing of such cases, and shall have a juvenile docket. The district court only shall have original jurisdiction in all proceedings wherein it is sought to have a child adjudged to be a dependent or neglected child, and its findings in such cases shall be entered in a book kept for that purpose to be known as the "Juvenile Record." [Acts 1907, p. 137; Acts 1913, p. 214; Acts 4th C. S. 1918, p. 43.]

Art. 2330. [2184] **"Dependent or neglected child."**—The term "dependent child" or "neglected child" includes any child under sixteen years of age who is dependent upon the public for support or who is destitute, homeless or abandoned; or who has not proper parental care or guardianship, or who habitually begs or receives alms, or who is found living in any house of ill fame or with any vicious or disreputable person, or whose home, by reason of neglect, cruelty or depravity on the part of its parents, guardian or other person in whose care it may be, is an unfit place for such child; or any such child whose parents or guardian permit it to use intoxicating liquor except for medicinal purposes or to become addicted to the use of such liquors, or permits it in or about any place where intoxicating liquors are sold. [Acts 1907, p. 135.]

Art. 2331. [2186] **Who may institute proceedings.**—Any person who is a resident of the county, having knowledge of a child in his county who appears to be a "dependent" or "neglected" child may file with the district clerk of his county a written petition, setting forth the facts constituting the child "dependent" or "neglected;" which petition shall be verified by the affidavit of the petitioner. It shall be sufficient, if the affidavit shall be upon information and belief. Such petition shall set forth the name of the parent or parents of such child, if known, and their residence; and if such child has no parent living, then the name and residence of the guardian of such child, if it has one. [Id.]

Art. 2332. [2187] **Citation.**—Upon the filing of such petition, the judge of said court shall fix the day and time for the hearing of such petition. If it appears that one or both of such

parents, or guardian, if there be no parents, reside in said county, the clerk of said court shall immediately issue citation; which citation shall include a copy of the petition, which shall be served on such parent, parents, or guardian, if any, if either can be found in said county, not less than two days before the time fixed for said hearing, requiring them to appear on said day and hour to show cause, if any, why such child should not be declared by said court to be a "dependent" and "neglected" child. Such citation shall be served by the sheriff or any constable of the county. If it appears from the petition that neither of said parents are living, or do not reside in said county and that said child has no guardian residing in said county, or in case one or both of said parents, or the guardian in case there be no parents, shall indorse on said petition a request that the child be declared a "dependent child," then the citation herein provided for shall not be issued; and the court may thereupon proceed to a hearing of the case. In case neither of the parents or guardian is found, then the court shall appoint some suitable person to represent said child in said cause. [Id.]

Art. 2333. [2188] **Hearing.**—Upon such hearing of such case the child shall be brought before said court; whereupon, the court shall investigate the facts, and ascertain whether the child is a "dependent child," its residence, and, as far as possible, the whereabouts of its parents or near adult relatives, when and how long the child has been maintained, in whole or in part, by private or public charity, the occupation of the parents, if living, whether they are supported by the public or have abandoned the child, and to ascertain, as far as possible, if the child is found dependent, the cause thereof. The court may compel the attendance of witnesses on such examination; and the clerk shall issue all process and the sheriff and other officers of the court shall serve the same as in other cases. The county attorney, when requested by the court, shall appear in any such examination in behalf of the petition. It shall be the duty of the county attorney of such county, upon the request of the court or any petitioner, to file a petition and to conduct any necessary proceedings in any case within the provisions of this title. [Id.]

Art. 2334. **Jury.**—Any person interested in any case under this title may appear therein and may be represented by counsel, and may demand a jury as in other cases. If no jury is demanded, it shall be deemed to have been waived. The judge of the court, of his own motion, may order a jury to try such case. [Id.]

Art. 2335. [2189] **Adjudication.**—Upon the hearing of such case, if the said child shall be found to be a dependent or neglected child, as defined herein, it shall be adjudged a "dependent child;" and an order may be entered making disposition of said child as to the court seems best for its moral and physical welfare. It may be turned over to the care and custody of

any suitable person or any suitable institution in the county or State organized for the purpose of caring for "dependent children," and which is able and willing to care for same. And when such child is so turned over to the custody of such person or institution, such person or institution shall have the right to the custody of said child, and shall be at all times responsible for its education and maintenance, subject at all times to the order of the court. [Id.]

Art. 2336. **Disposition of child.**—In any case where the court shall award any dependent or neglected child to the care of any individual or institution in accordance with the provisions of this title, the child, unless otherwise ordered, shall become a ward and be subject to the guardianship of the institution or individual to whose care it is committed. Such institution or individual shall, with the consent of the court, have authority to place such child in a suitable family home, the head of such family being responsible for the maintenance and education of said child. Any institution or individual receiving any such child under the order of the court shall be subject to visitation or inspection by any person appointed by the court for such purpose; and the court, may at any time, require from any institution or person a report containing such information as the court shall deem proper or necessary, to be fully advised as to the care, education, maintenance and moral and physical training of the child, as well as the standing and ability of such institution or individual to care for such child. The court may change the guardianship of such child, if, at any time, it is made to appear to the court such change is to the best interest of the child. If, in the opinion of the court, the causes of the dependency of any child may be removed under such conditions or supervisions for its care, protection and maintenance as may be imposed by the court, so long as it shall be for its best interests, the child may be permitted to remain in its own home and under the care and control of its own parent, parents or guardian, subject to the jurisdiction and direction of the court; and when it shall appear to the court that it is no longer to the best interests of such child to remain with such parents or guardian, the court may proceed to a final disposition of the case. [Id.]

Art. 2337. **Custody of child.**—In case any child is adjudged to be dependent or neglected under this title then such parents or guardian shall thereafter have no right over or to the custody, services or earnings of said child except upon such conditions in the interest of such child as the court may impose, or where, upon proper proceedings, such child may lawfully be restored to the parents or guardian. [Id.]

Art. 2338. **Care of delinquent child.**—In any case of a "delinquent child," the court may continue the hearing from time to time and may commit the child to the care of a probation officer, or to the care or custody of any other proper person, and may allow said child to remain in its own home, subject to visitation of the probation officer or other person designated by the

court, or under any other conditions that may seem proper and be imposed by the court; or the court may cause the child to be placed in the home of a suitable family, under such conditions as may be imposed by the court, or it may authorize the child to be boarded out in some suitable family, in case provision is made, by voluntary contribution or otherwise, for the payment of the board of such child until suitable provision may be made in a home without such payment; or the court may commit it to any institution in the county that may care for children that is willing to receive it, or which may be provided for by the State or county, suitable for the care of such children, willing to receive it, or of any State institution for boys or girls, willing to receive such child, or to any other institution in the State of Texas for the care of such children willing to receive it. In no case shall a child proceeded against under this law be committed beyond the age of twenty-one. The order of the court committing such child to the care and custody of any person shall prescribe the length of time and the conditions of such commitment. Such order shall be subject to change by further orders of the court with reference to said child; and the court shall have the power to change the custody of such child or to entirely discharge it from custody whenever, in the judgment of the court, it is to the best interest of the child to do so. [Acts 1913, p. 218.]

TITLE 44.

COURTS—COMMISSIONERS.

1. COMMISSIONERS COURTS.

| | Article | | Article |
|---------------|---------|---------------|---------|
| Election | 2339 | Notice posted | 2347 |
| Oath and bond | 2340 | Regular terms | 2348 |
| Vacancy | 2341 | Minutes | 2349 |
| The court | 2342 | Salaries | 2350 |
| Quorum | 2343 | Salaries | 2350a |
| Seal | 2344 | Salaries | 2350b |
| The clerk | 2345 | Salaries | 2350c |
| Process | 2346 | | |

Art. 2339. [2236] [1532] [1509] **Election.**—Each county shall be divided into four commissioners precincts, and one commissioner shall be elected biennially in each precinct, and each commissioner shall hold his office for two years. [Const. Art. 5, Sec. 18; Acts 1876, p. 51, Sec. 3; G. L. Vol. 8, p. 887.]

Art. 2340. [2239] [1535] [1512] **Oath and bond.**—Before entering upon the duties of their office, the county judge and each commissioner shall take the official oath, and shall also take a written oath that he will not be directly or indirectly interested in any contract with, or claim against, the county in which he resides, except such warrants as may issue to him as fees of office. Each commissioner shall execute a bond to be approved by the county judge in the sum of three thousand dollars, payable to the county treasurer, conditioned on the faithful performance of the duties of his office, that he will pay over to his county all moneys illegally paid to him out of county funds, as voluntary payments or otherwise, and that he will not vote or give his consent to pay out county funds except for lawful purposes. [Acts 1923, p. 14.]

Art. 2341. [2240] [1536] [1513] **Vacancy.**—In case of vacancy in the office of commissioner, the county judge shall appoint some suitable person living in the precinct where such vacancy occurs, to serve as commissioner for such precinct until the next general election. [Acts 1876, p. 51; G. L. Vol. 8, p. 887.]

Art. 2342. [2237] [1533] [1510] **The Court.**—The several commissioners, together with the county judge, shall compose the "Commissioners Court," and the county judge, when present, shall be the presiding officer of said court. [Const. Art. 5, Sec. 18; Acts 1876, p. 51; G. L. Vol. 8, p. 887.]

Art. 2343. [2238] [1534] [1511] **Quorum.**—Any three members of the said court, including the county judge, shall constitute a quorum for the transaction of any business, except that of levying a county tax. [Id.]

Art. 2344. [2278] [1566] [1529] **Seal.**—Each commissioners court shall have a seal, whereon shall be engraved a star with five points, the words, "Commissioners Court, _____ County, Texas," (the blank to be filled with the name of the County) which seal shall be kept by the clerk of said court and used in authentication of all official acts of the court, or of the presiding officer or clerk of said court, in all cases where a seal may be

necessary for the authentication of any of said acts. [Acts 1876, p. 53; G. L. Vol. 8, p. 889.]

Art. 2345. [2279] [1557] [1530] **The clerk.**—The county clerk shall be ex-officio clerk of the commissioners court; and he shall attend upon each term of said commissioners court; preserve and keep all books, papers, records and effects belonging thereto, issue all notices, writs and process necessary for the proper execution of the powers and duties of the commissioners court, and perform all such other duties as may be prescribed by law. [Id.]

Art. 2346. [2280-1] [1558-9] [1531-2] **Process.**—All notices, citations, writs and process issued from said court shall be in the name of the "State of Texas," and shall be directed to the sheriff or any constable of a county and shall be dated and signed officially by the clerk, and shall have the seal of the court impressed thereon. All process of said court, when not otherwise directed by law shall be executed at least five days before the return day thereof, which return day shall be specified in the process. Subpoenas for witnesses may be executed and returned forthwith when necessary. [Id.]

Art. 2347. [2282] **Notice posted.**—Whenever the commissioners court shall be unable to secure the publication of any notice or report required by law in the manner and for the fee provided therefor, such notice or report may be made and published by posting one copy of such notice at the courthouse door, and one of said copies shall be posted at some public place in each commissioners precinct for thirty days prior to the next succeeding term of the commissioners court. No two such copies shall be posted in the same town or city. [Acts 1899, p. 39.]

Art. 2348. [2274-5] [1552-3] [1525-6] **Regular terms.**—The regular terms of the commissioners court shall be commenced and be held at the court house on the second Monday of each month throughout the year and may continue in session one week; provided the court need not hold more than one session each quarter if the business of the court does not demand a session. Any session may adjourn at any time the business of the court is disposed of. Special terms may be called by the county judge or three of the commissioners, and may continue in session until the business is completed. [Acts 1876, p. 53; Acts 1911, p. 198; G. L. Vol. 8, p. 889.]

Art. 2349. [2276-7] **Minutes.**—The court shall require the county clerk to keep suitable books in which shall be recorded the proceedings of each term of the court; which record shall be read and signed after each term by the county judge, or the member presiding and attested by the clerk. The clerk shall also record all authorized proceedings of the court between terms; and such record shall be read and signed on the first day of the term next after such proceedings occurred. [Id.]

Art. 2350. **County commissioners salaries.**—In counties having the following assessed valuations, respectively, the county commissioners of such counties may each receive the annual salaries herein specified, to be paid in equal monthly installments out of the general funds of the county:

| Assessed Valuation. | Salary. |
|---|-------------|
| \$ 7,500,000 and less than \$10,000,000..... | \$ 1,200.00 |
| \$10,000,000 and less than \$12,500,000..... | 1,500.00 |
| \$12,500,000 and less than \$20,750,000..... | 1,800.00 |
| \$20,750,000 and less than \$25,000,000..... | 2,000.00 |
| \$25,000,000 and less than \$30,000,000..... | 2,250.00 |
| \$30,000,000 and less than \$100,000,000..... | 2,400.00 |
| \$100,000,000 and over..... | 3,600.00 |

In counties having an assessed valuation of less than \$7,500,000 each county commissioner shall receive five dollars per day for each day served as commissioner and when acting as ex-officio road superintendent in his precinct, not to exceed one thousand dollars in any year. In counties whose assessed valuation is \$100,000,000 or more, said commissioners shall devote their entire time to the duties required of them by law and such other duties as their commissioners' court may require of them. "Assessed valuation" means the total assessed valuation of all properties as shown by the tax rolls certified by the county assessor, approved by the commissioners' court and approved by the Comptroller for the year 1924. [Acts 1925, p. 340.]

Art. 2350a. County commissioners salaries.—Each county commissioner in each of the counties of all judicial districts of Texas, composed of two counties as of date January 1, 1925, which said counties comprising such judicial districts had a total population of not less than thirty-five thousand nor more than forty-one thousand inhabitants, according to the last United States census, and which said counties have an aggregate area of not less than 1890 square miles according to the records of the General Land Office of Texas, may receive eighteen hundred (\$1,800.00) per annum from the general funds of such counties, payable in twelve equal monthly installments, as compensation for all services rendered of whatsoever nature, whether in connection with the roads of the county, or in connection with other county business. [Acts 1925, p. 229.]

Art. 2350b. Salary of county commissioners.—Each county commissioner in counties having a population of not less than 17,000 according to the United States census of 1920, and which have an area of not less than 1060 square miles, nor more than 1200 square miles and which have assessed property valuations of not less than \$10,000,000 and which do not contain a town or city of 7,500 population or more, may receive a salary of eighteen hundred (\$1,800.00) dollars per annum, payable in twelve equal monthly installments, as compensation for their services rendered, of whatever nature, either in connection with the roads of the county, or in connection with other county business. The amount of salary to be received by commissioners in counties classed as herein set out, shall be fixed by an order of the commissioners' court passed at a regular term of such court, and entered upon its minutes; provided that nothing herein shall effect or apply to the counties of Grimes, Houston Leon, Madison, Montgomery, Polk, San Jacinto, Trinity and Walker in said State. [Acts 1925, p. 302.]

Art. 2350c. [6901a] In all counties having an assessed

valuation of all taxable properties of one hundred million (\$100,000,000) dollars or more, based upon the approved tax rolls for the year 1923, the county commissioners shall devote their entire time to the duties required of them by law and such other duties as may be required of them by the commissioners' court of their respective counties, and may each receive a salary of three thousand six hundred (\$3,600.00) dollars per annum, payable in equal monthly installments, and this salary shall be in lieu of all other fees and per diem of all kinds now allowed by law; provided that in all counties, having an assessed valuation of all taxable property of less than ten million (\$10,000,000.00) dollars, based upon the approved tax rolls for the year 1923, the county commissioners of the several counties shall each receive five (\$5.00) dollars per day for each day served as commissioner and when acting as ex-officio road supervisors of their precinct, they shall each receive five (\$5.00) dollars for each day actually served in supervising the construction or repair of the public roads in their respective precincts; provided that each commissioner shall, in no event, receive more than one thousand (\$1,000.00) dollars in any one year for such service." [Id., p. 386.]

2. POWERS AND DUTIES.

| | | | |
|-----------------------------------|--------------|-------------------------------------|--------------|
| Certain powers specified..... | Article 2351 | Stationery classified..... | Article 2362 |
| May levy taxes..... | 2352 | Bond with bid..... | 2363 |
| Tax limit..... | 2353 | Unlawful interest in contract..... | 2364 |
| When tax levied..... | 2354 | Contracts made in open court..... | 2365 |
| To fill vacancies..... | 2355 | Contract and bond..... | 2366 |
| Bridges in corporate limits..... | 2356 | Affidavit with bid..... | 2367 |
| Shall keep in repair..... | 2357 | Contracts over \$2000..... | 2368 |
| May contract for supplies..... | 2358 | Commissioners may repeal order..... | 2369 |
| Bids advertised..... | 2359 | Provide for county court..... | 2370 |
| New bids advertised for..... | 2360 | Rest room..... | 2371 |
| Preference to local citizens..... | 2361 | Interpreters..... | 2372 |

Art. 2351. [2241] [1537] [1514] **Certain powers specified.**
—Each commissioners court shall:

1. Lay off their respective counties into precincts, not less than four, and not more than eight, for the election of justices of the peace and constables, fix the times and places of holding justices courts, and shall establish places in such precincts where elections shall be held; and shall establish justices precincts and justices courts for the unorganized counties as provided by law.
2. Establish public ferries whenever the public interest may require.
3. Lay out and establish, change and discontinue public roads and highways.
4. Build bridges and keep them in repair.
5. Appoint road overseers and apportion hands.
6. Exercise general control over all roads, highways, ferries and bridges in their counties.
7. Provide and keep in repair court houses, jails and all necessary public buildings.
8. Provide for the protection, preservation and disposition of all lands granted to the county for education or schools.
9. Provide seals required by law for the district and county courts.
10. Audit and settle all accounts against the county and direct their payment.

11. Provide for the support of paupers and such idiots and lunatics as cannot be admitted into the lunatic asylum, residents of their county, who are unable to support themselves. By the term resident as used herein, is meant a person who has been a bona fide inhabitant of the county not less than six months and of the State not less than one year.

12. Provide for the burial of paupers.

13. Punish contempts by fine not to exceed twenty-five dollars or by imprisonment not to exceed twenty-four hours, and in case of fine, the party may be held in custody until the fine is paid.

14. Issue all such notices, citations, writs and process as may be necessary for the proper execution of the powers and duties imposed by such court and to enforce its jurisdiction.

15. Said court shall have all such other powers and jurisdiction, and shall perform all such other duties, as are now or may hereafter be prescribed by law. [Const. Art. 5; Acts 1876, p. 51; G. L. Vol. 8, p. 887; Acts 1885, p. 89; G. L. Vol. 9, p. 708; Acts 1911, p. 236.]

Art. 2352. [2242] [1538] **May levy taxes.**—Said court shall have the power to levy and collect a tax for county purposes, not to exceed twenty-five cents on the one hundred dollars valuation, and a tax not to exceed fifteen cents on the one hundred dollars valuation to supplement the jury fund of the county, and not to exceed fifteen cents for roads and bridges on the one hundred dollars valuation, except for the payment of debts incurred prior to the adoption of the amendment to the Constitution, September 25, A. D. 1883, and for the erection of public buildings, streets, sewers, water works and other permanent improvements, not to exceed twenty-five cents on the one hundred dollars valuation in any one year, and except as in the Constitution otherwise provided. They may levy an additional tax for road purposes not to exceed fifteen cents on the one hundred dollar valuation of the property subject to taxation, under the limitations and in the manner provided for in Article 8, Sec. 9, of the Constitution and in pursuance of the laws relating thereto. [Const. Art. 8, Sec. 9; Amendment 1899.]

Art. 2353. [2243] [1539] [1516] **Tax limit.**—No tax levied for the purpose of paying debts incurred prior to the eighteenth day of April, A. D. 1876, shall exceed two and one-half mills on the dollar, and no tax levied for the erection or repair of public buildings shall exceed two and one-half mills on the dollar for any one year. [Const. Art. 8, Sec. 9; Amendment 1899.]

Art. 2354. [2244] [1540] [1517] **When tax levied.**—No county tax shall be levied except at a regular term of the court, and when all members of said court are present. [Id.]

Art. 2355. [2245-6] **To fill vacancies.**—The court shall have power to fill vacancies in the office of: county judge, county clerk, sheriff, county attorney, county treasurer, county surveyor, county hide inspector, assessor of taxes, collector of taxes, justices of the peace and constables. Such vacancies shall be filled by a majority vote of the members of said court present

and voting, and the person chosen shall hold office until the next general election.

Art. 2356. [2252-3] **Bridges in corporate limits.**—Said court may erect bridges within the corporate limits of any city or town to the same extent and under the same conditions now prescribed by law for the construction of bridges outside the limits of any city or town. Said court and the governing body of any city or town may co-operate in the erection of a bridge within the corporate limits of a city or town, and jointly erect such bridge upon terms and conditions mutually agreed upon; and either or both the city and county may issue its bonds to pay its proportionate part of the debt by complying with the requirements of the law regulating the issuance of bonds by counties and cities and towns. [Acts 1895, p. 164; G. L. Vol. 10, p. 894.]

Art. 2357. [2255] [1547] **Shall keep in repair.**—The commissioners court of counties owning bridges, situated within the corporate limits of cities and towns, shall keep the same in repair. This article shall not affect or diminish the liability of town and city corporations for injuries caused by defective condition of such bridges situated within the city limits. [Acts 1897, p. 212.]

Art. 2358. [2256] **May contract for supplies.**—The commissioners court by an order entered of record, may contract as hereinafter prescribed, with some suitable person or persons to supply the county with blank books, all legal blanks and stationery as may be required by law to be furnished the county officials. [Acts 1907, p. 252.]

Art. 2359. [2257] **Bids advertised.**—The commissioners court shall advertise, at least once in every two years, for sealed proposals to furnish blank books, legal blanks, stationery and such other printing as may be required for the county for the term of such contract, and shall receive separate bids for the different classes hereinafter designated. Such advertisement shall be made by the county clerk, who shall notify by registered letter, each newspaper and job printing house in the county, and at least three stationery and printing houses in the State, of the time said contract is to be awarded, and of the probable amount of supplies needed. [Id.]

Art. 2360. [2258] **New bids advertised for.**—Should supplies furnished by the successful bidder not be of the quality designated and provided for, then the commissioners court may declare such contract null and void, and from time to time advertise for sealed proposals as in the first instance, rejecting any or all bids as often as they may deem best. [Id.]

Art. 2361. [2260] **Preference to local citizens.**—All things being equal, contracts must be awarded to a citizen or taxpayer of the county in which the contract is let. [Id.]

Art. 2362. [2262] **Stationery classified.**—The stationery shall be divided into four classes: Class "A" shall embrace all blank books and all work requiring permanent and substantial binding. Class "B" shall embrace all legal blanks, letter heads and other printing, stationery and blank papers. Class "C" shall embrace typewriter ribbons, pens, ink, mucilage, pencils,

penholders, ink stands and ware of like kind. Class "D" poll tax receipts and all election supplies of whatever nature and description, not furnished by the State. Each and every bid shall be upon a particular class, separate and apart from any other class. To the lowest bidder on each class shall be awarded the contract for all work of that class. [Id.]

Art. 2363. [2263] **Bond with bid.**—Each bid shall be accompanied by a bond of the bidder, with two or more good and sufficient sureties, conditioned that, should the contract be awarded to him, he will without delay, upon being notified of such award, enter into a written contract, according to law and with his proposal, and will give such bond as may be required for the faithful performance of said contract. [Id.]

Art. 2364. [2264] **Unlawful interest in contract.**—No member of the commissioners court or any county officer shall be, either directly or indirectly, interested in any such contract. [Id.]

Art. 2365. [2265] **Contract made in open court.**—All contracts shall be made in open court, with the lowest bidder, and all bids shall be spread in full on the minutes of the court.

Art. 2366. [2266] **Contract and bond.**—The successful bidder shall enter into a written contract with the court, and shall give bond in the sum of two hundred and fifty dollars for each class or contract, to be approved by the county judge, conditioned for the faithful compliance with his bid and with the law, and shall be made payable to the county judge or his successors in office. [Id.]

Art. 2367. [2268] **Affidavit with bid.**—The manager, secretary or other agent or officer of the bidder shall attach to each bid an affidavit to the effect that affiant has full knowledge of the relations of the bidder with the other firms in the same line of business and that the bidder is not a member of any trust, pool or combination of any kind and has not been for six months last past, directly or indirectly concerned in any pool or agreement or combination to control the price of supplies bid on, or to influence any person to bid or not to bid thereon. [Id.]

Art. 2368. **Contracts over \$2000.**—No commissioners court shall make a contract calling for or requiring the expenditure or payment of two thousand dollars or more out of any fund or funds of any county or subdivision of any county, without first submitting such proposed contract to competitive bids. Notice of the time and place when and where such contract will be let shall be published in such county or subdivision once a week for four weeks prior to the time set for letting such contract, and a certified check for five per cent of the amount of the bid shall be required to be filed with each bid, and said contract shall be let to the lowest and best responsible bidder upon said contract and said bidder shall be required to give a good and sufficient bond in the full amount of the contract price executed by some surety company authorized to do business in this State. If there is no newspaper published in such county or subdivision, then notice of the letting of such contract shall be given by causing notice thereof to be posted at the courthouse door of such county.

for four weeks prior to the time of letting such contract. Provided, that in case of public calamity, where it becomes necessary to act at once to appropriate money to relieve the necessities of citizens or to preserve the property of the county or subdivision, this provision may be waived. All contracts made by or with said court calling for or requiring the expenditure of any amount of money less than two thousand dollars and exceeding five hundred dollars shall be let by competitive bids at a regular term of court, except in case of urgent necessity or public calamity. The provisions of this article shall not apply to any work done under the direct supervision of the county commissioners and paid for by the day. A contract made by the commissioners court without complying with the terms of this article shall be void, and shall not be enforceable in any court of this State, and the performance of same and the payment of any money thereunder may be enjoined by any citizen of the county or subdivision. This law shall be cumulative of this title. [Acts 1917, p. 349; Acts 1923, p. 262.]

Art. 2369. [2269] **Commissioners may repeal order.**—The commissioners court may, by order entered of record after contracts have been in force for the specified time in such contract, repeal said order. [Acts 1907, p. 252.]

Art. 2370. [2270] [1548] [1521] **Provide for county court.**—Said court may, when necessary, provide buildings, rooms or apartments at the county seats, other than the court house, for holding the sessions of the county courts. [Acts 1876, p. 211; G. L. Vol. 8, p. 1047.]

Art. 2371. **Rest-room.**—Said courts may maintain public rest-rooms for women in the court house or at some convenient place near the court house. The rest-room shall be comfortably furnished with necessary furnishings as may be needed to make the room attractive and comfortable for women. The commissioners court may assist the public in paying the salary of a matron to be appointed by the county judge with the consent of the commissioners. The expense of furnishing and maintaining rest-rooms shall be limited in the following manner:

1. In counties having a population of twenty-five thousand or less, not exceeding \$125.00 for furnishings and \$15.00 per month for matron.

2. In counties having a population of twenty-five thousand and not exceeding fifty thousand, not to exceed \$200.00 for furnishings and \$25.00 per month for matron.

3. In counties having a population exceeding fifty thousand, not to exceed \$300.00 per month for furnishings and \$50.00 per month for matron.

The population shall be determined by the preceding Federal census. [Acts 1919, p. 159; Acts 2nd C. S. 1919, p. 178.]

Art. 2372. **Interpreters.**—Each commissioners court may pay an interpreter for his services as such in any court within their county only for the time he is actually employed not to exceed three and one-half dollars a day, to be paid out of the general fund upon proper warrant issued by the court or clerk thereof. [Acts 4th C. S. 1918, p. 26.]

TITLE 45.

COURTS—JUSTICE.

| Chapter | Page | Chapter | Page |
|-----------------------------|------|-------------------------------|------|
| 1 Courts—Justice | 632 | 4 Judgment and new trial..... | 642 |
| 2 Institution of suit..... | 636 | 5 Execution | 644 |
| 3 Appearance and trial..... | 639 | 6 Appeal and Certiorari..... | 646 |

CHAPTER 1.

JUSTICES AND JUSTICE COURTS.

| | Article | | Article |
|--|---------|----------------------------|---------|
| Election, bond and term of office..... | 2373 | Docket | 2382 |
| In unorganized counties..... | 2374 | Custody of books, etc..... | 2383 |
| Two justices elected..... | 2375 | Enforcing delivery..... | 2384 |
| Commissioned..... | 2376 | Jurisdiction..... | 2385 |
| Nearest justice to hold court..... | 2377 | Other powers..... | 2386 |
| Disqualification..... | 2378 | No jurisdiction..... | 2387 |
| Justice's office..... | 2379 | Oral pleadings..... | 2388 |
| Term of court..... | 2380 | Sworn pleadings..... | 2389 |
| District court rules govern..... | 2381 | | |

Art. 2373. [2283] [1560] [1533] **Election, bond and term of office.**—The qualified voters of each justice precinct in this State, at each biennial election, shall elect one justice of the peace, styled in this title “justice,” who shall hold his office for two years. Each justice shall give bond payable to the county judge in the sum of one thousand dollars, conditioned that he will faithfully and impartially discharge the duties required of him by law, and will promptly pay over to the party entitled to receive it, all moneys that may come into his hands during his term of office. [Acts 1885, p. 90; G. L. Vol. 9, p. 710.]

Art. 2374. [2284-85] **In unorganized counties.**—The commissioners courts of counties to which unorganized counties are attached for judicial purposes may appoint a justice and a constable for each unorganized county attached to said county for judicial purposes, in accordance with the law authorizing such appointments in organized counties. Whenever, in any unorganized county, a necessity may exist for the appointment of more than one justice and constable, and one hundred qualified voters of said county shall petition the commissioners court of the organized county to which such unorganized county is attached for judicial purposes, asking the appointment of such officers, such commissioners court shall lay off and designate as many justice precincts in such unorganized county as may be necessary, not exceeding four, and such court may appoint one justice and one constable for each justice precinct in such unorganized county; and such justice precincts shall be legally constituted election precincts. [Acts 1879, p. 89; G. L. Vol. 8, p. 1389; Acts 1885, p. 88; G. L. Vol. 9, p. 708.]

Art. 2375. [2286] [1563] [1534] **Two justices elected.**—Where there is a city of eight thousand inhabitants or more in a justice precinct, two justices of the peace shall be elected. [Id; Acts 1876, p. 154; G. L. Vol. 8, p. 990.]

Art. 2376. [2287] [1564] [1353] **Commissioned.**—Each justice of the peace shall be commissioned as justice of the peace of his precinct and ex officio notary public of his county. [Const., Art. 4, Sec. 20; Acts 1876, p. 165; G. L. Vol. 8, p. 1001.]

Art. 2377. [2289] [1566] [1537] **Nearest justice to hold court.**—Whenever there is a vacancy or the justice in any precinct shall be absent, or unable or unwilling to perform the duties of his office, the nearest justice in the county may temporarily perform the duties of the office. [Acts 1876, p. 164; G. L. Vol. 8, p. 1001.]

Art. 2378. [2290] [1567] [1538] **Disqualification.**—No justice of the peace shall sit in a cause where he may be interested, or where he may be related to either party within the third degree by consanguinity or affinity. [Id., Sec. 24.]

Art. 2379. **Justice's office.**—When the justice precinct where the courthouse of any county is located contains more than seventy-five thousand inhabitants, the commissioners court of said county shall provide and furnish a suitable place in such courthouse for such justice to hold court. [Acts 1919, p. 152.]

Art. 2380. [2298-99-2300-01] **Term of court.**—These rules shall govern as to the terms of court:

1. Each justice shall hold a term of his court for civil business once in each month, and may transact such business out of term time as may be authorized by law.

2. Each justice shall hold the regular term of his court at his office at such time as the commissioners court may prescribe.

3. The justice may hold court from day to day until all business shall be disposed of, or may adjourn the court or the trial of any case to a particular day.

4. If the regular term from any cause shall not be opened on the day fixed therefor by law, the court shall be considered adjourned until its next regular term. [Acts 1876, p. 157; G. L. Vol. 8, p. 993; Acts 1881, p. 10; G. L. Vol. 9, p. 102.]

Art. 2381. [2319-20-26-28-2400] **District court rules govern.**—The rules governing the district courts shall also govern the justice courts, in so far as they can be applied, in the following cases:

1. As to requiring security for costs, and the effect of the rule for costs and the penalty for non-compliance therewith.

2. As to parties to suits.

3. Issuance and service and return of citation, and notice to serve non-resident defendants.

4. Acceptance of service and entering appearance.

5. Amendment of pleadings.

6. Whenever the mode of proceeding in any particular case or matter is not prescribed by the provisions of this title, or of some other law or title specifically relating thereto.

Art. 2382. [2302-3-4] **Docket.**—Each justice shall keep a civil docket in which he shall enter:

1. The title of all suits commenced before him.

2. The time when the first process was issued against the defendant, when returnable, and the nature thereof.

3. The time when the parties, or either of them appeared before him, either with or without citation.

4. A brief statement of the nature of the plaintiff's demand

or claim, and the amount claimed, and a brief statement of the nature of the defense made by the defendant, if any.

5. Every adjournment, stating at whose request and to what time.

6. The time when the trial was had, stating whether the same was by a jury or by the justice.

7. The verdict of the jury, if any.

8. The judgment rendered by the justice and the time of rendering same.

9. All applications for setting aside judgments or granting new trials and the order of the justice thereon, with the date thereof.

10. The time of issuing execution, to whom directed and delivered, and the amount of debt, damages and costs; and, when any execution is returned, he shall note such return on said docket, with the manner in which it was executed.

11. All stays and appeals that may be taken, and the time when taken, the amount of the bond and the name of the sureties.

12. He shall also keep such other dockets, books and records as may be required by law, and shall keep a fee book in which shall be taxed all costs accruing in every suit commenced before him. [Acts 1876, p. 156; G. L. Vol. 8, p. 992.]

Art. 2383. [2305-6] **Custody of books, etc.** — Each justice shall arrange and safely keep all dockets, books and papers transmitted to him by his predecessors, and all papers filed in any case in his court subject at all reasonable times to the inspection of any interested party. Any person having possession of dockets, books or papers belonging to the office of any justice shall deliver the same to such justice on demand. [Acts 1876, p. 156; G. L. Vol. 8, p. 992.]

Art. 2384. [2307] [1584] [1555] **Enforcing delivery.** — If any person having such dockets, books or papers, refuses to deliver the same on such demand, he may, upon motion, be attached and imprisoned by order of the county judge in term time or vacation, until he shall make such delivery; but such motion shall be supported by affidavit, and three days' notice thereof shall be given to the party against whom such motion is made. [Id.]

Art. 2385. [2291] [1568] [1539] **Jurisdiction.** — Justice courts shall, in addition to their other powers and duties, have and exercise original jurisdiction in civil matters of all cases where the amount in controversy is two hundred dollars, or less, exclusive of interest, of which exclusive original jurisdiction is not given to the district or county courts, and of cases of forcible entry and detainer, and to foreclose mortgages and enforce liens on personal property, where the amount in controversy is within their jurisdiction. [Const., Art. 5, Sec. 19; Acts 1876, p. 155; G. L. Vol. 8, p. 991.]

Art. 2386. [2293-4-5-7] **Other powers.** — Justices of the peace shall also have power:

1. To punish any party guilty of a contempt of court by fine

not to exceed twenty-five dollars and by imprisonment not exceeding one day.

2. To issue writs of attachment, garnishment and sequestration within their jurisdiction, the same as judges and clerks of the district and county courts.

3. To exercise jurisdiction over all other matters not hereinbefore enumerated that are or may be cognizable before a justice of the peace under any law of this State.

4. To proceed with all unfinished business of his office in like manner as if such business had been originally commenced before him.

Art. 2387. [2296] [1573] [1544] **No jurisdiction.**—Justice courts have no jurisdiction of suits in behalf of the State to recover penalties, forfeitures and escheats, of suits for divorce, of suits to recover damages for slander or defamation of character, suits for the trial of title to land, or of suits for the enforcement of liens on land. [Const. Art. 5, Sec. 8.]

Art. 2388. [2326] [1603] [1573] **Oral pleadings.**—The pleadings shall be oral, except where otherwise specially provided; but a brief statement thereof may be noted on the docket. [Acts 1876, p. 154; G. L. Vol. 8, p. 990.]

Art. 2389. [2327] [1604] [1574] **Sworn pleadings.**—An answer or other pleading setting up any of the following matters shall be in writing and signed by the party or his attorney and verified by affidavit:

1. That the suit is not commenced in the proper county or precinct.

2. That the plaintiff has not legal capacity to sue.

3. That the plaintiff is not entitled to recover in the capacity in which he sues.

4. That there is another suit pending in this State between the same parties for the same cause of action or counter claim.

5. That there is a defect of parties plaintiff or defendant.

6. That the plaintiffs or defendants suing or sued as partners or receiver are not partners or receiver as alleged.

7. That the plaintiff or defendant suing or sued as a corporation is not a corporation as alleged.

8. That a written instrument purporting to be signed by him and relied on by the other party was not executed by him or by his authority.

9. That the indorsement or assignment of a written instrument pleaded by the adverse party was not executed by the party by whom it purports to have been executed, or by his authority.

10. That a written instrument pleaded by the adverse party is without consideration, or that the consideration of the same has failed, in whole or in part.

11. That an account pleaded by the adverse party and duly verified by affidavit, as provided by the laws of this State, is not just; and, in such case, the answer shall set forth the items and particulars which are unjust.

12. That the contract sued upon is usurious. [Acts 1891, p. 85; G. L. Vol. 10, p. 87.]

CHAPTER TWO.

INSTITUTION OF SUIT.

| | Article | | Article |
|-----------------------------------|---------|-----------------------------|---------|
| Suits, where brought..... | 2390 | Order of transfer..... | 2397 |
| Residence of a single man..... | 2391 | Transcript..... | 2398 |
| Where there are two justices..... | 2392 | Special justice..... | 2399 |
| If justice is disqualified..... | 2393 | Requisites of process..... | 2400 |
| Venue changed on affidavit..... | 2394 | Citation..... | 2401 |
| "Nearest justice"..... | 2395 | Special process server..... | 2402 |
| By consent..... | 2396 | | |

Art. 2390. [2308] [1585] [1556] **Suits, where brought.**—Every suit in the justice court shall be commenced in the county and precinct in which the defendant or one or more of the several defendants resides, except in the following cases and such other cases as are or may be provided by law:

1. Cases of forcible entry and detainer must be brought in the precinct where the premises, or a part thereof, are situated.

2. Suits against executors, administrators and guardians as such must be brought in the county in which such administration or guardianship is pending, and in the precinct in which the county seat is situated.

3. Suits against counties must be brought in such county and in the precinct in which the county seat is situated.

In the following cases the suit may, at the plaintiff's option, be brought either in the county and precinct of the defendant's residence or in that provided in each exception:

4. Suits upon a contract in writing promising performance at any particular place, may be brought in the county and precinct in which such contract was to be performed, provided that in all suits to recover for labor actually performed, suit may be brought and maintained where such labor is performed, whether the contract for same be oral or in writing.

5. Suits for the recovery of rents may be brought in the county and precinct in which the rented premises, or a part thereof are situated.

6. Suits for damages for torts may be brought in the county and precinct in which the injury was inflicted.

7. Suits against transient persons may be brought in any county and precinct where such defendant is to be found.

8. Suits against non-residents of the State or persons whose residence is unknown, may be brought in the county and precinct where the plaintiff resides.

9. Suits for the recovery of personal property may be brought in any county and precinct in which the property may be.

10. Suits against private corporations, associations and joint stock companies may be brought in any county and precinct in which the cause of action or a part thereof arose, or in which such corporation, association or company has an agency or representative, or in which its principal office is situated.

11. Suits against railroad and canal companies, or the owners of any line of transportation vehicles of any character, for any injury to person or property upon the road, canal, or line of vehicles of the defendant, or upon any liability as a carrier, may

be brought in any precinct through which the road, canal or line of vehicles may pass, or in any precinct where the route of such railroad, canal, or vehicle may begin or terminate.

12. Suits against fire, marine or inland insurance companies may be brought in any county and precinct in which any part of the insured property was situated; and suits against life and accident insurance companies or associations may be brought in the county and precinct in which the persons insured, or any of them resided at the time of such injury or death.

13. Suits against the owners of a steamboat or other vessel may be brought in any county or precinct where such steamboat or vessel may be found, or where the cause of action arose or the liability was contracted or accrued. In every suit commenced in a county or precinct in which the defendants or one of them may reside, it shall be affirmatively shown in the citation or pleading, if any, that such suit comes within one of the exceptions named in this article. [Acts 1876, p. 154; Acts 1917, p. 321; G. L. Vol. 8, p. 993.]

Art. 2391. [2309] [1586] [1557] **Residence of a single man.**—The residence of a single man is where he boards. [Acts 1876, p. 154.]

Art. 2392. [2310-11] **Where there are two justices.**—Where, in any one precinct, incorporated city or town there may be more than one justice of the peace, the suit may be brought before either of them. [Id.]

Art. 2393. [2312] [1589] [1560] **If justice is disqualified.** If there be no justice qualified to try the suit in the proper precinct, the suit may be commenced before the nearest justice of the county who is not disqualified to try the same. [Id.]

Art. 2394. [2313] [1590] [1561] **Venue changed on affidavit.**—If any party to a suit before any justice shall make an affidavit supported by the affidavit of two other credible persons, citizens of the county, that they have good reason to believe, and do believe that such party cannot have a fair and impartial trial before such justice or in such justice precinct, the justice shall transfer such suit to the court of the nearest justice within the county not subject to the same or some other disqualification.

Art. 2395. [2316] [1593] [1563a] **"Nearest justice".**—By the term "nearest justice", as used in this chapter, is meant the justice whose place of holding his court is nearest to that of the justice before whom the proceeding is pending or should have been brought.

Art. 2396. [2314] [1591] [1562] **By consent.**—The venue may also be changed to the court of any other justice of the county, upon the written consent of the parties or their attorneys, filed with the papers of the cause.

Art. 2397. [2317] [1594] [1564] **Order of transfer.**—The order of transfer in such cases shall state the cause of the transfer, and the name of the court to which the transfer is made, and shall require the parties and witnesses to appear before such court at its next ensuing term.

Art. 2398. [2318] [1595] [1565] **Transcript.**—When such

order of transfer is made, the justice who made the order shall immediately make out a true and correct transcript of all the entries made on his docket in the cause, certify thereto officially, and send it, with a certified copy of the bill of costs taken from his fee book, and the original papers in the cause, to the justice of the precinct to which the same has been transferred.

Art. 2399. [2315] [1592] [1563] **Special justice.**—If a justice be disqualified from sitting in any civil case, or is sick or absent from the precinct, the parties to such suit may agree upon some person to try the case; and, should they fail to agree at the first term of the court after service is perfected, the county judge in whose county said case is pending, shall, upon the application of the justice in whose court said cause is pending, or upon the application of either party to said suit, appoint some person who is qualified to try said cause. The fact of the disqualification of the justice and the selection by agreement or appointment of some other person to try said cause shall be noted on the docket of said justice in said cause. [Acts 1895, p. 26; G. L. Vol. 10, p. 756.]

Art. 2400. [2321] [1598] [1568] **Requisites of process.**—Every writ of process from the justice courts shall be issued by the justice, shall be in writing and signed by him officially. The style thereof shall be "The State of Texas". It shall, except where otherwise specially provided by law, be directed to the sheriff or any constable of the proper county, be made returnable to some regular term of such court; and the date of its issuance noted thereon. [Acts 1876, p. 158; G. L. Vol. 8, p. 994.]

Art. 2401. [2322-23] **Citation.**—When a claim or demand is lodged with a justice for suit, he shall issue forthwith a citation for the defendant. If there be several defendants residing in different counties, one citation shall be issued to each of such counties. The citation shall be directed to the sheriff or any constable of the county where the defendant is represented to be, and shall, in addition to the requirements of the preceding article, require the officer to summon the defendant to appear and answer the plaintiff's suit at some regular term of the court, stating the time and place of holding the same. It shall state the names of all the parties to the suit, and the nature of the plaintiff's demand. [Id.]

Art. 2402. [2324] [1601] [1571] **Special process server.**—The justice, in case of an emergency, may depute any person of good character to serve any process; and the person so deputed shall for such purpose, have all the authority of a sheriff or constable; but in every such case the justice shall indorse on the process a statement in writing, signed by him officially, to the effect that he has deputed such person to serve such process. Such person shall also take and subscribe an affidavit, to be indorsed on or attached to the process, to the effect that he will to the best of his ability execute the same according to law. [Id.]

CHAPTER THREE.

APPEARANCE AND TRIAL.

| | Article | | Article |
|------------------------------|---------|------------------------|---------|
| Continuance | 2403 | Excuses | 2416 |
| Appearance day | 2404 | Defaulting jurors | 2417 |
| If defendant fails to appear | 2405 | Talesmen | 2418 |
| Appearance noted | 2406 | Call of jury docket | 2419 |
| If no demand for jury | 2407 | Challenge to the array | 2420 |
| Call of non-jury docket | 2408 | Drawing jury | 2421 |
| Dismissal | 2409 | Challenge for cause | 2422 |
| Proceedings | 2410 | Peremptory challenge | 2423 |
| Jury trial demanded | 2411 | The jury | 2424 |
| Jury trial day | 2412 | If jury is incomplete | 2425 |
| Summons for jury | 2413 | Jurors sworn | 2426 |
| Summoning jury | 2414 | Verdict | 2427 |
| Jurors called | 2415 | Jurors paid | 2428 |

Art. 2403. [2329] [1606] [1576] **Continuance.**—The justice for good cause shown, supported by affidavit, may continue any suit pending before him to the next regular term of his court, or postpone the same to some other day of the term. [Acts 1876, p. 159; G. L. Vol. 8, p. 995.]

Art. 2404. [2330] [1607] [1577] **Appearance day.**—The first day of each term of the justice court after the return of the process duly served in any cause shall be appearance day; but where the service was made by publication, the first day of the second term after such publication shall be appearance day. [Acts 1876, p. 154; G. L. Vol. 8, p. 990.]

Art. 2405. [2331] [1608] [1578] **If defendant fails to appear.**—If the defendant who has been duly served with a citation shall fail to appear at, or before, ten o'clock a. m. on appearance day, the justice shall proceed in the following manner:

1. If the plaintiff's cause for action be liquidated and proved by an instrument of writing purporting to have been executed by the defendant, or be upon an open account duly verified by affidavit, the justice shall, whether the plaintiff appear or not, render judgment in his favor against the defendant for the amount of such written obligation or sworn account, after deducting all credits indorsed thereon.

2. If the plaintiff's cause of action is not so liquidated, and the plaintiff appears in person or by agent or attorney, the justice shall proceed to hear the testimony; and, if it appears therefrom that the plaintiff is entitled to recover, judgment shall be rendered against the defendant for such amount as the testimony shows the plaintiff entitled to; otherwise, judgment shall be rendered for the defendant.

Art. 2406. [2332] [1609] [1579] **Appearance noted.**—If the defendant appear, the same shall be noted on the docket, and the cause shall stand for trial in its order.

Art. 2407. [2334] [1611] [1581] **If no demand for jury.**—If neither party shall demand and be entitled to a jury trial, the justice shall try the cause without a jury. [Acts 1876, p. 159; G. L. Vol. 8, p. 995.]

Art. 2408. [2335] [1612] [1582] **Call of non-jury docket.**—The docket of cases to be tried by the justice shall be called regularly; and the cases shall be tried when called, unless the same shall be continued or postponed. [Id.]

Art. 2409. [2336] [1613] [1583] **Dismissal.**—If the plain-

tiff shall fail to appear when the cause is called in its order for trial, the justice, on motion of the defendant, may dismiss the suit. [Id.]

Art. 2410. [2337-61] **Proceedings.**—The trial before the justice or before the jury shall conform as near as may be to the rules governing the district and county courts, except that the justice shall not charge the jury, and all the rules of evidence and the provisions for procuring the attendance of witnesses, for taking the depositions of witnesses and parties, and for taking and determining the exceptions thereto, prescribed for the government of the district and county courts, shall, when not in conflict with the provisions of this title, govern the proceedings in justice courts so far as the same may be applicable. [Id.]

Art. 2411. [2339-40] **Jury trial demanded.**—Either party shall be entitled to a trial by jury, upon complying with the provisions of this chapter. The party desiring a jury shall, on or before the first day of the term at which the case is to be tried, make a demand for a jury, and also deposit a jury fee of three dollars, which shall be noted on the docket; and the case shall be set down as a jury case. [Acts 1876, p. 159; G. L. Vol. 8, p. 994.]

Art. 2412. [2341] [1618] [1588] **Jury trial day.**—The justice shall, on the first day of the term, fix a day for taking up the jury cases, if any, pending for trial at such term, and he may fix said first day of the term for that purpose.

Art. 2413. [2342-43] **Summons for jury.**—Whenever at any term of a justice court there may be any jury cases pending for trial, the justice shall order the sheriff or constable to summon such number of legally qualified jurors as he may deem necessary, to attend as a jury before such justice at a day and place directed. The justice, on delivering such order to the officer, shall administer to him the following oath: "You do solemnly swear that you will, to the best of your skill and ability, and without bias or favor toward any party, summon such jurors as may be ordered by the court; that you will select none but impartial, sensible and sober men, having the qualifications of jurors under the law; that you will not, directly or indirectly, converse or communicate with any jurymen, touching any case pending for trial; and that you will not, by any means, attempt to influence, advise or control any jurymen in his opinion in any case which may be tried by him. So help you God." [Acts 1876, p. 80; G. L. Vol. 8, p. 916.]

Art. 2414. [2344-45] **Summoning jury.**—The officer shall immediately summon the required number of jurors to appear before the justice at the day and place named. Such summons shall be by an oral notice by the officer to the juror that he is required to appear as a juror before such justice on the day and at the place named.

Art. 2415. [2346] [1623] [1593] **Jurors called.**—At the time fixed for taking up the jury cases, the justice shall proceed to call the names of the jurors so summoned.

Art. 2416. [2347] [1624] [1594] **Excuses.**—The court may

hear any reasonable excuse of a juror, supported by oath, and may excuse him for the trial of any particular case, or for one or more days of the term.

Art. 2417. [2348] [1625] [1595] **Defaulting jurors.**—If any person so summoned as a juror shall fail or refuse to attend, the justice shall enter a fine nisi against him not exceeding five dollars, to the use of the county, to be made final, with costs, unless such person shall, after being cited to do so, show a good and sufficient excuse for such failure.

Art. 2418. [2349] [1626] [1596] **Talesmen.**—If the number of jurors present and not excused be less than six, or less than the justice shall deem necessary, he shall order the sheriff or constable to summon a sufficient number of other qualified jurors.

Art. 2419. [2350] [1627] [1597] **Call of jury docket.**—When the required number of jurors is present, the jury cases shall be called in their order on the docket.

Art. 2420. [2351-52] **Challenge to the array.**—When the parties to a jury case have announced themselves for trial, either party may challenge the array of jurors. The cause and the manner of making such challenge, the decision thereof and the proceedings, when such challenge is sustained, shall be as provided for similar proceedings in the district and county courts.

Art. 2421. [2353] [1630] [1600] **Drawing jury.**—If no challenge to the array is made, the justice shall write the names of all the jurors present on separate slips of paper, as nearly alike as may be, and shall place them in a box and mix them well, and shall then draw the names one by one from the box, and write them down as they are drawn, upon several slips of paper, and deliver one slip to each of the parties, or their attorneys. [Acts 1876, p. 82; G. L. Vol. 8, p. 918.]

Art. 2422. [2354-55] **Challenge for cause.**—If either party desires to challenge any juror for cause, such challenge shall now be made. The causes of such challenge, and the manner of making it and the decision thereof, and the proceedings, when such challenge is sustained, shall be as provided for similar proceedings in the district and county courts.

Art. 2423. [2356] [1633] [1603] **Peremptory challenge.**—When a juror has been challenged for cause, his name shall be erased from the slips furnished to the parties; and, if as many as six names remain on such slips, the parties may make their peremptory challenge governed by the rules prescribed for the district and county courts.

Art. 2424. [2357] [1634] [1604] **The jury.**—When the peremptory challenges are made, they shall deliver their slips to the justice, who shall call off the first six names on the slips that have not been erased, and these shall be the jury to try the case.

Art. 2425. [2358] [1635] [1605] **If jury is incomplete.**—If the jury by peremptory challenges is left incomplete, the justice shall direct the sheriff or constable to summon others

to complete the jury; and the same proceedings shall be had in selecting and impaneling such jurors as are had in the first instance. [Acts 1876, p. 82; G. L. Vol. 8, p. 918.]

Art. 2426. [2359-60] **Jurors sworn.**—When the jury has been selected, such of them as have not been previously sworn for the trial of civil cases shall be sworn by the justice. The form of the oath shall be in substance as follows: “You and each of you do solemnly swear that in all cases between parties which shall be to you submitted you will a true verdict render, according to the law and evidence. So help you God.” [P. D. 3984.]

Art. 2427. [2362] [1639] [1609] **Verdict.**—Where the suit is for the recovery of specific articles, the jury shall, if they find for the plaintiff, assess the value of each of such articles separately, according to the proof. [Acts 1876, p. 163; G. L. Vol. 8, p. 998.]

Art. 2428. [2363] [1640] [1610] **Jurors paid.**—Before the verdict is rendered, the justice shall pay to each juror fifty cents out of the jury fee deposited in the case.

CHAPTER FOUR.

JUDGMENT AND NEW TRIAL.

1. JUDGMENT.

| | Article | | Article |
|-------------------------------------|---------|-----------------------------------|---------|
| Judgment upon verdict..... | 2429 | To enforce judgment..... | 2434 |
| Case tried by justice..... | 2430 | No judgment without citation..... | 2435 |
| Judgment..... | 2431 | Confession of judgment..... | 2436 |
| Costs..... | 2432 | Warrant of attorney..... | 2437 |
| Judgment for specific articles..... | 2433 | Rules governing..... | 2438 |

Art. 2429. [2364] [1641] [1611] **Judgment upon verdict.**—Where the case has been tried by a jury and a verdict has been returned by them, the justice shall announce the same in open court and note it in his docket, and shall proceed to render judgment thereon.

Art. 2430. [2365] [1642] [1612] **Case tried by justice.**—When the case has been tried by the justice without a jury, he shall announce his decision in open court and note the same in his docket, and render judgment thereon. [Acts 1876, p. 154; G. L. Vol. 8, p. 990.]

Art. 2431. [2366] [1643] [1613] **Judgment.**—The judgment shall be recorded at length in the justice’s docket, and shall be signed by the justice; clearly state the determination of the rights of the parties in the subject matter in controversy and the party who shall pay the costs, and shall direct the issuance of such process as may be necessary to carry the judgment into execution.

Art. 2432. [2367] [1644] [1614] **Costs.**—The successful party in the suit shall recover his costs, except in cases where it is otherwise expressly provided. [Id., Secs. 11-14.]

Art. 2433. [2368] [1645] [1615] **Judgment for specific articles.**—Where the judgment is for the recovery of specific articles, their value shall be separately assessed, and the judg-

ment shall be that the plaintiff recover such specific articles, if they can be found, and if not, then their value as assessed, with interest thereon at the rate of six per cent from the date of judgment. [Id., Sec. 19.]

Art. 2434. [2369] [1646] [1616] **To enforce judgment.**—The court shall cause its judgments to be carried into execution, and where the judgment is for personal property and the verdict, if any, is that such property has an especial value to the plaintiff, the court may award a special writ for the seizure and delivery of such property to the plaintiff, and may, in addition to the other relief granted in such case, enforce its judgment by attachment, fine and imprisonment. [Acts 1846, p. 200; G. L. Vol. 2, p. 1506.]

Art. 2435. [2370] [1647] [1617] **No judgment without citation.**—No judgment, other than judgment by confession, shall be rendered by the justice of the peace against any party who has not entered an appearance or accepted service, unless such party has been cited either personally or by publication, or been served by the notice to serve a non-resident provided for by law. [Acts 1870, p. 87; Acts 1876, p. 163; Acts 1909, p. 89; P. D. 6341; G. L. Vol. 6, p. 261; G. L. Vol. 8, p. 999.]

Art. 2436. [2371] [1648] [1618] **Confession of judgment.**—Any party may appear in person, or by an agent or attorney, before any justice of the peace, without the issuance or service of process, and confess judgment for any amount within the jurisdiction of the justice court; and such judgment shall be entered on the justice's docket, as in other cases; but, in such cases, the plaintiff, his agent or attorney, shall make and file an affidavit signed by him, to the justness of his claim. [Acts 1876, p. 154; G. L. Vol. 8, p. 990.]

Art. 2437. [2372] [1649] [1619] **Warrant of attorney.**—Where such judgment is confessed by an agent or attorney, the warrant of attorney shall be filed with the justice and noted in the judgment. [P. D. 1477.]

Art. 2438. [2373] [1650] [1620] **Rules governing.**—The rules governing the district and county courts in relation to judgments shall also apply to justice courts, in so far as they may not conflict with some provision of this title.

2. New Trial.

| | | | |
|---------------------------|--------------|------------------------|--------------|
| Judgments by default..... | Article 2439 | Notice | Article 2442 |
| New trials..... | 2440 | If motion granted..... | 2443 |
| Sworn motion..... | 2441 | But one new trial..... | 2444 |

Art. 2439. [2374] [1651] [1621] **Judgments by default.**—A justice may within ten days after the rendition of a judgment by default or of dismissal, set aside such judgment, on motion in writing, for good cause shown, supported by affidavit. Notice of such motion shall be given to the opposite party at least one full day prior to the hearing thereof. [Acts 1876, p. 154; G. L. Vol. 8, p. 990.]

Art. 2440. [2375] [1652] [1622] **New trials.**—The justice, within ten days after the rendition of a judgment in any suit

tried before him, may grant a new trial therein on motion in writing showing that justice has not been done in the trial of the cause. [Id.]

Art. 2441. [2376] [1653] [1623] **Sworn motion.**—If the grounds of the motion be other than that the verdict, or judgment is contrary to the law or the evidence, or that the justice erred in some matter of law, the motion shall be supported by affidavit. [Id.]

Art. 2442. [2377] [1654] [1624] **Notice.**—All motions to set aside a judgment, or to grant a new trial, under the two preceding articles, shall be made within five days after the rendition of the judgment, and one day's notice thereof shall be given the opposite party or his attorney. [Id.]

Art. 2443. [2378] [1655] [1625] **If motion granted.**—If a judgment is set aside, or a new trial is granted, the cause shall be continued to the next regular term of the court, unless otherwise agreed by the parties with the consent of the justice. [Id.]

Art. 2444. [2379] [1656] [1626] **But one new trial.**—But one such new trial shall be granted to either party. [Id.]

CHAPTER FIVE.

EXECUTION.

| | Article | Article | |
|--------------------------------------|---------|----------------------------------|------|
| Judgments enforced by execution..... | 2445 | Execution to another county..... | 2450 |
| Execution..... | 2446 | Dormant judgments..... | 2451 |
| Taxation of costs..... | 2447 | General rules apply..... | 2452 |
| Execution on eleventh day..... | 2448 | Stay of execution..... | 2453 |
| Within the ten days..... | 2449 | | |

Art. 2445. [2380-2] **Judgments enforced by execution.**—The judgments of the justice courts shall be enforced by execution or other appropriate process. Such execution or other process shall be returnable in sixty days. [Acts 1876, p. 163; G. L. Vol. 8, p. 999.]

Art. 2446. [2381] [1658] [1628] **Execution.**—Such execution or other process shall conform to the requirements of writs. It shall describe the judgment and shall require the sheriff or constable of the proper county to execute the same, according to its terms, whether the same be to make a sum of money, or to deliver personal property, or to deliver possession of real estate, or to do some other thing; and, if for money, it shall state the rate of interest; and it shall also require the officer to make the costs which may have been adjudged against the defendant in execution, and the further costs of executing the writ. A certified copy of the costs, taxed against the defendant in execution according to the fee book up to the issuance of the execution, shall be attached to the writ.

Art. 2447. [2383] [1660] [1630] **Taxation of costs.**—Within ten days after the rendition of any final judgment of the justice court, the justice shall tax the costs of such suit and enter the same in his fee book.

Art. 2448. [2384] [1661] [1631] **Execution on eleventh day.**—On the eleventh day after the rendition of any final judg-

ment, if the case has not been appealed, and no stay of execution has been granted, the justice shall issue an execution for the enforcement of such judgment and the collection of the costs. [Id.]

Art. 2449. [2385] [1662] [1632] **Within the ten days.**—Such execution may be issued at any time before the eleventh day, upon the filing of an affidavit by the plaintiff in the judgment, or his agent, or attorney, to the effect that the defendant is about to remove his property out of the county, or is about to transfer or secrete his property for the purpose of defrauding his creditors. [Id.]

Art. 2450. [2386] [1663] [1633] **Execution to another county.**—Where an execution from a justice court is sent to a county other than that in which the judgment was rendered, it shall be accompanied by a certificate of the county clerk, and attested by his official signature and seal of office that the officer issuing the same is an acting justice of the peace in said county. The cost of procuring such certificate shall be collected as a part of the costs of executing the writ. [Acts 1842, p. 62; G. L. Vol. 2, p. 740.]

Art. 2451. [2387] [1664] [1634] **Dormant Judgments.**—If no execution is issued within twelve months after a judgment is rendered, the judgment shall become dormant, and no execution shall issue thereon unless such judgment be revived. Where the first execution has issued within the twelve months, the judgment shall not become dormant unless ten years shall have elapsed between the issuance of executions thereon, and execution may issue at any time within ten years after the issuance of the preceding execution. [Acts 1866, p. 118; P. D. 7005, 7007; G. L. Vol. 5, p. 1036.]

Art. 2452. [2388] [1665] [1635] **General rules apply.**—The rules prescribed for the issuance, levy and return of executions shall apply to the justice courts where not in conflict with some provision of this chapter. [Acts 1876, p. 154; G. L. Vol. 8, p. 990.]

Art. 2453. [2389-90] **Stay of execution.**—At any time within ten days after the rendition of any judgment in a justice court, the justice may grant a stay of execution thereof for three months from the date of such judgment, if the person against whom such judgment was rendered shall, with one or more good and sufficient sureties, to be approved by the justice, appear before him and acknowledge themselves and each of them bound to the successful party in such judgment for the full amount thereof, with interest and costs, which acknowledgment shall be entered in writing on the docket, and signed by the persons binding themselves as sureties; provided, no such stay of execution shall be granted unless the party applying therefor shall first file an affidavit with the justice that he has not the money with which to pay such judgment, and that the enforcement of same by execution prior to three months would be a hardship upon him and would cause a sacrifice of his property which would not likely be caused should said execution be stayed. Such acknowledgment shall be entered by the justice on

his docket, and shall constitute a judgment against the defendant and such sureties, upon which execution shall issue in case the same is not paid on or before the expiration of such day. [Acts 1876, p. 154; G. L. Vol. 8, p. 990; Acts 1887, p. 10; G. L. Vol. 9, p. 808.]

CHAPTER SIX.

APPEAL AND CERTIORARI.

| | Article | Article |
|------------------------------|---------|------------------------------------|
| Appeal | 2454 | Appeal perfected on affidavit..... |
| To district court, when..... | 2455 | Transcript |
| Appeal bond | 2456 | Certiorari |
| Affidavit of inability..... | 2457 | 2458 2459 2460 |

Art. 2454. [2391] [1668] [1638] **Appeal.**—A party to a final judgment in any justice court may appeal therefrom to the county court where such judgment, or the amount in controversy, shall exceed twenty dollars exclusive of costs, and in such other cases as may be expressly provided by law. [Acts 1876, p. 154; G. L. Vol. 8, p. 990.]

Art. 2455. [2392] [1669] **To district court, when.**—In all counties in which the civil jurisdiction of the county courts has been transferred to the district courts, appeals and writs of certiorari may be prosecuted to remove a case tried before a justice of the peace to the district court, in the same manner and under the same circumstances under which appeals and writs of certiorari are allowed by general law to remove causes to the county court. [Acts 1879, p. 125; G. L. Vol. 8, p. 1425.]

Art. 2456. [2393] [1670] [1639] **Appeal bond.**—The party appealing, his agent or attorney, shall, within ten days from the date of the judgment, file with the justice a bond, with two or more good and sufficient sureties, to be approved by the justice, in double the amount of the judgment, payable to the appellee, conditioned that appellant shall prosecute his appeal to effect, and shall pay off and satisfy the judgment which may be rendered against him on appeal. When such bond has been filed with the justice, the appeal shall be held to be thereby perfected and all parties to said suit or to any suit so appealed shall make their appearance at the next term of court to which said case has been appealed without further notice. [Acts 1883, p. 91; Acts 1915, p. 170; G. L. Vol. 9, p. 397.]

Art. 2457. [2394] [1671] **Affidavit of inability.**—Where the appellant is unable to pay the costs of appeal, or to give security therefor, he shall nevertheless be entitled to prosecute his appeal; but in order to do so, he shall be required to make strict proof of his inability to pay the costs, or any part thereof. Such proof shall be made before the county judge of the county where such party resides or before the court trying the same, at any time within ten days from and after the date of the judgment rendered therein, and shall consist of the affidavit of said party stating his inability to pay the costs; which affidavit may be contested by any officer of the court or party to the suit; whereupon, it shall be the duty of the court trying the case, or the justice of the peace of the precinct in which the suit is pend-

ing, to hear evidence and to determine the right of the party to his appeal. [Acts 1887, p. 113; G. L. Vol. 9, p. 911.]

Art. 2458. [2395] [1672] **Appeal perfected on affidavit.**—When the bond, or the affidavit in lieu thereof, provided for in the two preceding articles, has been filed, and the previous requirements of this chapter have been complied with, the appeal shall be held to be perfected. [Id.; Acts 1883, p. 91; G. L. Vol. 9, p. 397.]

Art. 2459. [2396-97] **Transcript.**—Whenever an appeal has been granted from the justice court to the county court, the justice who made the order shall immediately make out a true and correct copy of all the entries made on his docket in the cause, and certify thereto officially, and send it, together with a certified copy of the bill of costs taken from his fee book, and the original papers in the cause, to the clerk of the county court of his county. Such transcript and papers shall, if practicable, be sent to said county clerk on or before the first day of the next term of such court; but, if there be not time to make out and send the same to the first term, they may be so sent on or before the first day of the second term of the court. [Acts 1876, p. 154; G. L. vol. 8, p. 990.]

Art. 2460. [2398-99] **Certiorari.**—A cause tried before a justice, wherein the amount in controversy or the judgment exceeds twenty dollars, exclusive of costs, may be removed from such justice court to the county court by certiorari under the rules prescribed in the title and chapter relating thereto. Whenever a writ of certiorari to remove any cause from the justice court to the county court shall be served on any justice of the peace, he shall immediately make out a certified copy of the entries made on his docket, and of the bill of costs, as provided in case of appeals, and send same, together with the original papers in the cause, to the clerk of the county court in the manner and within the time prescribed in the preceding article.

TITLE 46.

CREDIT ORGANIZATIONS.

1. Rural Credit Unions.

| | Article | | Article |
|-----------------------|---------|------------------------------|---------|
| Defined | 2461 | Capital and shares | 2473 |
| Loans and investments | 2462 | Shares and deposits | 2474 |
| May incorporate | 2463 | Depositories | 2475 |
| Right to use name | 2464 | Repaying loan | 2476 |
| Supervision | 2465 | Conditions of loans | 2477 |
| By-laws | 2466 | May expel member | 2478 |
| Approval of by-laws | 2467 | Liability to expelled member | 2479 |
| Meetings | 2468 | Audit | 2480 |
| Board of directors | 2469 | Dividend | 2481 |
| Officers | 2470 | Guaranty fund | 2482 |
| Credit committee | 2471 | Dissolution | 2483 |
| Supervisory committee | 2472 | Report to commissioner | 2484 |

Art. 2461. Defined.—The words “rural credit union” shall mean a co-operative association formed for the purpose of promoting thrift among its members, and to enable them, when in need, to obtain for productive purposes moderate loans of money for short periods and at reasonable rates of interest. The capital stock of rural credit unions organized under the provisions of this title shall be divided into shares of twenty-five dollars. Entrance fees of rural credit unions may be fixed by the board of directors at such an amount as may be prescribed by the by-laws. [Acts 1913, p. 162.]

Art. 2462. Loans and investments.—A rural credit union may receive the savings of its members in payment for shares; may lend to its members at reasonable rates of interest not to exceed six per cent per annum, or invest as hereinafter provided the funds so accumulated and may undertake such other activities relating to the purposes of the association as its by-laws may authorize. [Id.]

Art. 2463. May incorporate.—Ten or more citizens of this State may associate themselves together by articles of agreement and form a rural credit union, and upon the approval of the State Banking Board may become a corporation upon complying with such provisions of the law regulating State banks as may be applicable to the transaction of the business herein authorized to be done. The State Banking Board may permit the formation of such corporation when it is satisfied that the proposed field of operation is favorable to the success of a rural credit union, and that the standing of the proposed members is such as to give assurance that its affairs will be administered in accordance with the spirit of this law, and the Banking Commissioner shall issue a charter to said rural credit union to do business in conformity with the provisions of this title. Such Commissioner or his deputy, shall have authority to examine the accounts, books and papers of rural credit unions herein authorized to be organized. Any rural credit union violating any provision of this title shall be subject to the forfeiture of its charter. [Id.]

Art. 2464. Right to use name.—No person, partnership, association or corporation, except corporations formed under the provisions of this law shall hereafter transact business under

any name or title which contains the words "rural credit union", except those herein expressly authorized to be formed.

Art. 2465. Supervision.—The Banking Commissioner shall require such rural credit unions to keep such books as he may deem necessary for the proper conduct of their business; may make examination and report of the transaction of such rural credit union's business. The rural credit unions shall be subject to the general supervision of the Commissioner. [Id.]

Art. 2466. By-laws.—The by-laws of the rural credit unions shall prescribe:

1. The name of the corporation.
2. The purpose for which it is formed.
3. The conditions of residence or occupation which qualify persons for membership.
4. The par value of the shares of capital stock.
5. The conditions on which shares may be paid in, transferred and withdrawn.
6. The conditions on which deposits may be received and withdrawn.
7. The method of receipting for money paid on account of shares or deposited.
8. The number of directors and number of members of the credit committee.
9. The duties of the several officers.
10. The fines, if any, which may be charged for failure to meet obligations of the association punctually.
11. The date of the annual meeting of members.
12. The manner in which members shall be notified of meetings.
13. The number of members which shall be a quorum at meetings.
14. Such other regulations as may seem necessary. [Id.]

Art. 2467. Approval of by-laws.—No such credit union shall receive deposits or payments on account of shares, or make any loans until its by-laws have been approved in writing by the Banking Commissioner, nor shall any amendments to its by-laws become operative until they have been so approved. [Id.]

Art. 2468. Meetings.—The fiscal year of every such association shall end at the close of business on the thirty-first day of December. The annual meeting of the association shall be held at such time and place as the by-laws prescribe. Special meetings may be held by order of the directors or of the supervisory committee. The clerk shall give notice of such special meetings upon written request of ten members. Notice of all meetings of the association shall be given in the manner prescribed by the by-laws. No person shall be entitled to vote who has not been a member for more than three months but this restriction shall not apply during the first twelve months of the existence of the association, nor shall any member vote by proxy or have more than one vote. At the annual meeting, the members shall upon recommendation of the board of directors declare dividends and fix the amount of entrance fee. At any meeting the mem-

bers may decide upon any question of interest to the association, and upon appeal of two members may reverse the decisions of the credit committee or board of directors; and, by a three-fourths vote of those present, provided the notice of the meeting shall have specified the question to be considered, may amend the by-laws. [Id.]

Art. 2469. Board of Directors.—At the annual meeting the members shall elect a board of directors of not less than five members from which a credit committee of not less than three members may be selected. A supervisory committee of three members shall also be elected. No member of the Board of Directors shall be a member of the advisory committee, nor shall one person be a member of more than one of said committees. All members thereof, as well as all officers whom they elect, shall be sworn, and shall hold their several offices until others are elected and qualified in their stead. A record of every such qualification shall be filed and preserved with the records of the association. [Id.]

Art. 2470. Officers.—At their first meeting the board of directors shall elect from their number a president, a vice president, a clerk and a treasurer, who shall be the executive officers of the association. The board of directors shall have the general management of the affairs, funds and records of the association, and shall meet as often as may be necessary. It shall be their special duty:

1. To act upon all applications for membership.
2. To act upon the expulsion of members.
3. To fix the amount of surety bond which shall be required of each officer having custody of the funds.
4. To determine the rate of interest on loans.
5. To fill vacancies in the board of directors or in the credit committee of the association until the election and qualification of officers to fill said vacancies.
6. To make recommendations to meetings of the members relative to the amount of entrance fee; the maximum number of shares which may be held by, and the maximum amount which may be lent to, any one member; the dividend to be declared; amendments to the by-laws and any other matters which in their opinion, the members should decide. [Id.]

Art. 2471. Credit committee.—The credit committee shall approve every loan or advance made by the association. Every application for a loan shall be made in writing and shall state the purpose for which the loan is desired, and the security offered. No loan shall be made unless the credit committee is satisfied that it promises to benefit the borrower, nor unless it has received the unanimous approval of those members of said committee who were present when it was considered, nor if any member of said committee shall disapprove thereof; but applicant for a loan may appeal from the decisions of the credit committee to the board of directors. [Id.]

Art. 2472. Supervisory committee.—The supervisory committee shall inspect the securities, cash and accounts of the association and supervise the acts of its board of directors, credit

committee, and officers. At any time, the supervisory committee, by unanimous vote, may suspend the credit committee or any officer elected by the board of directors, and by a majority vote may call a meeting of the shareholders to consider any violation of this title or of the by-laws, or any practice of the association which, in the opinion of said committee, is unsafe or unauthorized. Within seven days after the suspension of the credit committee the supervisory committee shall cause notice to be given of a special meeting of the members to take such action relative to such suspension as may seem necessary. The supervisory committee shall fill vacancies in their own number until the next annual meeting. [Id.]

Art. 2473. **Capital and shares.**—The capital of the association shall be unlimited in amount. Shares of capital stock may be subscribed for and paid in in such manner as the by-laws shall prescribe. [Id.]

Art. 2474. **Shares and deposits.**—Shares may be issued and deposits received in the name of a minor and such shares and deposits may, in the discretion of the directors, be withdrawn by such minor or by his parent or guardian, and in either case payments made on such withdrawals shall be valid. If shares are held or deposits made in trust, the name and residence of the beneficiary shall be disclosed and the account shall be kept in the name of such holder as trustee for such person. If no other notice of the existence and terms of such trust has been given in writing to the association, such shares or deposits may, upon the death of the trustees, be withdrawn by the person for whom the amount of such shares was paid in or for whom such deposit was made, or by his legal representatives. [Id.]

Art. 2475. **Depositories.**—The capital, deposits and surplus funds of the association shall be either lent to the members for such purposes and upon such security and terms as the credit committee shall approve, or deposited to the credit of the association in savings banks or trust companies incorporated under the laws of this State, as in national or State banks located therein, such depositories to be approved by the Banking Commissioner. [Id.]

Art. 2476. **Repaying loan.**—A borrower may repay the whole or any part of his loan on any day on which the office of the association is open for the transaction of business. For failure to pay the interest or any installment required by the terms of the loan, the borrower may be fined if the by-laws so prescribe. [Id.]

Art. 2477. **Conditions of loans.**—No member of the board of directors or of the credit or supervisory committee shall receive any compensation for his services as a member of said board or committees, nor shall any member of the credit or supervisory committee, either directly or indirectly, borrow from or become surety for any loan or advance made by the association except upon the approval of two-thirds of the members of the association. No loan shall be granted except for the productive purposes or urgent needs, nor for a longer period than eight

months; nor shall any loan be renewed for a sum as large as the original amount. Loans to any one member shall not exceed two hundred dollars. [Id.]

Art. 2478. May expel member.—The board of directors may expel from the association any member who has not carried out his engagements with the association, or has been convicted of a criminal offense, or neglects or refuses to comply with the provisions of this law or of the by-laws of the association, or who habitually neglects to pay his debts, or shall become insolvent or bankrupt, or shall have deceived the association with regard to the use of borrowed money. No member shall be expelled until he has been informed in writing of the charges against him, and an opportunity has been given him, after reasonable notice, to be heard thereon. [Id.]

Art. 2479. Liability to expelled member.—The amounts paid in on shares or deposited by members who have withdrawn or have been expelled, shall be paid to them, but in the order of withdrawal or expulsion, and only as funds therefor become available and after deducting any amounts due by said members to the association. Such expulsion shall not operate to relieve a member from any remaining liability to the association. [Id.]

Art. 2480. Audit.—Immediately before a meeting of the directors called to recommend the declaration of a dividend, the supervisory committee shall make a thorough audit of the receipts, disbursements, income, assets and liabilities of the association for the fiscal year, and shall make a full report thereon to the directors. Said report shall be read at the annual meeting and shall be filed and preserved with the records of the association. [Id.]

Art. 2481. Dividend.—At the annual meeting a dividend may be declared from income which has been actually collected during the fiscal year next preceding or during the months which have elapsed since the association began business, and which remains after the deduction of all expenses, losses and the amount required to be set apart as a guaranty fund. Such dividend shall be paid on all fully paid shares outstanding at the close of the fiscal year, but shares which become fully paid during the year shall be entitled only to a proportional part of said dividend, calculated from the first day of the month following such payment in full. Dividends due to a member shall be paid to him in cash or credited to the account of partly paid shares for which he has subscribed. [Id.]

Art. 2482. Guaranty fund.—Immediately before the payment of each dividend, there shall be set apart as a guaranty fund twenty per cent of the net income which has accumulated during the fiscal year. Said fund and the investments thereof belong to the association and shall be held to meet contingencies or losses in its business. All entrance fees shall be added at once to the guaranty fund. But upon recommendation of the board of directors the members at an annual meeting may increase, and whenever said fund equals or exceeds the amount of capital stock actually paid in, may decrease the proportion of

profits required by this article to be set apart as a guaranty fund. [Id.]

Art. 2483. **Dissolution.**—At any meeting specially called to consider the subject, the members upon the unanimous recommendation of the board of directors may vote to dissolve the association, provided at least two-thirds of the members are present at such meeting, and provided that not more than ten members either in person or by written notice, object thereto. A committee of three shall thereupon be elected to liquidate the assets of the association, and each share of the capital stock, according to the amount paid in thereon, shall be entitled to its proportion of the proceeds after all debts of the association have been paid. [Id.]

Art. 2484. **Report to Commissioner.**—Within twenty days after the last business day of December in each year, every such association shall make to the Banking Commissioner a report, in such form as he may prescribe, signed by the president, treasurer and a majority of the supervisory committee who shall certify and make oath that the report is correct according to their best knowledge and belief. Any such association which neglects to make the said report within the time herein prescribed shall forfeit to the State five dollars for each day during which such neglect continues. [Id.]

2. AGRICULTURAL AND LIVESTOCK POOLS.

| | | | |
|--|--------------|-------------------------------------|--------------|
| May incorporate..... | Article 2485 | Margins..... | Article 2492 |
| Definitions..... | 2486 | Loan limit and liquidation..... | 2493 |
| May borrow..... | 2487 | Bond..... | 2494 |
| May loan..... | 2488 | Officers to furnish bonds..... | 2495 |
| Loans and interest..... | 2489 | To file statement..... | 2496 |
| Agents for borrowers..... | 2490 | Pools may use security..... | 2497 |
| Warehouses and concentration places..... | 2491 | Term of loan..... | 2498 |
| | | Unlawful to dispose of receipt..... | 2499 |

Art. 2485. **May incorporate.**—Any association of persons, which may include corporations duly chartered, State banks and trust companies, National banks and trust companies, and cooperative associations composed of persons engaged in producing or producing and marketing staple agricultural products or livestock, or both, may organize a pool for the purpose of borrowing and lending money on agricultural products or livestock, or both, for agricultural purposes, or for the raising, breeding, fattening or marketing of livestock. Any number of persons, not less than three, may incorporate for the purpose of growing, storing, preparing for the market, and marketing agricultural products, or for the purpose of growing, raising, fattening for the market, and marketing livestock, or for both such purposes, and may use any of such livestock or farm products, or both, as security, in financing such enterprises; and shall have all the privileges of a pooling organization in borrowing money to promote the business of such corporation. [Acts 2nd C. S. 1923, p. 82.]

Art. 2486. **Definitions.**—“Pools” as used in this title shall be held to mean agricultural financial pools and livestock financing pools; “agricultural products” shall be held to mean any or all

products of the farm, orchard or dairy usually classed as agricultural products other than livestock; "livestock" shall be held to mean any herd of cattle, sheep, goats or swine; "margins" shall be held to mean additional security in money of legal tender of the United States. [Id.]

Art. 2487. **May borrow.**—Such pools shall have the right to borrow money, and to use as security for such borrowed funds, the security given by those borrowing money from such pooling organizations, and shall be authorized to co-operate with the Federal Reserve Banks and Federal Farm Loan Banks under the provisions of the Federal laws affecting farm credits. [Id.]

Art. 2488. **May loan.**—Such pools are authorized to lend money on agricultural products that are stored in bonded licensed warehouses and for which there is outstanding therefor a negotiable bonded warehouse receipt issued in accordance with the Uniform Warehouse Receipt Act. They are also authorized to lend money to the owners of herds upon the terms and conditions as hereinafter provided, and such herds shall be permitted to remain in the possession of the owner or owners thereof, or in the possession of an agent or representative of the owner or owners. A mortgage against such herd, or shipping documents issued against such herds in transit, may be used as collateral for such loan. [Id.]

Art. 2489. **Loans and interest.**—The interest charged on all such loans shall not exceed by more than one and one-half per cent the rate of interest charged such pooling institutions by the farm loan banks. No loans shall be made by any pooling organization to any person or association of persons, unless such person or association is engaged in producing, or producing and marketing, staple agricultural products, or livestock, upon which such loan is made. All such commodities, articles or things classed herein as agricultural products shall be insured with some stock insurance company authorized to do business in this State. Such insurance shall be for not less than the full amount of the loan. At no time shall a greater amount than seventy-five per cent of the market value of such commodities, articles or things on date of loan be loaned thereon. [Id.]

Art. 2490. **Agents for borrowers.**—Such pools shall have the right to act as agents for all borrowers in the sale of such commodities, articles or things on which loans have been made. The commissions charged for such service shall not exceed fifty cents per bale for cotton sold, and shall in all cases on all other commodities, articles or things be reasonable. Where such pools operate bonded and licensed warehouses, it shall have authority to make a charge for storage, for drawing and handling of samples and for insurance in addition to other charges as provided for herein. [Id.]

Art. 2491. **Warehouses and concentration places.**—All such pools are authorized to own, maintain, and operate bonded and licensed warehouses when such warehouses are deemed necessary in the conduct of said business, and to own or maintain concentration places, including railroad sidings. [Id.]

Art. 2492. **Margins.**—Such pools shall be authorized to demand margins, such as is necessary to keep the market value of any commodity, article or thing on which a loan has been made up to within seventy-five per cent of the value of such commodity, article or thing on date of loan at any time during the life of such loan, and shall have the right to sell any commodity, article or thing on which a loan has been made when the owner or owners thereof fail or refuse to put up or provide for such margin. All such margins shall be credited to the account of such borrower and same shall be taken into account when such loan or loans shall be liquidated. [Id.]

Art. 2493. **Loan limit and liquidations.**—Such pools are authorized to make loans as herein provided, the total of which shall at no time exceed ten times the total of the capital stock and surplus of such organizations. The borrower of any funds from such pool shall have the right to liquidate his loan at any time during the contract period thereof, upon full and satisfactory settlement of all claims against such borrower due such organization. [Id.]

Art. 2494. **Bond.**—Such pools shall, before engaging in business in this State, furnish a good and sufficient bond, conditioned upon the faithful performance of its duties and responsibilities as a pooling organization, said bond to be for ten per cent of the capital stock of such pool. Such bonds shall be approved by the commissioners court of the county in which such pool is organized, or in the county in which is located the home office of such pool. All such bonds shall be certified to the Commissioner of Markets and Warehouses (Commissioner of Agriculture; Acts Thirty-ninth Legislature, p. 35), and the Commissioner shall, upon receipt of such bond and after satisfying himself as to its genuineness, issue to such pool a certificate of authority to conduct a pool in accordance with the provisions of this title, upon the payment of a fee of ten dollars which shall be collected by said Commissioner and by him paid into the State Treasury. [Id.]

Art. 2495. **Officers to furnish bonds.**—The officers of such pools shall be a president, vice-president, and a secretary and treasurer, provided that the office of secretary and treasurer may be held by one person, and a board of directors, all of which shall be members of such pooling organization. The said board of directors shall elect a president, vice-president, secretary and treasurer from said board of directors, and such board shall be authorized to employ a manager and others to conduct the affairs of the pool. The secretary-treasurer and all officers in charge of the management shall be required to furnish to such pool, a good and sufficient bond conditioned upon the faithful performance of duty. Such bond shall be not less than five per cent of the total of the capital stock and surplus of said pool. The directors of any such pool shall not permit such persons to conduct the affairs of such pools when they have not so furnished bond. [Id.]

Art. 2496. **To file statement.**—All such pools shall on the first of January, April, July and October of each year file with

the Commissioner of Markets and Warehouses (Commissioner of Agriculture; Acts Thirty-ninth Legislature, p. 35) a sworn statement of the condition of the affairs of such pool, and such statement shall be made to show the amount of business done, the number of negotiable receipts on which loans have been made and the value of such commodities, the total of all such loans and the total of all the obligations of the pool, to whom due and the amount of interest being paid on same, the quality or number of sales made for clients, the gross receipts of such sales, the amount of commissions charged thereon, and the number and value of all livestock mortgages and other securities. [Id.]

Art. 2497. **Pools may use security.**—All such pools shall be authorized to use such security or collateral held by them as security for loans made to such pooling organizations. When any loan due the pooling organization is satisfied, such organization shall deliver to the borrower a final receipt of settlement, and when any article, commodity or thing is sold, the negotiable warehouse receipt shall be delivered to the maker thereof, and cancelled in accordance with the provisions of the Warehouse Acts of this State. [Id.]

Art. 2498. **Term of loan.**—The maximum term of any loan on agricultural products shall not exceed twelve months and no loans on livestock shall be for any term exceeding three years. Loans may be renewed conditioned upon new and agreed valuations of the commodity, article or thing, or upon additional security, or both. [Id.]

Art. 2499. **Unlawful to dispose of receipt.**—No person shall dispose of any negotiable bonded warehouse receipt placed with any bonded organization as security on loan, or to be held by such pool, pending the sale of any such commodity, article or thing represented by such receipt except as provided herein. [Id.]

3. MUTUAL LOAN CORPORATIONS.

| | | | |
|---------------------------------|--------------|---------------------------------|--------------|
| Purpose | Article 2500 | Articles of incorporation | Article 2504 |
| Powers | 2501 | Semi-annual report | 2505 |
| Capital stock | 2502 | Liability of stockholders | 2506 |
| Ratio of capital to loans | 2503 | Rate of interest | 2507 |

Art. 2500. **Purpose.**—Ten or more persons, five of whom shall be citizens of Texas, may organize corporations to aid their member stockholders in producing, or producing and marketing of staple agricultural products, or in acquiring, raising, breeding, fattening or marketing of livestock. [Acts 2nd. and 3rd. C. S. 1923, pp. 87, 174.]

Art. 2501. **Powers.**—Such corporations shall have power:

1. To accumulate and lend money to their member stockholders where such loans are made for the purposes provided for in the Federal "Agricultural Credits Act of 1923."

2. To lend money to their member stockholders where the money loaned is to be used for the production or production and marketing of staple agricultural products, or for the acquiring, raising, breeding, fattening or marketing of live stock, or the purchase of the capital stock of such corporations and in order

to obtain the funds to loan their members, such corporations are authorized to purchase, sell, indorse and discount the notes of its member stockholders and by indorsement to become liable as principal makers thereof, where such notes are secured by warehouse receipts or shipping documents covering such agricultural products or chattel mortgages on livestock or by crop mortgages or other acceptable chattel mortgages or other acceptable security. [Id.]

Art. 2502. Capital stock.—Such corporations must have a fully paid up capital stock of not less than ten thousand dollars at the time of the filing of the articles of incorporation. Ten thousand dollars of such capital shall be kept intact and invested in securities approved by law for investments of saving banks. In the discretion of the organizers or board of directors, the capital stock may be divided into preferred and common stock, and in such case the articles of incorporation shall provide for the payment of dividends on preferred stock and for the retirement of both kinds of stock. Preferred stock shall be issued in such amount only as provided in the articles of incorporation. No dividends shall be paid on common stock until dividends provided to be paid on the preferred stock have been fully paid at the rate provided in the articles of incorporation. With the approval of the Banking Commissioner first obtained, any domestic corporation except a savings bank may invest any part of its funds in the preferred stock of such corporation.

Art. 2503. Ratio of capital to loans.—Such corporations shall automatically increase their capital stock at the rate of ten per cent of the amount of loans made by them to their member stockholders and their articles of incorporation and by-laws shall so provide. Such corporation shall not make loans in excess of ten times its unimpaired capital stock represented by the part of its capital stock so automatically increased. [Id.]

Art. 2504. Articles of incorporation.—The articles of incorporation shall further provide: That each applicant for a loan or discount by such corporation shall become a subscriber to its common stock in an amount equal to ten per cent of the loan or discount applied for, to be fully paid for upon or before the closing of such loan or granting of such discount, provided the board of directors may waive such requirement if the stockholder is already the owner of sufficient stock; and that the corporation may buy in out of available funds any outstanding capital stock at the book value thereof, as conclusively determined by the directors of the corporation. [Id.]

Art. 2505. Semi-annual report.—On or before the tenth day of each January and July, such corporation shall file with the Secretary of State a report showing its true financial condition on the first days of January and July, and the amount of capital stock, both preferred and common, then outstanding, including that added by the automatic increase. Such corporations shall not pay a franchise tax. [Id.]

Art. 2506. Liability of stockholders.—Except for debts lawfully contracted between a member stockholder and the corpora-

tion, no stockholder either preferred or common, shall be liable for the debts, contracts or engagements of the corporation beyond the par value of the stock owned by such stockholder, and the stock, both common and preferred, shall be non-assessable.

Art. 2507. Rate of interest.—No corporation organized under the provisions of this chapter shall, in making loans to its members, or discounting notes of the members of such corporation, exceed two and a half per cent of the rate of discount established by the Federal Farm Loan Board for discounts made by the Federal Intermediate Credit Banks. [Acts 1925, p. 221.]

4. CO-OPERATIVE CREDIT ASSOCIATIONS.

| | | | |
|--------------------|---------|--------------------------------|---------|
| | Article | | Article |
| Purpose | 2508 | Articles of incorporation..... | 2511 |
| Powers | 2509 | Fees and reports..... | 2512 |
| Capital stock..... | 2510 | Retirement of stock..... | 2513 |

Art. 2508. Purposes.—Ten or more persons, citizens of this State, who are engaged in the production, or production and marketing of staple agricultural products, or the raising, breeding, feeding, fattening or marketing of live stock, may organize private cooperative credit associations not for profit. [Acts 2nd. C. S. 1923, p. 90.]

Art. 2509. Powers.—Such associations shall have the following powers:

1. To borrow for and lend money to its members only.
2. To discount or rediscount for its members only, and to purchase and sell the notes of its members, or such other evidences of indebtedness as may be discounted or rediscounted under the provisions of the Federal "Agricultural Credits Act of 1923," and under the terms, rules and regulations prescribed by the Federal Farm Loan Board, and to that end may indorse all bills, notes or other evidences of indebtedness of its members.
3. And to do such acts as are permitted to associations generally organized under the laws of this State where not in conflict herewith. [Id.]

Art. 2510. Capital stock.—Such associations may be organized with or without capital stock, but if organized to lend money secured by chattel mortgages on live stock, shall have a capital stock. Associations having a capital stock shall automatically increase the same at the rate of ten per cent of the amount of loans or discounts made by them to their stockholder members and such loans or discounts shall never exceed ten times the amount of their paid up unimpaired capital stock, and the articles of incorporation shall so provide. [Id.]

Art. 2511. Articles of incorporation.—In addition to the requirements prescribed by the general corporation law, the articles of incorporation shall provide: That loans shall not be obtained for, made to, or notes purchased of, or discount for any person or association other than a stockholder in such association; and that each applicant for a loan or discount by such association shall become a subscriber to its capital stock in an amount equal to ten per cent of the amount of the loan or discount applied for, to be fully paid for on or before the closing of such loan or granting of such discount. A filing fee of ten dol-

lars shall accompany said articles of incorporation and be paid to the Secretary of State.

Art. 2512. Fees and reports.—Each such association, except those having a capital stock, shall pay an annual license fee of ten dollars, and all such associations shall be exempt from all franchise or other license tax. On or before the tenth days of January, April, July and October, those having a capital stock shall file with the Secretary of State with a fee of two dollars and fifty cents, accurate reports showing their financial condition and the amount of outstanding paid up capital stock as of the first of January, April, July and October. [Id.]

Art. 2513. Retirement of stock.—Whenever the debts and liabilities of such association are less than fifty per cent of its assets, and in the judgment of the directors the same may be done without impairment of the financial condition of such association, said board may authorize the buying in and purchase of its capital stock at the book value thereof as it may conclusively determine, and pay for it in cash within one year thereafter; provided the board may in its discretion retire pro rata such stock held by any member or group of members whose loans have been paid in whole or in part. [Id.]

5. FARMERS' CO-OPERATIVE SOCIETY.

| | | | |
|-----------------------------------|--------------|---------------------------|--------------|
| May incorporate..... | Article 2514 | Authority | Article 2520 |
| Purely local..... | 2515 | Membership | 2521 |
| Laws governing..... | 2516 | Withdrawal | 2522 |
| Filing and recording charter..... | 2517 | Liability of members..... | 2523 |
| Statement to be made..... | 2518 | Publications | 2524 |
| Assets | 2519 | | |

Art. 2514. May incorporate.—Private corporations may hereafter be incorporated for the purpose of enabling those engaged in agricultural pursuits to co-operate with each other for the purposes named in this subdivision. Only those engaged in agricultural pursuits can become incorporators of, or members of societies chartered under this law. Each corporation chartered hereunder shall contain as a part of its name these words, "Farmers' Co-operative Society". Persons not engaged in agricultural pursuits may be permitted to contribute an amount not in excess of one-third the outstanding working capital of the society. [Acts 1917, p. 432.]

Art. 2515. Purely local.—Corporations chartered hereunder shall be purely local in their character, shall confine their activities, business operations and membership to the community in which they are located, and in no event to extend beyond the territory surrounding the town, village or city designated as the place of business of the corporation. No public funds appropriated to any department of State government, or to any State institution shall be used in organizing any society or corporation mentioned in this subdivision. Corporations incorporated under this law may join with other corporations incorporated under this Act in establishing and maintaining joint agencies for the accomplishment of the purposes for which they are incorporated.

Art. 2516. Laws governing.—Those desiring to form corporations hereunder shall, in the exercise of the rights herein granted and subject to the limitations herein provided, prepare

and file their charters under the general corporation laws of this State, which said corporation laws shall govern them except where in conflict with the provisions of this subdivision. [Id.]

Art. 2517. Filing and recording charter.—The Secretary of State shall charge for filing charters and amendments to charters of corporations incorporated hereunder the sum of ten dollars for each charter and amendment thereof. Charters, amendments to charters and by-laws must be filed in the office of the Secretary of State and must before being filed, first be approved by the Attorney General. Copies of the charter and by-laws properly certified to by the Secretary of State shall also be filed in the office of the county clerk of the county in which it is located any society which is incorporated hereunder, but need not be recorded by the county clerk, but shall be kept by him subject to inspection of any person interested. The Secretary of State shall, in furnishing the corporation certified copies of charters, amendments and by-laws, furnish to the society two certified copies of each, one for the files of the society, and one to be filed in the office of the county clerk. [Id.]

Art. 2518. Statement to be made.—Corporations chartered hereunder shall be purely co-operative, and not for profit, and shall not be required to pay any annual franchise tax, but shall nevertheless make a statement of their assets and liabilities to the Secretary of State, showing the condition of their affairs, in such form as the Attorney General may prepare for the Secretary of State. Such societies may, by their directors, in accordance with their by-laws pass their profits to the surplus fund or divide the same among the members of the society in proportion to their respective contributions in cash to the working capital of the corporation and patronage of their members. [Id.]

Art. 2519. Assets.—Corporations chartered hereunder shall have property of not less than five hundred dollars in value, which may be cash, property or note acceptable to the board of directors. No membership certificates shall be issued for subscriptions in the form of notes until such notes have been paid in full, principal and interest, and the holders of membership certificates for which cash or property has not been paid, while entitled to vote in the management of the affairs of the corporation, shall not be entitled to share in its dividends nor in a distribution of any assets until such notes are paid in full. However, they may become borrowers from the corporation under the provisions of this sub-division and the by-laws adopted hereunder. Such notes shall be construed to be valid subscription contracts, and shall be the property of the corporations chartered hereunder for any and all purposes. [Id.]

Art. 2520. Authority.—Corporations chartered under this law shall have authority to borrow money and discount notes to an aggregate amount not in excess of five times the working capital of the corporation; such corporations shall have the right to loan their funds to members only upon such terms and security, if any, as may be provided in their by-laws; they shall also have the right to act as the co-operative selling and purchasing agents of their members only, and may for their members sell

any and all agricultural products, and for their members purchase machinery and all supplies of any kind or character, including the purchase of fire, live stock, hail, cyclone and storm insurance for its members; in the event of purchasing insurance for its members, however, the corporation shall have authority to be, and shall be appointed and licensed as, the agent of the insurance companies, and the commissions so received by it shall be a part of the corporate funds of the company; they shall also have authority to own and operate such machinery and instrumentalities as may be necessary in the production, harvesting, and preparation for market of farm and ranch products. [Id.]

Art. 2521. Membership.—Membership in societies incorporated under this law can be obtained only by election thereto at the time of organization of the society by the organizers thereof, or by the board of directors of such society when organized under such rules and limitations as may be made in the by-laws. Members shall each have one vote only in the management of the affairs of the corporation. Members may be suspended or expelled for misconduct under such rules and regulations as may be prescribed in the by-laws. In case of expulsion the society shall return to the member at such time as may be fixed in its by-laws an amount equal to the money value of the amount contributed by such member to the working capital of the society. [Id.]

Art. 2522. Withdrawal.—Membership certificates shall not be transferable, but members shall have the right of withdrawal under such rules and regulations as may be adopted by the society in its by-laws. In case of withdrawal the society may return to the member an amount equal to the money value of the amount contributed by him to the working capital of the society. [Id.]

Art. 2523. Liability of members.—Unless otherwise provided, the members of a corporation chartered hereunder shall not be responsible to the corporation or to its creditors, in excess of the membership shares subscribed by them, and when such shares are paid for their liability shall cease; provided that the association may, in its by-laws, make each member responsible for an additional amount equal to one hundred per cent of the shares owned by a member, payable upon assessment of the board of directors for the payment of the debts and obligations of the corporation; and may provide in like manner that members may waive their right to claim personal property exempt from seizure for debt as against debts and obligations due to the society. In all such instances such liability must be plainly provided for in the by-laws, which by-laws in this and all other instances must be signed by the member. [Id.]

Art. 2524. Publications.—Appropriate forms of charter, charter amendments, by-laws, rules and annual reports to the members and such other forms as may be necessary to make this law effective, shall be prepared by the Attorney General and filed with the Secretary of State, who shall cause same, together with a copy of this law, to be published and distributed among the citizens of the State who may be interested. [Id.]

TITLE 47.

DEPOSITORIES.

| Chapter | Page | Chapter | Page |
|----------------------------|------|---------------------------------|------|
| 1 State Depositories..... | 662 | 4 City and other depositories.. | 674 |
| 2 County depositories..... | 669 | 4 Special depositories..... | 677 |

CHAPTER ONE.

STATE DEPOSITORIES.

| Article | Article | | |
|-------------------------------------|---------|--------------------------------|------|
| Depository board..... | 2525 | Remittances | 2535 |
| Bids | 2526 | Extensions | 2536 |
| Application for deposits..... | 2527 | Cancellation of contracts..... | 2537 |
| Acceptance | 2528 | Surplus | 2538 |
| Qualifications of depositories..... | 2529 | Interest | 2539 |
| Deposit of securities..... | 2530 | Rate board | 2540 |
| Failure to qualify..... | 2531 | Expenses of rate board..... | 2541 |
| Placing deposits..... | 2532 | Duties of rate board | 2542 |
| Reserve depositories..... | 2533 | Meetings | 2543 |
| Withdrawals | 2534 | | |

Art. 2525. [2417] **Depository Board.**—The State Treasurer as secretary, together with the Attorney General and the Banking Commissioner, shall constitute the Depository Board. The said Board shall have the right to make such rules and regulations governing the establishment and conduct of State depositories and the handling of funds therein as the public interest may require, not inconsistent with the provisions of this chapter, which said rules and regulations shall be in writing and entered upon the minutes of said Board. Whenever in this chapter the word "Treasurer" is used it shall mean the State Treasurer, and the word "Board" shall mean the State Depository Board, and the words "Rate Board" shall mean the Texas Rate Making Board. [Acts 1923, p. 60.]

Art. 2526. [2418] **Bids.**—The Treasurer biennially, as soon as practicable after the rate of interest has been certified to the Board by the Rate Board, and not later than the twentieth day of September, shall mail to each State and national bank doing business in this State a circular letter enclosing an application blank to be used by banks in making application for a deposit of State funds for a term of two years after the first day of December next succeeding. Said letter shall state the conditions to be complied with by the applicants as herein provided. The Treasurer shall make three certified lists of the banks to which such letters are mailed, each to be accompanied by a copy of such letter, one of which he shall deliver to each member of the Board and the other he shall keep on file in his office for the inspection of any person desiring to see the same. The Treasurer is authorized to cancel all bids received for funds and to send out applications to the banks above described, under the terms of this law, giving said banks fifteen days from the date said notices are mailed in which to file their application to become a depository. Funds deposited shall be for a period of two years. If it develops that more depositories are required at any time, the Board may send out notices to all State and national banks who are not depositories, notifying them that further applications for funds for the unexpired term will be accepted.

Said additional depositories shall comply with the same rules and conditions regarding all other depositories approved under this chapter. [Id.]

Art. 2527. [2419] **Application for deposits.**— The application of the bank applying for State funds shall state its amount of paid up capital stock and permanent surplus, and the maximum of State funds it will accept, accompanying same with a statement of the bank's condition at the date of said application. Such application shall contain a provision that the books and accounts of such bank, if designated as a State Depository, shall be open at all times to the inspection of the Board, any member or any accredited representative thereof. All such applications shall be mailed to the Treasurer at Austin in time to reach his office on or before noon of the fifteenth day of October next succeeding. Applications received in the next succeeding five days may be considered at the option of the Board. [Id.]

Art. 2528. [2420] **Acceptance.**— When the Treasurer receives such application, he shall endorse thereupon the date of its receipt, and shall on the first Monday in November prepare three lists giving the names of all applicants for funds and the amount applied for. One list shall be furnished each member of the Board. Said board shall meet promptly thereafter and consider said applications, giving approval to those applicants that are acceptable and having the power to reject those whose management of condition, in the opinion of the board, does not warrant the placing of State funds in their possession. No application for State funds shall be granted to any bank whose liabilities for borrowed money are in excess of its capital stock, but the board may in its discretion waive this provision. [Id.]

Art. 2529. [2423] **Qualifications of depositories.**—As soon as practicable after the Board shall have passed upon all applications, the Treasurer shall notify all banks whose applications have been accepted of their designation as State depositories. The Treasurer shall require each bank so designated to qualify as a State depository on or before the twenty-fifth day of November next succeeding by (a) depositing a depository bond signed by some surety company authorized to do business in Texas in an amount equal to not less than double the amount of State funds allotted, such bond to be payable to the Treasurer and to be in such form as may be prescribed by the Board and subject to the approval of such board; or (b) by pledging with the Treasurer any securities of the following kinds in an amount at par value one-fifth greater than the amount of State funds allotted: Bonds and certificates of indebtedness of the United States, bonds of this State, bonds of the Federal Land Banks located in Texas, bonds of counties, independent school districts and common school districts located in Texas, and bonds issued by municipal corporations in Texas, or vendor's lien or mortgage lien notes secured by first lien on real estate situated in this State of value, exclusive of improvements, at least double the amount of such notes. No State, county, independent school district, common school district or municipal bonds shall be ac-

cepted as collateral security unless they shall be approved by the Attorney General. All bonds accepted as collateral security shall be registered under the same rules and regulations as are required for bonds in which the permanent school funds are invested. In case vendor's lien and mortgage lien notes are offered for deposit as collateral they shall be accompanied by an abstract of title to the land securing the payment thereof, accompanied by an opinion of a reputable attorney residing in the county in which such land is located approving such title. The Board shall make such investigation in regard to the value of the land securing the payment of such notes as it may deem proper, requiring the payment or deposit by the depository bank offering such collateral of an amount sufficient to cover the expense of investigating the title and value of land securing such collateral. Subject to the approval of the Board, a State depository may secure its deposit of State funds in part by an acceptable surety bond and in part by acceptable collateral of the kind herein mentioned. The Board shall have the power to reject, without assigning any reason therefor, any or all collateral of any surety bond tendered by a State depository, and its action in so doing shall be final and not subject to any review.

When the collateral pledged by a State depository to secure a deposit of State school funds shall be in excess of the amount required under the provisions of this chapter, the Treasurer may, subject to the approval of the Board, permit the release of any such excess. In the event the balance to the credit of the Treasurer on the books of such bank shall be thereafter increased, adequate security as provided for in this chapter, shall be deposited and maintained by such depository bank. [Id.]

Art. 2530. [2426] Deposit of securities.—The securities above mentioned shall be delivered to the Treasurer and receipted for by him, and retained by him in the vaults of the State Treasury and if, in any case, or at any time, such bonds or other securities are not satisfactory security in the opinion of the Board for the deposits made under this chapter, they may require such additional security to be given as will be satisfactory to them. Said Board shall, from time to time, inspect such bonds and see that the same are actually kept in the vaults of the State Treasury. In the event that any State depository shall fail to pay deposits or any part thereof on the check of the Treasurer, he shall have the power to forthwith realize upon such bonds or other securities deposited by said bank, and disburse the money arising therefrom, according to law, upon the warrants drawn by the Comptroller upon the funds for which said bonds or other securities are secured. Any bank making deposits of bonds or other securities with the Treasurer under the provisions of this chapter may cause such bonds or other securities to be endorsed or stamped, as they may deem proper, so as to show that they are deposited as collateral and not transferable, except as herein provided. The right of substitution of securities shall be granted to depositories, provided the securi-

ties substituted meet with the requirements of the law and are approved by the Board.

Upon request of the owner or owners, the Treasurer may surrender interest coupons or other evidence of interest when due on securities deposited with him by depository banks, provided said securities are ample to meet the requirements of the State. [Id.]

Art. 2531. [2424] **Failure to qualify.**—In case any bank that has submitted an application for State funds shall fail to qualify within the time specified in this chapter after being notified to do so, it shall forfeit its right to act as a depository for a period of one year. [Id.]

Art. 2532. [2425] **Placing deposits.**—After the depositories have qualified as provided in the preceding articles, it shall be the duty of the Treasurer to deposit the funds belonging to the State in such depositories, as far as practical on a fair percentage basis, and shall at all times keep such funds equitably prorated in proportion to the amount which each is entitled to receive by drawing warrants alternately thereon, or by apportioning the warrants so drawn.

No depository shall be entitled to keep on deposit more than fifty per cent of its paid up capital stock and permanent surplus. Any reduction in the capital stock and surplus of any depository shall reduce correspondingly the amount of funds which it can retain as a depository, and the Treasurer is authorized to withdraw from said depository any funds in excess of fifty per cent of its capital and surplus.

The amount of funds allotted to any one depository shall at no time exceed one hundred thousand dollars. If there be a surplus after the awards are made, the surplus shall be prorated among the applying banks. Such provisions, however, shall not affect arrangements for clearing checks made by said Board with Reserve Depositories as hereinafter provided.

All State depositories shall collect at their own expense all checks, drafts and demands for money deposited with them by the Treasurer, and when using due diligence, shall not be liable on such collections until the proceeds thereof have been received by the depository bank.

If the Treasurer shall fail to exercise proper diligence in depositing or investing State funds in accordance with the provisions of this chapter, he shall be liable to the State for three per centum annually on funds which he fails to deposit or invest, excepting such as he may retain in the State Treasury or on deposit with Reserve Depositories sufficient to meet the current demands on the Treasury.

State Depositories shall show in their published statements the amount of State funds on deposit with them. [Id.]

Art. 2533. [2428] **Reserve Depositories.**—The Board shall designate one or more banks in centrally located cities to be known as Reserve Depositories, to be used for clearing checks and other obligations due the State, and the Treasurer shall

keep sufficient funds on deposit in said depositories to meet all current demands upon the State. All items received by the Treasurer for collection shall be deposited with such depositories for credit to the account of the Treasurer and all checks drawn by the Treasurer for the payment of obligations due by the State may be drawn on a reserve depository or on a State depository, so that the checks of the State may at all times pass current as cash. Reserve depositories shall pay interest to the State at the customary rate paid by said depositories to their correspondent banks on average daily net balances, payable monthly. The Board shall fix the amount of security to be required of any reserve depository and when so fixed, the reserve depository shall execute or give security of the kind or kinds provided for other State depositories.

Funds accumulating in the reserve depository, or depositories, in excess of that required for meeting the current bills of the State shall be distributed from time to time among the State depositories as heretofore provided. Only such amounts shall be maintained with a reserve depository as in the judgment of the Treasurer shall be found necessary to meet the cash demands on the Treasury. [Id.]

Art. 2534. [2431]. **Withdrawals.** — The funds on deposit with depositories shall be subject to withdrawal at any time by the Treasurer. At no time shall the withdrawal from one depository be greater than **twenty-five** per cent of its quota for any one month, unless fifteen days notice has previously been given the depository by the Treasurer. Whenever the current demands upon the Treasurer are such that the said twenty-five per cent is insufficient to meet such current demands, then the Treasurer shall have power, without notice, to withdraw additional amounts above the twenty-five per cent to meet such current demands, provided that such additional amounts shall be drawn in equal portion as far as possible from different depositories, and not the full amount from any one depository. The limitation as to the withdrawal of only twenty-five per cent of any bank's quota and the limitation as to additional amounts, shall not apply to any reserve depository. [Id.]

Art. 2535. [2429]. **Remittances.** — All State depositories shall remit free of charge to the Treasurer on his demand, all withdrawals of State funds as provided for in the preceding article. All remittances to the Treasurer made by the State or reserve depositories, or any person or persons may be in cash by registered letter, by post office money order, express money order of any company authorized to do business in Texas, or by any bank draft on any bank in the following cities: Dallas, Fort Worth, Waco, Houston, Austin, Galveston and San Antonio. The liability of any reserve depository, State depository or person sending the same shall not cease until the said money is actually received by the Treasurer. Any depository that refuses to remit for State items, or Treasury drafts, as above indicated, shall upon order of the Board forfeit its right to receive further deposits, and the Board shall have the right to

withdraw all funds from said bank, which shall thereafter cease to be a State depository. [Id.]

Art. 2536. [2434] **Extensions.**—If it should be found by the Board at the expiration of any biennial depository period that any of the existing depository banks have not been or will not be selected as depositories for the ensuing period and that the withdrawal of State funds at any particular depository bank will create a demand on such funds at any particular depository bank which it will not be able to meet, though otherwise solvent, and if it should be further found by the Board that such action is warranted in the interest of the public welfare, then the Board shall have the discretion and authority to extend the time of payment of such funds into the State Treasury from time to time. Such extension shall not be made unless and until such depository bank executes a new application and gives security as provided in this chapter covering such time as the Board may designate. Any depository bank receiving the benefits of this extension privilege shall pay a rate of interest one per cent per annum in excess of the then current rate as fixed by the Board. [Id.]

Art. 2537. [2432] **Cancellation of contracts.**—Each depository shall have the right to cancel its depository contract upon accounting to the Treasurer for all funds deposited with it, (a) at the end of any year by giving thirty days notice in advance, or (b) when the interest rate is increased by the rate Board.

The Board shall have the right to terminate a contract with a depository at any time they deem it to be in the interest of the State to do so, upon giving the depository fifteen days notice of such termination. The Treasurer may discontinue making deposits in any bank, when in the opinion of the Board the condition or management of the bank warrants such action on his part. [Id.]

Art. 2538. [2433] **Surplus.**—If there should be at any time a surplus of State funds above the aggregate amount applied for by and allotted to State funds above the aggregate amount applied for by and allotted to State depositories, together with the amount necessary in the judgment of the Treasurer to be carried in reserve depositories, the Treasurer is hereby authorized and it shall be his duty, with the approval of the Board, to invest all of such surplus in bearer obligations of the United States Government yielding interest at a rate of not less than three per centum per annum, such securities to be purchased on the open market at the best price obtainable and to be held by him as the property of the State in such manner as similar securities are required by law to be held. As the needs of the State may require and before withdrawing funds from any State depository, it shall be the duty of the Treasurer to convert all such obligations into cash by selling the same on the open market at the best price obtainable and placing the proceeds thereof to the credit of the proper funds. [Id.]

Art. 2539. [2437] **Interest.**—Any State depository receiv-

ing State funds under the provisions of this chapter shall pay to the Treasurer at the end of each month in the manner prescribed by him, interest on the average daily balance for said month at the rate fixed by the Rate Board. All State funds deposited under the provisions of this chapter shall be subject to a change in the rate of interest by the Rate Board at the end of any one year. [Id.]

Art. 2540. [2421] **Rate Board.**—The Texas Rate Making Board shall be composed of five members who shall be citizens of Texas, and who shall be competent and skilled business men of known ability and high moral character and integrity, to be appointed biennially by the Governor and confirmed by the Senate. All members of said Board shall hold office for two years beginning February 1, biennially. Any vacancy in the membership of said Rate Board shall be filled by the Governor for the unexpired term. The Governor shall designate one of said members as chairman of said board. In appointing said members, the Governor shall not select any two from the same section of the State. The Governor shall have full power to remove any member of said board from office for good cause, the reasons for such removal to be specified and filed with the Secretary of State. [Id.]

Art. 2541. [2421] **Expenses of Rate Board.**—The members of said board shall serve without remuneration, but the Legislature shall make ample provision for the payment of their traveling expenses, including hotel expenses, necessarily incurred in connection with their official duties. [Id.]

Art. 2542. [2421] **Duties of Rate Board.**—The Rate Board shall have power and it shall be its duty to fix and specify annually the precise rate of interest which banks designated as State depositories shall pay to the credit of the Treasurer on average daily balances in said banks. The rate of interest to be charged shall be the same for all banks. Said Rate Board shall never fix a rate for less than four per cent. [Id.]

Art. 2543. [2421] **Meetings.**—Said Rate Board, for the purpose of fixing such interest rate shall meet on the first Monday in September of each year, at which meeting the rate of interest for the succeeding year, beginning on December 1st of each year and ending on the 30th day of November, shall be fixed. When the rate of interest has been fixed the Rate Board shall certify the rate to the State Depository Board.

All meetings of the Rate Board shall be upon call of the chairman, or in the event of his failure, refusal or neglect to act, upon the call of any three members thereof, such meetings to be held in any available room or space in the State Capitol. Said Rate Board shall meet at least once each year on the first Monday in September, and as often thereafter as may be necessary. Whenever a quorum of both the Rate Board and the State Depository Board shall deem it necessary, the Rate Board and the State Depository Board shall meet in joint session or meeting. [Id.]

CHAPTER TWO.

COUNTY DEPOSITORIES.

| | Article | | Article |
|--|---------|--|---------|
| Notice to bidders..... | 2544 | Checks payable at county seat..... | 2552 |
| Sealed proposals..... | 2545 | Depository not located at county seat..... | 2553 |
| Opening bids and selecting depository..... | 2546 | Warrants, how paid and charged..... | 2554 |
| Bond..... | 2547 | May select at a subsequent term..... | 2555 |
| Additional bond..... | 2548 | New bond may be required..... | 2556 |
| Designating depository..... | 2549 | Liability of treasurer..... | 2557 |
| Deposits not bid for..... | 2550 | Bids from adjoining county..... | 2558 |
| Clearing house to be selected..... | 2551 | | |

Art. 2544. [2440] **Notice to bidders.**—The commissioners court of each county is authorized and required at the February term thereof next following each general election to receive proposals from any banking corporation, association, or individual banker in such county that may desire to be selected as the depository of the funds of such county. Notice that such bids will be received shall be published by and over the name of the county judge, once each week for at least twenty days before commencement of such term in some newspaper published in said county; and if no newspaper be published therein, then in any newspaper published in the nearest county. In addition thereto, notice shall be published by posting same at the court house door of said county. [Acts 1905, p. 392; Acts 1907, p. 208; Acts 1917, p. 16.]

Art. 2545. [2441] **Sealed proposals.**—Any banking corporation, association or individual banker in such county desiring to bid, shall deliver to the county judge, on or before the first day of the term of the commissioners court at which the selection of a depository is to be made, a sealed proposal stating the rate of interest offered on the funds of the county for the term between the date of such bid and the next regular time for the selection of a depository. Said bid shall be accompanied by a certified check for not less than one-half of one per cent of the county revenue of the preceding year as a guarantee of the good faith on the part of the bidder, and that, if his bid is accepted, he will enter into the bond hereinafter provided. Upon the failure of the banking corporation, association or individual banker in such county that may be selected as such depository, to give the bond required by law, the amount of such certified check shall go to the county as liquidated damages, and the county judge shall readvertise for bids. [Id.]

Art. 2546. [2442] **Opening bids and selecting depository.**—It shall be the duty of the commissioners court at 10 o'clock a. m., on the first day of each term at which bids are required to be received, to publicly open such bids and cause each bid to be entered upon the minutes of the court, and to select as the depository of all the funds of the county the banking corporation, association or individual banker offering to pay the largest rate of interest per annum for said funds. The commissioners court may reject any and all bids. The interest upon such county funds shall be computed upon daily balances to the credit of such county with such depository, and shall be payable

to the county treasurer monthly, and shall be placed to the credit of the jury fund or to such funds as the commissioners court may direct. When selection of a depository has been made, the checks of bidders whose bids have been rejected shall be immediately returned. The check of the bidder whose bid is accepted shall be returned when his bond is filed and approved by the commissioners court, and not until such bond is filed and approved. [Id.]

Art. 2547. [2443] **Bond.**—Within five days after the selection of such depository, it shall be the duty of the banking corporation, association or individual banker so selected to execute a bond or bonds, payable to the county judge and his successors in office, to be approved by the commissioners court and Comptroller and filed in the office of the clerk of said county, with not less than five solvent sureties, who shall own unincumbered real estate in this State not exempt from execution under the laws of this State of as great value as the amount of said bond, or of as great value as the amount of all of said bonds when more than one bond; and said bond or bonds shall in no event be for less than the total amount of revenue of such county for the next preceding year for which the same are made. Nothing herein shall prevent the making of such bond or bonds by a surety company or companies, as provided by law, and payable as herein provided. The commissioners court may accept in lieu of such real estate or surety company, security bonds of the United States, or of this State or of any county, city, town or independent school district in the State, which shall be deposited as the commissioners court may direct, the penalty of said bond or bonds not to be less than the total amount of the annual revenue of the county for the years for which said bond or bonds are given, and shall be conditioned for the faithful performance of all the duties and obligations devolving by law upon such depository, and for the payment upon presentation of all checks drawn upon said depository by the county treasurer of the county and that said county funds shall be faithfully kept by said depository and accounted for according to law. Any suits arising thereon shall be tried in the county for which such depository is selected. [Acts 1905, p. 393; Acts 1909, p. 165; Acts 1917, p. 17.]

Art. 2548. **Additional bond.**—Whenever, after the creation of a county depository, as by this chapter provided, there shall accrue to the county or any subdivision thereof, any funds or moneys from the sale of bonds or otherwise, the commissioners court of such county at its first meeting after such special funds shall have come into the treasury, or depository of such county, or so soon thereafter as may be practicable, may make written demand upon the duly accredited and established depository of the county for a special additional bond as such depository in a sum equal to the whole amount of such special fund, to be kept in force so long as such fund remains in such depository. Such extra or special bond may be canceled and a new bond contem-

poraneously substituted therefor as such special fund may have been reduced. Such special bond shall at all times be sufficient in amount to cover such special fund then on hand. Upon the failure of such depository to furnish such additional bond within thirty days from the date of such demand, the commissioners court may cause such special funds to be withdrawn upon the drafts of the county treasurer from such depository, and cause the same to be deposited in some solvent national bank or State bank whose combined capital stock and surplus is in excess of such special fund, and to leave the same or so much thereof as may not have been expended with such national bank or State bank of last deposit, until such time that such county depository may have filed with the commissioners court the required additional bond, when such special fund or so much thereof as shall not have been expended shall be forthwith returned to and deposited with such county depository. The requiring of such additional or special bond shall be optional with such commissioners court. When a banking institution selected, qualified and acting as a county depository shall become insolvent and it shall become necessary to resort to the depository bond or bonds to collect the county and State funds deposited therein, payment shall be made to the county and State pro rata.

Art. 2549. [2444] **Designating depository.** — As soon as said bond be given and approved by the commissioners court, and the Comptroller, an order shall be made and entered upon the minutes of said court designating such banking corporation, association, or individual banker, as a depository of the funds of said county until sixty days after the time fixed for the next selection of a depository; and, thereupon, it shall be the duty of the county treasurer of said county, immediately upon the making of such order, to transfer to said depository all the funds belonging to said county, as well as all funds belonging to any district or other municipal subdivision thereof not selecting its own depository, and immediately upon receipt of any money thereafter, to deposit the same with said depository to the credit of said county, district and municipalities; and, for each and every failure to make such deposit, the county treasurer shall be liable to said depository for ten per cent, upon the amount not so deposited, to be recovered by civil action against such treasurer and the sureties on his official bond in any court of competent jurisdiction in the county. It shall also be the duty of the tax collector of such county to deposit all taxes collected by him, or under his authority, for the State and such county and its various districts and other municipal subdivisions, in such depository or depositories, as soon as collected, pending the preparation of his report of such collections and settlement thereon, which shall bear interest on daily balances at the same rate as such depository or depositories have undertaken to pay for the use of county funds, and the interest accruing thereon shall be apportioned by the tax collector to the various funds earning the same. The bond of such county depository or depositories shall stand as security for all such funds.

If the tax collector of such county shall fail or refuse to deposit tax money collected as herein required, he shall be liable to such depository or depositories for ten per cent upon the amount not so deposited and shall in addition be liable to the State and county and its various districts and other municipal subdivisions for all sums which would have been earned had this provision been complied with, which interest may be recovered in a suit by the State. Upon such funds being deposited as herein required, the tax collector and sureties on his bonds shall thereafter be relieved of responsibility for its safe-keeping. All money subject to the control of the county treasurer or payable on his order, belonging to districts or other municipal subdivisions selecting no depository, are hereby declared to be "county funds" within the meaning of this chapter and shall be deposited in accordance with its requirements and shall be considered in fixing the amount of the bond of such depository. [Acts 1905, p. 393; Acts 1917, p. 19.]

Art. 2550. [2445] **Deposits not bid for.**—If for any reason there shall be submitted no proposals by any banking corporation, association or individual banker to act as county depository, or in case no bid for the entire amount of the county funds shall be made, or in case all proposals made shall be declined, then in any such case the commissioners court shall have the power, and it shall be their duty, to deposit the funds of the county with any one or more banking corporation, association or individual banker, in the county or in adjoining counties in such amounts and for such periods as may be deemed advisable by the court, and at such rate of interest, not less than one and one-half per cent per annum, as may be agreed upon by the court and the banker or banking concern receiving the deposit, interest to be computed upon daily balances due the county treasurer. Any banker or banking concern receiving deposits under this article shall execute a bond in the manner and form provided for depositories of all funds of the county, with all the conditions provided for same, the penalty of said bonds to be not less than the total amount of county funds to be deposited with such banker or banking concern. [Id.]

Art. 2551. [2446] **Clearing house to be selected.**—When the funds of any county shall be deposited with two or more depositories, the commissioners court shall select and name by order one of said depositories to act as a clearing house for the others, at which all county warrants shall be finally paid. [Acts 1905, p. 393, Sec. 26.]

Art. 2552. [2447] **Checks payable at county seat.**—It shall be the duty of the depository to provide for the payment, upon presentment at the county seat of the county, of all checks drawn by the county treasurer upon the funds of said county, as long as such funds shall be in the possession of the depository subject to such checks. For every failure to pay any such check at such county seat upon presentment, said depository shall forfeit and pay to the holder of such check ten per cent

of the amount thereof; and the commissioners court shall revoke the order creating such depository and the amount of its bid shall not be returned, but shall be forfeited to the county. [Id. Sec. 27.]

Art. 2553. [2448] Depository not located at county seat.—If any depository selected by the commissioners court be not located at the seat of such county, said depository shall file with the county treasurer of such county a statement designating the place at said county seat where, and the person by whom, all deposits may be received from the treasurer for such depository, and where and by whom all checks will be paid; and such depository shall cause every check to be paid upon presentation at the place so designated so long as the said depository has sufficient funds to the credit of said county applicable to its payment. [Id. Sec. 28.]

Art. 2554. [2449] Warrants, how paid and charged.—It shall be the duty of the county treasurer, upon the presentation to him of any warrant drawn by the proper authority, if there shall be money enough in the depository belonging to the funds upon which said warrant is drawn and out of which the same is payable, to draw his check as county treasurer upon the county depository in favor of the legal holder of said warrant, and to take up said warrant and to charge same to the fund upon which it is drawn. No county treasurer shall draw any check upon the funds with said depository, unless there is sufficient money belonging to the fund upon which said warrant is drawn to pay the same. No money belonging to said county shall be paid by said depository, except upon the check of the county treasurer. It shall be the duty of such depository to make a detailed statement to the commissioners court at each regular term of said court, showing the daily balances of the preceding quarter. In case any bonds, coupons or other indebtedness of any county, by the terms thereof, are payable at any particular place other than the treasury of the county, nothing herein contained shall prevent the commissioners court of any such county from causing the treasurer to place a sufficient sum at the place where such debts shall be payable at the time and place of their maturity. [Id.]

Art. 2555. [2450] May select at subsequent term.—If for any reason, no selection of a depository be made at the time provided by law, the commissioners court may, at any subsequent time after twenty days notice, select a depository in the manner provided for such selection at the regular time; and the depository so selected shall remain the depository until the next regular time for selecting a depository, unless the order selecting and naming such depository be revoked for lawful reasons. [Id. Sec. 30.]

Art. 2556. [2451] New bond may be required.—If the commissioners court shall at any time deem it necessary for the protection of the county, it may require any depository to execute a new bond; and, if said new bond be not filed within five

days from the time of the service of a copy of said order upon said depository, the commissioners court may proceed to the selection of another depository in the manner provided for the selection of a depository at the regular time for such selection. [Id. Sec. 31.]

Art. 2557. [2452] **Liability of Treasurer.**—The county treasurer shall not be responsible for any loss of the county funds through the failure or negligence of any depository; but nothing in this chapter shall release any county treasurer for any loss resulting from any official misconduct or negligence on his part, nor from any responsibility for the funds of the county until a depository shall be selected and the funds deposited therein, nor for any misappropriation of such funds by him. [Id. Sec. 32.]

Art. 2558. [2453] **Bids from adjoining county.**—If there be no bank situated within the county that seeks to select a county depository, then the commissioners court shall advertise for bids in the adjoining counties in the manner provided by the first article of this chapter. When a depository has been selected by the commissioners court in the manner set forth in this law said county depository shall, within five days after notice of such selection has been given to said depository, file with the county treasurer of such county a statement designating the place at said county seat where, and the person by whom, all deposits may be received from the treasurer for such depository, and where and by whom all checks will be paid. [Id. Sec. 33.]

CHAPTER THREE.

CITY DEPOSITORIES.

| | | | |
|-------------------------------------|-----------------|----------------------------------|-----------------|
| Council to take bids for depository | Article 2559 | May select at subsequent meeting | Article 2563 |
| Award and bond | 2560 | Liability of treasurer | 2564 |
| Designating depository, etc. | 2561 | Restrictions upon drawing | 2565 |
| Warrants and checks paid | 2562 | Definition of terms | 2566 |

Art. 2559. [2454] **Council to take bids for depository.**—The governing body of every city in this State incorporated under the general laws thereof, or incorporated under special charter, at its regular meeting in July of each year, is authorized to receive sealed proposals for the custody of the city funds, from any banking corporation, association or individual banker, doing business within the city, that may desire to be selected as the depository of the funds of the city. The school funds, from whatever source derived, of incorporated cities, is part of the city funds and is subject to the provisions of this chapter. Notice that such bids will be received shall be published by the city secretary not less than one nor more than four weeks before such meeting, in some newspaper published in the city. Any banking corporation, association, or individual banker, doing business in the city desiring to bid, shall deliver to the city secretary, on or before the day of such meeting designated by said published notice, a sealed proposal, stating the rate per cent

upon daily balances that such bidder offers to pay to the city for the privilege of being made the depository of the funds of the city for the year next following the date of such meeting; or, in the event that such selection shall be made for a less term than one year, as hereinafter provided, then for the time between the date of such bid and the next regular time for the selection of a depository as aforesaid. All such proposals shall be securely kept by the secretary, and shall not be opened until the meeting of the council for the purpose of passing upon the same; nor shall any other proposals be received after they shall have been opened. [Acts 1905, pp. 260, 395; Acts 1917, p. 132.]

Art. 2560. [2455] **Award and bond.**—Upon opening of the sealed proposals submitted, the governing body shall select as the depository of such funds the banking corporation, association, or individual banker offering to pay to the city the largest amount for such privileges. The council shall have the right to reject any and all bids, and readvertise for new proposals. Within five days after the selection of such depository, it shall be the duty of the banking corporation, association or individual banker, so selected to execute a bond, payable to the city, to be approved by the mayor with the concurrence of the city council, and filed with the city secretary, with not less than three solvent sureties, who, shall own unincumbered real estate in the county in which said city is located, of as great value as the amount of said bond; or said depository may make such bond in some approved fidelity and surety company, the penalty of said bond to be at least double the total revenues of the city for the preceding fiscal year, and conditioned for the faithful performance of all duties and obligations devolving by law or ordinance upon said depository, and for the payment upon presentation of all checks drawn upon said depository by the city treasurer, whenever any funds shall be in said depository applicable to the payment of said check, and that all funds of the city shall be faithfully kept by said depository, and with the interest thereon accounted for according to law; and for a breach of said bond, the city may maintain an action in its name. [Acts 1905, pp. 260, 396, Sec. 35.]

Art. 2561. [2456] **Designating depository, etc.**—As soon as said bond shall be given and approved, an order shall be made by the council designating said banking corporation, association, or individual banker, as the depository of the funds of the city until the time fixed by this chapter for another selection, and such order shall be entered upon the minutes. It shall be the duty of the city treasurer, immediately upon the making of said order, to transfer to said depository all the funds in his hands belonging to the city, and, immediately upon the receipt of the money thereafter, he shall deposit the same with said depository to the credit of the city; and, for each and every failure to make such deposit, the treasurer and his bondsmen shall be liable to said depository for ten per cent per month upon the amount not so deposited, to be recovered by civil action in a court

of competent jurisdiction. If any banking corporation, association, or individual banker, after having been selected as such depository, shall fail to give bond within the time provided by this chapter, then the selection of such banking corporation, association, or individual banker, as the depository of the city funds shall be set aside and be null and void, and the governing body shall, after notice published in the manner hereinbefore provided, proceed to receive new bids and select another depository. [Acts 1905, p. 261, Id. Sec. 36.]

Art. 2562. [2457] Warrant and checks paid.—The city treasurer, upon presentation to him of any warrant drawn by the proper authority, if there shall be enough money in the depository belonging to the fund upon which said warrant is drawn and out of which the same is payable, shall draw his check as city treasurer upon the city depository in favor of the legal holder of said warrant, and take up said warrant, and charge the same to the fund upon which it is drawn. In no case shall the city treasurer draw any check upon any fund in the city depository, unless there is sufficient money belonging to the fund upon which said warrant is drawn to pay the same. No money belonging to the city shall be paid out of the city depository, except upon checks of the city treasurer. All such checks shall be payable by said depository at its place of business in the city. In case any bonds or coupons or other indebtedness of the city are payable, by the terms of such bonds, coupons or other indebtedness, at any particular place other than the city treasury, nothing herein shall prevent the governing body from causing the treasurer to withdraw from the depository and to place at the place where such bonds, coupons or other indebtedness shall be payable at the time of their maturity, a sufficient sum to meet the same. [Acts 1905, p. 261. Id. Sec. 37.]

Art. 2563. [2458] May select at subsequent meeting.—If for any reason no selection of a depository is made at the time fixed by this chapter, said governing body may, at any subsequent meeting, after notice published as hereinbefore provided, receive bids and select a depository in the manner herein set out, and the banking corporation, association, or individual banker so selected shall remain the depository until the next regular term for the selection of a depository, unless the order selecting it be revoked for the causes specified in this chapter. If the governing body shall at any time deem it necessary for the protection of the city, it may by resolution, require the depository to execute a new bond; and, upon failure to do so within five days after the service of a copy of the resolution on said depository, said body may proceed to select another depository in the manner hereinbefore provided. [Id.]

Art. 2564. [2458] Liability of treasurer.—The city treasurer shall not be responsible for any loss of the city funds through the negligence, failure or wrongful act of such depository, but nothing in this chapter shall release said treasurer from responsibility for any loss resulting from any official

misconduct on his part nor from responsibility for the said funds at any time when, for any reason, there shall be no city depository, nor until a depository shall be selected and the funds deposited therein, nor for any misappropriation of such funds in any manner by him. [Acts 1905, p. 261. Id. Sec. 38.]

Art. 2565. [2459] **Restrictions upon drawing.**—No check shall be drawn upon the city depository by the treasurer, except upon a warrant signed by the mayor and attested by the secretary. No warrant shall be drawn by the mayor and secretary upon any of the special funds, created for the purpose of paying the bonded indebtedness of said city, in the hands of the city treasurer, or in the depository, for any purpose whatsoever other than to pay the principal or interest of said indebtedness, or for the purpose of investing said special fund according to law. No city treasurer shall pay or issue a check to pay any money out of any special fund created for the purpose of paying any bonded indebtedness of said city other than for the purpose of paying interest due on said bonds, the principal of said bonds, or for the purpose of making an investment of said fund according to law. The treasurer shall report to the council on or before its first regular meeting of July in each year, the amount of receipts and expenditures of the treasury, the amount of money on hand in each fund, and the amount of bonds falling due for the redemption of which provision must be made; also the amount of interest to be paid during the next fiscal year, and such other reports as the existing law requires of him. [Acts 1905, p. 262. Id. Sec. 39.]

Art. 2566. [2460] **Definitions of terms.**—All provisions of this chapter shall apply to towns and villages incorporated under the general laws of Texas, as well as to cities so incorporated, and the terms "city secretary", and "secretary" shall be construed to include the clerk or secretary of such towns and villages; the term, "city treasurer" shall be construed to include the treasurer of such towns and villages, and the term "city" shall be construed to include towns and villages. [Acts 1905, p. 262, Id. Sec. 40.]

CHAPTER FOUR.

SPECIAL DEPOSITORY.

Art. 2567. **Selection of special depository.**—When any bank, which is a county, city or district depository of public funds under the laws of this State, suspends business or is taken charge of by the Comptroller of the currency or the Commissioner of Banking, as the case may be, the lawful county, city or district authorities, authorized to select the depository in the first instance, shall have the discretion and authority to select by contract a special depository for the public funds in such suspended bank. Such special depository shall assume the payment of the amount of public funds due by the suspended bank on the date of its suspension, including interest to that date, and

shall pay the same to the lawfully designated public authority in accordance with the contract entered into by such special depository. The contract shall be for the performance of the agreement entered into between the proper public authorities designated above, and the special depository, and shall require the payment of the deposit in such installments as may be agreed upon, the last of which shall be paid not exceeding three years from the date of the contract. The installments, or the amount due, may be evidenced in the discretion of the contracting parties by negotiable certificates of deposit or cashier's checks, payable at specified dates, if made a part of the contract. The performance of the contract and the payment of funds described therein shall be secured by bond, or by several bonds in case of installments, to be given by the special depository with the same character of sureties as is required by regular depository bonds. The contracts and bonds of special depositories shall be approved by the authority authorized by law to approve contracts and bonds of regularly selected depositories. The rate of interest which funds placed in a special depository hereunder shall bear shall be fixed by the contract, or such funds may, in the discretion of the contracting parties, be non-interest bearing. [Acts 1921, p. 68.]

Art. 2568. **For State funds.**—If any State funds are in the county depository which has failed, the amount thereof shall be ascertained by the Comptroller, who shall be authorized in his discretion to enter into a contract for the custody and payment of the same, with the special depository selected by the county authorities in the same manner that the county authorities are herein authorized so to do, and to take and approve contracts and bonds therefor. State funds thus placed in such special depository shall bear the average rate of interest received by the State on State funds placed with the regularly selected State depositories. [Id.]

Art. 2569. **Selection optional.**—Nothing in this chapter shall require the State, county, city or district authorities to select any special depository as herein permitted, but they may proceed by their lawful remedies against the failed bank, if, in their discretion, it is best for the public interest so to do. [Id.]

TITLE 48.

DESCENT AND DISTRIBUTION.

| | Article | | Article |
|--|---------|---------------------------------------|---------|
| Intestate leaving no husband or wife | 2570 | Advancements brought into hotch-potch | 2576 |
| Intestate leaving husband or wife | 2571 | Per capita and per stirpes | 2577 |
| Distinction because of property's source | 2572 | Community estate | 2578 |
| Whole and half blood | 2573 | Passes charged with debts | 2579 |
| Corruption of blood or forfeiting estate | 2574 | Jus accrescendi abolished | 2580 |
| Persons not in being | 2575 | Illegitimate children | 2581 |
| | | Bastards inherit from mother | 2582 |
| | | Alienage no bar to inheritance | 2583 |

Art. 2570. [2461] [1688] [1645] **Intestate leaving no husband or wife.**—Where any person, having title to any estate or inheritance, real, personal or mixed, shall die intestate, it shall descend and pass in parcenary to his kindred, male and female, in the following course:

1. To his children and their descendants.
2. If there be no children nor their descendants, then to his father and mother, in equal portions. But if only the father or mother survive the intestate, then his estate shall be divided into two equal portions, one of which shall pass to such survivor, and the other half shall pass to the brothers and sisters of the deceased, and to their descendants; but if there be none such, then the whole estate shall be inherited by the surviving father or mother.

3. If there be neither father nor mother, then the whole of such estate shall pass to the brothers and sisters of the intestate, and to their descendants.

4. If there be none of the kindred aforesaid, then the inheritance shall be divided into two moieties, one of which shall go to the paternal and the other to the maternal kindred, in the following course: To the grandfather and grandmother in equal portions, but, if only one of these be living, then the estate shall be divided into two equal parts, one of which shall go to such survivor, and the other shall go to the descendant or descendants of such deceased grandfather or grandmother. If there be no such descendants, then the whole estate shall be inherited by the surviving grandfather or grandmother. If there be no surviving grandfather or grandmother, then the whole of such estate shall go to their descendants, and so on without end, passing in like manner to the nearest lineal ancestors and their descendants. [Act March 18, 1848, p. 129; P. D. 3419; G. L. Vol. 3, p. 129; Act Jan. 18, 1840, p. 132; G. L. Vol. 3, p. 306.]

Art. 2571. [2462] [1689] [1646] **Intestate leaving husband or wife.**—Where any person having title to any estate of inheritance, real, personal or mixed, shall die intestate as to such estate, and shall leave a surviving husband or wife, the estate of such intestate shall descend and pass as follows:

1. If the deceased have a child or children, or their descendants, the surviving husband or wife shall take one-third of the personal estate, and the balance of such personal estate shall go

to the child or children of the deceased and their descendants. The surviving husband or wife shall also be entitled to an estate for life, in one-third of the land of the intestate, with remainder to the child or children of the intestate and their descendants.

2. If the deceased have no child or children, or their descendants, then the surviving husband or wife shall be entitled to all the personal estate, and to one-half of the lands of the intestate, without remainder to any person, and the other half shall pass and be inherited according to the rules of descent and distribution; provided, however, that if the deceased have neither surviving father nor mother nor surviving brothers and sisters, or their descendants, then the surviving husband or wife shall be entitled to the whole of the estate of such intestate. [P. D. 3422.]

Art. 2572. [2463] [1690] [1647] **Distinction because of property's source.**—There shall be no distinction in regulating the descent and distribution of the estate of a person dying intestate between property which may have been derived by gift, devise or descent from the father, and that which may have been derived by gift, devise or descent from the mother; and all the estate to which such intestate may have had title at the time of death shall descend and vest in the heirs of such person in the same manner as if he had been the original purchaser thereof; provided, however, that if such intestate was the legally adopted heir of another, and dies leaving no surviving husband or wife, and no children, then so much of his estate as was obtained by gift, devise or descent, from the person adopting him, shall descend to the person and his heirs who adopted such intestate. [Act March 20, 1861; G. L. Vol. 5, p. 359.]

Art. 2573. [2464] [1691] [1648] **Whole and half blood.**—In cases before mentioned, where the inheritance is directed to pass to the collateral kindred of the intestate, if part of such collateral be of the whole blood, and the other part of the half blood only of the intestate, those of half blood shall inherit only half so much as those of the whole blood; but if all be of the half-blood they shall have whole portions. [Acts 1848, p. 129; P. D. 3424; G. L. Vol. 3, p. 129.]

Art. 2574. [2465] [1692] [1649] **Corruption of blood or forfeiting estate.**—No conviction shall work corruption of blood or forfeiture of estate nor shall there be any forfeiture by reason of death by casualty; and the estate of those who destroy their own lives shall descend or vest as in the case of natural death. [Const. Bill of Rights, Sec. 21; Id.]

Art. 2575. [2466] [1693] [1650] **Persons not in being.**—No right of inheritance shall accrue to any person whatsoever other than to children or lineal descendants of the intestate, unless they be in being and capable in law to take as heirs at the time of the death of the intestate. [Acts 1848, p. 129; P. D. 3423; G. L. Vol. 3, p. 129.]

Art. 2576. [2467] [1694] [1651] **Advancements brought**

into hotchpotch.—Where any of the children of a person dying intestate, or their issue, shall have received from such intestate in his lifetime any real, personal or mixed estate by way of advancement, and shall choose to come into the partition and distribution of the estate with the other distributees, such advancement shall be brought into hotchpotch with the whole estate, and such party returning such advancement shall thereupon be entitled to his proper portion of the whole estate; provided that it shall be sufficient to account for the value of the property so brought into hotchpotch at the time it was advanced. [P. D. 3426.]

Art. 2577. [2468] [1695] [1652] **Per capita and per stirpes.**—When the intestate's children, or brothers and sisters, uncles and aunts, or any other relations of the deceased standing in the first and same degree alone come into the partition, they shall take per capita, namely: by persons; and, when a part of them being dead and a part living, the descendants of those dead have right to partition, such descendants shall inherit only such portion of said property as the parent through whom they inherit would be entitled to if alive. [Acts 1887, p. 49; G. L. Vol. 9, p. 847.]

Art. 2578. [2469] [1696] [1653] **Community estate.**—Upon the dissolution of the marriage relation by death, all property belonging to the community estate of the husband and wife shall go to the survivor, if there be no child or children of the deceased or their descendants; but if there be a child or children of the deceased, or descendants of such child or children, then the survivor shall be entitled to one-half of said property, and the other half shall pass to such child or children, or their descendants. But such descendants shall inherit only such portion of said property as the parent through whom they inherit would be entitled to if alive. [Acts 1887, p. 76; G. L. Vol. 9, p. 874.]

Art. 2579. [2470] [1697] [1654] **Passes charged with debts.**—In every case, the community estate passes charged with the debts against it. [P. D. 5498.]

Art. 2580. [2471] [1698] [1655] **Jus accrescendi abolished.**—Where two or more persons hold an estate, real, personal or mixed, jointly, and one joint owner dies before severance, his interest in said joint estate shall not survive to the remaining joint owner or joint owners, but shall descend to, and be vested in, the heirs or legal representatives of such deceased joint owner in the same manner as if his interest had been severed and ascertained. [Act March 18, 1848, p. 129; P. D. 3429; G. L. Vol. 3, p. 129.]

Art. 2581. [2472] [1699] [1656] **Illegitimate children.**—Where a man, having by a woman a child or children, shall afterward intermarry with such woman, such child or children, if recognized by him, shall thereby be legitimated and made capable of inheriting his estate. The issue also of marriages

deemed null in law shall nevertheless be legitimate. [P. D. 3427.]

Art. 2582. [2473] [1700] [1657] **Bastards inherit from mother.**—Bastards shall be capable of inheriting from and through their mother, and of transmitting estates, and shall also be entitled to distribute shares of the personal estates of any of their kindred, on the part of their mother, in like manner as if they had been lawfully begotten of such mother. [P. D. 3428.]

Art. 2583. [2474] [1701] [1658] **Alienage no bar to inheritance.**—In taking title to land by descent, it shall be no bar to a party that any ancestor through whom he derives his descent from the intestate, is or has been an alien. [P. D. 44, 45, 46.]

TITLE 49.

EDUCATION—PUBLIC.

| Chapter | Page | Chapter | Page |
|------------------------------------|------|----------------------------------|------|
| 1 University of Texas..... | 683 | 10 State Department of Educa- | |
| 2 Agricultural and Mechanical | | cation..... | 705 |
| College..... | 690 | 11 County schools..... | 710 |
| 3 John Tarleton Agricultural | | 12 County unit system..... | 719 |
| College..... | 694 | 13 School districts..... | 729 |
| 4 North Texas Junior Agricul- | | 14 Scholastic census..... | 756 |
| tural College..... | 694 | 15 School funds..... | 759 |
| 5 College of Industrial Arts..... | 696 | 16 Free text books..... | 764 |
| 6 Texas Technological College..... | 697 | 17 Teachers' certificates..... | 780 |
| 7 School of Mines..... | 698 | 18 Compulsory education..... | 792 |
| 8 Prairie View Normal..... | 699 | 19 Miscellaneous provisions..... | 795 |
| 9 State Teachers' Colleges..... | 701 | 19a Rural high schools..... | 801 |

CHAPTER ONE.

UNIVERSITY OF TEXAS.

1. BOARD OF REGENTS.

| | Article | | Article |
|---------------------------------------|---------|--------------------|---------|
| The government of the University..... | 2584 | Admission fee..... | 2587 |
| Powers..... | 2585 | Annual report..... | 2588 |
| May remove officers..... | 2586 | Expenses..... | 2589 |

Art. 2584. **The government of the University.**—The government of the University of Texas shall be vested in a Board of Regents composed of nine persons. They shall elect a chairman from their number who shall serve at the pleasure of the board. The State Treasurer shall be the treasurer of the University. The board shall have the right to make and use a common seal and may alter the same at pleasure. [Acts 1913, p. 191.]

Art. 2585. [2639] [3846] **Powers.**—They shall establish the departments of a first-class university, determine the offices and professorships, appoint a president, who shall, if they think it advisable, also discharge the duties of a professor, appoint the professors and other officers, fix their respective salaries; and they shall enact such by-laws, rules and regulations as may be necessary for the successful management and government of the University; they shall have power to regulate the course of instruction and prescribe, by and with the advice of the professors, the books and authorities used in the several departments, and to confer such degrees and to grant such diplomas as are usually conferred and granted by universities.

Art. 2586. [2640] [3848] **May remove officers.**—The regents shall have power to remove any professor, tutor or other officer connected with the institution, when, in their judgment, the interest of the University shall require it.

Art. 2587. [2641] [3849] **Admission fee.**—The fee of admission to the University shall never exceed thirty dollars. It shall be open to all persons of both sexes in this State on equal terms, without charge for tuition, under the regulations prescribed by the regents, and to all others under such regulations as the board of regents may prescribe. [Id.]

Art. 2588. [2649] [3854] **Annual report.**—The board of re-

gents shall report to the State Board annually, and to each regular session of the Legislature, the condition of the University, setting forth the receipts and disbursements, the number and salary of the faculty, the number of students, classified in grades and departments, the expenses of each year, itemized, and the proceedings of the board and faculty fully stated. [Acts 1881, p. 80; G. L. Vol. 9, p. 172.]

Art. 2589. [2651] [3856] **Expenses.**—The reasonable expenses incurred by the boards of regents and visitation in the discharge of their duties shall be paid from the available University fund.

2. FUNDS AND PROPERTIES.

| | Article | | Article |
|----------------------------|---------|-------------------------------------|---------|
| Permanent fund..... | 2590 | Control of mineral lands..... | 2597 |
| Use..... | 2591 | Duty of Land Commissioner..... | 2598 |
| Improvements..... | 2592 | Sales to railroad; application..... | 2599 |
| Contracts, how made..... | 2593 | Railway sales; patent..... | 2600 |
| Distribution of funds..... | 2593a | Condition of sale..... | 2601 |
| Expenditures..... | 2594 | Forfeiture..... | 2602 |
| Donations..... | 2595 | Right to lands; limitations..... | 2603 |
| Control of lands..... | 2596 | | |

Art. 2590. [2626] [3836] **Permanent fund.**—The following shall constitute a permanent fund to be used for the benefit of the University of Texas:

1. All lands and other property heretofore set apart and appropriated for the establishment and maintenance of the University of Texas under any previous law.

2. One million acres of the unappropriated public domain of the State set apart for that purpose by the present Constitution, and one million acres of land set apart by Act of April 10, 1883.

3. All bonds that have or may be purchased with the proceeds of the sale of University lands.

4. All proceeds of the sales of University lands that are or may be placed in the State Treasury.

5. All grants, donations and appropriations that may be made or received from any other source. [Const. Art. 5, Secs. 10-15; Acts 1858, p. 148; G. L. Vol. 4, p. 1020; P. D. 3573.]

Art. 2591. [2627] [3837] **Use.**—Such portions of such funds as are in the possession of the State, or that may be received, shall be held in trust by the State for the use and maintenance of said University; and all such funds as are susceptible of investment, and that have not heretofore been invested, shall be invested for the benefit of such University in the manner provided in the Constitution and laws on that subject. [Id.]

Art. 2592. [2643] **Improvements.**—The Board of Regents of the University of Texas shall expend the interest which has heretofore accrued and that which may hereafter accrue on the permanent University fund, and also all other income of said fund and all income resulting from the use of the University lands, including all proceeds from grazing and mineral leases which proceeds are now in the State Treasury or may be hereafter received from such leases, for permanent improvements to be erected on the campus of the University of Texas or at any

of the branches of the University, and the Board of Regents may pledge said interest and income for a term of not exceeding fifteen years to make said funds immediately available. Any contract for the expenditure of said interest and income for any other purpose shall be void. No lease of said land shall be made for a period of more than ten years during the fifteen year period. [Acts 1925, p. 415.]

Art. 2593. **Contracts, how made.**—All contracts, with architects, plan makers, landscapers, or draftsmen, or with any other person, firm or corporation of whatever name or designation shall be absolutely void unless same be approved by the signed written vote of a majority of said Board of Regents in regular or called meeting assembled, and provided further that all contracts for the construction or erection of such permanent improvements shall be absolutely void unless same are made after receiving sealed competitive bids after advertisement therefor by the president of the Board of Regents, for four consecutive weeks in one or more newspapers of general circulation in the State of Texas, and said bids considered and awards made to the lowest responsible bidder by the signed written vote of a majority of said Board of Regents, in a regular or called meeting assembled. Said bids and awards shall be made only after such publication.

Art. 2593a. **Distribution of Funds.** The proceeds arising from activities which effect lands belonging to the public free school fund or the permanent fund of the several asylums, shall be credited to the permanent funds of said respective institutions. All proceeds paid or collected from activities under this law affecting the lands belonging to the permanent fund of the University of Texas shall be credited by the State Treasurer to the available fund of such institution, and all such funds shall be held by the Board of Regents of the University in a special building fund and shall be expended only for the erection of buildings and equipping same, or for other permanent improvements. All proceeds arising from the activities affecting lands other than those belonging in the public free school fund, the University and the several asylums, shall be credited to the same fund. [Id., p. 415.]

Art. 2594. [2644] [3852] **Expenditures.**—All expenditures may be made by the order of the board of regents, and the same shall be paid on warrants from the Comptroller based on vouchers approved by the chairman of the board or by some officer of the University designated by him in writing to the Comptroller, and countersigned by the secretary of the board, or by some other officer of the University designated by said secretary in writing to the Comptroller. [Id; Acts 1911, p. 99.]

Art. 2595. [2628-32] **Donations.**—Donations of property for the purpose of establishing or assisting in the establishment of a professorship or scholarship in the University or any of its branches, either temporarily or permanently, may be made and such donations will be governed by the following rules:

1. The legal title to the property shall be vested in a per-

son or persons, body corporate, or the State of Texas, to be held in trust for said purpose under such directions, limitations and provisions as may be declared in writing in the donation not inconsistent with the objects and proper management of said institution or its branches.

2. The donor may declare and direct the manner in which the title to said property shall thereafter be transmitted from such trustee in continued succession, to be held and appropriated to the use aforesaid.

3. The donor may declare and direct the person or class of persons who shall receive the benefit of said donation and the manner of their selection.

4. Said declarations, directions and limitations shall not be inconsistent with the objects and proper management of said institution or its branches.

5. In case of failure to transmit the title to the property or to bestow its use in the manner as declared and directed in the donation, or should such uses, or either of them, become impracticable from the change of circumstances, the title to the property, unless otherwise expressly directed by the donor, shall vest in this State to be held in trust to carry into effect the purposes of the donation as nearly as may be practicable by such agencies as may be provided therefor.

6. The title to the property donated shall be received, and the trust conferred in the donation shall be assumed, subject to laws that may be passed and carried into effect from time to time which may be necessary to prevent the loss of, or damage to, the property donated, or an abuse or neglect of the trust so as to defeat, materially change, or prevent the objects of the donation.

7. Copies of such donation shall be filed with the board of regents of the University or the branch to which the donation applies, which board shall report the condition and management of the property and the manner in which the trust is being administered, as part of the matters reported pertaining to said institution. [Acts 1889, p. 143; G. L. Vol. 9, p. 1117.]

Art. 2596. [2633] [4263a] **Control of lands.**—The board of regents are invested with the sole and exclusive management and control of the lands set aside and appropriated to, or acquired by, the University of Texas, with the right to sell, lease and otherwise manage, control and use the same in any manner, and at such prices and under such terms and conditions as they deem best for the interest of the University, not in conflict with the State Constitution; provided, such land shall not be sold at a less price per acre than that at which the same class of other public lands may be sold under the statutes. [Acts 1895, p. 19; G. L. Vol. 10, p. 749.]

Art. 2597. [2634] **Control of mineral lands.**—The board of regents are invested with the sole and exclusive management and control of all mineral lands within the domain appropriated, set aside or acquired by the University of Texas; and said board

of regents is hereby empowered and authorized to sell, lease, manage and control said mineral lands belonging to said University as may seem best to them for the interest of the University; and they are further empowered with authority to explore and have explored and develop said mineral lands and to make any contract with any persons whomsoever for the exploration and development of said mineral lands, and pay the expenses for such exploration or development out of the proceeds of the lease or sale of said land. [Acts 1901, p. 266.]

Art. 2598. [2635] [4263b] Duty of Land Commissioner.—The Land Commissioner shall furnish to the board of regents complete and accurate maps and all other data necessary to show the location and condition of every tract of the University lands, and shall at all times furnish to said board such additional information as they may require, and render to said board such possible assistance as they shall request in the discharge of their duties. [Acts 1895, p. 19; G. L. Vol. 10, p. 749.]

Art. 2599. [5439] Sales to railroad; application.—Any railroad company owning, operating or constructing a line of railway in this State, desiring to purchase any portion of the University land in this State except mineral lands under provisions of this and the three succeeding articles for the location and establishment thereon of town sites, depots, stations, yards, divisional terminals, shops, round houses or water stations shall file an application to purchase each tract so desired, supported by the affidavit of its president, vice-president or chief engineer which application shall:

1. Describe by metes and bounds or otherwise sufficient to satisfy the Board of Regents of the particular tract of land that it desires to purchase.

2. Show that said land is desired and needed by said railway company for some one or more of the purposes for which the sale of such lands are authorized by this article, and that it is the intention of said railway company to speedily use said land for such purposes.

3. Show that said application is not made for the use or benefit of any other person or corporation than the applicant nor in collusion with, or in the interest of any other person or corporation whatsoever.

4. Be accompanied by a plat and map, together with the field notes of each tract of land so applied for, if required. [Acts 1905, p. 58; Acts 1919, p. 312.]

Art. 2600. [5440] Railway sales; patent.—When any such application is so filed, said Board shall investigate the matter therein set forth; and, if after such investigation they shall be satisfied that the statements made in such application are true they shall then determine and fix the fair and reasonable value of such tracts of land, regardless of any lease thereon, unless the lessee shall have two hundred dollars worth of improvements thereon, in which event the consent of the lessee shall be first obtained, and shall advise the applicant of the price so fixed;

and, if said railway company desires said land at the price so fixed, it shall pay therefor in cash to the State Treasurer the price so fixed by said Board of Regents, and the Treasurer shall give his receipt showing such payment, whereupon there shall be issued and delivered to the said railway company a patent for said tract or tracts of land, to be properly executed by the Governor and the Land Commissioner upon the payment of the patent fee therefor. [Acts 1903, p. 127.]

Art. 2601. [5441] Condition of sale.—All land purchased by or for any one railway company under the provisions of this law shall be sold subject to the following conditions and limitations:

1. If such land is desired for the purpose of the location and establishment thereon of depots, stations, yards, divisional terminals, shops or round houses, said railway company shall be permitted to purchase only such amount of land adjoining its line of road, tracks or right of way as may be necessary for the proper operation and maintenance of said railway which fact shall be determined by said board of regents, and if desired by them, they may for that purpose, have the advice and assistance of the engineer of the Railroad Commission of Texas.

2. If said land applied for be desired for water stations at points on or near said line of railway where it is necessary to construct and maintain a dam and reservoir for the impounding of rain water, for the use and operation of said railway, sufficient land may be sold for such purpose as may be necessary for the proper construction, preservation and maintenance of such water station, not to exceed six hundred and forty acres for each water station. Each tract sold for such purpose must be within three miles of the line of road of said railway company, and must be at least eight miles distant from any other tract sold to the same railway company for the same purpose; and, when said tract of land does not adjoin said line of road of said railway company, said railway shall have the right of way over any University lands for its water mains from its said water station to its line of railway.

3. If said land is sold for town site purposes, not exceeding three hundred and twenty acres shall be sold therefor, and such tract must be at least eight miles distant from any other tract of land sold for the same purpose to said railway company, and, after such sale, no other tract or tracts of land shall ever be sold to said railway company, or its assigns, for town site purposes, adjoining said tract sold for such purpose. All lands sold for town sites must either adjoin said railway tracks, line of road or right of way, or adjoin land sold under the provisions hereof to said railway company for depots, stations, yards, divisional terminals, shops or round houses. All such lands shall be in good faith placed upon the market for sale, and said railway company shall alienate the title to said lands so sold to said railway company within the term of ten years after acquiring title to same. [Acts 1905, p. 58.]

Art. 2602. [5443] **Forfeiture.**—If any railway company fails to use said land for the purpose for which the same was sold, within five years from the date of the patent for each tract of land sold, said land and all improvements thereon belonging to said railway company shall revert to the University fund. Whenever any land is sold to railway companies for the purpose mentioned in this chapter and shall be used for any other purposes than those mentioned in this chapter, then such land shall revert to the State. [Acts 1903, p. 127.]

Art. 2603. [5458-9] **Right to lands; limitation.**—Any person claiming the right to purchase or lease any lands belonging to the State University which have been sold or leased to any other person under any provision of the law authorizing the sale or lease of any such lands, shall bring his suit therefor within one year after the date of the award of such sale or lease and not thereafter. If no such suit has been instituted within said period it shall be conclusive evidence that each requirement of law with reference to the sale or lease of such land was complied with. Nothing in this article shall affect the State in any action or proceeding it may bring in respect to said lands. [Acts 1905, p. 35; Acts 1921, p. 118.]

3. GENERAL PROVISIONS.

| | | | |
|------------------------|-----------------|-----------------------|-----------------|
| Non-sectarian | Article 2604 | Manuscript bonds..... | Article 2606 |
| Board of visitors..... | 2605 | | |

Art. 2604. [2645] [3853] **Non-sectarian.**—No religious qualification shall be required for admission to any office or privilege in the University. No course of instruction of a sectarian character shall be taught therein. [Acts 1881, p. 80; G. L. Vol. 9, p. 172.]

Art. 2605. [2650] [3855] **Board of visitors.**—The legislature at each regular session shall appoint a board of visitors who shall attend the annual examinations of the University and its branches and report to the Legislature thereon. [Id.]

Art. 2606. [2652-4] **Manuscript bonds.**—The Governor is authorized and directed to have issued manuscript bonds of the State of Texas to be sold or exchanged at par for the permanent University fund at any time when there is on hand in cash any reasonable amount of such funds not less than five thousand dollars. Said bonds shall be of such denomination as the Governor may direct, shall be redeemable at the pleasure of the State, and shall bear five per cent interest payable annually at the State Treasury on the first day of March of each year. Said bonds shall recite the title and date of passage of the act of 1889, p. 81, shall be signed by the Governor and Treasurer and countersigned by the Comptroller, and shall be registered in the office of the State Treasurer. After said bonds have been registered, the Governor shall offer said bonds to the State Board as an investment for the permanent University fund then on hand in cash which are by law authorized to be invested. If the State

Board takes said bonds, the Treasurer and Comptroller shall make the proper entry, showing the facts of the transaction and the necessary transfer of such fund on their books. If said board shall not take said bonds thus offered, the same shall be destroyed and cancelled and of no effect whatever. [Acts 1889, p. 81; G. L. Vol. 9, p. 1109.]

CHAPTER TWO.

AGRICULTURAL AND MECHANICAL COLLEGE.

| | Article | | Article |
|---------------------------------|---------|----------------------------|---------|
| Branch of University..... | 2607 | Expenses of directors..... | 2612 |
| Leading object..... | 2608 | Powers and duties..... | 2613 |
| Free tuition..... | 2609 | Perpetual fund..... | 2614 |
| Board of directors..... | 2610 | Accrued interest..... | 2615 |
| Certificate of appointment..... | 2611 | | |

Art. 2607. [2655] [3860] **Branch of University.**—The Agricultural and Mechanical College of Texas, located in Brazos County, and by the Constitution made and constituted a branch of the University of Texas, for instruction in agriculture, the mechanical arts and the natural science connected therewith, shall be managed and controlled as herein provided. [Const. Art. 7, Sec. 13; 12 U. S. Stat., p. 503; 14 Id., p. 203; Acts 1875, p. 72; P. D. 5693; G. L. Vol. 8, p. 444.]

Art. 2608. [2656] [3861] **Leading object.**—The leading object of this College shall be, without excluding other scientific and classical studies, and including military tactics, to teach such branches of learning as are related to agriculture and the mechanical arts, in such manner as the legislature may prescribe, in order to promote the liberal and practical education of the industrial classes in the several pursuits and professions in life. [12 U. S. Stat., p. 503; Act of Cong. July 2, 1862, Sec. 4.]

Art. 2609. [2663] [3868] **Free tuition.**—There shall be maintained and instructed at said College annually, free of charge to them, three students from each senatorial district in this State, one of whom shall be appointed by the senator of such district, and the other two by the representatives thereof. One-half of said students so appointed shall be compelled to take an agricultural, and the other a mechanical, course of study, to be assigned by the president of said College. The Comptroller, on proper vouchers being filed in his office by the directors, is authorized to draw his warrant on the State Treasurer against any appropriation made for such purpose. [Id.]

Art. 2610. [2657-60] **The Board of Directors.**—The government of the Agricultural and Mechanical College shall be vested in a Board of Directors composed of nine persons. Said board shall elect from their number a president of the board, who shall call said board together for the transaction of business whenever he deems it expedient. The board shall have the right to make and use a common seal. [Acts 1881, p. 75; G. L. Vol. 9, p. 167; Acts 1913, p. 191.]

Art. 2611. [2662] [3867] **Certificate of appointment.**—

The Secretary of State shall forward a certificate to each director within ten days after his appointment, notifying him of the fact of such appointment, and, should any director so appointed and notified fail for ten days to give notice to the Governor of his acceptance, his appointment shall be deemed void, and his place filled as in case of vacancy. [Acts 1881, p. 75; G. L. Vol. 9, p. 167.]

Art. 2612. [2661] [2866] **Expenses of directors.**—Said directors shall serve without compensation, but shall receive actual expenses incurred in attending said meetings or in the transaction of any business of the College imposed by said board. [Acts 1881, p. 75; G. L. Vol. 9, p. 167.]

Art. 2613. [2664-2676] **Powers and duties.**—The Board of Directors is charged with the duties and empowered to do and perform the acts hereinafter set forth as follows:

1. The board shall, when necessary, appoint the president and professors of the college and such other officers as, from time to time, they may think proper to keep the college in successful operation, and may from time to time abolish any office that is in their judgment unnecessary. [Acts 1875, p. 74; G. L. Vol. 8, p. 446.]

2. The president and board shall employ an expert entomologist, one or more, as may be deemed necessary, whose duty it shall be to devise, if possible, means of destroying the Mexican boll weevil, boll worm, caterpillar, sharpshooter, chinch bug, peach bug, fly and worm and other insect pests and to perform the duties of professor of entomology in the college. [Acts 1899, p. 9.]

3. The board shall establish at and in connection with the said College a school or department for instruction in the theory and practical arts of grading, classing and determining the spinable value of cotton, whose main purpose shall be to train students in the theory and practical art of cotton classing in all its branches from the field to the factory. [Acts 1909, p. 220.]

4. The board shall also provide for a special summer school of at least two months each year for the training of special students who shall be admitted without an entrance examination and may make provisions for said summer school and purchase the necessary equipment, and generally do and perform all acts necessary to establish and maintain the same. [Id.]

5. The board shall establish at and in connection with the said College a school or department for instruction in the theory and practical art of textile and kindred branches of industry, whose main purpose shall be to train students in the theory and practice of cotton manufacturing in all its branches, from the raw cotton to the finished fabric, and shall do and perform all acts necessary to establish and maintain said school or department. [Acts 1903, p. 74; Acts 1909, p. 220.]

6. The board shall also, from time to time, make such by-laws, rules and regulations for the government of said College as they may deem necessary and proper for that purpose, and shall regulate the course of study, the rates of tuition, the man-

ner of performing labor, and the kind of labor to be performed by the students of said College, and shall also prescribe the course of discipline necessary to enforce the faithful discharge of the duties of the professors, officers and students. [Acts 1875, p. 74; G. L. Vol. 8, p. 446.]

7. The board shall require the teaching of elementary agriculture for teachers in the summer sessions. [Acts 1909, p. 221.]

8. The board shall employ a graduate civil engineer of said College having a practical and scientific knowledge of the conservation of moisture and soil fertility, who understands the practical art of terracing farm land to preserve the moisture and soil fertility and to prevent the washing away and the destruction of the properties of the soil, and who has had five years actual experience in terracing farm lands in some southern State. He shall receive a salary not exceeding two thousand dollars per annum, and shall make his headquarters at the College, where he shall instruct the students by lecture and practical demonstration, in the best method of such conservation and terracing so as to enable them to do the work successfully. He shall devote one-half of his time to such instruction, and the other half shall be spent in field work, giving practical demonstrations in terracing to farmers' institutes and other farmers' organizations, and the president of said College shall require him to go over the State upon the application of farmers desiring expert instruction in terracing farm lands, and in conserving the moisture and soil fertility. He shall be furnished with the necessary instruments and equipment for such demonstration and instruction. [Acts 1911, p. 155.]

9. All expenditures for the Agricultural and Mechanical College of Texas may be made by the order of the board of directors and the same shall be paid on warrants from the Comptroller based on vouchers approved by the president of the board of directors, or by some officer or officers of the College designated by him in writing to the Comptroller. [Acts 1915, p. 104.]

10. The board shall appoint a State Forester who shall be a technically trained forester of not less than two years' experience in professional forestry work. His compensation shall be fixed by said board at not to exceed three thousand dollars per annum, and he shall be allowed reasonable traveling and field expenses incurred in the performance of his official duties. He shall, under the general supervision of said board, have direction of all forest interest and all matters pertaining to forestry within the jurisdiction of this State. He shall appoint, subject to the approval and confirmation of said board, such assistants and employes as may be necessary in executing the duties of his office and the purposes of said board, their compensation to be fixed by said board. He shall take such action as may be deemed necessary by said board to prevent and extinguish forest fires, shall enforce all laws pertaining to the protection of forest and woodlands, and prosecute for any violation

of such laws; and collect data relative to forest conditions. He shall prepare for said board annually a report on the progress and condition of State forestry work, and recommend therein plans for improving the State system of forest protection, management and replacement. He shall, upon request, under the sanction of the board of directors, and whenever he deems it essential to the best interest of the people of the State, co-operate with counties, towns, corporations or individuals in preparing plans for the protection, management and replacement of trees, woodlots and timber tracts, under an agreement that the parties obtaining such assistants pay at least the field expenses of the men employed in preparing said plans. The board of directors may co-operate with the Federal Forest Service under such terms as may seem desirable. [Acts 1915, p. 220.]

11. Upon the recommendation of the board of directors, the Governor is authorized to accept gifts of land to the State, to be held, protected and administered by said board as State forests, and to be used so as to demonstrate the practical utility of timber culture and water conservation, and as game preserves. Such gifts must be absolute except for the reservation of all mineral and mining rights over and under said lands, and shall contain a stipulation that they shall be administered as State forests. The board of directors shall have the power to purchase lands in the name of the State, suitable chiefly for the production of timber, as State forests, using for such purposes any special appropriation. The Attorney General shall see that all deeds conveying such land to the State are properly executed before the gift is accepted or payment of the purchase money is made. All moneys received from the sale of wood, timber, minerals or other products from the State forests and penalties for trespassing thereon shall be paid into the State Treasury. [Id.]

Art. 2614. [2677] [3872] **Perpetual fund.**—The money arising from the sale of the one hundred and eighty thousand acres of land donated to this State by the United States under the provisions of an Act of Congress passed on the second day of July, 1862, and an amended Act of Congress of July 23, 1866, shall constitute a perpetual fund, under the conditions and restrictions imposed by the above recited acts, for the benefit of said College; and the investment of the same, heretofore made in the bonds of the State, shall continue until the Legislature shall, by law, direct it to be invested otherwise in furtherance of the interests of said College and in accordance with the terms on which it was received. [12 U. S. Stat., p. 503; 14 U. S. Stat., p. 203; Acts 1875, p. 73; G. L. Vol. 8, p. 445.]

Art. 2615. [2678-81] **Accrued interest.**—The interest heretofore collected by the State Board of Education in accordance with the provisions of the act of August 21, 1876, due at the end of the fiscal year of 1876, on the bonds belonging to said Agricultural and Mechanical College and invested in six per cent State bonds, shall also constitute a part of the perpetual

fund of said college until the legislature shall otherwise provide. The State Board shall collect the semi-annual interest on said bonds as the same becomes due, and place the same in the State Treasury to the credit of said College fund. The interest on all such bonds is set apart exclusively for the use of said College, and shall be drawn from the Treasury by the board of directors on vouchers audited by said board, or approved by the Governor and attested by the secretary of the board. On such vouchers being filed with the Comptroller, he shall draw his warrant on the State Treasurer for the same, from time to time, as the same may be needed to pay the directors, professors and officers of the College. [Const. Art. 7, Sec. 8; Acts 1876, p. 283; G. L. Vol. 8, p. 1119; Acts 1875, p. 72; G. L. Vol. 8, p. 444; Acts 1879, C. S. p. 16; G. L. Vol. 9, p. 48.]

CHAPTER THREE.

JOHN TARLETON AGRICULTURAL COLLEGE.

| | | | |
|------------------------|---------|-----------------------|---------|
| | Article | | Article |
| Government | 2616 | Courses of study..... | 2618 |
| Student loan fund..... | 2617 | Eminent domain..... | 2619 |

Art. 2616. **Government.**—The government and direction of policies of the John Tarleton Agricultural College at Stephenville shall be vested in the Board of Directors of the Agricultural and Mechanical College of Texas. [Acts 1917, p. 58.]

Art. 2617. **Student loan fund.**—The sum of \$75,000 donated by the citizenship of Stephenville and Erath County shall be used by said board of directors as a student loan fund to be lent to students who cannot otherwise attend said college, at a rate of interest not to exceed five per cent per annum, on such terms and conditions as said board may deem advisable. [Id.]

Art. 2618. **Courses of study.**—Said college shall rank as a Junior Agricultural College, which for the purposes of this law is designated as an institution offering four year courses beginning with the junior year of a four year high school and extending to and including the sophomore year of a standard four year college, provided that nothing in this law shall preclude the offering of such preparatory courses or short courses as may be deemed advisable. It shall be co-educational and instruction shall be offered in agriculture, including the arts and sciences connected therewith. [Id.]

Art. 2619. **Eminent domain.**—Said board of directors is hereby vested with the power of eminent domain to acquire for the use of said college such lands as may be necessary or proper for carrying out its purposes. [Id.]

CHAPTER FOUR.

NORTH TEXAS JUNIOR AGRICULTURAL COLLEGE.

Art. 2620. **Government.**—The North Texas Junior Agricultural, Mechanical and Industrial College at Arlington shall be under the direction of the board of directors of the Agricultural

and Mechanical College designated herein the supervisory board in connection with a local board of managers composed of five members to be appointed by the Governor, subject to the approval of said supervisory board, by and with the advice and consent of the Senate, who shall serve for two years from the date of their appointment. Said local board shall perform all the duties required in the management of said College in like manner as governing boards of the same character. Said local board shall meet at Arlington as soon after their appointment as convenient and organize by the election of a presiding officer, a secretary and a treasurer. The supervisory board shall determine the compensation to be paid said local board. [Acts 1917, p. 260.]

Art. 2621. Courses of study.—Said local board shall have all the powers, subject to the supervision of the supervisory board, necessary to establish and maintain said College as a co-educational institution in the arts and sciences of academic grade, and to furnish instruction in agriculture, horticulture, floriculture, stock raising and domestic arts and sciences, including the several branches and studies usually taught in the established institutions of like character, having in view the training of the youth for the more important industrial activities of life, while acquiring facilities for the acquirement of a good practical literary education not below the academic grade. [Id.]

Art. 2622. Faculty.—The local board, in connection with the supervisory board, shall appoint a president and professors of said College and such officers as they may think proper and necessary to put the same into successful operation, and make such rules and regulations for the government of said officers and the proper management of said institution as they may deem advisable. They shall regulate rates of tuition with the course of discipline necessary to enforce the faithful discharge of the duties of all officers, professors and students. They shall, in connection with the faculty, divide the courses of instruction into departments so as to secure a thorough education of the academic grade and the best possible industrial training, selecting careful and efficient professors in each department, giving preference to Texas teachers, if available, and shall adopt all such rules, by-laws and regulations as they may deem necessary to carry out all the purposes and objects of said institution. Said boards shall determine and fix the salary of each officer, professor and employe, provided that the salaries of the professors in any department shall not exceed that which is now fixed for the professors of the Agricultural and Mechanical College or the College of Industrial Arts. [Id.]

Art. 2623. Entrance requirements.—The terms upon which pupils may be admitted, including the entrance requirements, shall be determined by the local board and the supervisory board, and in that respect they are empowered to fix or remit tuition, fees and charges as they may deem best for said institution and the people for whose benefit it is established. [Id.]

CHAPTER FIVE.

COLLEGE OF INDUSTRIAL ARTS.

Art. 2624. [2682] **Name of institute.**—The industrial institute and college located at Denton, in Denton county, for the education of white girls in the arts and sciences shall be known as the College of Industrial Arts. [Acts 1901, p. 306.]

Art. 2625. [2683-4-7] **Board of regents.**—The board of regents of the College of Industrial Arts at Denton shall be composed of six persons, three of whom may be women. The board of regents shall have the power incident to their position and to the same extent, so far as may be applicable and shall receive like compensation as is conferred by law on the regents of the State University. Said board of regents shall elect a president, a secretary and a treasurer, whose terms of office shall be two years. The president shall convene the board of regents to consider any business connected with said College whenever he deems it expedient. The secretary shall record in a well bound book all of the proceedings had by said board. The treasurer shall receive and disburse all moneys under the direction of the board, and shall be required to give bond in such sum as the board may prescribe. [Acts 1901, p. 306; Acts 1913, p. 191.]

Art. 2626. [2685] **Courses.**—The board of regents shall possess all the powers necessary to the establishment and maintenance of a first-class industrial institute and college for the education of white girls in this State in the arts and sciences, at which such girls may acquire a literary education, together with a knowledge of kindergarten instruction, telegraphy, stenography and photography, drawing, painting, designing and engraving, in their industrial application, needle-work, including dressmaking, bookkeeping, scientific and practical cooking, including a chemical study of food, practical housekeeping, trained nursing, caring for the sick, the care and culture of children, with such other practical industries as, from time to time, may be suggested by experience, or tend to promote the general object of said institute and college, to-wit: Fitting and preparing such girls for the practical industries of the age. [Id.]

Art. 2627. [2686-9] **General duties of regents.**—The board of regents shall appoint a president and professor of said college and such other officers and employes as they may think proper, and fix their salaries not to exceed the salaries paid professors in any one department at the Agricultural and Mechanical College; and make such rules and regulations for the government of said officers as they may deem advisable. They shall regulate rates of tuition, together with course of discipline necessary to enforce the faithful discharge of the duties of all officers, professors and students; divide the course of instruction into departments, so as to secure a thorough education and the best possible instruction in all of said industrial studies, selecting careful and efficient professors in each department, and shall adopt all such rules, by-laws and regulations as they may

deem necessary to carry out all the purposes and objects of said institution. [Id.]

Art. 2628. [2688] **To apportion students.**—The board of regents shall apportion to each county its quota of pupils or students, on the basis of the number of educatable white girls in the State and several counties; and the several superintendents of education of the several counties shall, after having given notice in some newspaper of the county, and three weeks after such publication, under such regulations as the board of regents may adopt, appoint such number of white girls to such industrial institute and college as such county may be entitled to. [Id.]

CHAPTER SIX.

TEXAS TECHNOLOGICAL COLLEGE.

Art. 2629. **Purpose.**—The Texas Technological College at Lubbock shall be a co-educational college giving thorough instruction in technology and textile engineering from which a student may reach the highest degree of education along the lines of manufacturing cotton, wool, leather and textile engineering, the chemistry of materials, the technique of weaving, dyeing, tanning and the doing of any and all other things necessary for the manufacturing of raw materials into finished products; and said college shall also have complete courses in the arts and sciences, physical, social, political, pure and applied, such as are taught in colleges of the first class, leading to the degrees of bachelor of science, bachelor of arts, bachelor of literature, bachelor of technology and any and all other degrees given by colleges of the first class; said college being designed to elevate the ideals, enrich the lives and increase the capacity of the people for the democratic self-government, and particularly to give instruction in technology, manufacturing and agricultural pursuits, domestic husbandry and home economics so that the boys and girls of this State may attain their highest usefulness and greatest happiness and in so doing, may prepare themselves for producing from the State its greatest possible wealth. [Acts 1923, p. 32.]

Art. 2630. **Board of Directors.**—The government, control and direction of the policies of said technological college shall be vested in a board of nine directors who shall hold office for a period of six years. The Governor shall biennially appoint three directors, the classification to continue as constituted by law. The Governor may remove any director for inefficiency or inattention to his duties as members of such board. The board of directors shall provide a president therefor who shall devote his entire time to the executive management of said school and who shall be directly accountable to the board of directors for the conduct thereof. [Id.]

Art. 2631. **Courses.**—In addition to the courses provided in technology and textile engineering, said College shall offer the

usual college courses given in standard senior colleges of the first class and shall be empowered to confer appropriate degrees to be determined by the board of directors, and shall offer four year courses, two year courses, or short term courses in farm and ranch husbandry and economics and the chemistry of soils and the adaption of farm crops to the peculiar soil, climate and condition of that portion of the State in which the college is located and such other courses and degrees as the board of directors may see fit to provide as a means of supplying the educational facilities necessary for this section of the State. The board shall furnish such assistance to the faculty and students of said college as will enable them to do original research work and to apply the latest and most approved method of manufacturing and, in general, to afford the facilities of the college for the purpose of originating, developing, supporting and maintaining all of those agencies for the development of the physical, mental and moral welfare of the students who attend the college and for the further purpose of developing the material resources of the State to their highest point of value and usefulness by teaching the arts of commerce and manufacturing. All male students attending this college shall be required to receive such instruction in military science and tactics as the board of directors may prescribe which shall at all times, comply in full with the requirements of the United States Government now given as a prerequisite to any aid now extended or hereafter to be extended by the Government of the United States to State institutions of this character and all such white male students shall, during their attendance at such college, be subject to such military discipline and control as the board of directors may prescribe. [Id.]

Art. 2632. **Eminent domain.**—The board of directors is hereby vested with the power of eminent domain to acquire for the use of said college such land as may be necessary for the purpose of carrying out its purpose. [Id.]

CHAPTER SEVEN.

SCHOOL OF MINES AND METALLURGY.

Art. 2633. **Government.**—The School of Mines and Metallurgy at El Paso shall be under the management and control of the Board of Regents of the State University, and the faculty of said school shall be appointed by the Board of Regents of the University of Texas, and such appointees shall hold their positions for a term of two years, and the same is hereby made and constituted a branch of the State University of Texas for instruction in the arts of mining and metallurgy as now provided for by law. [Acts 1913, p. 427; Acts 1919, p. 92.]

Art. 2634. **Purpose of school.**—The principal purpose of said school shall be to teach such branches in mining and metallurgy as will give a thorough technical knowledge of mines and mining, and all subjects pertaining thereto, including physics and

mining, engineering, mathematics, chemistry, geology, mineralogy, shop work and drawing, the technical knowledge and properties of mine gases, assaying, surveying, drafting of maps and plans, and such other subjects pertaining to mining engineering as may add to the safety and economical operation of mines within this State. [Id.]

Art. 2635. **Faculty.**—Said school shall have a separate and distinct faculty which shall have the power, under the direction of the board of regents, to confer degrees and issue diplomas and fix a standard of grades for all students attending said school, and to make such rules and regulations for the proper control and management of the school as they may deem necessary. Said school shall have regular courses leading to degrees, and such other special courses as the faculty may deem necessary. The regular course shall extend over a period of two years. [Acts 1913, p. 428.]

Art. 2636. **Tuition.**—The board of regents shall fix the terms and tuition to be charged students in this school, and all moneys received from said tuition or in any way from said school, over and above that necessary for the actual maintenance and carrying on of said school shall be paid into the State Treasury. [Id.]

Art. 2637. **Annual reports.**—At the close of each school year the board of regents shall require the faculty of said school to report to them the workings and progress of said school, and the board of regents in turn shall make a detailed report to the Governor exhibiting the progress, condition, and wants of the several departments of instruction in said school, the course of study in each and the number and names of the officers and students, the amount of receipts and disbursements, together with the nature, cost and results of all important experiments and investigations, and such other matters, including special industrial and economical statistics as may be thought useful. The board of regents shall cause the same to be printed for the use of the Legislature and the people of the State, and shall cause one copy of same to be transmitted by mail to the Secretary of the Interior and one copy to the Commissioner of Labor at Washington, and one copy to the Commissioner of Labor and Chief Mine Inspector of this State. [Id.]

CHAPTER EIGHT.

PRAIRIE VIEW STATE NORMAL AND INDUSTRIAL COLLEGE.

Art. 2638. [2718] [3885] **Management.**—The Prairie View State Normal and Industrial College for colored teachers at Prairie View shall be under the control and supervision of the board of directors of the Agricultural and Mechanical College, and said board shall in all respects have the same powers and perform the same duties in reference to this college as those conferred upon them by law for the government of the Agricultural

and Mechanical College. [Acts 1879, p. 181; G. L. Vol. 8, p. 1481.]

Art. 2639. [2719] [3886] **Appointment of students.**—Said board shall admit one student from each senatorial district, who shall be appointed by the senator representing said district, and one student from each representative district, who shall be appointed by the member of the Legislature representing said district; provided, that, where there is more than one representative in a district, each representative of such district shall appoint one student, said students to be taken from the colored population of this State, and shall not be less than sixteen years of age at the time of their admission. Said board may provide for receiving such number of students of both sexes as the school can best accommodate. [Id.; Acts 1899, p. 325.]

Art. 2640. [2720] [3887] **Duties of board.**—Said board shall appoint a principal teacher and such assistant teachers and other officers of said school as may be necessary, and shall make such rules, by-laws and regulations for the government of said school as they may deem necessary and proper, and shall regulate the course of study and the manner of performing labor by the students, and shall provide for the board and lodging and instruction of the students, without pecuniary charge to them, other than that each student shall be required to pay one-third of the cost of said board, lodging and instruction, quarterly, in advance; and said board of directors shall regulate the course of discipline necessary to enforce the faithful discharge of the duties of all officers, teachers, students and employes of said school, and shall have the same printed and circulated for the benefit of the people of the State and the officers, teachers, students and employes of said school. [Id.]

Art. 2641. [2721] [3888] **Obligation of students.**—Said board shall require each student admitted to said school to sign a written obligation, in a proper book kept for that purpose, binding said student to teach in the public free schools for the colored population of their respective districts at least one year next after their discharge from the normal school, and as much longer than one year as the time of their connection with said normal school shall exceed one year; for which teaching said discharged students shall receive the same rate of compensation allowed other teachers of such schools with like qualifications. [Id.]

Art. 2642. [2722] **Courses.**—There shall be maintained a four-year college course of classical and scientific studies at said college, to which graduates of the normal course shall be admitted without examination, and to which others may be admitted after having passed a satisfactory examination in the branches comprised in the normal course; provided, that no State student shall be admitted to the privileges of the said course; and provided further, that the diploma conferred on the completion of said course shall entitle the holder without other

or further examination to teach in any colored free school of the State. [Acts 1901, p. 35.]

Art. 2643. [2723] [3889] **Appropriations.**—The Comptroller shall annually set apart out of the interest accruing from the University fund, appropriated for the support of public free schools, the sum of six thousand dollars for the support of said normal school, and place said fund to the credit of said normal school and the same may be drawn by the board of directors on vouchers audited by the board or approved by the Governor and attested by the Secretary; and, on filing such vouchers, the Comptroller shall draw his warrant on the State Treasury for the same from time to time as the same may be needed. [Acts 1879, p. 181; Id.; G. L. Vol. 8, p. 1481.]

CHAPTER NINE.

STATE TEACHERS' COLLEGES.

1. GENERAL PROVISIONS.

| | | | |
|-------------------------------------|-----------------|--------------------------------|-----------------|
| Control of colleges..... | Article 2644 | Diplomas and certificates..... | Article 2646 |
| Subjects required to be taught..... | 2645 | Board of regents..... | 2647 |

Art. 2644. **Control of colleges.**—Except as herein provided, all laws establishing State teachers colleges or normal institutes for the training of white teachers and providing for their government, control and maintenance are continued in force, and all such colleges which are or may be established by law shall be under the general control and management of the Board of Regents of the State Teachers' Colleges.

Art. 2645. [2695] **Subjects required to be taught.**—Manual training, domestic science and agriculture shall be taught in each of the State Teachers' Colleges. Elementary agriculture shall be taught in the summer sessions of said colleges.

Art. 2646. [2696] **Diplomas and certificates.**—Diplomas and teachers certificates of each of the State Teachers' Colleges shall authorize the holders to teach in the public schools.

Art. 2647. **Board of regents.**—The board of regents of the State Teachers' Colleges shall be composed of six persons. Said board is charged with the duties and empowered to do and perform the acts hereinafter set forth as follows:

1. The Board of Regents of the State Teachers' Colleges is charged with the responsibility of the general control and management of all State Teachers' Colleges for white persons and may erect, equip and repair buildings; purchase libraries, furniture, apparatus, fuel and other necessary supplies; employ and discharge presidents or principals, teachers, treasurers and other employes; and fix the salaries of the persons so employed. The principal of each State Teachers' College shall nominate annually to the board of regents such professors, teachers, officials and assistants as in his opinion will promote the best interests of the institution. [Acts 1911, 2nd C. S. p. 74; Acts 1913, p. 191.]

2. The board shall visit each college under its control and

management at least once during each scholastic year and inspect its work and gather such information as will enable said board to perform its duties intelligently and effectively. [Id.]

3. The board may determine what departments of instruction shall be maintained in the State Teachers' Colleges and what subjects of study shall be pursued in each department. Said board shall not change any department of instruction provided by law, and no department shall be established for the support of which provision has not been made by the Legislature. The board shall also have authority to fix the rate of incidental fees to be paid by students attending said schools and to make rules for the collection of such fees and for the disbursement of such funds. [Id.]

4. The board shall make an annual report to the Governor showing the general condition of the affairs of each college and shall make such recommendations as it may deem best for future management and welfare thereof. [Id.]

5. The board may determine the conditions on which students may be admitted to such colleges, and what grades of certificates may be issued to students attending, and on what conditions certificates and diplomas may be issued to students, and by what authority said certificates and diplomas shall be signed.

6. The board shall meet each year at Austin, on the first Monday in May, or as soon thereafter as practicable, for the transaction of business pertaining to the affairs of the State normal schools, and at such other times and places as a majority of the members of the board deem necessary for the welfare of said colleges. Each and every member of said board shall receive five dollars per day for the time spent attending the meetings provided for in this law, and in addition thereto the amount of their traveling expenses, said compensation to be paid to the several members of the board out of the appropriation for the support and maintenance of the said State Teachers' Colleges as the board may direct. [Id.]

7. All appropriations made by the Legislature for the support and maintenance of State Teachers' Colleges, for the purchase of land or buildings for the use of such schools, for the erection or repair of buildings, for the purchase of apparatus, libraries or equipment of any kind or for any other improvement of any kind, shall be disbursed under the direction and authority of the board of regents; and said board shall have power to formulate and establish such rules for the general control and management of the State normal schools for white teachers, for the auditing and approving of accounts, and for the issuance of vouchers and warrants as in their opinion may be necessary for the efficient administration of such schools. [Id.]

8. The board shall file in each house of the Legislature, at each of its regular biennial sessions, a statement of the receipts and expenditures of each of said normal schools, showing the amount of salaries paid to the various teachers, contingent expenses, expenditures for improvements, etc., together with such recommendations as the board may see proper to submit relative

to the appropriation for said schools to be made by the Legislature. [Id.]

9. Power and authority is hereby conferred upon said board of regents to acquire by purchase or condemnation for the use and benefit of any of the State Teachers' Colleges, such lands within the counties where such schools may be located, as said board may deem expedient for the use of any of said schools for purposes necessary in the conduct thereof. [Acts 1913, p. 347.]

10. If in the exercise of such power, said board and the land owner cannot agree upon the sale and purchase of said land, the board of regents shall request the Attorney General to proceed to condemn the land required as provided by law. In lieu of such suit, the parties thereto may select by agreement three persons to ascertain the value of such land under their oaths and the direction of the court. The finding and decision of the jury, court or of such persons, shall in all cases be final; provided the parties to said proceedings shall have the right to appeal as in other civil cases.

11. When the value of the land has been so ascertained and the court is satisfied with such valuation, it shall enter a decree vesting the title of such lands in this State for the use and benefit of the State Teachers' College for whose benefit the land is sought to be acquired, to be held, owned, possessed and enjoyed by the State of Texas, for the purposes hereinbefore stated. No such decree shall be entered until the value of the land so ascertained, together with all reasonable cost and expense of the owner in attending such proceeding, shall be paid to him or into court for his benefit and subject to his order, such costs and expenses to be ascertained by the court in which such proceeding is had, including reasonable attorneys fees to be fixed by the court. [Id.]

2. SAM HOUSTON STATE TEACHERS' COLLEGE.

| | | | |
|-----------------------------|-----------------|---------------------------|-----------------|
| Admission of students..... | Article 2648 | Annual appropriation..... | Article 2650 |
| Obligation of students..... | 2649 | | |

Art. 2648. [2692-4] **Admission of students.**—Not more than two students from each senatorial district, and six from the State at large, shall be received in the Sam Houston State Teachers' College at Huntsville, as State students, who shall receive tuition, board and lodging free to the extent of the appropriation that may be made. In no case shall the current expenses of the institute exceed the sum or sums appropriated. The board of regents shall make all necessary rules and regulations for the admission of students and the manner of their appointment or selection. No student shall be received who is not a resident of this State and at least of the age of sixteen years and of good moral character. Said board may authorize other students to be admitted to said College who shall pay tuition, in whole or in part, as the board may prescribe. [Acts 1879, p. 182; G. L. Vol. 8, p. 1482.]

Art. 2649. [2693] [3881] **Obligation of students.**—All stu-

denents attending said institute at State expense shall sign a written obligation in a book to be kept at the College for that purpose, binding said student to teach in the public schools of their respective districts at least one year next after their discharge from the normal school and as much longer than one year as the time of their attendance at said school shall exceed one year, for which teaching said student shall receive the same compensation allowed other teachers of said schools. Said board of education shall make rules by which students may receive certificates of qualification as teachers, authorizing them to teach without examination. [Id.]

Art. 2650. [2698] [3884] **Annual appropriation.**—The State Comptroller shall annually set apart out of the available free school fund the sum of fourteen thousand dollars for the support of said College and place the same to its credit. Said sum may be drawn upon by the board of regents for the current expenses of said school on vouchers audited by said board or approved by the Governor and attested by the Secretary; and, on filing said vouchers, the Comptroller shall draw his warrant on the State Treasurer for the same. The board is authorized to receive from the agent of the trustees of the Peabody Education Fund such sums as he may tender for the aid of said institute, and shall disburse the same in such manner as will best subserve the interests of said college. [Acts 1879, p. 182; G. L. Vol. 8, p. 1482.]

3. NORTH TEXAS STATE TEACHERS' COLLEGE.

| | | | |
|------------------------------|---------|--------------|---------|
| | Article | | Article |
| Purpose | 2651 | Free tuition | 2653 |
| Funds set apart for college. | 2652 | | |

Art. 2651. [2699] **Purpose.**—The State Teachers' College located at Denton shall be known as the "North Texas State Teachers' College." It shall be conducted for a session of not less than thirty-six weeks each year upon improved methods and plans for first class schools designed for special training of teachers. [Acts 1899, p. 74.]

Art. 2652. [2701] **Funds set apart for college.**—The Comptroller shall set apart annually, out of the general revenue, the sum of twenty thousand dollars for the maintenance of said normal school, together with such other sums as may be appropriated by the Legislature for defraying a part of the expenses of the students appointed from year to year by senators and representatives, such sum or sums to be placed to the credit of such State normal school, and which shall be paid out upon warrants approved by the Governor and attested by the board of regents. Said board is hereby authorized to receive from the agent of the Peabody Education Fund such sums as he may tender for the aid of the said State normal school, to be disbursed in such manner as may be prescribed by the donor. [Id; Amended Acts 1901, p. 10.]

Art. 2653. [2702] **Free tuition.**—Tuition in said college shall be free to all students who are at least sixteen years of

age, of good moral character, and who wish to prepare themselves for the profession of teaching. All State students attending such college shall sign a written obligation, in a book to be kept for that purpose, binding said students to teach in the public schools of this State for as long a period of time as they attend said college, for which teaching they shall receive the same compensation as other teachers. [Id.]

4. SOUTHWEST TEXAS STATE TEACHERS' COLLEGE.

School established..... Article
2654

Art. 2654. [2708-11] **School established.**—The institution established at San Marcos shall be known as the Southwest Texas State Teachers' College. The rules and regulations provided by law for the government of the Sam Houston State Teachers' College shall apply so far as applicable to the government and control of this college. [Acts 1909, p. 221.]

CHAPTER TEN.

STATE DEPARTMENT OF EDUCATION.

1. STATE SUPERINTENDENT.

| | Article | Article |
|--------------------------------------|---------|------------------------------------|
| Election..... | 2655 | Shall make report.....2660 |
| General duties..... | 2656 | School officers to report.....2661 |
| To advise school officers..... | 2657 | Reports to be filed.....2662 |
| Shall note educational progress..... | 2658 | Shall prorate funds.....2663 |
| Plans for school buildings..... | 2659 | |

Art. 2655. [4509] **Election.**—There shall be elected at each general election, a State Superintendent of Public Instruction, who shall hold his office for a term of two years. The Superintendent shall take the official oath and shall perform such duties as may be prescribed by law. [Acts 1905, p. 263.]

Art. 2656. [4510-13] **General duties.**—The State Superintendent shall be charged with the administration of the school laws and a general superintendency of the business relating to the public schools of the State, and he shall have printed for general distribution such number of copies of school laws as the State Board of Education may determine. He shall hear and determine all appeals from the rulings and decisions of subordinate school officers, and all such officers and teachers shall conform to his decisions. Appeal shall always be from his rulings to the State Board. He shall prescribe suitable forms for reports required of subordinate school officers and teachers, and blanks for their guidance in transacting their official business and conducting public schools and shall, from time to time, prepare and transmit to them such instructions as he may deem necessary for the faithful and efficient execution of the school laws, and by whatsoever is so communicated to them, they shall be bound to govern themselves in the discharge of their official duties. He shall examine and approve all accounts against the school funds that are to be paid by the State Treasurer, and, upon such approval, the Comptroller shall be

authorized to draw his warrant. He may employ such clerks to perform the duties of his office as may be authorized by appropriations therefor.

Art. 2657. [4511] To advise school officers.—The State Superintendent shall advise and counsel with the school officers of the counties, cities and towns and school districts as to the best methods of conducting the public schools, and shall be empowered to issue instructions and regulations binding for observance on all officers and teachers in all cases wherein the provisions of the school law may require interpretation in order to carry out the designs expressed therein, also in cases that may arise in which the law has no provision, and where necessity requires some rule in order that there may be no hardships to individuals, and no delays or inconvenience in the management of school affairs. [Id.]

Art. 2658. [4512] Shall note educational progress.—He shall inform himself concerning the educational progress of the different parts of this State and of other States. In so far as he may be able, he shall visit different sections of this State and address teachers institutes, associations, summer normals and other educational gatherings, instruct teachers and arouse educational sentiment; and the Legislature shall make adequate appropriation for necessary traveling expenses, or those of his representative, when in the service of the State. [Id.]

Art. 2659. [4514] Plans for school buildings.—The State Superintendent shall prepare as many as three sets of plans for public school buildings designed to meet the needs of rural schools of various sizes, and, upon request of the trustees of any school district, shall furnish copies of such plans and specifications. [Id; Acts 1909, p. 21.]

Art. 2660. [4515-16] Shall make report.—The State Superintendent shall, one month before the meeting of each regular session of the Legislature and ten days prior to any special session thereof, at which, under the Governor's proclamation convening the same, any legislation may be had respecting the public schools, make a full report to the State Board of the condition of all the public schools. Such report shall give all the information called for by the State Board and such other matters as the State Superintendent shall deem important. The Governor shall lay such report before the Legislature and two thousand copies of said report shall be printed in pamphlet form for the use of the Legislature and for distribution among the various school officers and libraries within the State, and other States and territories of the United States and Canada, and the Bureau of Education at Washington. [Acts 1905, p. 263.]

Art. 2661. [4517] School officers to report.—The State Superintendent shall require of county judges, county, city and town superintendents, county and city treasurers and treasurers of school boards and other school officers and teachers, such school reports relating to the school fund and other school affairs as he may deem proper for collecting information and advancing the interests of the public schools, and shall furnish the

county, city and town superintendents, and other school officers and teachers, for the use of such officers and teachers, the necessary blanks and forms for making such reports and carrying out such instructions as may be required of them. [Id.]

Art. 2662. [4518] Reports to be filed.—The State Superintendent shall file all reports, documents and papers transmitted to him and the State Board by county or city school officers, and from all other sources, pertaining to public schools, and keep a complete index of the same. [Id.]

Art. 2663. [4519-20] Shall prorate funds.—On the first of each month, the State Superintendent shall prorate to the several counties, cities and towns and school districts constituting separate school organizations, according to the scholastic population of each, the available school money collected during the preceding month and then on hand as shown by the certificate issued that day to him by the Comptroller, and shall thereupon certify to the Comptroller the total sum prorated to each; and such certificate shall be authority for the Comptroller to draw his warrant in favor of the Treasurer of each such county, city or town or school district for the amount stated in such certificate. He shall receive from the State Treasurer all warrants so drawn, and shall transmit such warrants to the respective treasurer in favor of whom they are drawn. [Acts 1909, 2d S. S. 432.]

2. STATE BOARD.

| | Article | | Article |
|--|---------|----------------------------|---------|
| Members | 2664 | Purchase of bonds | 2670 |
| Shall make apportionment | 2665 | Condition of purchase | 2671 |
| New districts created at eleemosynary institutions | 2666 | Estoppel | 2672 |
| Trustees for such districts | 2667 | Option to purchase | 2673 |
| Transfer of funds | 2668 | Jurisdiction | 2674 |
| Investing school fund | 2669 | Extent of these provisions | 2675 |

Art. 2664. [2727-8] Members.—The Governor, Secretary of State and Comptroller shall constitute a State Board of Education which shall hold its sessions at Austin. The Governor shall be ex officio president of the board. The State Superintendent shall be ex officio secretary of the Board and shall keep a complete record of all its proceedings, which shall be signed by the president and attested by the secretary. [Acts 1905, p. 263.]

Art. 2665. [2729] Shall make apportionment.—The State Board shall, on or before the first day of August in each year, based on the estimate theretofore furnished said Board by the Comptroller, make an apportionment for the ensuing scholastic year of the available State school fund among the several counties of the State, and the several cities and towns and school districts constituting separate school organizations, according to the scholastic population of each; and thereupon the secretary shall certify to the treasurer of each such separate school organization the total amount of available school fund so apportioned to each, which certificate shall be signed by the president, countersigned by the Comptroller and attested by the secretary. [Acts 2nd C. S. 1909, p. 432.]

Art. 2666. [2733] New districts created at eleemosynary institutions.—The State Board is authorized to create new school districts at such of the several eleemosynary institutions of this State, including the State Orphan Asylum, or at any and all orphan homes or like institutions that may be established by any fraternal organization; provided, that the number of children within the scholastic age in each instance be sufficient to justify such action. The territorial limits in each case shall be co-extensive with the property lines of the institution. [Acts 1905, p. 263.]

Art. 2667. [2734] Trustees for such districts.—Upon the exercise of such power, the State Superintendent shall appoint a board of three trustees for each district so created; and such trustees need not be residents of such district, and the fact shall be duly certified to local authorities for information and observance; and upon the creation of such districts the trustees shall take and certify the census of the children within the scholastic age, and the funds shall thereafter be apportioned directly to such district; and the law pertaining to independent districts shall govern so far as applicable, though the State Board may make special regulations and orders for the government of such districts as they may deem expedient. [Id.]

Art. 2668. [2735] Transfer of funds.—Upon the creation of such district, the county school superintendent shall transfer to such district whatever amount of money may have been apportioned for the current school year to the old district, for and in behalf of the children included in the new district; provided only, such children may not have had the advantage of such fund in the old district.

Art. 2669. [2736] Investing school fund.—The State Board is authorized and empowered to invest the permanent public free school funds of the State in bonds of the United States, the State of Texas or any county thereof, and the independent or common school districts, road precinct, drainage, irrigation, navigation, and levee districts in this State, and the bonds of incorporated cities and towns. [Acts 1905, p. 263; Acts 1909, p. 216.]

Art. 2670. [2737] Purchase of bonds.—When any county bonds, or the bonds of any incorporated city, independent or common school district, road precinct, drainage, irrigation, navigation and levee districts are offered for sale, the party offering, or proposing to sell, such bonds shall first submit them to the Attorney General who shall carefully inspect and examine the same in connection with the law under which they were issued, and shall diligently inquire into the facts and circumstances so far as may be necessary to determine the validity thereof; and, upon being satisfied that such bonds were issued in conformity with law, and that they are valid and binding obligations, he shall thereupon certify to their validity, and his certificate to that effect, so procured by the party offering such bonds for sale, shall be submitted to the Comptroller or State Board with the bonds so offered for sale, and shall be carefully

preserved by the Comptroller. If the same be purchased from the county, city, precinct or district issuing the same, or from any person authorized to act for it in the negotiations or sale of such bonds, such bonds shall thereafter be held to be valid and binding obligations in every action or proceeding in which their validity is or may be called in question, unless fraudulently issued, or issued in violation of the constitutional limitation. In every such action such certificate of the Attorney General shall be admitted and received as prima facie evidence of the validity of the bonds and coupons thereto, which may have been so purchased. [Id.]

Art. 2671. [2738] **Conditions of purchase.**—The Comptroller or State Board shall carefully examine the bonds so offered and investigate the facts tending to show the validity thereof; and such Board may decline to purchase same unless satisfied that they are a safe and proper investment for such fund. No bonds shall be so purchased that bear less than three per cent interest. No bonds, except State or Federal bonds, shall be so purchased when the indebtedness of the county, city, precinct or district issuing same, inclusive of the bonds so offered, shall exceed seven per cent of the assessed value of the real estate therein. If default be made in the payment of interest due upon such bonds, the State Board may at any time prior to the payment of such overdue interest, elect to treat the principal as also due, and the same shall thereupon, at the option of said Board become due and payable; and the payment of both such principal and interest shall in all such cases be enforced in the manner provided by law, and the right to enforce such collection shall never be barred by any law or limitation whatever. [Id.]

Art. 2672. [2739] **Estoppel.**—In all cases where the proceeds of the sale of any bonds have been received by the proper officers of any such county, city, precinct or district, or by the party acting for it in negotiating the sale thereof, such county, city, precinct or district shall thereafter be estopped from denying the validity of such bonds so issued, and the same shall be held to be valid and binding obligations for the amount of bonds sued on and interest thereon, at the rate mentioned therein, deducting such amounts, if any, as have been previously paid thereon. [Acts 1905, p. 263; Acts 1909, p. 216.]

Art. 2673. [2740] **Option to purchase.**—Whenever any county, city, independent or common school district, road precinct, drainage, irrigation, navigation or levee district of this State issues any bonds, and they have been approved by the Attorney General, as required by the preceding articles, the county judge, the mayor, the president of the board of trustees of the school district, or the county judge or party authorized by law to sell such bonds, shall notify the State Board of all bids received for such bonds, and shall give said Board an option of ten days in which to purchase such bonds; provided, that said Board will pay the price offered for such bonds by the best bona fide bidder; and, if the Board fails to purchase such bonds within said time, then such county judge, mayor, or presi-

dent shall sell the bonds to the best bona fide bidder. If the State Board shall pay a premium out of the permanent school fund, on any bonds purchased as an investment for the permanent school fund, then the principal of such bonds and an amount of the interest first accruing on such bonds equal to the premium so paid, shall be treated as the principal in such investment, and, when such first interest is collected, such sum of the same shall be returned to the permanent school fund, and, if they purchase said bonds for less than par, the discount they receive in the purchase of said bonds shall be paid to the available school fund when the bonds are paid off and discharged. The price paid for bonds shall be indorsed thereon at the time the same are purchased. If said Board shall refuse to purchase bonds from such county, city, precinct or district, or the parties to whom said bonds were issued, then in no event shall said Board purchase said bonds from any subsequent owner or holder of the same. [Id.]

Art. 2674. [2742] **Jurisdiction.**—The district court of Travis County shall have jurisdiction of any suit upon bonds or obligations belonging to the permanent public school funds, or purchased therewith, concurrent with that of any other court having jurisdiction in said case. [Id.]

Art. 2675. [2743] **Extent of these provisions.**—The provisions of the six preceding articles shall extend to any bonds or securities other than the bonds of the State or of the United States, in which the public school funds are or may be invested, as is or may be authorized or prescribed by law, and also to any bonds or securities purchased with any of the permanent funds set apart for the support, maintenance and improvement of any asylum or other institution of this State. [Id.]

CHAPTER ELEVEN.

COUNTY SCHOOLS.

1. TRUSTEES.

| | | | |
|-------------------------------------|--------------|----------------------------------|--------------|
| Election | Article 2676 | Supervisory powers of court..... | Article 2682 |
| Qualifications | 2677 | Powers of trustees..... | 2683 |
| To classify schools..... | 2678 | Organization | 2684 |
| Classification of high schools..... | 2679 | Apportionment of fund..... | 2685 |
| Subjects in high schools..... | 2680 | Appeals | 2686 |
| School districts..... | 2681 | Meetings | 2687 |

Art. 2676. **Election.**—The general management and control of the public free schools and high schools in each county shall be vested in five county school trustees elected from the county, one of whom shall be elected from the county at large by the qualified voters of the common school districts of the county, and one from each commissioners precinct by the qualified voters of each commissioners precinct, who shall hold office for a term of two years. The time for such election shall be the first Saturday in April of each year; the order for the election of county school trustees to be made by the county judge at least thirty days prior to the date of said election, and such order shall designate one voting place for each common school dis-

trict. The election officers appointed to hold the election for trustees in each common school district shall hold the election at the same place therein for the county school trustees. Each year there shall be elected alternately two county school trustees and three county school trustees in each county. The State Superintendent shall prepare a proper form of the ballot to be used in such election and such other explanation of the laws as he deems necessary, and transmit the same to the county judge of each county at least sixty days prior to the date of such election. All vacancies shall be filled by the remaining trustees. [Acts 1915, p. 69.]

Art. 2677. **Qualifications.**—The county school trustees shall be qualified voters of the precinct or county from which they are elected, and four of them shall reside in different commissioners precincts. They shall be of good moral character, able to read and speak the English language, shall be persons of good education, and shall be in sympathy with public free schools. The returns of their election shall be made to the county clerk within five days after such election shall have been held, to be delivered by him to the commissioners court at its first meeting thereafter to be canvassed and the results declared as in cases of other elections. The county clerk shall issue to said trustees their commissions and impress thereon the seal of the said court after they have taken the official oath and filed same with said clerk. [Id.]

Art. 2678. **To classify schools.**—Said trustees shall classify the schools of the county in accordance with such regulations as the State Superintendent may prescribe into elementary schools and high schools for the purpose of promoting high schools at convenient and suitable places. In classifying the schools and in establishing high schools, said trustees shall confer and advise with the county superintendent and the school trustees of each district at interest, and shall give due regard to schools already located, to the distribution of population, and to the advancement in their studies. The county trustees shall not so classify any school as to deprive any child of scholastic age of its right to receive instruction in the grades to which it belongs in the public school of the district in which it resides, unless arrangements are made by said trustees for said child to attend a school of proper classification free of charge in another district which is within three miles from the home of said child, the distance to be computed according to the route or road commonly traveled in going from the home of said child to the school building; or unless the trustees shall arrange for the free transportation daily of said child to and from the school of proper classification, such expense to be paid for by the district trustees out of the funds of the district in which the child actually resides. The county superintendent of public instruction and the county school trustees shall see that every child of scholastic age is properly provided for as herein required, and the State Superintendent shall transmit definite and specific in-

structions to the county superintendent, and the county trustees and the district trustees with respect to the proper observance and administration of this law, to the end that no child shall be deprived of its right to attend school. The county school trustees shall, in co-operation with the county superintendent of public instruction, prescribe a course of study for the public schools of the county conforming to the law and the requirements of the State Superintendent. [Id.]

Art. 2679. Classification of high schools.—The public high schools of the State shall, upon satisfactory evidence, be ranked by the State Department of Education as follows:

1. A high school of the first class shall be one which maintains at least four years or grades of work above the seventh grade or years, may include in its curriculum the first seven grades or years of work, shall employ at least two teachers to teach high school subjects, who shall each hold a State first grade certificate or certificate of higher grade, and shall be maintained for not less than eight scholastic months during each school year.

2. A high school of the second class shall be one which maintains at least three years or grades of work above the seventh grade or year, and shall otherwise conform to the requirements for the first class.

3. A high school of the third class shall be a high school which maintains at least two years or grades of work above the seventh grade or year, may include in its curriculum the first seven years or grades of work, shall employ at least one teacher to teach high school subjects, who shall hold a State first grade certificate or certificate of higher grade, and shall be maintained for not less than seven scholastic months during each school year.

Each such class of high schools shall be entitled to receive a certificate of approval or classification from the State Department of Education. Other high schools shall not be prohibited by this law, but shall not be entitled to receive such certificate. A grade or year of work as herein mentioned shall consist of not less than thirty-two weeks of five days each. [Acts 1911, p. 34; Acts 1915, p. 71.]

Art. 2680. Subjects in high schools.—Besides the subjects prescribed by law to be taught in the public schools of Texas, such additional subjects as agriculture, manual training, domestic economy or other vocational branches shall be included in the course of study in all high schools provided for herein which are located outside of incorporated towns and cities, and special attention shall be given to teaching said subjects. [Acts 1915, p. 71.]

Art. 2681. School districts.—The county school trustees are authorized to exercise the authority heretofore vested in the commissioners court with respect to subdividing the county into school districts, and making changes in school district lines. Said trustees shall call an annual joint meeting of the district and county school trustees of the county to be held at the county

seat at some convenient season in August or September of each year, to be presided over by the chairman of the county school trustees. They shall consider questions dealing with the location of high schools and the teaching of high school subjects, the classification of schools and such other matters as may pertain to the location, conduct, maintenance and discipline of schools, the terms thereof, and other matters of interest in school affairs of the county, and the county school trustees shall be guided in their action by the result of the deliberation of such meeting, not inconsistent with law. The county school trustees may also call other meetings of the district school trustees, when deemed necessary by them, or on the petition of a majority of such district school trustees. The county superintendent, as secretary of the county school trustees, shall keep an accurate and complete record in a well bound book provided for that purpose, the field notes of all changes made in school district lines, and of all proceedings of the county school trustees. A certified copy of such change in a school district line shall be made and transmitted by the county superintendent to the county clerk, and the county clerk shall record the field notes and certified copy of such change in a well bound book to be designated as the "Record of School Districts." In providing better schooling for the children and in carrying out the provisions of article 2678, the county superintendent shall, on the recommendation of the county school trustees, transfer children of scholastic age from one school district to another, and the amount of funds to be transferred with each child of scholastic age shall be the amount to which the district from which the child is transferred is entitled to receive. [Id.]

Art. 2682. Supervisory powers of district court.—The district court shall have general supervisory control of the actions of the county board of school trustees in creating, changing and modifying school districts. [Id.]

Art. 2683. Powers of trustees.—The county school trustees of each county shall constitute a body corporate, by the name of the county school trustees of _____ County, State of Texas, and in that name may acquire and hold real and personal property, sue and be sued, and may receive bequests and donations or other moneys or funds coming legally into their hands, and may perform other acts for the promotion of education in the county. The title to any school property belonging to the county, the title of which has heretofore been vested in the county judge and his successors in office, or any school property that may be acquired, shall vest in the county school trustees and their successors in office for public free school purposes.

Art. 2684. Organization.—At the regular meeting in May, the county trustees shall elect one of their number president; and three trustees shall be a quorum to transact business, and all questions shall be decided by majority vote. The secretary shall keep a true and correct record of all the proceedings of said county school trustees in a well bound book, which shall be open to public inspection. He shall keep an accurate record of the

term of office of each common school district and county school trustee, and shall furnish the county judge at least sixty days prior to the date of their election the number of trustees to be elected in each district or precinct or in the county at large.

Art. 2685. **Apportionment of fund.**—Upon receiving notice from the State Superintendent of the amount of State available school funds apportioned to the county, exclusive of all independent districts having each more than one hundred and fifty scholastics, the county school trustees, acting with the county superintendent, shall apportion all available State and county funds to the school districts as prescribed by law. [Id.]

Art. 2686. **Appeals.**—All appeals from the decisions of the county superintendent shall lie to the county school trustees and from the said county trustees to the State Superintendent and thence to the State Board of Education. [Id.]

Art. 2687. **Meetings.**—The county school trustees shall hold meetings once each quarter, on the first Monday in August, February, May and November, or as soon thereafter as practicable, and at other times when called by the president of the county school trustees or at the instance of any two members of the county school trustees and the county superintendent, the meeting place to be at the county seat and in the office of the county superintendent. Each trustee shall be paid three dollars per day, but not exceeding thirty-six dollars in any one year, for the time spent in attending such meetings out of the general fund of the county by warrants drawn on order of the commissioners court, after approval of the account, properly sworn to, by the president of the county school trustees. [Id.]

2. SUPERINTENDENT.

| | Article | | Article |
|-----------------------------|---------|-----------------------------------|---------|
| Office established..... | 2688 | Transfers | 2695 |
| Bond | 2689 | Application to transfer | 2696 |
| Supervision of schools..... | 2690 | Transfer to adjoining county..... | 2697 |
| Teachers' institutes..... | 2691 | Emergency transfers..... | 2698 |
| Shall apportion funds..... | 2692 | By agreement of trustees..... | 2699 |
| General duties..... | 2693 | Salary..... | 2700 |
| May administer oaths..... | 2694 | Ex officio superintendent..... | 2701 |

Art. 2688. [2750] **Office established.**—The commissioners court of every county having three thousand scholastic population or more as shown by the preceding scholastic census, shall at each general election provide for the election of a county superintendent to serve for a term of two years, who shall be a person of educational attainments, good moral character, and executive ability, and who shall be provided by the commissioners court with an office in the court house, and with necessary office furniture and fixtures. He shall be the holder of a teacher's first grade certificate, or teacher's permanent certificate. In every county that shall attain three thousand scholastic population or more, the commissioners court shall appoint such superintendent who shall perform the duties of such office until the election and qualification of his successor. In counties having less than three thousand scholastic population, whenever more than twenty-five per cent of the qualified voters of said county, as shown by the vote for Governor at the preceding gen-

eral election, shall petition the commissioners court therefor, said court shall order an election for said county to determine whether or not the office of county superintendent shall be created in said county; and, if a majority of the qualified property taxpaying voters, voting at said election, shall vote for the creation of the office of county superintendent in said county, the commissioners court, at its next regular term after the holding of said election, shall create the office of county superintendent, and name a county superintendent, who shall qualify under this chapter, and hold such office until the next general election. [Acts 1905, p. 263; Acts 1907, p. 210.]

Art. 2689. [2751] **Bond.**—The county superintendent shall first take the official oath and shall enter into a bond in the sum of one thousand dollars, with good and sufficient sureties, to be payable to and approved by the commissioners court, conditioned upon the faithful performance of his duties. Any sum collected on a forfeiture of said bond shall become a part of the available county school fund. [Acts 1905, p. 263.]

Art. 2690. [2752] **Supervision of schools.**—The county superintendent shall have, under the direction of the State Superintendent, the immediate supervision of all matters pertaining to public education in his county. He shall confer with the teachers and trustees and give them advice when needed, visit and examine schools, and deliver lectures that shall tend to create an interest in public education. He shall spend four days each week visiting the schools while they are in session, when it is possible for him to do so. He shall have authority over all of the public schools within his county, except such of the independent school districts as have a scholastic population of five hundred or more. In such independent school districts as have less than five hundred scholastic population, the reports of the principals and treasurers to the State Department of Education shall be approved by the county superintendent before they are forwarded to the State Superintendent. All appeals in such independent school districts shall lie to the county superintendent, and from the decisions of the county superintendent to the State Superintendent, and thence to the State Board of Education. [Id.; Acts 1907, p. 210.]

Art. 2691. [2753] **Teachers' institutes.**—The county superintendent shall organize and hold, with such assistance as may be necessary, within the first four months of the scholastic year, one institute of five consecutive days for white and for colored teachers, respectively, and he shall require the attendance of all teachers upon their respective institutes. A failure to comply with these requirements shall be a sufficient cause for his removal from office. The county superintendent shall be authorized to cancel the certificate of any teacher who wilfully and persistently absents himself from attendance upon said institute. The board of school trustees in any independent school district having five hundred or more scholastic population, may authorize the superintendent or principal to organize and hold institutes

for the teachers of such district, in lieu of the county institute; provided, that the plan, scope and quality of the work of said city institutes shall be approved by the State Superintendent. [Id.]

Art. 2692. [2755] **Shall apportion funds.**—The county superintendent, upon the receipt of the certificate issued by the State Board of Education for the State fund belonging to his county, shall apportion the same to the several school districts, not including the independent school districts of the county, making a pro rata distribution as per the scholastic census, and shall at the same time apportion the income arising from the county school fund to all the school districts, including the independent school districts of the county, making a pro rata distribution as per scholastic census. Within thirty days after such apportionment, the trustees of each district shall, if possible, agree upon a division of the funds of the district among the schools thereof, and shall fix the term for which the schools of the district shall be maintained for the year. Should they agree upon a division of the funds of the district or upon the length of the term for which the schools of the district shall be maintained, they shall at once certify their agreement to the county superintendent who shall not approve any contracts with teachers of the district until such agreement is received. Should the trustees fail to agree, they shall at once certify their disagreement to the county superintendent who shall proceed to fix the school term of such school district and declare the division of the school fund of the district among the schools thereof, endeavoring as far as practicable to provide, for the schools of such district, school terms of the same length. [Id.; Acts 1907, p. 204.]

Art. 2693. [2756] **General duties.**—The county superintendent shall approve all vouchers legally drawn against the school fund of his county. He shall examine all the contracts between the trustees and teachers of his county, and if, in his judgment, such contracts are proper, he shall approve the same; provided, that in considering any contract between a teacher and trustees he shall be authorized to consider the amount of salary promised to the teacher. He shall distribute all school blanks and books to the officers and teachers of the public schools, and shall make such reports to the State Superintendent as may be required by that officer. He shall discharge such other duties as may be prescribed by the State Superintendent. [Acts 1905, p. 263.]

Art. 2694. [2757] **May administer oaths.**—The county superintendents are hereby empowered to administer oaths necessary in transacting any business relating to school affairs; but shall receive no compensation for administering same. [Id.]

Art. 2695. [2759] **Transfers.**—Each year after the scholastic census of the county is completed, the county superintendent shall, if any district has fewer than twenty pupils of scholastic age, either white or colored, have authority to consolidate said district as to said white or colored schools with other adjoin-

ing districts, and to designate the board of trustees which shall control the white or colored school of such consolidated district. But this shall be done before the apportionment is made, and the apportionment shall be made with respect to such consolidation. [Acts 1905, p. 263.]

Art. 2696. [2760] **Application to transfer.**—Any child lawfully enrolled in any district, or independent district, may at the discretion of the county superintendent be transferred to the enrollment of any other district, or independent district, in the same county, upon the written application of the parent or guardian or person having the lawful control of such child, filed with the county superintendent. No child shall be transferred more than once. The applicant shall state in said application that it is his bona fide intention to send said child to the school to which the transfer is asked. Upon the transfer of any child, its portion of the school funds shall follow and be paid over to the district, or independent district, to which such child is transferred; provided, no transfer shall be made after August first, after the enrollment was made. [Id.]

Art. 2697. [2761] **Transfer to adjoining county.**—Any child specified in the preceding article, and its portion of the school fund, may be transferred to an adjoining district in another county, in the manner provided in said article. It must be shown to the county superintendent that the school in the district in which such child resides, on account of distance or some uncontrollable and dangerous obstacle, is inaccessible to such child. [Acts 1907, p. 242.]

Art. 2698. **Emergency transfers.**—In case of conditions resulting from public calamity in any section of the State such as serious floods, prolonged drouth, or extraordinary border disturbances, resulting after the scholastic census has been taken, in such sudden change of the scholastic population of any county as would work a hardship in the support of the public free schools of the said county, the State apportionment of any child of school age may, on approval of the State Board, be ordered by the State Superintendent to be transferred to any other county or independent school district in any other county; provided, that the facts warranting such transfer shall be sent to the State Superintendent by the county or district board of trustees of schools to which transfer is to be made with a formal request for the said transfer before the first of August of the year in which such unusual conditions occur. No application for emergency transfers shall be granted unless the number of transfers applied for exceeds twenty per cent of the number of children assigned to said district including regular transfers as a result of the preceding census. The State Superintendent shall in such case notify the county superintendent of both counties that final apportionments of school funds cannot be made under these circumstances before August 15. All arrangements for the said emergency transfers must be completed by the 15th of August following the unusual conditions causing the emergency. Children whose State funds are thus

transferred to any county shall be included in the number of children for whom the county school apportionment of the said county is made. [Acts 2nd C. S. 1919, p. 87; Acts 1923, p. 253.]

Art. 2699. [2762] **By agreement of trustees.**—Except as herein provided, no part of the school fund apportioned to any district or county shall be transferred to any other district or county; provided that districts lying in two or more counties, and situated on the county line, may be consolidated for the support of one or more schools in such consolidated district; and, in such case, the school funds shall be transferred to the county in which the principal school building for such consolidated district is located; and provided, further, that all the children residing in a school district may be transferred to another district, or to an independent district, upon such terms as may be agreed upon by the trustees of said districts interested. [Acts 1905, p. 263.]

Art. 2700. [2758] **Salary.**—The county superintendent shall receive from the available school fund of their respective counties annual salaries based on the scholastic population of such counties, as follows:

| Population | Salary |
|----------------|-----------|
| 3000 or less | \$1600.00 |
| 3001 to 4000 | 1800.00 |
| 4001 to 5000 | 1900.00 |
| 5001 to 6000 | 2000.00 |
| 6001 to 7000 | 2200.00 |
| 7001 to 8000 | 2400.00 |
| 8001 to 9000 | 2500.00 |
| 9001 to 10,000 | 2600.00 |
| 10,001 or more | 2800.00 |

In making the annual per capita apportionment to the schools, the county school trustees shall also make an annual allowance out of the State and county available funds for salary and expenses of the office of the county superintendent, and the same shall be prorated to the schools coming under the supervision of the county school superintendent. The compensation herein provided for shall be paid monthly upon the order of the county school trustees; provided, that the salary for the month of September shall not be paid until the county superintendent presents a receipt from the State Superintendent showing that he has made all reports required of him. The county board of trustees may make such further provision as it deems necessary for office and traveling expenses for the county superintendent and any assistant he may have; provided that expenditures for office and traveling expenses shall not exceed three hundred dollars per annum, and the county board of trustees may make provision for the employment of a competent assistant for the county superintendent who shall, in addition to his other duties, act as attendance officer; and said board is hereby authorized to fix the salary of such assistant and pay the

same out of the same funds from which the salary and expenses of the county superintendent are paid; provided, that the county superintendent of Dallas County shall receive an annual salary of \$4800.00, and office expenses of not exceeding \$600.00 per annum, to be paid as provided in this article, and in addition thereto he shall be allowed traveling expenses of not exceeding \$900.00 per annum to be paid monthly out of the general fund of the county by the county treasurer on the order of the commissioners court as said expenses may be incurred. [Acts 3rd C. S. 1920, p. 100; Acts 1923, p. 377.]

Art. 2701. [2763-4] **Ex-officio superintendent.**—In each county having no school superintendent, the county judge shall be ex officio county superintendent and shall perform all the duties required of the county superintendent in this chapter. He shall give bond in the sum of one thousand dollars payable to and to be approved by the commissioners court and conditioned for the faithful performance of his duties. [Id.]

CHAPTER TWELVE.

COUNTY UNIT SYSTEM.

| | Article | | Article |
|---------------------------------|---------|---------------------------------|---------|
| Election | 2702 | Right to acquire property | 2722 |
| County board of education | 2703 | To insure buildings | 2723 |
| Meetings | 2704 | Local revenue and taxation | 2724 |
| Payment for services | 2705 | Election for revenue | 2725 |
| County superintendent secretary | 2706 | Tax levy | 2726 |
| Treasurer of board | 2707 | Duties of county superintendent | 2727 |
| Scope of board's authority | 2708 | Assistants | 2728 |
| To supervise school system | 2709 | Teachers to keep record | 2729 |
| Sanitation | 2710 | District school trustees | 2730 |
| Consolidation of districts | 2711 | Meetings | 2731 |
| Common line districts | 2712 | Assignment of teachers | 2732 |
| To appoint teachers | 2713 | Closing schools | 2733 |
| Grades and courses | 2714 | Janitor | 2734 |
| Date of opening | 2715 | To visit schools | 2735 |
| Census | 2716 | Care of property | 2736 |
| Reports | 2717 | Hygienic condition | 2737 |
| Forms for reports | 2718 | Use of school building | 2738 |
| To provide separate schools | 2719 | Application of law | 2739 |
| Compulsory attendance | 2720 | Abolishment | 2740 |
| May borrow money | 2721 | | |

Art. 2702. **Election.**—Upon the petition, duly signed and verified by the tax rolls of the county, of five hundred qualified voters of any county having a population of one hundred thousand or over, according to the preceding Federal census, the county judge shall call an election in said county within ninety days thereafter to determine whether or not such county shall adopt what is commonly known as the county unit system of education, provided for under this law; such election to be governed by the laws governing the holding of a primary election in and for a county, in which said election is called. The county judge shall prepare a proper form of ballot to be used in such election and furnish such explanations of the law as in his judgment may be necessary and transmit the same to the presiding officer of each election precinct. A majority of all votes cast shall be required to adopt the provisions of this law. The results of said election shall be certified by the county judge to the Secretary of State, and shall take effect as soon as the county board of education hereinafter provided for has been

duly elected and qualified, and this law shall take the place of any existing general or special law affecting said county which may be in conflict with the provisions hereof. [Acts 1923, p. 237.]

Art. 2703. County board of education.—The general management, supervision and control of the public schools and of the educational interests of each county adopting the provisions of this law, shall be vested in the county board of education except as otherwise provided by law, and said board shall perform such duties as are or may be required of it by law. Said board shall be composed of seven members, one of whom shall be elected from each commissioners precinct by the qualified voters of such precinct and three from the county at large who shall hold office for a term of four years. They shall be nominated at the regular primary election held for county officers and elected at the general election. At the first election seven members of said board shall be elected, four of whom shall be elected for a term of two years and three for a term of four years and biennially thereafter. At the first meeting after such election, the members so elected shall determine by lot who shall hold under the four year term and who under the two year term. At subsequent elections, four members and three members shall be elected on alternate years. Such members shall be persons of good moral character, with at least a fair elementary education, and they need not hold teacher's certificates, and shall be of good standing in their respective communities, and known for their honesty and business ability, public spirit and interest in the promotion of public education. Any vacancy in said office shall be filled by a majority of the remaining members and the appointee shall hold office until the next general election following the date of his appointment. If the vacancy is not so filled within thirty days, the State Superintendent shall fill the vacancy. Each such member shall first qualify by taking the official oath, the certification of which shall be filed in the office of the probate judge of the county. The term "Board" when hereafter used in this chapter shall mean the County Board of Education and the term "Superintendent" shall mean the County Superintendent of Education. [Id.]

Art. 2704. Meetings.—Said board shall hold an annual meeting on the first Tuesday in January. At this meeting the board shall elect one of its members to serve as president, and one to serve as vice-president. Other regular meetings shall be held on the first Tuesday in April, July and October of each year and such other special meetings may be held and at such place as the duties and business of the board may require. No motion or resolution shall be declared adopted without the concurrence of the majority of the whole board. [Id.]

Art. 2705. Payment for services.—The members of said board shall receive five dollars a day from the public schools of the county. Such members shall not be allowed pay for more than twenty days in any one year, to be paid in like manner as provided for the pay of teachers. [Id.]

Art. 2706. **County superintendent secretary.**—The board shall during the month of May appoint as its executive officer a county superintendent of education who shall also be secretary of the board. Such appointment may be for a term of two or five years from the first day of July succeeding his appointment. Such person must be a graduate of a standard normal school, or have completed courses in other institutions that in the opinion of said board are equivalent to such education, or must hold a first grade or life certificate, and in addition thereto have had at least three years of successful teaching experience. He shall devote his entire time to public school purposes and shall receive such compensation as said board shall direct, not less than fifteen hundred dollars per annum. As secretary, he shall conduct all correspondence of the board; keep and preserve all its records, receive all the reports required by the board, and see that such reports are in proper form, complete, and accurate. He shall have the right to advise on any question under consideration by the board, but shall have no vote. Said board may, by an affirmative vote of five or more of its members, remove such person for immorality, misconduct in office, incompetency or wilful neglect of duty, or when in the opinion of the board the best interests of the schools require it. If said office is temporarily vacant or said officer is absent by reason of the nature of the business in hand or otherwise, the board shall temporarily appoint some one to act as secretary. [Id.]

Art. 2707. **Treasurer of board.** Said board shall select some suitable person, company or corporation to act as treasurer of the public school funds of the county. Said treasurer shall be selected and he shall qualify and give bond in like manner as provided by law for treasurers of independent school districts, except that the amount of his bond shall be determined according to the estimated amount of the receipts coming annually into his hands. [Id.]

Art. 2708. **Scope of board's authority.**—All the property, estate, effects, money, funds, claims and donations now or hereafter vested by law in the public school authorities of any county for the benefit of the public free schools of any county, are hereby transferred and vested in the county board of education and their successors in office. Said board is authorized, empowered, directed and required to maintain a uniform and effective system of public schools. Real and personal estate granted, conveyed, devised or bequeathed for the use of any particular county, school district, or public school, shall be held in trust by said board for the benefit of any such county, school district, or school. Said board shall determine with and on the advice of the county superintendent of education, the educational policy of the county, and shall prescribe rules and regulations for the conduct and management of the schools. The authority vested in said board shall apply to the county as a whole, including all cities and towns therein. [Id.]

Art. 2709. **To supervise school system.**—Said board shall exercise through the superintendent and his professional assist-

ants, control and supervision of the public school system of the county, subject to the provisions of this law. The board shall consult and advise, through its executive officer and his professional assistants, with school trustees, principals, teachers, and interested citizens, and shall seek in every way to promote the interest of the schools under their jurisdiction. [Id.]

Art. 2710. **Sanitation.**—Said board shall provide sanitary, hygienic, suitable and convenient water closets or outhouses for the children of the public schools under its jurisdiction, not less than two for each school or building when both sexes are in attendance, with separate means of access to each and shall make provisions for keeping same in a clean, comfortable, sanitary and hygienic condition. [Id.]

Art. 2711. **Consolidation of districts.**—Said board shall consolidate schools, wherever in its judgment, it is practicable, and arrange if possible, for the transportation of pupils to and from such consolidated schools. Before consolidating two or more separate schools located in separate school districts said board shall call a meeting of the board of trustees of such school districts to meet with the county board for the purpose of giving such boards of local trustees an opportunity of being heard as to the advisability of making such consolidations. [Id.]

Art. 2712. **Common line districts.**—The county boards of education of two or more counties shall have the power to provide jointly for the maintenance of schools in or near the dividing line of such counties, on the basis of the probable enrollment in such school from the counties represented. [Id.]

Art. 2713. **To appoint teachers.**—Said board shall appoint, upon the written recommendation of the county superintendent, all principals, teachers, clerical and professional assistants for the county authorized by the board. The county board shall suspend or dismiss for immorality, misconduct in office, insubordination, or incompetency, or wilful neglect of duty, or whenever, in the opinion of the board, the best interests of the school require it, superintendents, principals, teachers, or other employes or appointees of the board. [Id.]

Art. 2714. **Grades and courses.**—Subject to the provisions of this law, said board shall on the written recommendation of its secretary, subject to the regulations of the State Board grade and standardize all schools under its jurisdiction and prescribe courses of study for same. A printed copy of these courses of study shall be supplied to every teacher and interested citizen of the county. The elementary schools of the county shall have grades from one to six inclusive, the junior high schools, grades seven to nine inclusive; and the senior high schools, grades ten and eleven inclusive. Upon the recommendation of the secretary, said board shall prescribe the conditions for admission of pupils from the elementary schools to the junior high schools, and from the junior to the senior high schools. [Id.]

Art. 2715. **Date of opening.**—Said board in order to expedite the payment of the teachers' salaries and to make possible efficient supervision, shall fix a uniform date for each fiscal year

for the opening of all schools in the county under its jurisdiction, and all schools, so far as said board deems practicable, shall open on said date. If for any reason, the board shall permit any schools to open at a later date, the reports and the records of such schools shall be made so as to conform to the scholastic months, counting from said uniform date. [Id.]

Art. 2716. **Census.**—Said board subject to the rules and regulations of the State board, shall cause to be taken in the manner provided by law, under the direction of its secretary, a census of the children in the county within scholastic age. Upon the recommendation of its secretary, the board shall appoint a sufficient number of enumerators to take the census, and shall fix their compensation and order them paid out of the available funds of the county. The report of the enumerators shall be made under oath to said secretary not later than the fifteenth day of April next succeeding the time of the taking of the census, and on or before June first following, said secretary shall make his consolidated report to the State board. The said secretary upon the direction at any time of the State Superintendent, shall cause the whole or any part of any school census in his county to be retaken. [Id.]

Art. 2717. **Reports.**—Said board shall cause to be prepared and published annually, in the month of October, in sufficient quantities for distribution among the citizens of the county, a report covering the condition, current accomplishment, and needs for the improvement of the schools, and also a statement of the business and financial transactions of the board with an itemized account of all receipts and expenditures of said board. Such statement must show a total amount of school funds received by the county board and the sources from which derived; the amount expended for teacher's salaries in each of the several school districts of the county and the amount paid out of the school funds for any other purpose than teachers' salaries must be shown and shall include the name of the persons to whom paid, the amount of each of said items and the purpose for which said amounts were expended. Said board shall make all reports at the time and in the manner required by the State Board and the secretary of said county board shall prepare the same. [Id.]

Art. 2718. **Forms for reports.**—Said secretary shall submit to the board forms and blanks on which school trustees, supervisors, attendance officers, principals, teachers, janitors and other regular employes shall make such reports as said board shall require of them and said board shall prescribe the same. [Id.]

Art. 2719. **To provide separate schools.**—Said board shall provide schools of two kinds; those for white children and those for colored children. Such schools respectively, shall be free to all such children over six years of age. This article shall not be construed as in any wise reducing the scholastic age relative to State apportionment. [Id.]

Art. 2720. **Compulsory attendance.**—Said board shall, upon

the recommendation of its secretary, arrange the county into one or more appropriate and convenient compulsory school attendance districts; shall keep full and complete records of the boundaries thereof, and shall see to it that the compulsory attendance law is enforced. [Id.]

Art. 2721. **May borrow money.**—Said board shall have authority, upon the recommendation of its secretary to borrow money on the credit of the school fund of the county to meet salaries of teachers and current expenses when the current funds on hand are not sufficient to meet the same, to be secured by a pledge of the current revenues of the year. All such current loans, under the provisions of this article and other regulations of the board, shall be paid within the county school year in which such current loans are made, and from the funds accruing for the support of the schools within such given school year. The amount so borrowed shall at no time exceed one-third of the sum estimated for current expenses, as shown by the school budget of that year. [Id.]

Art. 2722. **Right to acquire property.**—Said board shall have the right to purchase, acquire by the right of eminent domain, lease, receive, hold, transmit and convey the title to the real and personal property for school purposes, except where otherwise provided. It shall have the power to sue and contract, all contracts to be made after resolutions have been adopted by the board and spread upon its minutes. All processes shall be executed by service on the executive officers of the board. [Id.]

Art. 2723. **To insure buildings.**—Said board is charged with the duty of seeing that every school building whose title is vested in the State, county or school district, is insured for its insurable value, and to this end may use such a part of the proceeds of the maintenance funds of the schools herein provided as may be specifically set apart for such purpose by said board. [Id.]

Art. 2724. **Local revenue and taxation.**—Said board shall form a budget of the county funds to be used for the benefit of the public schools within said county during the year in which said funds are to be used, and which shall be composed of the State and county available school funds and of any other funds that may be received for any schools in said county from the State and also such local funds as may be derived by local taxes as hereinafter provided for. Immediately upon the adoption of this law and at such other times as they may deem necessary and to the best interest of the schools, said board shall call an election of all qualified taxpaying voters of the county to determine whether or not the county will vote in favor of levying a tax for the maintenance of schools and bonds for the purchase of sites and the erection of school houses and teacherages. The aggregate amount of bonds issued for said purpose and the amount of maintenance tax shall never exceed one dollar on the hundred dollar valuation of taxable property and the specific rate of tax need not be determined in the election. Any district within said county may continue to levy and collect any tax for maintenance and bonds heretofore provided, and any district within said

county may hereafter provide by an election as provided in subdivision 4 of Chapter 13 for the levy and collection of an additional tax for maintenance and bonds, the proceeds of which tax are to be used for the benefit of the schools within said district. All property assessed for school purposes by the county shall be assessed at such valuation as may be fixed by a county board of equalization, and assessed and collected by an assessor and collector of taxes all of which shall be appointed by the county board of education. [Id.]

Art. 2725. Election for revenue.—Said board shall order the sheriff to post a notice of such election at some public place within each local school district in said county, for three weeks before the election, and the sheriff shall obey such order. Not more than one such election shall be held in the same scholastic year. The president of said board shall appoint a presiding officer for each voting place to hold said election who shall make due returns thereof as required by law for holding a general election; and shall prepare ballots therefor at the county's expense, which shall have written or printed thereon: "For maintenance tax", and "Against maintenance tax". If the election is for the purpose of issuing bonds, the form of the ballot shall be "For the issuance of bonds and the levying of the tax in payment thereof", or "Against the issuance of the bonds and the levying of the tax in payment thereof". All polls for local tax elections shall be opened at 8 o'clock a. m. and shall be closed at seven o'clock p. m. and none of the officers holding such election shall be entitled to compensation therefor. All persons who are legally qualified voters of this State and of the county of their residence and who are resident property taxpayers in said county, shall be entitled to vote in such county tax elections. Returns shall be made to the county board of education and the result declared at its first meeting, as in case of general elections. Any person may challenge a voter, but if the challenged party takes an oath that he is qualified as a voter of the State and county, and that he is a resident property taxpayer in said district, then he shall be entitled to vote. [Id.]

Art. 2726. Tax levy.—Said board shall, at the time of levying the taxes for county purposes, also levy upon such school district the rate of tax said district has voted upon itself, or, if the proposition shall have been, "For a school tax not exceeding seventy-five cents on the one hundred dollar valuation of taxable property in the district," said board shall levy such rate within that limit as shall have been determined by the board of trustees of said district and the county superintendent and certified to said county board of education by the county superintendent. The tax assessor shall assess said tax as other taxes are assessed, and make an abstract showing the amount of special taxes assessed against each school district in his county, and furnish the same to the county superintendent, on or before the first day of October for the year for which such taxes are assessed; and the taxes levied upon the real property in said districts shall be a

lien thereon, and the same shall be sold for unpaid taxes in the manner and at the time of sales for State and county taxes. A special tax voted in any district after the levy of county taxes shall be levied at any meeting of the county board of education, prior to the delivery of the assessment rolls by the assessor. The tax assessor shall assess, and the tax collector shall collect, said taxes for educational purposes as other taxes are assessed and collected. The tax assessor and collector shall each receive a commission of one-half of one per cent for assessing and collecting such tax. The tax collector shall pay all such taxes to the county treasurer; and said treasurer shall credit the treasurer of the county school board the amount belonging to it and pay out the same in accordance with the law. [Id.]

Art. 2727. Duties of county superintendent.—The county superintendent shall see that the laws relating to the schools and the rules and regulations of the State and county boards of education are carried into effect. He shall have authority to administer oaths and to examine witnesses under oath in any part of the county on any matter pertaining to the public schools of the county, and to cause the examination to be reduced to writing. He shall in addition to the other duties required of him hereunder, perform the following duties:

1. Recommend to the county board of education, the kind, grade, the location of schools and plans therefor to be established and maintained, and the compulsory school attendance and local districts to be established, educational policies to promote the educational interests of the county and rules and regulations for the conduct of the schools, and for the admission of pupils to the junior and senior high schools.

2. Recommend to said board for condemnation, school buildings which are unsanitary and unfit for use. He shall recommend in writing all repairs, purchase of play grounds, school sites and buildings to be erected with State, county and local aid, and shall see that the plans and specifications, and the rules and regulations of the State Department with reference to the erection, repair, and equipment of the school buildings are carefully followed. He shall approve in writing all contracts of whatever kind entered into by the county board of education.

3. Work out plans for the consolidation of schools, and for the grounds, buildings, and equipment of such consolidated schools and submit the same to said board.

4. Grade and standardize all public schools of the county, prepare rules and regulations therefor, and prescribe courses of study for the schools of the county and submit the same to said board. Printed copies of such courses shall be supplied to every teacher and interested citizen of the county.

5. Be the representative of the State Superintendent in all State examinations for teachers' certificates conducted within the county, and shall perform such duties in connection therewith as may be required by the State Board.

6. Organize and attend county and local institutes for teach-

ers and citizens, advise teachers as to their further study in professional reading, assist parents and citizens to acquire knowledge of the aims and work of the schools, and call conferences with principals, teachers, attendance officers, school trustees and other interested citizens to develop interest in education and improve the condition of the schools.

7. Visit the schools, observe the management and instructions, and give suggestions for the improvement of the same.

8. Prepare an annual school budget for the schools of the county and shall submit the same to said board; and shall in every way seek to secure funds for the support and development of the schools of the county. He shall annually publish in a newspaper printed at the county seat a full itemized statement of the receipts and disbursements of the county at the time he forwarded the same to the State Superintendent.

9. On or before the first day of July of each year, forward to the State Superintendent, on blanks to be furnished by the latter, an annual report of the public schools of his county for the preceding year and submit a copy of same to said county board. If he fails, neglects, or refuses to make such statement, the county treasurer of the school funds is authorized and instructed to withhold the amount due him for the preceding month or months as salary, until said report has been duly received and approved by the State Superintendent.

Art. 2728. **Assistants.**—The county board of education may, in its discretion, provide, upon the nomination of its secretary, at least the following assistants: An elementary school supervisor and a statistical and stenographic clerk. No person shall be eligible for appointment as such supervisor who does not hold a certificate of graduation from a State normal school or the equivalent thereof. Said board may employ additional clerical and professional assistants, including health supervisors, and may reimburse them for all traveling expenses necessary in the performance of their official duties. The county commissioners shall provide said secretary and his professional and clerical assistants with ample, convenient and comfortable office quarters, and provide necessary forms and supplies, furniture and office equipment, stationery and postage required by them in the discharge of their official duties. [Id.]

Art. 2729. **Teachers to keep record.**—No teacher shall be entitled to receive payment for services unless all the current records of the school have been kept with care and accuracy, and no teacher or other employe of the board shall be entitled to receive payment for services unless all records required by the county board of education have been properly made and submitted. [Id.]

Art. 2730. **District school trustees.**—Each school district shall, in the manner provided by law, elect for every school in the county, discreet, competent and reliable persons of mature years, not exceeding three in number, residing near the school house, and having the respect and confidence of the community, to serve as trustees of the school. Such trustees shall care for the prop-

erty, look after the general interests of the school, and from time to time make reports to the county board of education, through its secretary, showing the progress and needs of the schools and the will of the people in regard to the schools. [Id.]

Art. 2731. **Meetings.**—Said trustees shall hold a meeting on the first Saturday in June of each year or as soon thereafter as practicable. At this meeting, the board shall appoint one of its members as chairman and shall give notice of such appointment to the county board of education. Other regular meetings shall be held at least twice during the scholastic year, and such special meetings shall be held as the duties of the board require. [Id.]

Art. 2732. **Assignment of teachers.**—Said trustees shall have the power by unanimous vote to refuse to accept the original assignment by the county board of education, of any teacher, not later than thirty days before the time set for the opening of the school upon written notification to the county superintendent of education setting out the reason for such refusal, and it is hereby made the duty of said superintendent to nominate another teacher for such school; provided, however, that not more than three such teachers shall be assigned to any one place under the provisions of this article. Said trustees may file written charges with said county board requesting the removal of the principal or any teacher of said schools. [Id.]

Art. 2733. **Closing schools.**—No teacher shall have the power to close the school during the school hours unless in case of an emergency without the consent of the school trustees or the county superintendent of education. [Id.]

Art. 2734. **Janitor.**—Said trustees, with the approval of the principal, may recommend the appointment of a janitor for the school under its jurisdiction. [Id.]

Art. 2735. **To visit schools.**—Said trustees shall visit the schools under their jurisdiction at least once each month and consult with the teachers and principals of the schools as to the progress of the pupils, conditions and cleanliness of the school and the grounds belonging to same, and give such aid as in their power for the advancement of said school. [Id.]

Art. 2736. **Care of property.**—Said trustees shall have the care of the building and grounds, the school apparatus and other school property. They shall attend to all incidental repairs and pay for the same out of the incidental funds collected in accordance with this chapter, provided that when repairs are to be paid for out of other than incidental funds, the amount to be expended shall be approved by the county superintendent of education and authorized by the county board of education before the repairs are made. [Id.]

Art. 2737. **Hygienic condition.**—The school trustees shall see that the water closets or out houses connected with the school are kept clean, comfortable, and in a sanitary and hygienic condition. [Id.]

Art. 2738. **Use of school building.**—The school trustees shall have the power in their discretion to authorize the use of the

school building for such civic, social, recreational and community gatherings as in their opinion do not interfere with the principal use of the said school building or property, and provided that the building is placed in as clean a condition as it was when turned over to the person or persons requesting its use, ordinary wear and tear excepted. [Id.]

Art. 2739. **Application of law.**—All reference to schools in this law shall be understood to apply alone to public schools, and the authority granted by this law to the county board of education and the county superintendent of education, of general supervision, control and management of the schools and the educational interests of the county, and the establishment of an educational policy for such county shall apply alone to the public school system. [Id.]

Art. 2740. **Abolishment of unit system.**—Any county operating under this law, any time after two years from the adoption hereof, may by majority vote abolish said county unit system at an election held after the presentation of a petition to abolish the same, said petition and election to conform to the provisions of this law governing the adoption of the county unit system. [Id.]

CHAPTER THIRTEEN.

SCHOOL DISTRICTS.

1. COMMON SCHOOL DISTRICTS.

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| Establishment of districts..... | Article 2741 | Control of schools..... | Article 2749 |
| To designate districts..... | 2742 | Contracts with teachers..... | 2750 |
| County line districts..... | 2743 | Check for payment of teacher..... | 2751 |
| County line districts: powers..... | 2744 | Contracts for building..... | 2752 |
| Election of trustees..... | 2745 | Sale of school property..... | 2753 |
| Conduct of election..... | 2746 | Control of school property..... | 2754 |
| Official ballots..... | 2746a | Separate schools..... | 2755 |
| Removal of trustee..... | 2747 | Title to property..... | 2756 |
| Trustees a body corporate..... | 2748 | | |

Art. 2741. [2815-6] **Establishment of districts.**—The commissioners courts of all organized counties not already subdivided shall subdivide their respective counties into convenient common school districts and designate them by number. Any county hereafter organized shall be so subdivided before the beginning of the next ensuing school year after its organization. The commissioners court of any organized county, to which any unorganized county is attached for judicial purposes, may, and, upon written petition of not less than ten resident citizens of such unorganized county shall create such unorganized county into one or more school districts, and shall cause an order to that effect to be entered upon the minutes of said court. Said courts may reduce the area of any common school district, create additional school districts, consolidate two or more adjacent districts, or subdivide any school district, if necessary for the interest of the school children; provided, no school district shall be established so as to contain less than nine square miles of territory. The area of a school district having an outstanding bonded indebtedness, shall never be reduced until after such bonded indebtedness shall have been fully discharged.

In counties containing a population of less than ten thousand,

no common school district shall be organized or surveyed in such a manner that the geographical center of the same will be more than four miles from the farthest line of said district. All districts shall be located as conveniently as possible to the scholastic population. [Acts 1905, p. 263; Acts 1913, p. 259.]

Art. 2742. [2817] **To designate districts.**—Said courts shall give the metes and bounds of each district, and shall designate the same carefully by giving the whole surveys and parts of surveys with acreage of whole surveys and approximate acreage of parts of surveys in each district, and the county clerk shall carefully record the same; and each district shall be given a number which shall be painted in large letters or figures over the doors of the school houses, said signs to be provided by the district trustees of each district. [Id.]

Art. 2743. **County line districts.**—The boards of county school trustees shall have full power and authority to create common school districts, to contain territory within two or more counties. In creating said district each such board shall pass an order describing the territory to be included in such district by metes and bounds, giving the course and direction with the exact length of each line contained in such description and locating each corner called for upon the ground, and shall also give the acres of each survey and parts of survey of lands contained in such district, together with a map showing the conditions upon the ground as described in the field notes, giving the number of acres of land contained in each survey and parts of survey contained in each county; also showing the exact position and location of the county line in the territory created into such district. Said order shall also designate and name some one of the counties having territory included in the description of such district which shall manage and have control of the public schools therein for all school purposes.

Said district shall have no authority or power until said order has been passed by the board of county school trustees of each county having territory included therein. No common county line school district shall be created with or changed to a less area than nine square miles, and shall be laid out in as near the shape of a square as possible, and in no event shall the length of such district be greater than the width plus one-half of the width of such district. [Acts 1909, Ch. 17; Acts 1911, p. 200; Acts 1917, p. 441.]

Art. 2744. **County line districts: powers.**—Common county line school districts shall have all the rights, powers and privileges of common school districts, and for all school purposes, shall be managed and controlled by the county named in the order creating such district, and should such district desire to levy the special tax authorized by law to be levied for the purpose of the maintenance of its schools, or to issue bonds in accordance with the limitations for such purpose provided by law for common school districts, or both, after an election has been held in such common county line school district as provided by law and it has been determined by a majority vote that such

district shall levy such special tax or issue such bonds, the commissioners court of the county having control of such district shall pass an order levying such tax or issuing such bonds, or both, against the territory included within such county where the commissioners court in control of the school is located, and such order levying said tax or issuing said bonds and levying a tax to pay the interest and sinking fund, shall be passed by the commissioners court of each county having territory in such district. Each such court shall continue to levy the said tax at such rate as is determined and certified by the county superintendent of the county having control of said schools until such tax be diminished or abrogated, as provided by law, or such bonds, if such a district has outstanding bonds, have been fully and finally paid and discharged. The tax assessor shall assess the taxes levied by the commissioners court of his county against the territory included in such county line school district for each year that such tax is levied, and shall make up a separate tax roll covering the special tax on territory in his county included in the county line school district, and deliver it with the general tax rolls of his county, which shall guide the tax collector in collecting the local taxes for such school district. The tax collector shall collect such special tax for such county line district in his county for every year that such tax has been levied in such districts and keep a separate account covering the territory of his county included in county line school districts, for the purpose of determining how much tax has been collected, and such taxes shall be paid by his county to the county line school district. Such district shall not be changed or abolished except by the consent of the commissioners court of each county having territory contained therein, and if such a district has outstanding bonds the same shall not be changed or abolished in any way until after such bonds are finally paid and discharged. [Acts 1911, p. 200.]

Art. 2745. [2818] **Election of trustees.**—On the first Saturday in April of each year, the qualified voters of each common school district, at a school district meeting for that purpose, shall elect three trustees for said district, who shall enter upon the discharge of their duties on the first of May next following. No person shall be trustee who cannot read and write the English language intelligibly, and read, comprehend and interpret the school laws of Texas, and who has not been a resident of such district for six months prior to his election. They shall immediately organize by electing one of their number president and one secretary. The term of office of said trustees shall be divided into two classes, and they shall draw for the different classes; and one drawing number one shall serve for one year, and those drawing numbers two and three shall serve for two years. On the first Saturday in April of each year thereafter, alternately one and two trustees shall be elected each of whom shall serve for two years. Said trustees shall first take the official oath and shall, as soon as practicable, file same with the county superintendent or county judge. [Acts 1905, p. 263.]

Art. 2746. [2819-20] **Conduct of election.**—Said trustees shall appoint three persons, qualified voters of the district, who shall hold such election and make returns thereof to said trustees within five days after such election, and said persons shall receive as compensation for their services the sum of one dollar each, to be paid out of the general fund of the county in which said election was held. The board of trustees, when ordering such election and appointing persons to hold election, shall give notice of the time and place where such election will be held, which notice shall be posted at three public places within the district at least twenty days prior to the date of holding said election. If, at the time and place for holding such election, any or all of the persons so appointed to hold such election are absent or refuse to act, then the electors present may select of their number a person or persons to act in the place of those absent or refusing to act. Said board of trustees shall meet and canvass the returns of said election within five days after returns have been made and declare the result of said election and issue to the persons so elected their commissions as such trustees, and shall notify the county judge or the county superintendent if the county has a superintendent. [Id; Acts 1915, p. 204.]

Art. 2746a. [2820] **Official ballots.**—All of the ballots for the election of school trustees in common school districts and in independent school districts having fewer than 500 scholastics as shown by the last preceding scholastic census roll approved by the State Department of Education and exclusive of transfers shall be printed with black ink on clear white paper, of sufficient thickness to prevent the marks thereon being seen through the paper, and be of uniform style; at the top of the ballot shall be printed "Official Ballot,..... Independent School District," the number or name of the school district in which the election is to be held to be filled in by the judge of the county when he orders the ballots printed. Any person desiring to have his name placed on said official ballot, as a candidate for the office of trustee of a common school district or independent school district as herein provided shall, at least ten days before said election, file a written request with the county judge of the county in which said district is located, requesting that his name be placed on the official ballot, and no candidate shall have his name printed on said ballot unless he has complied with the provisions of this section; provided that five or more resident qualified voters in the district may request that certain names be printed. The county judge, upon receipt of said written request, and at least five days before the election, shall have the ballots printed as provided in this Act, placing on the ballot the name of each candidate who has complied with the terms of this Act and deliver a sufficient number of printed ballots and necessary election supplies to the presiding officer of the election at least one day before the election is held, the said election supplies including the ballots, poll lists and tally sheets to be delivered by the county judge by mail or in any other manner by him deemed best, to the presiding officer of said election in

sealed envelopes, and said sealed envelopes shall not be opened by the election officers until the day of the election. The expense of printing the ballots and delivering same to the presiding officers, together with the other incidental expenses, shall be paid out of the general funds of the county. The election officers of said election shall be required to use the ballots so furnished by the county judge as provided by the terms of this Act. The election officers shall make returns of said election to the county judge and certify the result in the same manner as is now required by law, and said ballot boxes, which have been furnished by the local school officials shall be sent to the county judge and said election returns shall be canvassed by the commissioners' court, and together with ballot boxes shall be safely preserved for a period of three months next after the date of the election. [Acts 1925, p. 329.]

Art. 2747. **Removal of trustee.**—If a trustee so elected or appointed as herein provided, who in the opinion of the county superintendent, does not possess the qualifications prescribed by law, the county superintendent shall refuse to recognize such person who has been so elected and make written request within twenty days after such election, of the county attorney, or district attorney if there be no county attorney, to institute and prosecute with dispatch suit in the name of the State for the removal of such trustee, in the district court of the county where such trustee resides, at the option of said attorney. Upon good cause shown within the discretion of the court where such suit is pending, it shall be lawful to enjoin and restrain such person from acting as such trustee during the pendency of such suit. It shall be lawful to summon such trustee before the court in the trial of such cause, and there make examination of him as to his qualifications to serve as such. If after being so summoned, such trustee fails, neglects or refuses to obey said summons and fails to appear for the purpose of examination, and fails or refuses to submit to such examination, such failure, neglect or refusal shall be prima facie evidence of his disqualification, and because thereof the court trying such cause shall be authorized to render thereupon judgment by default against such trustee so defaulting, removing him from his said office and declaring the same vacant. The county board of education of the county where such trustee has been elected shall appoint some suitable person, who is qualified by law to act as such trustee, if during the pendency of such suit said trustee shall be enjoined from so acting. If such trustee so elected shall be so removed then such trustee so appointed shall continue to serve until the next regular election of school trustees for such district. The county board of education shall fill a vacancy in said office by appointing a suitable person qualified by law to act as trustee until the next regular election of school trustees for such district. [Acts 1905, p. 263; Acts 1907, p. 204; Acts 1917, p. 447.]

Art. 2748. [2822] **Trustees a body corporate.**—Said trustees shall be a body politic and corporate in law, and shall be known by and under the title and name of district trustees of

district number _____, and county of _____, State of Texas; and as such may contract and be contracted with, sue and be sued, plead or be impleaded, in any court of this State of proper jurisdiction, and may receive any gift, grant, donation or devise made for the use of the public schools of the district. All reports and other official papers shall be headed with the number of district and name of county. [Acts 1905, p. 263.]

Art. 2749. [2823-4] **Control of schools.**—Said trustees shall have the management and control of the public schools and public school grounds; and they shall determine how many schools shall be maintained in their school district, and at what points they shall be located; provided, that not more than one school for white children and one school for colored children shall be established for each sixteen square miles of territory or major fraction thereof, within such district; and they shall determine when the schools shall be opened and when closed. They shall have the power to employ and dismiss teachers; but in case of dismissal, teachers shall have the right of appeal to the county and State Superintendents. They shall contract with teachers and manage and supervise the schools, subject to the rules and regulations of the county and State Superintendents; they shall approve all claims against school funds of their district; provided, that the trustees, in making contracts with teachers, shall not create a deficiency debt against the district. [Id.]

Art. 2750. [2825] **Contracts with teachers.**—Trustees of a district shall make contracts with teachers to teach the public schools of their district, but the compensation to a teacher, under a written contract so made, shall be approved by the county superintendent before the school is taught, stating that the teacher will teach such school for the time and money specified in the contract. The board of trustees shall have authority, whenever the average daily attendance exceeds thirty-five pupils, to employ one competent assistant to every thirty-five pupils of such excess and fractional part thereof exceeding fifteen pupils. All children within the scholastic age residing in such district, though they may have settled in such district since the scholastic census was taken, shall be entitled to receive all the benefits of the schools of such district. In a district that levies a special school tax the trustees shall have the right to increase the salaries of teachers and the scholastic age, and may also have the schools taught longer than six months, if it is deemed advisable. [Id.]

Art. 2751. [2826] **Check for payment of teacher.**—The amount contracted by trustees to be paid a teacher shall be paid on a check drawn on the county treasurer by a majority of the trustees and approved by the county superintendent. [Id; Acts 1921, p. 237.]

Art. 2752. [2844-5] **Contracts for building.**—The trustees of a school district shall contract for the erection of the buildings and superintend the construction of the same; and the

county superintendent shall draw his warrant upon the school fund so appropriated only upon the accounts first approved by them. No mechanic, contractor, material man, or other person, can contract for, or in any other manner have or acquire, any lien upon the house so erected or the land upon which the same is situated; and all contracts with such parties shall expressly stipulate for a waiver of such lien. [Acts 1905, p. 263.]

Art. 2753. [2846] **Sale of school property.**—The trustees of any school district, upon the order of the county trustees prescribing the terms thereof, when deemed advisable, may make sale of any property belonging to said school district, and apply the proceeds to the purchase of necessary grounds, or to the building or repairing of schoolhouses, or place the proceeds to the credit of the available school fund of the district. [Id.]

Art. 2754. [2847] **Control of school property.**—All school houses erected, grounds purchased or leased for a school district, and all other property belonging thereto, shall be under the control of the district trustees of such district. [Id.]

Art. 2755. [2848] **Separate schools.**—A school house constructed in part by voluntary subscription by colored parents or guardians, and for a school for colored children, shall not be used for white children without the consent of the trustees of the district, and a like rule shall protect the use of school houses erected in part by voluntary subscription of white parents or guardians for the benefit of white children. [Id.]

Art. 2756. [2849] **Title to property.**—All conveyances, devises, and bequests of property for the benefit of the public schools made by any one for any county, city or town, or district, shall, when not otherwise directed by the grantor or devisor, vest said property in the county school trustees, or the board of school trustees of the city or town, or the trustees of the school district, or their successors in office, as the trustees for those to be benefited thereby, and the same, when not otherwise directed shall be administered by said officers under such rules as the State Superintendent may establish. [Id.]

2. INDEPENDENT DISTRICTS IN TOWNS.

| | | | |
|-------------------------------|------|---------------------------------------|------|
| Incorporation of town..... | 2757 | Small districts: laws applicable..... | 2763 |
| Board of trustees..... | 2758 | Districts in several counties..... | 2764 |
| City control of district..... | 2759 | Extension of boundaries..... | 2765 |
| City control: ballot..... | 2760 | Change of boundaries..... | 2766 |
| Extent of city control..... | 2761 | Change of districts..... | 2767 |
| City control: officers..... | 2762 | | |

Art. 2757. [2851-54] **Incorporation of town.**—A town or village authorized by law to incorporate for municipal purposes, or having two hundred inhabitants or over, may form an incorporation for free school purposes only, which may include within its bounds a town or village incorporated for municipal purposes, the same not having assumed control of the public schools within its limits. The territory so incorporated shall not exceed an area of twenty-five square miles, and said corporation shall be laid out in a square as near as is practicable with reference to the location of the school building. When so desiring, written application shall be made therefor to the county judge

and an election held as provided for the election of school trustees hereunder. If at such election, a majority of the votes cast be in favor of the incorporation, the county judge shall make return thereof, and cause a record of the result of such election to be made, the same as provided by law when a town or village votes to incorporate for municipal purposes. Upon such entry such town or village hereinafter called an "independent school district," shall be regarded as duly incorporated for the purpose of establishing and maintaining free schools therein, and shall, upon notice to the State Board by the board of trustees hereinafter provided for, receive such pro rata share of the available school fund as its scholastic population may entitle it to. All school incorporations formed under the provisions of this law shall have exclusive control of the public free schools within their limits, and shall have the right to levy and collect taxes and issue bonds for school purposes, the same as school incorporations heretofore formed. When a town or village is included in a corporation for free school purposes, and such town or village shall afterwards be incorporated for municipal purposes, it shall not thereby acquire a right to take the control of the schools within its limits out of the hands of the school corporation. [Acts 1905, p. 263.]

Art. 2758. [2852-3] Board of trustees.—The county judge shall order an election of seven school trustees for such town or village so incorporated for school purposes, who shall be elected in the same manner and at the same time, and whose term of office shall be the same as that of trustees of districts. They shall be vested with the full management and control of the free schools of such incorporated town or village, and shall in general be vested with all the powers, rights and duties in regard to the establishment and maintaining of free schools, including the powers and manner of taxation for free school purposes that are conferred by the laws of this State upon the governing bodies of incorporated cities and towns. [Id.]

Art. 2759. City control of district.—When a town or village incorporated for free school purposes only under the general law, and hereinafter designated as an "independent school district," and a city or town forming a part of such independent school district, which is incorporated for municipal purposes, under the general law, and hereinafter referred to as an incorporated city or town, shall desire to have the public schools within such independent district assumed by or under the control of such city or town, the same shall be done in the following manner:

Whenever as many as fifty or a majority of the resident qualified voters of such independent school district petition the district board of trustees thereof to order an election for the purpose of voting on such proposition of whether or not the public free schools in said district shall be assumed and controlled by such incorporated city or town, said board shall order an election to be held at the usual voting places within such district, and which election shall be ordered and held in conformity

with the law governing bond and tax elections in independent school districts, except the qualified electors voting thereat need not be property tax payers, but must be qualified to vote under the laws of this State regulating general elections. [Acts 1919, 2nd. C. S. p. 32.]

Art. 2760. **City control: ballot.**—All persons voting at such election in favor of such proposition shall have written or printed on their ballots the words “For assuming control of the public free schools of _____ Independent School District by the city of _____, Texas,” and all persons voting at such election not in favor of such proposition shall have written or printed on their ballots the words “Against assuming control of the public free schools of _____ Independent School District by the city of _____, Texas.” [Id.]

Art. 2761. **Extent of city control.**—If a majority of the qualified voters voting at the election in such independent school district, shall vote in favor of the incorporated city or town assuming control of the schools of such independent school district, the district board of trustees shall certify the results of such election to the governing authority of such incorporated city or town, together with a certified copy of the record showing all the proceedings had in the incorporation of such independent school district and all boundary extensions thereto, if any, together with a well defined map accurately showing the territory described in such record. If said governing authority finds that such election has been in all respects lawfully held and the returns thereof duly and legally made, then it shall, by ordinance duly passed and entered of record, assume control and management of the public free schools within its limits, in conformity with the provisions and requirements of subdivision 3 of this chapter except as otherwise provided herein; provided, that if the boundaries of such independent school district do not coincide with the boundaries of the incorporated city or town, then the city governing body shall on the same day pass an ordinance extending its corporate line for school purposes only so that the same shall coincide with and embrace the same territory within such independent school district. If such independent school district shall have an outstanding bonded indebtedness, then the incorporated city or town shall become liable and bound for the payment of such bonded indebtedness and the governing body thereof, shall levy and cause to be assessed and collected, upon all property subject to taxation within the limits of such incorporated city or town or within the limits of such corporation as extended for school purposes only if the boundaries of the former independent school district were not the same as the boundaries of the incorporated city or town, taxes to pay interest on such bonds and provide a sinking fund sufficient to redeem the same at maturity, and such tax thereafter shall be annually levied and collected so long as such bonds, or any of them, are outstanding and unpaid; and provided further that the assumption of the control of the schools of such independent school district shall not abrogate or affect any main-

tenance tax theretofore authorized in such independent school district and such tax shall thereafter be annually levied, assessed and collected by the proper authorities of such incorporated city or town, until increased or changed by the qualified voters in conformity with the provisions and requirements of subdivision 4 of this chapter. [Id.]

Art. 2762. **City control: officers.**—Nothing in this law shall be construed as affecting the terms of office of any trustee previously elected in such independent school district and serving as such at the time of the assumption of the control of the district schools by the incorporated city or town, and such trustees shall be vested with the same authority as is conferred by law upon school trustees in cities and towns constituting separate and independent school districts, and shall thereafter be elected in the same manner as school trustees for such cities and towns, in accordance with the provisions of the succeeding subdivision of this chapter. [Id.]

Art. 2763. [2856] **Small districts: laws applicable.**—All incorporated districts, having each fewer than one hundred and fifty scholastics according to the latest census, shall be governed in the general administration of their schools by the laws which apply to common school districts; and all funds of such districts shall be kept in the county depositories and paid out on order of the trustees approved by the county superintendent. [Id; Acts 1909, p. 17.]

Art. 2764. **Districts in several counties.**—Independent school districts may be created containing territory within two or more counties in the same way and manner that towns and villages are created by law for municipal purposes; provided, that the map required by the law governing said incorporation shall show the correct location and position of the county lines involved in such incorporation proceedings. Said incorporated free school district containing territory in two or more counties shall have all the rights, powers, and privileges granted under the general laws to incorporations for free school purposes only. The same modes, manners, and methods of government and procedure provided by the general law for independent school districts incorporated for free school purposes only shall govern the management and control of the incorporated school districts for free school purposes containing territory within two or more counties. [Acts 1911, p. 200.]

Art. 2765. [2865] **Extension of boundaries.**—Whenever the territory heretofore incorporated, or which may hereafter be incorporated, for free school purposes, shall contain less than twenty-five square miles, and thereafter the majority of the inhabitants, qualified to vote for members of the Legislature, of any territory adjoining the limits of the town and village so incorporated, shall desire such territory to be added to and become a part of such incorporated town or village for free school purposes only, and a majority of such qualified voters sign a petition to that effect, any three of such qualified voters may file with the president of the board of trustees of such in-

corporated town or village the said petition, fully describing by metes and bounds the territory proposed to be annexed and showing its location with reference to the existing territory of the town or village already incorporated, provided that said territory proposed to be added must be contiguous to one line of said corporation. Upon so filing said petition, affidavits and descriptions, said president shall submit the same to the board, and, if upon investigation by the board it is found that the proposed addition will not increase the corporate limits so that the whole, when so increased, will exceed twenty-five square miles, the said board of trustees, by resolution duly entered upon its minutes, may receive such proposed territory as an addition to, and become a part of, the corporate limits of such town or village; a copy of which resolution, containing a description of the added territory, shall be filed for record in the county clerk's office of the county in which said town or village is situated, after which the territory so received shall be a part of said town or village; and the inhabitants thereof shall thenceforth be entitled to all the rights and privileges, and subject to the same liabilities of taxation as other citizens, and all property within said limits shall thenceforth be subject to such taxation as may have been, or may hereafter be, provided by said incorporation for free school purposes only. [Id.]

Art. 2766. [2866] **Change of boundaries.**—The commissioners court of any county shall have the authority to change the boundaries of any independent district incorporated for free school purposes only, situated in said county, when in the judgment of said court the public good demands such change; provided, that the president of the board of trustees of the independent district to be affected by the proposed change shall first be notified, and said board of trustees shall have the right to be heard in case there is opposition to the change. No such change shall be made that would reduce the total value of taxable property in any independent district against which there are outstanding bonds legally issued. [Id.]

Art. 2767. **Change of districts.**—All independent school districts incorporated for free school purposes within the State of Texas may be changed or abolished in the same way that is provided for the change or abolishment of a town and village or city and town, as provided by law; provided that no such district shall be diminished, changed, or abolished while it has an outstanding debt, either of bonds or otherwise, as authorized by law, against it. [Id.]

3. INDEPENDENT DISTRICTS IN CITIES.

| | | | |
|--------------------------------------|--------------|----------------------------------|--------------|
| Assumption of control..... | Article 2768 | Board shall order elections..... | Article 2776 |
| Election..... | 2769 | Terms of office..... | 2777 |
| Shall receive pro rata of funds..... | 2770 | Oath of office..... | 2778 |
| General laws shall govern..... | 2771 | Organization of board..... | 2779 |
| Property vested in trustees..... | 2772 | Powers of trustees..... | 2780 |
| Sale of school property..... | 2773 | Teachers' contracts..... | 2781 |
| Appointment of trustees..... | 2774 | Cities exempt..... | 2782 |
| Election..... | 2775 | Additional courses..... | 2783 |

Art. 2768. [2867-8] **Assumption of control.**—Any city or town in this State may acquire the exclusive control of the

public free schools within its limits. Any city or town which has heretofore, under the Act of March 15, 1875, or any subsequent law, assumed control of the public free schools within its limits, and has continued to exercise the same until the present time, or any city or town which may hereafter determine so to do by majority vote of the property tax payers of said city or town voting at an election held for that purpose, may have exclusive control of the public free schools within its limits. [Acts 1905, p. 263.]

Art. 2769. [2869] **Election.**—The mayor of said city or town shall, upon the written application of not less than fifty of the qualified electors thereof, and within twenty days thereafter, order an election by the qualified electors of such city or town, to be conducted as other municipal elections, to decide, by a majority of the votes cast by the qualified electors of such city or town at such election, whether such city or town shall acquire the exclusive control of the public free schools and institutions of learning within its limits. Not more than one election shall be held in any one calendar year to determine such question. [Id.]

Art. 2770. [2870] **Shall receive pro rata of school funds.**—Such city or town, after notice to the State Board that it has determined to assume control of the public free schools within its limits, shall receive such pro rata of the available school fund as its scholastic population may entitle it to. [Id.]

Art. 2771. [2871] **General laws shall govern.**—Schools thus organized and provided for by incorporated cities and towns shall be subject to the general laws, so far as the same are applicable; but each city or town having control of schools within its limits shall constitute a separate school district, and may provide for the organization of schools and the appropriation of its school funds in such manner as may be best suited to its population and condition. [Id.]

Art. 2772. [2872] **Property vested in trustees.**—In every city or town in this State which has or may assume the exclusive control and management of public free schools within its limits, and which has or may determine that such exclusive control and management shall be in a board of trustees, and organized under an Act of the Sixteenth Legislature, approved April 3, 1879, and Acts amendatory thereto, the title to all houses, lands and other property owned, held, set apart, or in any way dedicated to the use and benefit of the public free schools of such city or town, including property heretofore acquired as well as that which may hereafter be acquired, shall be vested in the board of trustees and their successors in office, in trust for the use and benefit of the public free schools in such city or town; and such board of trustees shall have and exercise the exclusive control and management of such school property, and shall have and exercise the exclusive possession thereof for the purpose aforesaid; provided, that where trustees

are named other than the municipal corporation itself, in any instrument conveying, donating, bequeathing or devising any money or other property, real or personal, for the benefit of any city or town, this law shall not interfere in any manner with the title or authority of such trustees to or over such money or other property. Such board of trustees shall constitute a body corporate, and shall have full power to protect the title, possession and use of all such property within the limits of such city or town, and may bring and maintain such suit or suits in law or in equity in any court of competent jurisdiction when necessary to recover the title or possession of any such property that may be adversely held or seized, or to prevent any trespass upon or injury to such property; provided, that the provisions of this article shall not apply to lands belonging to the State upon which houses for school purposes have been built without authority from the State. [Id.]

Art. 2773. [2873] **Sale of school property.**—Any houses or lands held in trust by any city or town for public free school purposes may be sold for the purpose of investing in more convenient and desirable school property, with the consent of the State Board, by the board of trustees of such city or town; and, in such case, the president of the school board shall execute his deed to the purchaser for the same, reciting the resolution of the State Board giving consent thereto and the resolution of the board of trustees authorizing such sale. [Id.]

Art. 2774. [2885] **Appointment of trustees.**—Towns and cities which have heretofore chosen their trustees by appointment of the city council or board of aldermen, under the provisions of Article 4018, Revised Statutes of 1895, shall be authorized to continue to choose their trustees in this manner; that is, by the appointment of the board of aldermen of said city or town; provided, that seven trustees shall be appointed at first, four of whom shall serve for one year, and three for two years; and each year thereafter, four trustees and three trustees alternately, shall be appointed for a term of two years; and further provided, that on a petition of twenty-five per cent of the voters of any such city or town, to be ascertained by the ballots cast at the last regular city election in said city or town, the mayor of such city or town shall order an election to determine whether or not the school affairs of such city or town shall be directed by a school board elected in accordance with the provisions of this chapter; and, in case of an affirmative vote, an election shall at once be ordered by the said mayor, for the purpose of choosing a school board consisting of seven trustees, as provided in the succeeding article. [Id.]

Art. 2775. [2886] **Election.**—In each independent district that shall hereafter be organized, the county judge of the county in which said independent district is situated shall order an election for seven trustees, who shall constitute the school board of such district, and all of whom shall serve without compensation.

All of the qualified voters of each such district shall be entitled to vote at any election for trustees hereunder. [Id.]

Art. 2776. [2887] **Board shall order elections.**—All elections shall be ordered by the board of trustees of each independent school district; and such order shall be made at least ten days before the date of election; and a notice of the order shall be posted at three different places in the district. The board of school trustees, at the time of ordering such election, shall appoint three persons to hold the election, and shall designate the places where the polls shall be open. Each person appointed to hold such election shall receive one dollar therefor, to be paid out of the general fund of the county as other claims are paid. All such elections shall be held, and returns thereof made to the board of school trustees, in accordance with the general election laws. The board of school trustees shall canvass such returns, declare the result of such election, and issue certificates of election to the persons shown by such returns to be elected. [Id.; Acts 1915, p. 205.]

Art. 2777. [2888-9-93] **Terms of office.**—The seven candidates receiving the largest number of votes at the first election, and the three or four candidates receiving the largest number of votes at all subsequent elections, shall be entitled to serve as trustees hereunder. Those elected at the first election shall determine by lot the term for which they are to serve. The four members drawing numbers one, two, three and four shall serve for one year, and the three members drawing the numbers five, six and seven shall serve two years, or until the second of April thereafter, and until their successors are elected and qualified; and regularly thereafter on the first Saturday in April of each year, four trustees and three trustees, alternately, shall be elected for a term of two years, to succeed the trustees whose term shall at that time expire. The members of the board remaining after a vacancy shall fill the same for the unexpired term. [Id.]

Art. 2778. [2890] **Oath of office.**—Each trustee shall first swear that he will faithfully and impartially discharge the duties of such office; and his affidavit to that effect shall be filed after the first election with the county judge, and after all subsequent elections with the president or chairman of the school board. [Acts 1905, p. 263.]

Art. 2779. [2891] **Organization of board.**—Said trustees shall meet within twenty days after the election, or as soon thereafter as possible, for the purpose of organizing. A majority of said board shall constitute a quorum to do business. They shall choose from their number a president, and they shall choose a secretary, a treasurer, assessor and collector of taxes, and other necessary officers and committees. [Id.]

Art. 2780. [2892] **Power of trustees.**—Said trustees shall adopt such rules, regulations and by-laws as they may deem proper; and the public free schools of such independent district shall be under their control; and they shall have the exclusive

power to manage and govern said schools, and all rights and titles to property for school purposes heretofore vested in the mayor, city councils, or school trustees by articles 3995, 4013 and 4032, Revised Statutes of 1895, or other statutes, general and special, except such cities as are exempted by this title, shall be vested in said board of trustees and their successors in office; and their claims shall apply to any action or suit which may arise to which said board is a party. [Id.]

Art. 2781. [2895] **Teachers' contracts.**—The board of trustees of any city or town or of any independent school district may elect a superintendent or principal or teacher in the schools therein for a term not to exceed two years, and in cases of twelve month contracts the date of employment shall begin on July first and end on June thirtieth. [Acts 1905, p. 263; Acts 1923, p. 260.]

Art. 2782. [2884] **Cities exempt.**—The cities of Dallas and Fort Worth shall be exempt from the provisions of this title concerning trustees. [Acts 1905, p. 263.]

Art. 2783. [2894] **Additional courses.**—Any school district having voted a tax under the provisions of the succeeding subdivision may prescribe such other studies as the board of school trustees may deem proper. [Id.; Acts 1913, p. 175.]

4. TAXES AND BONDS.

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|------------------------------------|-------|----------------------------------|------|
| Taxing power..... | 2784 | Common school tax: election..... | 2793 |
| Elections | 2785 | Change in common school tax..... | 2794 |
| Bonds | 2786 | Levy of common school tax..... | 2795 |
| Common school bonds..... | 2787 | Districts affected..... | 2796 |
| May pay bonds..... | 2787a | Teachers' homes..... | 2797 |
| Independent district bonds..... | 2788 | Tax in cities..... | 2798 |
| Refunding bonds..... | 2789 | Election for tax..... | 2799 |
| Independent district tax..... | 2790 | Governing body to fix rate..... | 2800 |
| Independent district assessor..... | 2791 | Trustees to fix rate..... | 2801 |
| County assessor for district..... | 2792 | Assessment and collection..... | 2802 |

Art. 2784. **Taxing power.**—The commissioners court for the common school districts in its county, and the district school trustees for the independent school districts incorporated for school purposes only, shall have power to levy and cause to be collected the annual taxes and to issue the bonds herein authorized, subject to the following provisions:

1. In common school districts, for the further maintenance of public free schools and the erection and equipment of school buildings therein, a special tax; and in independent districts for the maintenance of schools therein, an ad valorem tax, not to exceed one dollar on the one hundred dollars valuation of taxable property of the district.

2. In common school and independent districts, for the purchase, construction, repair or equipment of public free school buildings within the limits of such districts and the purchase of the necessary sites therefor, a tax not to exceed fifty cents on the one hundred dollars valuation, such tax to be for the payment of the current interest on and provide a sinking fund sufficient to pay the principal of bonds which said districts are empowered to issue for such purposes.

3. The amount of maintenance tax, together with the amount:

of bond tax of any district, shall never exceed one dollar on the one hundred dollars valuation of taxable property; and if the rate of bond tax, together with the rate of maintenance tax voted in the district, shall at any time exceed one dollar on the one hundred dollars valuation, such bond tax shall operate to reduce the maintenance tax to the difference between the rate of the bond tax and one dollar.

4. No tax shall be levied, collected, abrogated, diminished or increased, and no bonds shall be issued hereunder, until such action has been authorized by a majority of the votes cast at an election held in the district for such purpose, at which none but property tax paying qualified voters of such district shall be entitled to vote.

5. All property assessed for school purposes in a common school district shall be assessed at the rate of value of property as said property is assessed for State and county purposes. [Acts 1921, p. 56.]

Art. 2785. **Elections.**—Before an election is held to determine the proposition of the levy of such tax or the issuance of such bonds, a petition therefor signed by twenty or more, or a majority of those entitled to vote at such election, shall be presented to the county judge of the county if for a common school district, and to the district trustees if for an independent school district. On presentation of said petition, said officer or officers shall order an election for such purpose, and order the sheriff to post notices thereof in three places in the district for three weeks prior thereto, or if for an independent district, the secretary of said board of trustees shall post such notices. The petition, election order and notice of election shall in all cases either state the specific rate of tax to be voted on or that the rate shall not exceed the limit herein specified. All election orders and notices of elections shall state the time and place of holding the election. The ballots for maintenance tax elections in common school districts shall have written or printed thereon the words "For school tax", and "Against school tax"; and for independent districts "For maintenance tax", and "Against maintenance tax". If said maintenance tax proposition is defeated at an election held for such purpose, no other election shall be held therefor within one year from the date of said election. The commissioners court for common school districts, and the board of trustees for independent districts, shall canvass the returns and declare the result of all elections hereunder; and said elections shall be held and conducted as provided by law for general elections, except as herein provided. [Id.]

Art. 2786. **Bonds.**—Whenever the proposition to issue bonds is to be voted on in any common or independent school district hereunder, the petition, election order and notice of election must distinctly specify the amount of the bonds, the rate of interest, their maturity dates, and the purpose for which the bonds are to be used. The ballots for such election shall have written or printed thereon the words "For the issuance of bonds and the

levying of the tax in payment thereof"; and "Against the issuance of bonds and the levying of the tax in payment thereof." All such bonds shall bear not more than six per cent interest per annum, and may mature serially or otherwise, not exceeding forty years from their date; provided, that when the houses are to be built of wood, said bonds shall mature in not more than twenty years from their date. Such bonds shall be examined by the Attorney General and registered by the Comptroller. All bonds shall be sold to the highest bidder for not less than their par value, and the proceeds of such sale shall be deposited in the county depository for the common school districts, and in the district depository for the independent school districts, to the credit of such districts, and shall be disbursed only for the purpose for which said bonds were issued, on warrants issued by the district trustees and approved by the county superintendent for common school districts, and by the president of the board of trustees and countersigned by the secretary of said board for independent districts. [Id.]

Art. 2787. Common school bonds.—If the proposition to issue said bonds of a common school district carries at an election held therefor, the commissioners court as soon thereafter as practicable shall issue said bonds on the faith and credit of said common school district. Said bonds shall express on their face: The State of Texas, the name of the county, and the number or corporate name of the district issuing said bonds. They shall be signed by the county judge, countersigned by the county clerk and registered by the county treasurer, in accordance with the general law relative to county bonds. At the time of the issuance of said bonds and each year thereafter so long as any of said bonds are outstanding, the said court shall levy a bond tax within the limits herein specified to pay the interest on said bonds and redeem the same at maturity. The rate of such tax shall be determined by the trustees of the district and county superintendent and certified by the county superintendent to the commissioners court, and said court shall levy the tax at said rate until a change is recommended by said school officers. Said tax shall be assessed and collected as provided by law for the assessment and collection of special local tax for the maintenance of public free schools. After said bonds shall have been issued and sold and said bond tax has been levied, it shall be unlawful to hold an election in said district to determine whether or not said tax shall be discontinued or lowered until said bonds, together with the interest thereon, shall have been fully paid, nor shall the limits and boundaries of said common school district ever be decreased by the county board of school trustees until all of said bonds and the accrued interest thereon shall have been fully paid. [Id.]

Art. 2787a. May pay bond.—The State Board of Education may authorize the trustees of any common school district or of any independent school district of this State to pay off and dis-

charge, at any interest paying date whether the bonds are matured or not, all or any part of any bonded indebtedness now owned or hereafter to be owned by the State Permanent School Fund, outstanding against any common school district, or any independent school district in this State.

It shall be the duty of the school trustees of any common school district, or any independent school district of this State desiring to pay off and discharge any bonded indebtedness now owned or hereafter to be owned by the Permanent School Fund of this State, outstanding against such district or districts, before maturity thereof, to make direct application in writing to the State Board of Education at least thirty days before any interest paying date on said bonds, making known to said State Board of Education the desire of said trustees to pay off and discharge said bonded indebtedness, or any part thereof, describing said bonds or the part thereof that the trustees desire to pay off and discharge; and it shall be the duty of the State Board of Education upon receipt of such application to act thereon in such manner as they deem best and notify the applicant or applicants whether the application is refused or granted in whole or in part; provided, that only such tax money as has been collected by virtue of tax levies made for the specific purpose of providing a sinking fund and paying interest on the particular bonds to be redeemed shall be expended in the redemption, taking up, or paying off of such bonds as provided in this Act; unless said bonds are being redeemed for the purpose of being refunded; and the application of the board of trustees of any common or independent school district desiring to retire bonds as herein provided shall include an affidavit to that effect in their application; and provided further, that it shall be unlawful for any person upon whom any duty rests in carrying out the provisions of this law to give or receive any commission, premium, or any compensation whatever for the performance of such duty or duties.

The provisions of this Act shall apply also to the governing boards of all cities, counties and political subdivisions in this State whose bonds are owned or may hereafter be owned by the Permanent School Fund of the State.

Art. 2788. Independent district bonds.—The bonds authorized to be issued by independent districts shall be coupon bonds, and the aggregate amount thereof shall never reach an amount such that a tax of fifty cents on the one hundred dollars valuation of taxable property will not pay current interest and provide a sinking fund sufficient to pay the principal at maturity. The election for said bonds shall be held within thirty days after order of election, as fixed in the election order. The board of trustees shall at the same time fix the polling places for holding such election and name a judge and two clerks at each polling place, or more judges and clerks, if deemed necessary, and furnish all necessary ballots and other election supplies requisite to such election. Immediately after the bond election the officers

holding the same shall make returns of the result thereof to the board of trustees of the district, and return the ballot box to the secretary of such board, who shall safely keep the same and deliver them together with the returns of the election to the board of trustees at its next regular or special meeting; and said board shall then canvass the returns and declare the result of said election. If said election results in favor of the issuance of bonds and the levy of the tax in payment thereof, said board, after such result has been declared, shall make an order directing the issuance of the bonds of such district and provide for the levy and collection of a tax annually of sufficient amount with which to pay the interest and provide a sinking fund with which to pay such bonds at maturity. Such bonds shall state upon their face the purpose for which they are issued, and shall be issued in the name of the independent school district, signed by the president of the board of trustees of such district, and countersigned by the secretary of such district, and have the seal of the district affixed to each bond. When said bonds have been duly approved and registered, they shall continue in the custody of and under the control of said board and shall be sold by said board for cash, either in whole or in parcels. [Id.]

Art. 2789. [2864] **Refunding bonds.**—Where bonds have been legally issued, or may be hereafter issued, by any town or village incorporated for free school purposes only, new bonds, bearing the same or a less rate of interest, may be issued in conformity with this subdivision in lieu thereof; provided, no election shall be necessary to authorize the issuance of such new bonds; and provided, further, that the State Treasurer shall, upon order of the State Board, exchange bonds not matured held by him for the permanent school fund for the new refunding bonds issued by the same incorporation under the provisions of this subdivision, in case the rate of interest on the new bonds is not less than the rate of interest on the bonds for which they are exchanged. [Acts 1905, p. 263.]

Art. 2790. **Independent district tax.**—If an independent school district votes a maintenance tax, the board of trustees shall thereafter annually levy and cause to be assessed and collected upon the taxable property in the limits of the district for the maintenance of the public free schools of the said district such ad valorem tax as the qualified voters of such district authorized at the election held for that purpose; or if no specific rate has been voted, said board shall levy such a rate each year within that limit as it may deem judicious. Where a maintenance tax has been voted, no election to revoke, modify or increase the same shall be held until two years from the date of the election authorizing such maintenance tax. An election to revoke, modify or increase such maintenance tax, when permissible, may be obtained and held substantially as herein provided for an election to authorize such tax; provided, however, that no change or modification in such maintenance tax shall ever

affect any bond tax authorized by such district. [Acts 1921, p. 56.]

Art. 2791. [2861] **Independent district assessor.**—The district tax assessor and collector shall have the same power and shall perform the same duties with reference to the assessment and collection of taxes for free school purposes that are conferred by law upon the city marshal of incorporated towns or villages, and he shall receive such compensation for his services as the board of trustees may allow, except in cities and towns provided for, not to exceed four per cent of the whole amount of taxes received by him. He shall give bond in double the estimated amount of taxes coming annually into his hands, payable to and to be approved by the president of the board, conditioned for the faithful discharge of his duties, and that he will pay over to the treasurer of the board all funds coming into his hands by virtue of his office as such assessor and collector; provided that in the enforced collection of taxes the board of trustees shall perform the duties which devolve in such cases upon the city council of an incorporated city or town, the president of the board of trustees shall perform the duties which devolve in such cases upon the mayor of an incorporated city or town, and the county attorney of the county in which the independent school district is located shall perform the duties which in such cases devolve upon the city attorney of an incorporated city or town under the provisions of law applicable thereto. It shall be within the discretion of the board of trustees of any independent school district to name an assessor of taxes who shall assess the taxable property within the limits of the independent school district within the time and in the manner provided by existing laws, in so far as they are applicable, and when said assessment has been equalized by a board of equalization appointed by the board of trustees for that purpose, shall prepare the tax rolls of said district and shall duly sign and certify same to the county tax collector as provided for in the succeeding article. The said assessor of taxes shall receive a fee of two per cent of the whole amount of taxes assessed by him as shown by the completed certified tax rolls. [Acts 1905, p. 263; Acts 1923, 2nd C. S., p. 78.]

Art. 2792. [2862] **County assessor for independent district.**—When a majority of the board of trustees of an independent district prefer to have the taxes of their district assessed and collected by the county assessor and collector, or collected only by the county tax collector, same shall be assessed and collected by said county officers and turned over to the treasurer of the independent school district for which such taxes have been collected. The property of such districts having their taxes assessed and collected by the county assessor and collector, shall not be assessed at a greater value than that assessed for county and State purposes. If said taxes are assessed by a special assessor of the independent district and are collected only by the county tax collector, the property of said district may be as-

essed at a greater value than that assessed for State and county purposes and the county tax collector in such cases shall accept the rolls prepared by the special assessor and approved by the board of trustees as provided in the preceding article. When the county assessor and county collector are required to assess and collect the taxes of independent school districts they shall respectively receive one per cent for assessing and collecting same. [Id.]

Art. 2793. [2829-32] **Common school tax: election.**—The county judge shall appoint a presiding officer for each voting place to hold any such election in common school districts; and shall prepare the ballots for such elections, and the county shall bear the expense of having them printed. All polls for school district elections shall be opened at eight o'clock a. m., and shall be closed at six o'clock p. m. and none of the officers holding such election shall be entitled to compensation therefor. Any person may challenge a voter; but if the challenged party takes an oath that he is a qualified voter of the State and county, and that he is a resident property taxpayer in said district, he shall be entitled to vote. [Acts 1905, p. 263; Acts 1909, p. 17.]

Art. 2794. [2833-35] **Change in common school tax.**—At any time after the expiration of two years after any common school district has levied a school tax on itself, twenty property taxpaying qualified voters, or a majority of such voters of the district, may have an election held, upon the proper petition to the county judge, to determine whether such tax shall be abrogated, increased or diminished. Said election shall be held and conducted as other elections in said district. If the election be to abrogate or diminish the school tax, the ballots shall have written or printed thereon the words: "For abrogating school tax," or "For diminishing school tax to..... cents;" and "Against abrogating school tax," or "Against diminishing school tax to..... cents." If the election be to determine whether the tax shall be increased, the ballots shall have written or printed thereon the words: "For increase of school tax" and "Against increase of school tax." [Id.]

Art. 2795. **Levy of common school tax.**—The commissioners court, at the time of levying taxes for county purposes, shall also levy upon all taxable property within any common school district the rate of tax so voted if a specific rate has been voted; otherwise said court shall levy such a rate within the limit so voted as has been determined by the board of trustees of said district and the county superintendent and certified to said court by the county superintendent. If such tax has been voted after the levy of county taxes, it shall be levied at any meeting of said court prior to the delivery of the assessment rolls by the assessor. The tax assessor shall assess said tax as other taxes are assessed and make an abstract showing the amount of special taxes assessed against each school district in his county and furnish the same to the county superintendent on or before the first day of September of the year for which such taxes are

assessed. The taxes levied upon the real property in said districts shall be a lien thereon and the same shall be sold for unpaid taxes in the manner and at the time of sales for State and county taxes. The tax collector shall collect said taxes as other taxes are collected. The tax assessor shall receive a commission of one-half of one per cent for assessing such tax and the tax collector a commission of one-half of one per cent for collecting the same. The tax collector shall pay all such taxes to the county treasurer, and said treasurer shall credit each school district with the amount belonging to it, and pay out the same in accordance with law. [Acts 1921, p. 56.]

Art. 2796. Districts affected.—The provisions of the twelve preceding articles relative to tax and bond elections in common school districts shall also apply to common county line school districts. The provisions hereof relative to tax and bond elections in independent school districts shall apply to any such district incorporated under general or special laws for school purposes only, and shall also apply to all such incorporated districts having each fewer than one hundred and fifty scholastics according to the latest census. [Id.]

Art. 2797. Teachers' homes.—Any common school district or independent school district, whether created by special act of the Legislature or by vote of the people, and any city or town which has assumed control of its public schools, may issue serial coupon bonds in the same manner as provided by law for the issuance of other bonds to build and equip school houses and to purchase sites therefor, for the purpose of purchasing or building a teachers' home and for purchasing land in connection therewith, provided no bonds shall be issued to provide a home in a district employing fewer than three teachers in a single school. [Acts 1923, p. 256.]

Art. 2798. [2875] Tax in cities.—After a city or town has assumed control of the public free schools within its limits, the governing body shall also submit the question to the property taxpayers as to whether or not the additional amount as provided for hereinafter shall be raised by taxation. The provisions of this subdivision relative to the holding of elections in common school and other independent districts shall apply to elections held under the provisions of this law, except as otherwise provided herein. [Acts 1905, p. 263.]

Art. 2799. [2877] Election for tax.—The governing body of any city or town which is a separate and independent school district, whether incorporated under any act of the Congress of the Republic or the Legislature of Texas, or under any act or incorporation whatever, shall have power by ordinance to annually levy and collect ad valorem taxes for the support and maintenance of public free schools and for the erection and equipment of public free school buildings in the city or town. The proposition submitted may be for such a rate of ad valorem tax not exceeding such per cent as may be voted by a majority

vote of all votes cast at any such election. If the proposition is carried, the school tax shall be continued to be annually levied and collected for at least two years, and thereafter, unless it be discontinued at an election held to determine whether the tax shall be continued or discontinued at the request of fifty property taxpayers of such independent district. When the tax is continued no election to discontinue it shall be held for two years; when the tax is discontinued no election to levy a tax shall be held during the same year. [Id.; Acts 1917, p. 380.]

Art. 2800. [2878-9] **Governing body to fix rate.**—If the vote of the taxpayers is in favor of said tax, then the governing body of a city or town which has assumed exclusive control of the public free schools in its limits shall annually thereafter levy and assess upon the taxable property in the limits of such district, by ordinance duly passed and approved, in accordance with the usual assessment of taxes for municipal purposes, such additional tax, not to exceed the rate voted, as may be necessary for the support and maintenance of the public schools and for the erection and equipment of public school buildings for nine months in the year. If a specific rate of tax has been voted, the governing body shall have no discretion in determining the rate to be levied, but shall levy and assess the same at the rate voted. [Id.]

Art. 2801. [2880] **Trustees to fix rate.**—In a city or town constituting an independent school district, and where a special tax for school purposes has been voted by the people or provided by special charter, the board of trustees shall determine what amount of said tax, within the limit voted by the people or fixed by special charter, will be necessary for the maintenance and support of the school and for the erection and equipment of public school buildings for each current year; and the governing body of such city or town, upon the requisition of the said board of trustees, shall annually levy and collect said tax, as other taxes are levied and collected; and said tax, when collected, shall be placed at the disposal of the said school board, by paying over monthly to the treasurer of said board the amount so collected, to be used for the maintenance and support of the public free schools and for the erection and equipment of public school buildings in such district. [Id.]

Art. 2802. [2881] **Assessment and collection.**—In an independent school district constituted of a city or town having a city assessor and collector of taxes, such assessor and collector of taxes shall assess and collect the taxes for school purposes; provided, that in a city or town having an assessor and collector of taxes, the levy of taxes for school purposes shall be based upon the same assessment of property upon which the levy for other city purposes is based. In such a city or town, the assessor and collector of taxes shall receive no other compensation for collecting school taxes than the compensation paid him for assessing and collecting city taxes; and taxes for school pur-

poses in such a city or town shall be assessed and collected as other city taxes are assessed and collected. [Acts 1905, p. 263.]

5. ADDITIONS AND CONSOLIDATIONS.

| | Article | | Article |
|--|---------|------------------------------------|---------|
| Extension of city limits for school purposes | 2803 | Consolidation: trustees | 2808 |
| Extending city limits to include district | 2804 | Consolidation: teachers | 2809 |
| Municipality assuming indebtedness | 2805 | Consolidation: superintendent | 2810 |
| Election to consolidate | 2806 | Consolidation: elementary schools | 2811 |
| Consolidation: outstanding bonds | 2807 | Consolidation: high schools | 2812 |
| | | Consolidation: free transportation | 2813 |
| | | Consolidation: laws applicable | 2814 |
| | | Dissolution | 2815 |

Art. 2803. [2883] Extension of city limits for school purposes.—Any city or town that has taken charge of the public free schools within its limits, or that shall hereafter take charge of the same, may, by ordinance, extend its corporation lines for school purposes only, on a petition signed by a majority of the resident qualified voters of the territory, which is to be taken into said city or town for school purposes only, and recommended by a majority vote of the trustees of the public free schools of said city or town; provided, that the proposed change shall not deprive the scholastic children of the remaining part of the common school district or districts which may be affected by the proposed change, of the opportunity of attendance upon school. The added territory shall bear its pro rata part according to taxable values of any school debt or debts that may be owed or contracted by said city or town to which it shall have been added, and shall not bear any part of any other debt that may be owed or contracted by such town or city. The property of the added territory shall bear its pro rata part of all school taxes, but of no other taxes. The added territory shall not affect the city's debts or business relations in any manner whatever, except for school purposes as provided above. The officers whose duty it is to assess and collect school taxes within the city limits shall also assess and collect school taxes within the territory added for school purposes as herein provided. [Acts 1905, p. 263.]

Art. 2804. Extending city limits to include district.—Whenever the limits of any incorporated city or town constituting an independent school district are so extended or enlarged as to embrace the whole or any part of any independent or common school district adjacent to such incorporated city or town, that portion of such adjacent district so embraced within the corporate limits of such incorporated city or town shall thereafter become a part of the independent school district constituted by such incorporated city or town.

If within the portion of such district so embraced there should be situated any real property belonging to such district, such city or town may acquire the same upon such terms as may be mutually agreed upon between the governing body of such city or town and the authorities of such district.

This article shall not apply where it shall be determined at an election held within such city or town by majority vote of those

voting thereon that the territory or any portion thereof to be so embraced shall not thereby become a part of the independent school district constituted by such city or town, but shall be taken into the city limits for municipal purposes only, and shall remain for school purposes a portion of the adjacent independent or common school district as though said city limits had not been extended. [Acts 1st C. S. 1917, p. 35; Acts 2nd C. S. 1919, p. 101.]

Art. 2805. Municipality assuming indebtedness.—In all cases where a district is embraced within an incorporated city or town, as provided in the preceding article; and in all cases where any town or village has been or may be incorporated for free school purposes only and which shall include within the limits thereof any portion of any common school district which has an outstanding bonded indebtedness, then such city, town or village shall become liable and bound for the payment of such proportion of the bonded indebtedness of such district as the assessed value of the portion thereof so included bears to the entire assessed value of the district from which the same was taken. The assessed values of the districts so included shall be those shown upon the last preceding county tax assessment roll after such districts are so included; such incorporated city, town or village shall pay either directly or through the officers of such district the proportion of the interest and principal of such bonded indebtedness for which it is liable. [Id.]

Art. 2806. Election to consolidate.—On the petition of twenty or a majority of the legally qualified voters of each of several contiguous common school districts praying for the consolidation of such districts for school purposes, the county judge shall issue an order for an election to be held on the same day in each such district. The county judge shall give notice of the date of such elections by publication of the order in some newspaper published in the county for twenty days prior to the date on which such elections are ordered, or by posting a notice of such elections in each of the districts, or by both such publication and posted notices. The commissioners court shall at its next meeting canvass the returns of such elections, and if the votes cast in each and all districts show a majority in favor of such consolidation, the court shall declare such common school districts consolidated.

Common school districts may in like manner be consolidated with contiguous independent school districts, and the district so created shall be known by the name of the independent school district included therein, and the management of the new district shall be under the existing board of trustees of the independent district, and all the rights and privileges granted to independent districts by the laws of this State shall be given to the consolidated independent districts created under the provisions of this law.

The term "district" as used in this and the succeeding nine articles means "consolidated common school districts," or "con-

solidated independent school district.” [Acts 2nd C. S. 1919, p. 167; Acts 3rd C. S. 1923, p. 169.]

Art. 2807. **Consolidation: Outstanding bonds.**—If at the time of such proposed consolidation there are outstanding bonds of any of such districts, then at an election held for that purpose on some future day, there shall be, or at the election held for the purposes of consolidation, there may be, submitted to the qualified tax paying voters of such proposed consolidated district the question as to whether or not the said consolidated district shall assume and pay off said outstanding bonds and whether or not a tax shall be levied therefor. If said election on the question of assuming said outstanding bonds is held on the day upon which the election on the question of consolidation is held, there shall be separate notices, ballots, and ballot boxes and tally sheets for the two separate elections. If a majority of said voters should vote at either of said elections to assume and pay off said bonded indebtedness, then said bonded indebtedness shall become valid and subsisting obligations of said consolidated district, and the proper officers thereof shall annually thereafter levy sufficient taxes to pay the interest thereon as it accrues and to create a sinking fund which in addition to the sinking funds already accumulated in the original bonded district will pay off and retire the said outstanding bonds when they shall become due. [Acts 1919, 2nd C. S., p. 167.]

Art. 2808. **Consolidation: Trustees.**—The board of county school trustees at its next meeting after such consolidation of school districts is declared, shall appoint a board of seven trustees for the consolidated district. No person shall be trustee who cannot read and write the English language understandingly, and who has not been a resident of this State one year, and of the district six months, prior to his appointment or election. The terms of office of three of the trustees so appointed shall expire on the first day of May next following their appointment, and the terms of office of the other four trustees shall expire on the first day of May of the succeeding year, as those so appointed shall determine by lot. Each year thereafter alternately three trustees and four trustees shall be elected by the qualified voters of the district on the first Saturday of April and trustees so elected shall enter upon the discharge of their duties on the first day of May next following and serve for a term of two years thereafter. District trustees shall qualify by taking the official oath which shall be filed with the county superintendent of the county wherein the district is situated. The board of trustees after being qualified shall immediately organize by electing one of their number president and another secretary, a report of which organization shall be filed with the county superintendent. The board of county school trustees shall fill any vacancy by appointment until the next regular election for district trustees. The board of trustees of the district shall appoint three qualified voters of the district to hold said election and make returns thereof in like manner as provided by law for holding elections for trustees in common school districts, except

that the persons holding said election shall each receive two dollars a day for such services. [Id.]

Art. 2809. **Consolidation: Teachers.**—The board of trustees so elected shall employ a superintendent for the district, who shall be elected for one year or for two years as the trustees may determine, and who, in addition to his duties as superintendent, shall be a teacher in one of the elementary schools or the high school of the district. Acting in collaboration with the district superintendent, the board of trustees shall employ teachers for the several elementary schools of the district, or for the departments of the high school, which teachers shall be elected for one year or two years as the trustees decide, and they shall serve under the direction and supervision of the district superintendent. Contracts between the trustees and the district superintendent and teachers shall be in writing and subject to the approval of the county superintendent of the county wherein such district is situated. [Id.]

Art. 2810. **Consolidation: Superintendent.**—The district superintendent shall visit personally and inspect the several schools of the district and advise with the teachers therein, and he shall be responsible to the district trustees and to the county superintendent for the proper conduct of the school work and the management of the schools of the district. He shall spend at least one-fourth of his time in visiting and inspecting the schools of the district, and he shall make recommendations from time to time to the district trustees and to the county superintendent for any changes which in his judgment are necessary for the proper management of the schools of the district. He shall keep such records and make such reports as are required of him by the district trustees and the county superintendent, and the county superintendent shall refuse to approve vouchers drawn against the school funds of the district until such reports are made by the district superintendent. [Id.]

Art. 2811. **Consolidation: Elementary Schools.**—The district trustees shall recognize or establish elementary schools within the bounds of the district as the need for such elementary schools shall appear. They shall, in so far as is practicable, provide uniform school buildings and equipment for the several elementary schools so recognized or established, and they shall arrange an annual wage schedule for the teachers employed in such elementary schools as nearly uniform as is possible. The instruction in the elementary schools of the district shall embrace not more than the first seven grades or years of work as outlined in the course of study issued by the State Superintendent and approved by the county superintendent. [Id.]

Art. 2812. **Consolidation: High schools.**—Said trustees may recognize or establish not more than one high school for white children and one high school for colored children within the limits of the district, which high schools shall be located with reference to the convenience of the majority of the high school pupils of either race. The instruction in such high schools may embrace any or all of the four years or grades of work above the seventh grade, as outlined by the State Superintendent and

approved by the county board of trustees. Such high school may be located and conducted in connection with some of the elementary schools of the district as said trustees may decide. [Id.]

Art. 2813. **Consolidation: Free transportation.**—When in their judgment it is deemed necessary or expedient, said trustees may provide for the transportation of pupils to and from any elementary school or high school of the district whereupon such pupils may be in attendance, and trustees are hereby empowered to employ transportation vehicles and drivers for such service, paying the cost thereof out of the local maintenance fund of the district or out of such other funds as may be appropriated for this purpose. [Id.]

Art. 2814. **Consolidation: Laws applicable.**—Taxing and bonding powers as are provided for elsewhere in the laws of this State are hereby guaranteed to such consolidated districts, and rural school aid shall be extended to any or all of the schools of the districts so consolidating which comply with the laws and rulings governing the distribution of State aid to rural schools and independent districts. Appeals from such districts shall be made to the county superintendent and county board. [Id.]

Art. 2815. **Dissolution.**—Such consolidated districts may in the same manner provided for their consolidation, be dissolved and the districts included therein restored to their original status, except that it shall not be necessary to provide polling places in each district. Each such district when so restored shall assume and be liable for its pro rata part of the outstanding financial obligations of the consolidated district, such pro rata part to be based on the relation the total assessed valuation of all property in the district bears to the total assessed valuation of property in the consolidated district, as shown by the assessment rolls of the district for the current year. No election for the dissolution of said consolidated districts shall be held until three years have elapsed after the date of the election at which such districts were consolidated. [Id.]

CHAPTER FOURTEEN.

SCHOLASTIC CENSUS.

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|------------------------------------|--------------|-----------------------------------|--------------|
| Taking census..... | Article 2816 | Duty of State Superintendent..... | Article 2820 |
| Duty of census trustee..... | 2817 | Compensation..... | 2821 |
| County line districts..... | 2818 | In independent districts..... | 2822 |
| Duty of county superintendent..... | 2819 | | |

Art. 2816. [2774] **Taking census.**—The county superintendent and the board of trustees of the independent school districts, on the first day of each January or as soon as practicable thereafter, shall appoint one of the trustees of each school district, or some other qualified person, to take the scholastic census, who shall be known as the census trustee of the district. The census trustee between the first day of March and the first day of April after his appointment, shall take a census of all the children that will be over seven and under eighteen years of age on the first day of the following September, and who are resi-

dents of the school district on said first day of April. In taking the said census he shall visit each home, residence, habitation and place of abode, and shall by actual observation and interrogation, enumerate the children thereof in the following manner: He shall use for each parent, or guardian or person having control of any such children, a prescribed form showing the name, color and nationality of the person rendering such children, the name and number of the school district in which the children reside, and the name, sex and date of birth of each such child of which he is a parent or guardian, or of which he has control. The census trustee shall require such forms to be subscribed and sworn to by the person rendering the children, and he is authorized to administer oaths for this purpose. When the census trustee visits any home or house or place of abode of a family, and fails to find either the parent or any person having legal control, he shall leave the prescribed census blank for the use of parents at such home or place of abode, with a note to the parent or guardian having legal control of such child or children, requiring that the form be filled out, signed and sworn to, and that the blank, when so filled out, shall be delivered by the parent or person having legal control of the child or children to the census trustee. [Acts 1905, p. 263; Acts 1915, p. 183.]

Art. 2817. [2775] **Duty of census trustee.**—Only children of the same family shall be listed on one form; and, if one person has under his control children of different family name, he shall use a separate form for each family name. The census trustee shall arrange the forms for white and colored children separately, in alphabetical order, according to the family name of the children reported thereon. He shall also make, on a prescribed form, separate census rolls for the white and colored children of his district, showing the name, age, sex and color of each child, and the name of the parent, guardian or person having control of said child, by whom it is reported. He shall also make a summary of his rolls showing the number of such children of each race of scholastic age. He shall make oath to all his rolls and summaries, and to the faithful and accurate discharge of his duties, and deliver said rolls, with the forms arranged in alphabetical order, to the county superintendent on or before June first next after his appointment. [Acts 1905, p. 263.]

Art. 2818. **County line districts.**—The scholastic census of all common county line school districts shall be taken under the supervision of the authorities of the county having control of such school district and reported by such county to the State Department of Education as provided by law governing the taking of the scholastic census of the State, except that the census trustee taking the census of a common county line school district shall make a separate roll of the scholastic population contained in the territory of each county in such district which shall be separate and distinct from the general census roll of such district and be returned together with the general census roll, as provided by law, to be made by the census trustees. The county superintendent of the county having control of the schools of

such district shall make up a duplicate of the copy containing separately the scholastic population of each county having territory in such district and send such duplicate to the county superintendent and county treasurer of each such county to be by them used for the purpose of apportioning the county available school funds. If such district has voted a special tax for the purpose of school maintenance or the payment of interest and sinking fund on school bonds, the county superintendent of each of said counties shall, from time to time, as such taxes have been collected by his county, draw his warrant against the county treasurer or county depository of such county for such amount of available county school funds or special tax, or either or both, as the case may be, as shall be in the hands of the treasurer or depository in favor of the county treasurer of the county having control and management of the schools of such district, and upon the presentation of such warrant, the treasurer or depository against whom the warrant was drawn shall pay over to the treasurer named as depository of the county having control of the schools of the district such amount of money as is called for in such warrant. The said warrant shall be drawn in favor of the school district embracing the territory in the counties involved and in favor of the county treasurer or depository of the county having control of the schools of the districts and be credited to such school district, and the funds of such school district shall be used as provided by law for the use of the different kinds of school funds. [Acts 1911, p. 201.]

Art. 2819. [2776] **Duty of county superintendent.**—The rolls and summaries of the census trustee shall be preserved by the county superintendent in his office for three years after they are filed. The county superintendent shall make, on prescribed forms, separate consolidated rolls for the white and colored children of his county, showing the name, age and sex of each, together with the number of the district in which it lives, and the name of the parent or guardian, arranging the names of the children according to the alphabetical order of their family names. In making these consolidated rolls, he shall scrutinize carefully the work of the census trustees, and shall have power to summon witnesses, take affidavits and correct any errors he may find in any census trustee's roll, and he shall carefully exclude all duplicates. If he deems it necessary he may reject any roll, and appoint another census trustee to take the census of the district, in which case he shall not approve the warrant to pay the census trustee whose work has been rejected. When the county superintendent has prepared his consolidated census rolls, one for each race, he shall make a duplicate of each, and he shall make affidavit to the correctness of both originals and duplicates. The originals he shall, on or before July first, forward to the State Superintendent, and the duplicates shall be filed with the county clerk and become permanent records of his office. The county superintendent shall forward with his consolidated rolls an abstract on the prescribed form, under oath, showing the number

of children of each race, of the different years of school age, and the total number of children of each race, and the total of both races in his county. In making his consolidated rolls and in investigating the work of any census trustee, the county superintendent shall refer to the forms and rolls of previous years, when necessary, and they shall be carefully preserved for this purpose. [Id.]

Art. 2820. [2777] **Duty of State Superintendent.**—The State Superintendent shall have authority to investigate the census of any county, to correct errors, and in extreme cases when he believes gross errors have occurred or that fraud has been practiced, he may, with the approval of the State Board, reject any county roll and require the census of the county to be retaken. [Acts 1905, p. 287.]

Art. 2821. [2778] **Compensation.**—For their services, the census trustees shall receive four cents per capita of the children of scholastic age taken by them in county districts and three cents per capita in towns of twenty-five hundred and not more than five thousand inhabitants, and two cents per capita in cities of more than five thousand inhabitants. The county superintendent shall receive one cent per capita of the scholastic population reported by him. These amounts shall not be paid until the census of the county is accepted by the State Superintendent, and shall be forfeited as follows: The trustee's compensation, if his work is rejected by the county superintendent and the census of his district ordered retaken; and both the county superintendent's and the trustee's compensation, if the census of the county is rejected and ordered by the State Superintendent and the State Board to be retaken. [Id.]

Art. 2822. [2779] **In independent districts.**—The provisions of this chapter shall apply to the taking of the scholastic census in cities and towns constituting independent districts, except as specially provided herein, to wit: The census trustee shall be appointed by the president of the board of trustees, and a census trustee may be appointed for each ward or school sub-district, at the discretion of the president of the school board making such appointment. The forms for the parent and the rolls shall show the street and house number or location of the house or place in which each child resides. [Id.]

CHAPTER FIFTEEN.

SCHOOL FUNDS.

| | Article | | Article |
|--|---------|---|---------|
| What shall constitute school fund..... | 2823 | District of more than 150 scholastics | 2832 |
| School lands | 2824 | District treasurer's report..... | 2833 |
| Income from lease | 2825 | Comptroller shall report to State Board | 2834 |
| Duty of commissioners court..... | 2826 | He shall draw warrants..... | 2835 |
| Authorized expenditures..... | 2827 | He shall report to Legislature..... | 2836 |
| County depository..... | 2828 | Duty of Treasurer..... | 2837 |
| Bond | 2829 | Shall report condition of funds..... | 2838 |
| To keep accounts..... | 2830 | | |
| Balances | 2831 | | |

Art. 2823. [2725] **What shall constitute school fund.**—Besides other available school funds provided by law, one-fourth

of all occupation taxes and one dollar poll tax levied and collected for the use of public free schools, exclusive of the delinquencies and cost of collections; the interest arising from any bonds or funds belonging to the permanent school fund, and all the interest derivable from the proceeds of the sale of land heretofore set apart for the permanent school fund which may come into the State Treasury; all moneys arising from the lease of school lands, and such an amount of State tax not to exceed thirty-five cents on the one hundred dollars valuation of property, as may be from time to time levied by the Legislature, shall constitute the available school fund, which fund shall be apportioned annually to the several counties of this State, according to the scholastic population of each, for the support and maintenance of the public free schools. [Acts 1905, p. 263.]

Art. 2824. [5402] [4271] **School lands.**—Each county may sell or dispose of the lands granted to it for educational purposes in such manner as may be provided by the commissioners court of such county, and the proceeds of any such sale shall be invested in bonds of the United States, the State of Texas, the bonds of the counties of the State, and the independent or common school districts, road precinct, drainage, irrigation, navigation and levee districts in this State, and the bonds of incorporated cities and towns, and held by such county alone as a trust for the benefit of public free schools therein, only the interest thereon to be used and expended annually. [Acts 1889, p. 104; Acts 1915, p. 210.]

Art. 2825. [2726] **Income from lease.**—Besides other available school funds provided by law, the proceeds of any leasing or renting of lands, heretofore granted by the State of Texas to the several counties thereof for educational purposes, shall be appropriated by the commissioners courts of said counties in the same manner as is provided by law for the appropriation of the interest on bonds purchased with the proceeds of the sale of such lands; and the proceeds arising from the sale of timber on said lands, or any part thereof, shall be invested in like manner as the Constitution and law requires of proceeds of sales of such lands; and it shall be unlawful for the commissioners court of any county to apply said proceeds, or any part thereof, to any other purpose, or to loan the same, except as above required. [Acts 1905, p. 263.]

Art. 2826. [2771] [1550] [1523] **Duty of commissioners court.**—It shall be the duty of the commissioners court to provide for the protection, preservation and disposition of all lands heretofore granted, or that may hereafter be granted to the county for education or schools. [Const., Art. 7, Sec. 6.]

Art. 2827. [2772] **Authorized expenditures.**—The public free school funds shall not be expended except for the following purposes:

1. The State and county available funds shall be used exclusively for the payment of teachers' and superintendents' salaries, fees for taking the scholastic census, and interest on

money borrowed on short time to pay salaries of teachers and superintendents, when these salaries become due before the school funds for the current year become available; provided that no loans for the purpose of payment of teachers shall be paid out of funds other than those for the then current year.

2. Local school funds from district taxes, tuition fees of pupils not entitled to free tuition and other local sources may be used for the purposes enumerated for State and county funds and for purchasing appliances and supplies, for the payment of insurance premiums, janitors and other employes, for buying school sites, buying, building and repairing and renting school houses, and for other purposes necessary in the conduct of the public schools to be determined by the Board of Trustees, the accounts and vouchers for county districts to be approved by the county superintendent; provided, that when the State available school fund in any city or district is sufficient to maintain the schools thereof in any year for at least eight months, and leave a surplus, such surplus may be expended for the purposes mentioned herein. [Acts 1905, p. 263; Acts 1919, p. 189.]

Art. 2828. [2767] **County depository.**—The terms “county treasurer” and “county treasury,” as used in all provisions of law relating to school funds, shall be construed to mean the county depository. The commissioners court shall file with the State Department of Education a copy of the bond of said depository to cover school funds. No commission shall be paid for receiving and disbursing school funds. [Acts 1905, p. 263; Acts 1909, p. 17.]

Art. 2829. [2768] **Bond.**—Within twenty days after the receipt of a certificate of its selection, the county depository shall execute a good and sufficient bond, payable to the county judge, in an amount equal to the probable amount of available school fund and of the permanent county fund, which may come into his hands, to be estimated by the county superintendent, or commissioners court in a county having no superintendent, and shall be conditioned that the depository will faithfully perform its duties under this title, and safely keep and faithfully disburse the school fund according to law, and pay such warrants as may be drawn on said fund by competent authority. [Id.]

Art. 2830. [2769] **To keep accounts.**—The county treasurer, upon receiving notice from the State Superintendent of the amount apportioned to the county, shall report the same to the county superintendent, who shall immediately apportion the same to the several districts, according to the scholastic census; and the county superintendent shall immediately notify the county treasurer of the amount apportioned to each district. The county treasurer shall keep a separate account with each district, showing the amount apportioned, according to the certificate of apportionment, and the amount paid out to each school and district. In no case shall the county treasurer pay out any part of the school fund without the approval of the county superintendent. [Id.]

Art. 2831. [2770] **Balances.**—All balances of the general

school fund not appropriated for the current year shall be carried over by the treasurer as part of the general school fund for the county for the succeeding year, and unexpired balances to the credit of any district shall be carried over for the benefit of such school district. If any such balance shall exceed five dollars per capita, according to the last scholastic census, then such excess shall be reapportioned to the school districts of the county. [Id.]

Art. 2832. [2771] **Districts of more than 150 scholastics.**—In an independent district of more than 150 scholastics, whether it be a city which has assumed control of the schools within its limits or a corporation for school purposes only, the treasurer of the school fund shall be that person or corporation who offers satisfactory bond and the best bid of interest on the average daily balances for the privilege of acting as such treasurer. The treasurer when thus selected shall serve for a term of two years and until his successor shall have been duly selected and qualified, and he shall be required to give bond in an amount equal to the estimated amount of the total receipts coming annually into his hands. Said bond shall be made payable to the president of the board and his successors in office, conditioned for the faithful discharge of the treasurer's duties and the payment of the funds received by him upon the draft of the president of the school board drawn upon order duly entered of the board of trustees. Said bond shall be further conditioned that the treasurer shall safely keep and faithfully disburse all funds coming into his hands as treasurer, and shall faithfully pay over to his successor all balances remaining in his hands. It shall be approved by the school board and the State Department of Education shall be notified of the treasurer by the president of the school board filing a copy of said bond in said department. [Acts 1925, p. 328.]

Art. 2833. [2773] **District treasurer's report.**—Each treasurer receiving or having control of any school fund of an independent school district shall keep a full and separate itemized account with each of the different classes of school funds coming into his hands, and shall on or before the first day of October of each year, file with the board of trustees of such independent school district and with the State Superintendent an itemized report of the receipts and disbursements of the school funds for the preceding school year ending August 31st, which report shall be on a form prescribed and furnished by the Department of Education. The board of trustees shall notify the State Superintendent of their approval of said report within thirty days after receipt of same, should same be approved, and the State Superintendent shall notify the board of trustees of objections or of recommendations concerning same should he desire to make any. All vouchers showing items of the report shall be filed with the board of trustees and the State Superintendent may demand same when passing on said report or for the purpose of investigating same. [Acts 1905, p. 275; Acts 1919, p. 276.]

Art. 2834. [2744] **Comptroller shall report to State Board.**—The Comptroller shall keep a separate account of the available State school fund arising from every source, and shall, on or before the meeting of the State Board on or before the first day of August of each year, make an estimate of the amount of available school fund to be received from every source, and to be available for the succeeding scholastic year, and report the same to said board. [Acts 1909, 2nd C. S. p. 432.]

Art. 2835. [2745] **He shall draw warrants.**—The Comptroller shall, on the first working day of each month, certify to the State Superintendent the total amount of money collected from every source during the preceding month and on hand to the credit of the available school fund, and shall draw his warrant on the State Treasurer, and in favor of the treasurer of the available school fund of each county, city or town, and each school district having control of its public schools, for the amount stated in, and upon receipt of, the certificate therefor issued to him on the first day of each month by the State Superintendent and shall register such warrants and transmit them to the State Treasurer. [Id.]

Art. 2836. [2746] **He shall report to Legislature.**—The Comptroller shall, on or before the meeting of each regular session of the Legislature, report to the the Legislature an estimate of the amount of the available school fund to be received for the succeeding two years, and the several sources from which the same accrues, and which may be subject to appropriation for the establishment and support of public schools. [Acts 1905, p. 263.]

Art. 2837. [2747-9] **Duty of Treasurer.**—The State Treasurer shall receive and hold as a special deposit all money belonging to the available school fund, and keep an account of the same. He shall register every warrant drawn by the Comptroller on such fund in favor of the treasurer of the available school fund of any county, city, town or school district having control of its public schools, and transmit such warrants to the State Superintendent. On presentation to him for payment properly endorsed, he shall pay such warrants each in the order in which presented. He shall not, under any circumstances, use any portion of the permanent or available school funds in payment of any warrant drawn against any other fund whatever. [Acts 1909, 2nd C. S. p. 432; Acts 1905, p. 263.]

Art. 2838. [2748] **Shall report condition of funds.**—The State Treasurer shall, thirty days before each regular session of the Legislature, and ten days before any special session, at which any legislation can be had respecting the public schools, report to the Governor the condition of the permanent and available school funds, the amount of each, and the manner of its disbursement; and he shall also make any additional report required by the Board of Education. [Acts 1905, p. 263.]

EDUCATION—PUBLIC.
CHAPTER SIXTEEN.
FREE TEXT BOOKS.

I. TEXT BOOK COMMISSION.

| | Article | | Article |
|---|---------|---|---------|
| The Commission..... | 2839 | Changes may be ordered..... | 2850 |
| Affidavit..... | 2840 | Contractors bond..... | 2851 |
| Chairman, secretary, annual meet- ings..... | 2841 | Not to be furnished to others at less price..... | 2852 |
| Continuing, or discontinuing text books..... | 2842 | Anti-trust provision..... | 2853 |
| Uniform system..... | 2843 | Contract approved..... | 2854 |
| Supplementary readers..... | 2844 | Deposit to be returned..... | 2855 |
| May change text books..... | 2845 | Commission to issue proclamation..... | 2856 |
| Notice to be given..... | 2846 | Lists to be furnished..... | 2857 |
| Sealed bids..... | 2847 | Depository..... | 2858 |
| Bids opened..... | 2848 | Price to be printed..... | 2859 |
| Bids in two forms..... | 2849 | Text books exclusive..... | 2860 |
| | | Appearing before commission..... | 2861 |

Art. 2839. **The commission.**—A permanent Textbook Commission for the State of Texas is hereby authorized and styled "The Texas State Textbook Commission." The commission shall be constituted as follows: The State Superintendent of Public Instruction, the President of the College of Industrial Arts and the President of the Southwest Texas State Normal, the President of the University of Texas, the President of the A. & M. College, acting together as a committee, shall immediately after this Act takes effect and biennially thereafter, after the 15th day of January and not later than the 15th day of February, submit to the Governor of this State the names of thirteen (13) teachers of recognized scholarship and professional standing, who have been actively and continuously engaged in teaching or supervision in the public schools of this State for the past five years and who have State permanent primary or State permanent certificate, together with the names of two experienced business men; said thirteen teachers shall represent as nearly as possible every phase of public school work, and it shall be the duty of the Governor to select six teachers therefrom and one business man who shall, with the Governor and the State Superintendent of Public Instruction, constitute the Textbook Commission. One member of said board shall have had at least three years experience in teaching in the schools of Texas below the high school within the past five years. No two of said appointed members shall reside in the same county. In the event any member after appointment acquires a residence in the same county as another member, said acquisition of residence shall operate to vacate his position as a member of the commission. The term of office of the appointive members shall be for a period of not more than two years and shall be concurrent with the term of office of the official making the appointment. No person who has acted as a textbook agent for any author or textbook publishing house, or who has been an author or associate author of any book published by any house, or who owns stock in any school book depository, or who has directly or indirectly been concerned in the authorship of any textbook or in any textbook publishing house shall be eligible to appointment on the Textbook Commission. Any vacancy occurring on said commission from any cause shall be

filled by appointment by the Governor from the list submitted under the provisions of this Act. The Governor shall within ten days make the appointment of the members of the commission who immediately shall be called together in special session to adopt such rules, regulations and by-laws to govern the action of the commission, as it may deem proper, not inconsistent with other provisions of this Act.

Art. 2840. Affidavit.—Each member of the commission before entering upon his duties as a member of the commission, shall make out and file with the Secretary of the State an affidavit that he is not and has not been directly or indirectly interested in or connected with or employed by any publishing house, person, firm or corporation submitting any books for adoption, or in any books offered for adoption, or in any books adopted, nor is he connected in business with any person or agent representing such house, person, firm or corporation to whom any contract may be awarded by said commission during the term and duration of said contract, nor does he own stock in any school book depository, and that he is not connected in any business with any person or agent representing such house, firm or corporation, and that he will not become so interested and will not accept any position as agent or representative of any person, firm or corporation who may submit any books for adoption or to whom any contract may be awarded by said commission during the term and duration of said contract.

Art. 2841. Chairman—secretary—annual meeting. — The Governor shall be chairman of the commission and the State Superintendent of Public Instruction shall be its secretary, who shall keep a complete record of all proceedings of the Commission. The commission shall meet annually on the second Monday in October and at such other times and places as may be designated by the chairman for the purpose of considering and extending contracts, the making of new adoptions, and the keeping and operation of a complete system of uniform textbooks for the public free schools of this State in accordance with the provisions of this Act. The commission shall keep a minute book for its proceedings and on every action of the commission an "aye" and "no" vote of the members thereof shall be required, and such minute book shall be kept in the office of the Superintendent of Public Instruction, and shall be open to public inspection, and no adopted text shall be superseded or substituted or new text adopted except by the affirmative vote of two-thirds of the members of the commission.

Art. 2842. Continuing or discontinuing textbooks.—It shall be the duty of the commission to meet annually on the second Monday in October, and at such other times as it may be called together by the chairman, for the purpose of considering the advisability of continuing or discontinuing, at the expiration of all current contracts, any or all of the State adopted textbooks in use in the public schools of Texas, and of making such adoptions as are provided for in Section 5 of this Act. Before making any change in the adopted series, however, the

commission shall, upon thorough investigation, satisfy itself that a change is necessary for the best interest of the school children and that such change is consistent with financial economy. Unless new texts better suited to the requirements of the schools and of a price and quality satisfactory to the commission are offered to supplant existing texts, the commission shall renew the existing contract or contracts for such a period as may be deemed advisable not to exceed a period of six years. Wherever the contractor supplying any book agrees to renew the contract on the same terms for a period of not less than two years or more than six, the members of the commission shall give preference to the offer of the company holding the contract if in their judgment they shall thereby secure as good or better books at a lower price than by making a different contract, and it shall always be lawful for them to renew a contract on such terms as in their judgment may be for the best interests of the State. The contracts for the total number of different texts adopted shall be so arranged, in adoptions taking place after the passage of this Act, that contracts on not more than one-sixth of the total number of different basal subjects shall expire in any one year, or shall be changed in any one year. The series of copy books and the series of drawing books shall each be considered as one book. If no text or texts on any prescribed subject or subjects are submitted by any particular publisher or publishers that meet the requirements of the schools, as may be determined by the commission, it shall be the duty of the chairman of the commission, to instruct the secretary of the commission to investigate the book markets for the purpose of securing bids with a view of providing at most reasonable price or prices possible the best available texts on any and all subjects that are to be adopted by the commission for the schools of Texas.

Art. 2843. Uniform system.—The Textbook Commission authorized by this Act shall have authority to select and adopt a uniform system of textbooks to be used in the public free schools of Texas, and the books so selected and adopted shall be printed in the English language, and shall include and be limited to textbooks on the following subjects: Spelling, reading, English language and grammar, geography, arithmetic, physiology-hygiene, civil government, history of the United States, (in which the construction placed on the Federal Constitution by the fathers of the Confederacy shall be fairly represented) history of Texas, agriculture, a system of writing books, a system of drawing books, and may also, if deemed necessary, adopt a geography of Texas and a civil government of Texas; provided that none of said textbooks shall contain anything of a partisan or sectarian character, and that nothing in this Act shall be construed to prevent the teaching of German, Bohemian, Spanish, French, Latin or Greek in any of the public schools.

Said Textbook Commission shall also adopt a multiple list of books for use in the high schools of the State, said multiple list including not fewer than three nor more than five textbooks on

the following subjects: Algebra, plane geometry, solid geometry, general science, biology, physics, chemistry, a one year general history, ancient history, modern history, American history, Latin, Spanish, physical geography, English composition, history of American literature, history of English literature, physiology, agriculture and civil government and for each high school branch of study any one textbook of said multiple list adopted for that subject may be selected for and used in any high school of the State as the textbook on such branch in that high school, but when such book is so chosen by the local authorities from the multiple list adopted such book shall be continued in that high school for the entire five years of the adoption period. Provided, however, that the multiple list herein provided for shall apply to all high schools classed by the Department of Education as high schools of the first class. For use in all other high schools a uniform system of textbooks on each subject mentioned above shall be selected by the commission; provided, that in any city or independent school district having more than one high school of the first class said city or independent school district shall adopt from said multiple list for use in each of said high schools the same books and shall use said books so adopted for a period of not less than five years.

Specific rules as to the manner of the selection of books by the high school shall be made by the State Textbook Commission.

The commission, as herein provided for, shall adopt textbooks in accordance with the provisions of this Act for every public free school in this State and no public free school in this State shall use any textbook unless same has been previously adopted and approved by this commission; and the commission shall prescribe rules under which all textbooks adopted and approved shall be introduced or used by or in the public schools of the State.

In the event as many as three suitable texts are not offered for adoption on any one subject, the commission may select fewer than three texts.

Existing contracts shall not be affected by any adoptions made under this Act.

Art. 2844. **Supplementary readers.**—The Textbook Commission shall have authority to adopt supplementary readers for the first seven grades and such other supplementary books for use in said elementary grades as it may deem advisable. Said other supplementary books may be arranged in a series by said commission, one book in each series for each elementary grade, and contracts for not more than four series of supplementary books and readers, inclusive, as provided for in this section, may be in force at the same time; provided, that such series of these supplementary books shall only be used to supplement the basal book on reading and in no case shall supplemental books be adopted for other subjects. Each bidder presenting such book or books shall state at what price it or they are offered, provided, however, that no supplementary books shall

be purchased and used to the exclusion of the books prescribed under the provisions of Article 2343, but full use must be made in good faith of the books selected by said commission under Article 2343 before any of the supplementary books provided for in this article shall be purchased and used.

Art. 2845. **May change textbooks.**—The Textbook Commission may at any time require such changes, amendments or additions to the book or books adopted as in their judgment will be for the best interest of the public schools of this State; and contracts for books under the provisions of this Act shall be made upon the distinct condition that the commission provided for in this Act may, during the time for which the books are adopted under this Act, upon giving one year's previous notice to the publishers thereof, order such changes, amendments and additions to the book or books so adopted as such Textbook Commission may determine; provided, also that if in the judgment of the commission such changes or revisions make it impractical for the revised books to be used in the same class with the old books, the publishers will be required to give the same exchange terms as were given when the books were first adopted, and such exchange period shall extend two years from the time the revised books are first put into use in the schools; provided, that nothing in this section shall be construed so as to give said commission power or authority to abandon any book or books originally contracted for.

Art. 2846. **Notice to be given.**—When books are to be selected and adopted under the provisions of this Act the chairman of the commission shall for thirty days by notices in the public press and by written notices mailed to all persons, firms or corporations in whose behalf such notices may be requested, in which notices the time and place of such selection shall be set out and thus advertised that sealed bids will be received at the time and place fixed in said notice and not later than the second Monday of October of each year. Each bid shall specifically state at what price each book will be furnished, and shall be accompanied by specimen copies of each book offered, and it shall be required that each bidder deposit with the Treasurer of the State of Texas such sum of money as the commission may require, to be not less than five hundred dollars nor more than twenty-five hundred dollars, according to the value of the books each bidder may propose to supply. Such deposits shall be forfeited to the State absolutely if such bidder so depositing shall fail to make and execute such contract and bond as herein required within such times as the commission may require, which time shall be specified in the notice advertised.

Art. 2847. **Sealed bids.**—All bids submitted under Article 2346 shall be sealed and deposited with the chairman of the commission to be delivered by him in the commission in session and for the purpose of considering the same, and shall be opened in the presence of the commission. The commission shall not consider a bid of any publisher of school books who has failed to pay the tax due and payable to the State of Texas under

the laws of this State, and who has failed to make the affidavit required by this Act. Each individual, firm or corporation submitting bids to the commission for its consideration, or presenting books for adoption under the provisions of this Act, shall file with the Secretary of State an affidavit giving the names of all people employed to aid in any way whatsoever in securing the contract, and that no member of the commission is in any manner interested, directly or indirectly, in such individual, firm or corporation. If the fact should be disclosed that any member of the commission is so interested it shall work a disqualification of such member of the commission, and he shall not be permitted to serve on the commission, or if it should further be disclosed that any member of the commission is or has been interested in any book or series of books as the author or associate author, or in any way pecuniarily interested in any book or series of books published by any house bidding for this contract, or offered for use in the public schools of this State, or that any member of the commission is interested in any such book or series of books in any manner, such fact shall likewise work a disqualification of such member, and he shall not be permitted to serve upon the commission.

Art. 2848. **Bids opened.**—It shall be the duty of the commission to meet at the time and place mentioned in the notice and advertisement, and it shall then and there open and examine the sealed proposals received; and it shall be the duty of the commission to make a full and complete investigation of all the books and bids accompanying the same. The textbooks shall be selected and adopted after a careful examination and consideration of all books presented, and the books selected and adopted shall be those which in the opinion of the commission are most acceptable for use in the schools,—quality, mechanical construction, paper, print price, authorship, literary merit and other relevant matters being given such weight in making its decision as the commission may deem advisable. The commission shall proceed without delay to adopt for use in the public schools of this State textbooks on all branches hereinbefore mentioned; provided, that if the bids submitted to said commission should not be satisfactory to said commission, they may postpone the selection of such books or a part thereof to such time as they may select, and after the same is readvertised, new bids may be received and acted on by such commission as provided for in this Act; provided, that no textbook shall be adopted until it has been read carefully and examined by at least a majority of the commission.

Art. 2849. **Bids in two forms.**—All publishers submitting bids under the provisions of this Act shall submit their bids in two forms, one in which is stated the allowance made for the books then in use and the property of the State, when offered in exchange for the new books adopted under this Act; the other without stating the allowance for said books, which books would remain the property of the State. Said allowance and condition for exchange if agreed to and accepted by the State shall be en-

forced only during the two scholastic years following a change in books.

Art. 2850. Changes may be ordered.—Every contract entered into with a publisher for the adoption of any book or books shall contain a provision that the commission herein provided for may, during the life of the contract, upon giving one year's previous notice to the publishers of such book or books, order such changes, amendments and additions to the book or books so selected and adopted as in the discretion of said commission shall keep them up to date and abreast of the times; provided that such revisions shall not be made oftener than once in two years.

Art. 2851. Contractors bond.—The bidder to whom any contract may have been awarded shall execute a good and sufficient bond payable to the State of Texas in the sum of not less than ten thousand (\$10,000.00) dollars for each basal book adopted under the provisions of this Act; and a good and sufficient bond payable to the State of Texas in the sum of not less than three thousand (\$3,000.00) dollars for each supplementary textbook adopted under the provisions of this Act; provided further, that the commission is hereby given authority to require bond in such further and additional sums as it may deem advisable, said bond to be approved by the commission; such bond to be conditioned that the contractor shall faithfully perform all the conditions of the contract; the contract and bond shall be prepared by the Attorney General, and be payable in Travis County, Texas, and shall be deposited in the office of the Secretary of State. For the purpose of securing satisfactory bond a series of pamphlet writing books shall be considered as one basal book, and a series of pamphlet drawing books shall be considered as one basal book. The bond shall not be exhausted by a single recovery thereon, but may be sued upon from time to time until the full amount thereof is recovered; and the Texas State Textbook Commission may, at any time, on twenty days' notice, require a new bond to be given, and in the event the contractor shall fail to furnish such new bond the contract of such contractor may, at the option of the Texas State Textbook Commission, be forfeited.

Art. 2852. Not to be furnished to others at less price.—All contracts with publishers for the furnishing of books hereunder shall further stipulate and bind such publishers that they will not hereafter during the first twelve months after the date of the respective contracts furnish or offer to furnish and distribute the same book or books under contracts with any other State, county or school district in the United States at a lower price than that which said publishers agree to furnish and distribute the same books under the contracts executed pursuant to this Act, unless such publishers respectively shall immediately give such lower price to the beneficiaries of the contracts executed hereunder. In the event any such contract is made it shall be the duty of the Attorney General to institute suit upon the bond hereinabove provided for, for a recovery on behalf of the State of the liquidated damages due under and as

provided for in this article, and proof of a violation of this provision in any particular shall be prima facie evidence of liability in any such suit brought hereunder, and in case any contractor who has a contract to furnish a book or books for the State under the provisions of this Act shall at any time within twelve months after the date of this adoption contract with any other state, county or school district in the United States to furnish and distribute the same book or books at a lower price than fixed in accordance with the provisions of this Act, under similar conditions of sale and distribution as may be decided by the Texas State Textbook Commission, such lower price shall immediately be given to the State of Texas, and for the breach of any of the conditions and stipulations contained herein or in the respective contracts, the contract may be forfeited and the contractors shall be liable to the State of Texas in liquidated damages in the full amount of the bond; and it shall be the duty of the Attorney General to bring suit on the bond of such contractors for such liquidated damages as provided for in this article.

Art. 2853. Anti-trust provision.—No book or books shall be purchased from any person, firm or corporation who is a member of or connected with any trust; and in the event it be established that this provision has been violated, such violation shall be held to be fraud and collusion as contemplated under Article 2852 of this Act, and the Attorney General shall bring suit upon the bond of such person, firm or corporation, and upon proof of such violation shall recover the liquidated damages as provided for in said Article 2852 hereof, as defined by the laws of this State, and a sworn affidavit that said person or corporation is not connected either directly or indirectly with a trust shall be required, and said affidavit shall be filed with said commission. Before proceeding to adopt books as provided under the provision of this Act, the commission shall require all persons, firms and corporations bidding for a contract to file with the commission a sworn statement on or before the date selected by the commission for receiving sealed bids, stating whether said person, firm or corporation is interested, or whether said person, firm or any member thereof, or any individual stockholder of such corporation is interested, or whether said person, firm, or any member thereof, or any individual stockholder of such corporation is interested or acting as a director, trustee or stockholder, either directly or indirectly or through a third party, or in any manner whatsoever in any other textbook publishing house, and this statement shall be sworn to by such person, a member of such firm or the president, secretary, and each of the directors of said corporation. All firms or persons bidding for a contract or supplying books shall present a sworn statement signed by all its members showing the names of all members of said firm, and whether any other person, firm or corporation has any financial interest in said firm, and also whether any individual member or members of said firm have any financial interest in any other textbook publishing firm or corporation or textbook

publishers. The commission shall require all corporations, or persons, or firms to file with the Governor attested copies of all written agreements entered into and existing between them and others engaged in the textbook publishing business, and if in the opinion of the commission such written agreements or other facts adduced are violations of the anti-trust law of the State of Texas, or opposed to public policy, the bids of such houses shall not be considered by the commission.

Art. 2854. **Contract approved.**—Each contract shall be duly signed by the publishing house or its authorized officers and agents; and if it is found to be in accordance with all the provisions of this Act, and if the bond herein required is presented and duly approved, the commission shall approve said contract and order it to be signed on behalf of the State by the Governor in his capacity as chairman. All contracts shall be made in duplicate, one copy to remain in custody of the Secretary of State and be copied in full in the minutes of the meeting of the commission in a well bound book, and the other copy to be delivered to the company or its agent.

Art. 2855. **Deposit to be returned.**—When any person has been awarded a contract and he has filed his bond and contract with the commission and the same has been approved, the commission shall make an order on the Treasurer of the State reciting such fact, and thereupon the Treasurer shall return the deposit of such bidder to him; but if any successful bidder shall fail to make and execute the contract and bond as hereinbefore provided, the Treasurer shall place the deposit of such bidder in the State Treasury to the credit of the available school fund, and the commission shall re-advertise for other bids to supply such books which said bidder may have failed to supply. All unsuccessful bidders shall have their deposit returned to them by the State Treasurer as soon as the commission has decided not to accept their bids.

Art. 2856. **Commission to issue proclamation.**—As soon as the State shall have entered into the contract for the furnishing of books for the public schools of this State under the provision of this Act, it shall be the duty of the commission to issue its proclamation of such facts to the people of the State; and the State Superintendent of Public Instruction shall carefully label and file away the copies of the books adopted as furnished for examination to the board; and such copies of such books shall be securely kept and the standard of quality and mechanical excellence of the book or books so furnished under this Act shall be maintained in said books so furnished under contract authorized by this Act during the continuance of the contract.

Art. 2857. **List to be furnished.**—As soon as practical after the adoption of the textbooks provided for in this Act, the Superintendent of Public Instruction shall address a circular letter to the county superintendent and to the president of the school boards in independent school districts, which circular letter shall

contain a list of all the books with their respective prices, together with such other information as he may deem advisable.

Art. 2858. Depository.—All parties with whom the contracts have been made shall establish and maintain in some city in the State a depository where a stock of their goods to supply all immediate demands shall be kept; and contractors not maintaining their own individual or separate State agencies or depositories shall maintain a joint agency or depository to be located at some suitable and convenient distributing point. Any person, dealer or school board in any county in the State may order from the central depository; provided that the price of books so ordered shall be paid in advance. Upon the failure of any contractor to furnish the books as provided in the contract and in this Act, the county judge in the county wherein such books have not been furnished shall report the fact to the Attorney General, and he shall bring suit on account of such failure in the name of the State of Texas in the district court of Travis County, and shall recover on the bond given by such contractor for the full value of the books not furnished as required, and in addition thereto the sum of one hundred dollars, and each day of failure to furnish the books shall constitute a separate offense, and the amounts so recovered shall be placed to the credit of the available school fund of the State. Any unorganized county shall be furnished from the same agency as the county to which said unorganized county is attached for judicial purposes in the same manner as such organized county.

Art. 2859. Price to be printed.—The contract price of each book shall be plainly printed on the inside of the back of each book, together with the following notice, "The price marked hereon is fixed by the State, and any deviation therefrom should be reported to the State Superintendent of Public Instruction;" provided this notice may be waived by the State Board of Education the last year of the contract.

Art. 2860. Textbooks exclusive.—The books adopted by the commission under the provisions of this Act shall be introduced and used as textbooks to the exclusion of all others in public free schools of this State for such period of years as may be determined by the commission, not to exceed six years in any case; provided the right to the exclusive use of new books during the first two years of the term of any contract may be waived by the contracting parties to provide for gradual introduction of the new books, and provided further that nothing in this Act shall be construed to prevent or prohibit the trustees of school districts from purchasing textbooks with the local maintenance funds and furnishing free textbooks to the students in the event that no contracts are made by the State.

Said commission shall not contract for any book of which any member of the nominating committee, or any member of said commission is or may be author.

Art. 2861. Appearing before commission.—No person, not the author or publisher or the bona fide permanent and regular employe of such publisher, shall appear before such Textbook

Commission in behalf of any book submitted to the Commission for adoption, or seek to influence the members thereof.

2. DISTRIBUTION OF BOOKS.

| Article | Article |
|-------------------------------------|--------------------------------|
| Additional supplementary books..... | Requisitions |
| Cancellation for fraud..... | Warrants |
| Agent designated..... | Teachers to report..... |
| Compensation of teachers..... | Rules by superintendent..... |
| Without cost to pupils..... | Printed labels..... |
| Available funds..... | Books may be purchased..... |
| Text book fund..... | Disposition of text books..... |
| Superintendent's report..... | Complaints..... |
| Superintendent manager..... | Requisitions for readers..... |
| Depositories..... | Expenses..... |
| Custodians..... | Constitutionality..... |
| Property of the State..... | Complete plan..... |
| Trustees bond..... | |

Art. 2862. **Additional supplementary books.**—When the supplementary books other than those selected by the Textbook Commission are used, they shall be furnished at a price fixed by the trustees of the school in which they are used and approved by the State Superintendent of Public Instruction, which price in no case shall be greater than the publishers list price; and if any teacher or trustee shall knowingly and directly or indirectly receive from any pupil a greater price therefor than the price fixed, he shall be guilty of a misdemeanor, and on conviction shall be fined not less than fifty dollars nor more than one hundred dollars.

Art. 2863. **Cancellation for fraud.**—The State may, in a suit to be instituted by the Attorney General, cancel any contract entered into by virtue of the provisions of this Act for fraud, or collusion, or material breach of contract upon the part of either party of the contract, or any member of the commission or any person, firm or corporation or their agents making said bond or contract; and for the cancellation of any such contract the Attorney General is hereby authorized to bring suit in the proper court of Travis County, and in case of the cancellation of any contract as provided for, the damages are fixed at not less than the amount of said bond, to be recovered as liquidated damages in the same suit cancelling said contract; and on account of the difficulty of determining the damages that might accrue by reason of such fraud, collusion or material breach, and cancellation of such contract, the full amount of the bond given by the contractor shall be considered as liquidated damages to be recovered out of said bond by the State at the suit of the Attorney General, and every contract that shall contain a clause to this effect.

Art. 2864. **Agent designated.**—Any person, firm or corporation with whom a contract has been entered into under the provisions of this Act shall designate the Secretary of the State of Texas as its or their agent, upon whom citation and all other writs and processes may be served in the event any suit shall be brought against such person, firm or corporation.

Art. 2865. **Compensation of teachers.**—The teachers selected upon said commission under the provisions of this Act shall receive as compensation for their services the sum of five dollars

per day each while on active duty and actual traveling expenses in going to and from the place of meeting, and in attending to the business of the commission, to paid upon warrants drawn by the Comptroller under the direction and approval of the chairman of the Commission. The Superintendent of Public Instruction is hereby fully authorized to employ one stenographer to assist in the clerical work of the State Textbook Commission, the pay of said stenographer to be paid out of the appropriation made for expenses of the Textbook Commission on account approved by the State Superintendent of Public Instruction.

Art. 2866. **Without cost to pupils.**—The State Board of Education is hereby authorized and empowered and it is made its duty to purchase books from the contractors of textbooks used in public free schools of this State and to distribute the same without other cost to the pupils attending such schools within this State in the manner and upon the conditions hereinafter set out.

Art. 2867. **Available fund.**—In order to carry out the provisions of this Act the State Board of Education shall annually at a meeting designated by them each year, set apart out of the available free school fund of the State an amount sufficient to purchase and distribute the necessary school books for the use of the pupils of this State for the scholastic year ensuing.

Art. 2868. **Textbook fund.**—The State textbook fund of this State shall consist of the fund set aside by the State Board of Education from the available school fund as is provided for in this Act, together with all funds accruing from the sale of disused books and all moneys derived from the purchase of books from boards of school trustees by private individuals, by schools, or from any other source.

Art. 2869. **Superintendent's report.**—The State Board of Education shall require from the State Superintendent on July first of each year a report as to the funds necessary for the purchase and distribution of other necessary expenses of school books for the regular school session of the following year, and said Board of Education shall have the power to set apart from the available school fund the estimated amount with 25 per cent additional, this additional sum to be used to meet emergencies or necessities caused by unusual increase in scholastic attendance or by unusual and unforeseen expenses and school conditions. Funds transferred in the textbook fund shall remain permanently in this fund until expended, and shall not lapse to the State at the close of the fiscal year. The State Superintendent of Public Instruction shall be required to include in the aforementioned report to the State Board of Education a statement as to the amount of this fund which is unexpended, and said amount shall be considered by the board in determining the necessary expenditures for textbooks for the following year.

Art. 2870. **Superintendent—manager.**—The purchase and distribution of free textbooks for the State shall be under the

management of the State Superintendent of Public Instruction, subject to the approval of the State Board of Education.

Art. 2871. **Depositories.**—All parties with whom book contracts have been made shall establish and maintain in some city in the State a depository where a stock of their goods to supply all immediate demands shall be kept; all contractors not maintaining their own individual or separate State agencies or depositories shall maintain a joint agency or depository to be located at some suitable and convenient distributing point, at which general depository each contractor joining in said agency shall keep on hand a sufficient stock of books to supply the schools of the State. Books to be purchased in accordance with the terms of this Act, shall be delivered by said depository, all packing, shipping, freight, express, mailing or other charges to be paid by said contractor or depository, to railway station at the town or city in which school is situated, or to railway station designated in the requisition; provided, that the depository shall not be required to fill orders by express or parcel post except such orders as may be defined by the State Superintendent of Public Instruction as emergency orders. The cost, above established freight rate for filling such emergency orders, may be added to the price of the books so shipped. If book contractors have complied with orders from the State Department of Education and have made prompt shipments as required by their contracts, if the receivers of said shipments fail or refuse to take the shipments from the transportation companies, the contractors will not be responsible for any demurrage in case of such failure.

Any person, school not controlled by the State, or dealer in any county in the State may order books from the said State agency, or depository and the books so ordered shall be furnished at the same rate and discount as are granted to the State; provided, that in such case the State depository or agency may require that the price of books so ordered shall be paid in advance. Upon failure of any contractor to furnish the books as provided in the contract and in this Act, the county judge in the county wherein such books have not been furnished, shall report the fact to the Attorney General, and he shall bring suit on account of such failure in the name of the State of Texas in the district court of Travis County, and shall recover on the bond given by such contractor for the full value of the books not furnished as required, and in addition thereto the sum of one hundred dollars, and each day of failure to furnish the books shall constitute a separate offense, and the amount so recovered shall be placed to the credit of the State Textbook Fund.

Art. 2872. **Custodians.**—The school trustees of each district shall be designated as the legal custodians of the books, and shall have the power to make such arrangements for the distribution of books to the pupils as they may deem most effective and economical; provided, that no district shall have the power to make any regulation in regard to textbooks which is at variance with the provisions of this Act, or with the regulation of the State

made by the State Superintendent of Public Instruction and approved by the State Board of Education.

Art. 2873. **Property of the State.**—Books shall remain the property of the State, and after purchase through requisition according to the provisions of this Act, shall remain in the charge of the district school trustees as the legal custodians of the books. The district school trustees shall have the power to delegate to their employees such power as to requisitions and distributions of books and the management of books as in their judgment may be best, provided that such plans shall not be at variance with the provisions of this law, or with the State rules for free textbooks formulated by the State Superintendent of Public Instruction and approved by the State Board of Education.

Art. 2874. **Trustees bond.**—One or more members or employees of each district board of trustees shall enter into bond in the sum of fifty per cent in excess of the value of the books consigned to them by the State, payable in Austin, Texas, to the Governor of the State of Texas, or his successors in office, said bond to be approved by the county judge of the county in which the school is situated, and by the State Superintendent of Public Instruction and deposited with the State Superintendent, conditioned on the faithful discharge of his duties under his employment and under this Act, and that he or they will faithfully account for all books coming into his or their possession and for all moneys received from the sales thereof. All moneys accruing from the forfeiture of the bonds shall be deposited by the Governor to the credit of the State Textbook Fund.

Art. 2875. **Requisitions.**—Requisitions for books shall be made in the following manner: On the first day of April each teacher shall make report to the principal of the maximum attendance of his or her grade, or school, if not a graded school. If the school has only one teacher, said report as to the maximum attendance of pupils of each grade of work shall be made by the teacher to the board of school trustees and to the county superintendent. Reports as to the maximum attendance for the school shall be made not more than one week subsequent to the first school day of April by the principal to the city or town superintendent or by the principal to the county superintendent if the school is not situated in a city or town. The city or town superintendent of schools shall compile reports of principals and make report to the State Superintendent of Public Instruction. The county superintendent shall compile reports of the rural schools in his county and make report to the State Superintendent of Public Instruction. Books needed by the rural schools shall be requisitioned and distributed entirely through the office of the county superintendent. The duties of the county superintendent with reference to the care and distribution of textbooks shall be subject to the approval of the county board of trustees and the State Superintendent. Reports as to the maximum attendance of each school under their direction shall be made to the State Superintendent of Public Instruction by the aforesaid superintendent of cities, towns, and counties not later than April 25th,

provided that should the school close before this date, it shall be the duty of the teacher to file with the county superintendent and with the board of school trustees reports complying with the provisions of this Act. Blank forms for reports and for requisitions of textbooks shall be furnished to all boards of school trustees by the State Department of Education. Requisitions for books for a subsequent session shall be based on said reports as to the maximum number of scholastics in attendance the preceding school session, plus an additional ten per cent, and such requisition shall be made through the State Superintendent of Public Instruction and by him furnished to the State depository designated by contractors of books not later than June 1st of each year, provided that in cases of unforeseen emergency the State depository shall fill small orders for books on requisition approved by the State Department of Education. One copy of each textbook used in the work taught by the teacher shall be issued by the school trustees, or their representatives, to each teacher as a desk copy, such books to be returned to the trustees or their representatives at the close of the session.

Art. 2876. Warrants.—Bills for textbooks purchased by the State on requisitions as provided for in Article 2876a shall be paid by warrants on the State Treasury made by the Comptroller on receipt of bills approved by the State Superintendent of Public Instruction. Such payment shall be made within ninety days from date of delivery, and if payment be delayed thereafter, six per cent per annum shall be added until date of payment.

Art. 2876a. Teachers to report.—Teachers and school officers must make such reports as to the use, care and condition of free textbooks as may be required by the local trustees or by the State Department of Education. The salary for any month of any teacher or employee who neglects to make such report at the proper time may be withheld until each report be received in a condition satisfactory in form and content. Textbooks shall be subject to inspection by any inspector or agent authorized by those having charge of the local textbook service, or authorized by the State Superintendent of Public Instruction, subject to the approval of the State Board of Education, provided that inspectors authorized by the State Department of Education shall be those in regular employment as high school inspectors, rural school inspectors, or inspectors of vocational education.

2876b. Rules by superintendent.—Specific rules as to the requisition, distribution, care, use, and disposal of books may be made by the State Superintendent of Public Instruction, subject to the approval of the State Board of Education; provided, that such rules shall not conflict with the provisions of this Act, or with the uniform textbook law under the terms of which contracts for supplies and books are made with the publishers or with the terms of said contract. No teacher or employee of the school engaged in the distribution of textbooks under this law as the agent or employee of the State, or of any county or district in the State shall, in connection with this distribution, sell or distribute, or in any way handle, any kind of school furniture or

supplies, such as desks, stoves, blackboards, crayon, erasers, pens, ink, pencils, tablets, etc.

Art. 2876c. Printed labels.—All books shall have printed labels on both inside covers. Each school shall number all books, placing the number on these labels. All teachers shall keep a record of the number of all books issued to each pupil. All books must be covered by the pupil under the direction of the teacher. Books must be returned to the teacher at the close of the session, or when the pupil withdraws from school. Each pupil, or its parent or guardian shall be responsible to the teacher for all books not returned by the pupil, and said pupil not returning all books delivered to him or her shall not be entitled to the benefits of this Act until said books are paid for by said parent or guardian.

Local boards of trustees shall make provision for the fumigation of books before the reissue of the books. Covers of all books shall be removed before reissue, and the pupil to whom the books are issued shall replace cover under the direction of the teacher.

Art. 2876d. Books may be purchased.—Books may be bought from the local boards of trustees by pupils or parents of pupils attending the public schools of the State, said board to furnish the books at the retail contract price. Any book may be purchased from the State depository designated by the contractor holding the contract for said book, by State institutions or by private schools, or church schools, such purchase to be made on the same terms as those given to the State for the same book. All money accruing from sales of books by district boards of school trustees shall be forwarded to the State Textbook Fund not later than one month after the sale.

Art. 2876e. Disposition of textbooks.—The State Superintendent of Public Instruction, with the approval of the State Board of Education, may provide for the disposition of such textbooks as are no longer in a fit condition to be used for purposes of instruction, or for discarded books remaining the property of the State. In case of the disuse of books in fair condition, inspectors of the State Department of Education may require the continuance of the use of said books.

Art. 2876f. Complaints.—Complaints in regard to textbook service shall be made both to the State Superintendent and to the State depository designated by the contractor of the books. In case such complaint does not receive reasonable prompt attention complaint shall be taken to the county judge, who shall proceed in accordance with the provisions of this Act. Trustees of unorganized counties shall make complaint to the county judge of the county to which said unorganized county is attached for judicial purposes.

2876g. Requisitions for readers.—Requisitions for supplementary readers and books may be made at convenient times during the session, but must be made within one month in advance of the time the books will be needed, and shall be issued

according to the rules prescribed by the State Board of Education.

Art. 2876h. **Expenses.** All necessary expenses incurred by the operation of this Act incident to the enforcement of this law shall be paid from the State Textbook Fund herein provided for upon bills approved by the State Superintendent of Public Instruction, and shall be paid upon warrants drawn by the Comptroller upon the Treasury of the State.

Art. 2876i. **Constitutionality.**—Should the courts declare any section or provision of this Act unconstitutional, such decision shall effect only the section or provision so declared to be unconstitutional, and shall not effect any other section or part of this Act.

Art. 2876j. **Complete plan.**—The provisions of this Act are intended to furnish a complete plan for the adoption, purchase, distribution and use of free textbooks to be supplied to the public free schools of the State. All laws and part of laws in conflict herewith are hereby repealed.

CHAPTER SEVENTEEN.

TEACHERS' CERTIFICATES.

1. ISSUANCE OF CERTIFICATES.

| | Article | | Article |
|--------------------------------|---------|-----------------------------------|---------|
| State Board of Examiners..... | 2877 | Examination of papers..... | 2881 |
| County Board of Examiners..... | 2878 | Record of certificate..... | 2882 |
| Application..... | 2879 | Teachers' salaries..... | 2883 |
| Applicant's requisites..... | 2880 | Cancellation of certificates..... | 2884 |

Art. 2877. [2794] **State Board of Examiners.**—The State Superintendent shall be authorized to appoint a State Board of Examiners, consisting of not less than three competent teachers, living in the State, to serve during his pleasure, and he may increase or decrease the number, as varying conditions may make necessary. [Acts 1905, p. 262.]

Art. 2878. [2786] **County board of examiners.**—Each county superintendent shall appoint two persons who shall be a county board of examiners. A person to be eligible to such appointment must hold a teacher's State certificate of first or higher grade. They shall serve during the pleasure of the county superintendent, and shall meet at his call. The State Superintendent may, for cause approved by the State Board, require the county superintendent to dismiss any such appointee. In such case the vacancy must be filled by an appointee approved by the State Board. The county board of examiners of each county shall hold an examination if there be applicants, on the first Friday and Saturday following in the months of April, June, July, September and December of each year, and the State Superintendent may authorize such other examinations as may be necessary to secure an adequate force of certified teachers. Said board of examiners shall use the questions prescribed by the State Department of Education and shall conduct the examinations in accordance with the rules and regulations prescribed by

said State Department and the county superintendent. [Acts 1911, p. 195; Acts 1920, 3rd C. S., p. 112.]

Art. 2879. [2787] **Application.**—Any person desiring to be examined for a teacher's certificate shall make application to the county superintendent, stating the class of certificate desired, and shall present to the county superintendent a statement of three good and well known citizens, or such proof as he may require of his qualifications, except the examination grades required for the class of certificate desired. After investigation, the county superintendent shall give the applicant a written recommendation to the county board of examiners requiring them to examine the applicant for a certificate of the class mentioned; but no person shall receive such recommendation without first depositing with the county superintendent the sum of four dollars as an examination fee, and the recommendation given by the county superintendent shall show the receipt of said fee. The county board of examiners shall not permit any person to enter the examination who does not first present the written recommendation of the county superintendent. All examinations provided for herein and elsewhere in the Texas school laws shall be conducted in writing and in the English language. The county superintendent shall forward promptly to the State Superintendent, all papers of applicants applying for State certificates, these to be submitted to the State Board of Examiners, together with the reports of the county board of examiners, on a prescribed form furnished by the State Department of Education, with a fee of two dollars from the fee paid to him by each of the applicants applying for State certificates. Until shipment of papers to the State Superintendent, papers of applicants for a State certificate shall be deposited in some safe or vault at the county court house. [Acts 1905, p. 262; Acts 1911, p. 189; Acts 1921, p. 250.]

Art. 2880. [2788] **Applicant's requisites.**—No person shall receive a certificate authorizing his employment in the public free schools of Texas without showing to the satisfaction of the county superintendent that he is a person of good moral character, and has ability to speak and understand the English language sufficiently to use it easily and readily in conversation and in giving instruction in all subjects prescribed for the class of certificate for which he applies. The county superintendent, unless he knows the facts personally, shall require satisfactory proof of the applicant as herein required before issuing his recommendation to the county board of examiners. No certificate shall be granted to a person under eighteen years of age. [Acts 1905, p. 262; Acts 1911, p. 189; Acts 3rd C. S. 1920, p. 114.]

Art. 2881. [2786] **Examination of papers.**—The State Board of Examiners shall, at their next meeting after the receipt of said papers and reports, together with the fees, examine the papers and shall make a report to the State Superintendent

recommending that certificates be issued or be not issued, according to the grades made. To each applicant who has made the required grades the State Superintendent shall forward the report, together with the certificate recommended by the State Board of Examiners; and to each applicant who has failed to make the required grades, the State Superintendent shall forward the report of the State Board of Examiners without a certificate. [Acts 1911, p. 195; Acts 3rd C. S. 1920, p. 112.]

Art. 2882. [2798] **Record of certificates.**—The county superintendent shall keep a record of all certificates held by persons teaching in the public schools of the common school districts and of the independent school districts of his county. Any person who desires to teach in a public free school of a common school district shall present his certificate for record, before the approval of his contract. Any person who desires to teach in the public schools of an independent school district shall present his certificate to the county superintendent for record before his contract with the board of trustees of the independent school district shall become valid. A teacher or superintendent who does not hold a valid certificate shall not be paid for teaching or work done before the granting of a valid certificate, except for teaching in such branches as are exempted under the terms of this law. [Id.]

Art. 2883. [2781] **Salaries.**—Trustees in making a contract with a teacher shall determine the salary to be allowed or the wages to be paid. Provided a teacher holding a permanent State certificate shall not receive wages in excess of one hundred and fifty dollars per month out of the public free school fund; a teacher holding a first grade certificate shall not receive as wages from the public free school fund more than one hundred and twenty-five dollars per month, and a teacher holding a second grade certificate shall not receive as wages from the public free school fund more than one hundred dollars per month; provided that the salary limits herein specified shall not apply to any school district which levies and collects a local tax for school purposes. All women teaching in the State schools of the State shall be paid the same compensation as is paid to men for performing the same kind, grade and quantity of service. [Acts 1905, p. 262; Acts 1919, p. 145; Acts 3rd C. S. 1920, p. 45; Acts 1921, p. 211.]

Art. 2884. [2814] **Cancellation of certificates.**—Any certificate may be canceled for cause by the authority issuing it; and the State Superintendent shall have power to cancel any certificate upon satisfactory evidence that the holder thereof is conducting his school in violation of the laws of the State or is a person unworthy to instruct the youth of this State. If any teacher holding a certificate to teach in the public schools of this State shall enter into a written contract with any board of trustees to teach in any public school of this State, and shall, after making such contract and without the consent of the trustees,

abandon said contract, except for good cause, such abandonment shall be considered sufficient grounds for the cancellation of said teacher's certificate, and the same may be canceled upon the complaint of said trustees, or either of them. Before any certificate shall be canceled the holder thereof shall be notified, and shall have an opportunity to be heard, and shall have the right of appeal from such decision to the State Superintendent, and the State Board; provided, that when the State Superintendent shall have canceled the certificate, the appeal shall be to the State Board. The State Superintendent shall have the authority, upon satisfactory evidence being presented, to reinstate any teacher's certificate canceled under the provisions of this article, and upon a refusal of the Superintendent to so reinstate such certificate, the applicant shall have the right of appeal to the State Board. [Acts 1905, p. 263; Acts 1917, p. 366.]

2. CLASSES OF CERTIFICATES.

| | | | |
|--------------------------------------|--------------|-------------------------------------|--------------|
| Kinds of certificates..... | Article 2885 | Special certificates..... | Article 2889 |
| Ten years..... | 2885a | Special certificates..... | 2889a |
| Certificate by examination..... | 2886 | Certificates from other states..... | 2890 |
| Building to higher certificates..... | 2887 | City certificate..... | 2891 |
| College certificates..... | 2888 | | |

Art. 2885. [2797] **Kinds of certificates.**—Teachers' certificates authorizing the holders thereof to contract to teach in the public free schools of this State shall be of three kinds, as follows:

1. Elementary certificates.
2. High school certificates.
3. Special certificates.

Elementary certificates shall be of the following classes:

1. Elementary certificates of the second class.
2. Elementary certificates of the first class.
3. Elementary permanent certificates.

High school certificates shall be of the following classes:

1. High school certificates of the second class.
2. High school certificates of the first class.
3. High school permanent certificates.

Special certificates granted to teachers of kindergarten and special branches of study shall be of two classes:

1. Temporary.
2. Permanent. [Acts 1921, p. 242.]

Art. 2885a. **Ten years.**—When a teacher of a special subject has been for ten years engaged in teaching that subject in a city or town of two thousand inhabitants or more the board of trustees of such city or town shall have the right to employ such teacher though such teacher has no certificate. [Acts 1925, p. 326.]

Art. 2886. **Certificate by examination.**—An elementary certificate of the second class may be obtained by examination only. An applicant for an elementary certificate of the second class shall be examined in spelling, reading, writing, arithmetic, English grammar, elementary physiology and hygiene with special

reference to narcotics, school management and methods of teaching, descriptive geography, Texas history, United States history, Texas school law relating to teachers and pupils, and, in addition, on any two of the following subjects:

Elementary agriculture, elementary composition, drawing and music.

In taking examination for elementary certificate of the second class, no applicant shall be permitted at any one series of examinations to take examinations on more than thirteen subjects, eleven prescribed and two optional. An elementary certificate of the second class shall be valid, unless canceled by lawful authority, until the second anniversary of the thirty-first day of August of the scholastic year in which the examination was held, and to receive such a certificate an applicant shall make on examination on all subjects an average grade of not less than seventy-five per cent and on each subject a grade of not less than fifty per cent; provided that if the applicant makes a general average on all subjects of not less than eighty-five per cent and on each subject a grade of not less than sixty per cent, he may receive an elementary certificate of the second class valid, unless canceled by lawful authority, until the third anniversary of the thirty-first day of August of the calendar year in which the examination was held.

A high school certificate of the second class may be secured by examination only.

An applicant for a high school certificate of the second class shall be examined in the subjects prescribed for an elementary certificate of the second class, on any two of the optional subjects prescribed for an elementary certificate of the second class, and in addition thereto, on civil government, higher English composition, elementary psychology applied to teaching, and on any four of the following subjects:

Algebra, physical geography, ancient history, modern history, elements of plane geometry, botany and American literature.

A high school certificate of the second class shall be valid, unless canceled by lawful authority, until the second anniversary of the thirty-first day of August of the calendar year in which the examination was held. The applicant shall make on examination on all subjects an average grade of not less than seventy-five per cent and on each subject a grade of not less than fifty per cent; provided that if the applicant makes a general average on all subjects of not less than eighty-five per cent, and on each subject a grade of not less than sixty per cent, he shall be entitled to receive a high school certificate of the second class valid, unless canceled by lawful authority, until the third anniversary of the thirty-first day of August of the calendar year in which the examination was held. [Id.]

Art. 2887. Building to higher certificate.—The holder of an elementary certificate of the second class may during the validity of said certificate, build to a high school certificate of the second

class by taking examination in the additional subjects required for a high school certificate of the second class and in any four of the optional subjects prescribed for a high school certificate of the second class.

An applicant who, at one series of examinations, takes examinations on all of the subjects required for a high school certificate of the second class, shall not be permitted to take examination, at any one series of examinations, on more than twenty subjects, fourteen required and six optional, as specified in the requirements, respectively, for the issuance of elementary and a high school certificate of the second class. An applicant who takes at one series of examinations all of the examinations necessary to raise an elementary certificate of the second class to a high school certificate of the second class, shall not be permitted to take examinations during any one series of examinations on more than seven subjects, three prescribed, and four optional. [Id.]

Art. 2888. College Certificates.—An applicant who completes the first year course of a Texas State normal school shall be entitled to receive an elementary certificate of the first class, which shall be valid unless cancelled by lawful authority until the second anniversary of the thirty-first day of August of the calendar year in which the certificate was issued.

An applicant who completes the second-year course of a Texas State normal school shall be entitled to receive an elementary certificate of the first class, which shall be valid, unless cancelled by lawful authority, until the third anniversary of the thirty-first day of August of the calendar year in which the certificate was issued.

A person who has satisfactorily completed five full courses in any Texas State normal college, or in any university, senior college, junior college, or normal college which is ranked as first class by the State Superintendent shall be entitled to receive from the State Department of Education an elementary certificate of the first class, which shall be valid unless cancelled by lawful authority, until the fourth anniversary of the thirty-first day of August of the calendar year in which the certificate was issued; provided that the five courses shall include at least one course in education dealing especially with elementary education, at least one course in English, and that not more than two courses may be taken in one subject; and provided further that all of these five courses must be those only which the college recognizes as credit towards its diploma or degree.

An applicant who has satisfactorily completed the second year of college work in a Texas State normal college, and who has specialized in the materials of elementary education, including a minimum of thirty-six recitation hours of practice teaching in the elementary grades, under the supervision of a critic teacher, shall be entitled to receive a permanent elementary certificate.

An applicant who has satisfactorily completed the second

year's work of a university, or senior or junior college, other than a Texas State normal college, which is classified as first class by the State Superintendent, in which work shall be included two courses of professional training, shall be entitled to receive an elementary certificate of the first class, valid until the sixth anniversary of the thirty-first day of August of the calendar year in which the certificate was issued; provided that the holder of this certificate shall, upon completion of five years of successful elementary teaching, be granted a permanent elementary certificate; provided further that the satisfactory completion of any year's work at any Texas State normal college, or any university, senior college, junior college, or normal college, which is ranked as first class by the State Superintendent, may be substituted for a year's successful teaching, if this attendance at college take place after the issuance of the certificate.

A high school certificate of the first class, valid until the second anniversary of the thirty-first day of August of the scholastic year in which the certificate is issued, shall be granted to a student who has satisfactorily completed five full courses in any Texas State normal college or in any university, senior college, junior college or normal college, which is ranked as first class by the State Superintendent; provided that the five courses shall include at least one course in education, and at least one course in English, and that not more than two courses may be taken in any one subject; and provided further that all these five courses must be those only which the college recognizes as credit towards its diploma or a degree.

A high school certificate of the first class, valid until the fourth anniversary of the thirty-first day of August of the scholastic year in which the certificate is issued, shall be issued to a student who completes two years of college work in any Texas State normal college, or in any university, senior college, junior college, or normal college, which is ranked as first class by the State Superintendent, provided that this work shall include two courses in education, one of which shall bear upon training for high school teaching.

A high school certificate of the first class, valid until the sixth anniversary of the thirty-first day of August of the scholastic year in which the certificate is issued shall be granted to a student who completes three years of college work in a Texas State normal college or in any university, senior college, or normal college which is ranked as first class by the State Superintendent, provided that this work shall include three courses in education, one course of which must include a minimum of thirty-six recitation hours of practice teaching and one course of which shall bear upon training for high school teaching.

A permanent high school certificate shall be granted to a student who has satisfactorily completed a four year course, leading to a degree, in a Texas State normal college or in any university, senior college, or normal college, classified as first class by

the State Superintendent, provided that this work shall include four courses in education, one of which shall bear upon high school teaching and one of which shall consist of study of methods, observation of methods, and practice in teaching.

Any person who holds a diploma conferring upon him the degree of Bachelor of Arts, or any equivalent Bachelor's degree, or any higher academic degree, from any Texas State normal college, or any university, senior college, or normal college, which is ranked as first class by the State Superintendent, who has not had four full courses in education, but who furnishes satisfactory evidence of having completed two full courses in education, one of which shall bear upon high school teaching, and of having had not less than three years' successful experience in teaching, aggregating not less than twenty-seven months, subsequent to the taking of the degree, shall be entitled to receive from the State Department of Education a permanent high school certificate, which shall be valid anywhere in the State, unless cancelled by lawful authority; provided that a person on receiving such a diploma and degree from any Texas State normal college, or any university, senior college, or normal college, which is ranked as first class by the State Superintendent, who has taken two full courses in education, one of which shall bear upon high school teaching, and who has not had three years' successful experience in teaching, may be granted a temporary high school certificate, valid until the fourth anniversary of the thirty-first day of August of the scholastic year in which the diploma is issued.

An elementary certificate of the second class shall be valid only in elementary schools, grades one to seven, inclusive.

A high school certificate of the second class shall be valid in elementary schools, grades one to seven, inclusive, and in third class high schools, and unclassified high schools, but not in first and second class accredited high schools.

An elementary certificate of the first class shall be valid only in elementary schools, grades one to seven, inclusive; provided that the holder of an elementary certificate based upon the completion of two years of college work in a Texas State normal college, or in any university, senior college, junior college, or normal college, ranked as first class by the State Superintendent, may contract to teach in unclassified high schools, and in high schools of the third class.

A two-year high school certificate of the first class shall be valid in the elementary grades, one to seven, inclusive, in third class high schools, and unclassified high schools, but not in accredited high schools of the first and second class.

A high school certificate of the first class, valid for four years or six years, shall entitle the holder to contract to teach in any elementary grade or in any high school.

The term "course" as relating to college work, wherever it occurs in this law is to be taken as designating not less than the equivalent of 108 recitation hours of work.

In all cases of elementary, high school or special certificates, granted on college work, the validity of the certificate shall begin with the date of the completion of the work on which the certificate is granted, and shall expire on the thirty-first day of August of the scholastic year, for the specified length of time for which the certificate was issued. The State Board of Examiners in the State Department of Education shall on application of institutions in Texas to be recognized as junior colleges, teachers' colleges, colleges or universities of the first class, make investigations as to the standards of such institutions, and shall make recommendations to the State Superintendent of Public Instructions, who shall give them such rating as the standards of their work may justify. Any school applying for approval under the provisions of this Act shall pay a fee of twenty-five dollars. Each applicant for teachers' certificates based on college credentials from junior colleges, teachers' colleges, colleges or universities, shall pay a fee of one dollar to cover the expenses of inspection and standardization of approved colleges and of recording and issuing the certificate.

The State Superintendent shall appoint a suitable person or persons of recognized college standing, who shall make a thorough inspection of the equipment and standards of instruction maintained in each school applying for approval under this law, and who shall make a detailed report to the State Board of Examiners for their consideration. The State Board of Examiners shall make recommendation to the State Superintendent in regard to the classification of schools applying for approval under the provisions of this law, and shall give to them such rating as the standards of their work may justify.

The State Superintendent shall have each school receiving the benefits of this law thoroughly inspected from year to year as to its standards and facilities of instruction, and he shall have authority to suspend any school from the benefits of this law which fails for any reason to maintain the approved standards of classification. [Id., p. 370.]

Art. 2889. **Special certificates.**—Special certificates may be issued authorizing the holders to teach in a kindergarten or to teach the special subjects specified in this article.

Any person who has satisfactorily met the college entrance requirements of any Texas State normal college or any university or senior college, junior college or normal college, ranked as first class by the State Superintendent, and who has satisfactorily completed one year's training in a kindergarten training school for teachers which has been classified by the State Superintendent as a kindergarten training school of the first class, shall be entitled to receive a kindergarten certificate valid for two years, and the holder thereof on completing the equivalent of three courses of additional work at a kindergarten training school classified as first class by the State Superintendent, shall be entitled to have this certificate extended for one year.

A person who has satisfactorily met the college entrance requirements of any Texas State normal college or any univer-

sity, or senior college, junior college, or normal college ranked as first class by the State Superintendent and who has satisfactorily completed a two-year college course in a kindergarten training school for teachers, classified by the State Superintendent as a kindergarten training school of the first class, shall be entitled to receive a kindergarten certificate valid for four years. The holder of such certificate after three years of satisfactory experience in teaching in a kindergarten, shall be entitled to receive a permanent kindergarten certificate; provided that it shall be illegal for a person to teach in a public school kindergarten unless he or she is the holder of a kindergarten certificate.

Certificates authorizing the holders to teach the special subjects of agriculture, domestic art, domestic science, commercial subjects, public school drawing; expression, manual training, physical training, public school music, vocal music, instrumental music, industrial training, or foreign languages may be granted to applicants as follows:

An applicant who has met the college entrance requirements of any Texas State normal college, or any university or senior college, junior college, or normal college, which is ranked as first class by the State Superintendent, and, in addition thereto, has satisfactorily completed ten college courses, at least one of which shall be in English, at least one in education, and at least one in the special subject on which the certificate is issued, these courses to be taken in any Texas State normal college, or any university, or senior college, junior college, or normal college, which is ranked as first class by the State Superintendent, shall be entitled to receive a special certificate authorizing him to make contract to teach his special subject, which special certificate shall be valid until the third anniversary of the thirty-first day of August of the scholastic year in which the certificate was issued; provided that one of these courses must include special methods of teaching the subject on which the certificate is granted.

An applicant who has met the college entrance requirements of any Texas State normal college, or any university, senior college or normal college, which is ranked as first class by the State Superintendent, and in addition thereto has satisfactorily completed fifteen college courses, at least one of which shall be in English, at least one in education, and at least three of which shall be in the subject on which the certificate is granted, these courses to be taken in any Texas State normal college, or any university, or senior college, or normal college, ranked as first-class by the State Superintendent, shall be entitled to receive a certificate entitling him to contract to teach his special subject, which certificate shall be valid until the fourth anniversary of the thirty-first day of August of the scholastic year in which the certificate is granted.

It is especially herein provided that the holder of a special kindergarten certificate, or a special certificate in commercial subjects, public school music, public school drawing, or physical training, on the completion of three years of teaching the special

subject during the validity of his certificate or certificates, shall be entitled to receive a permanent special certificate in his subject, valid for use in the public schools, unless cancelled by lawful authority.

An applicant who has met the college entrance requirements of any Texas State normal college or any university or senior college, or normal college, ranked as first class by the State Department of Education, and in addition thereto, has completed twenty college courses, at least one of which shall be in English, at least one in education, and at least four of which shall be in his special subject, these courses to be taken in any Texas State normal college, senior college, or normal college, ranked by the State Superintendent as a college of the first class, shall be entitled to receive a permanent certificate in his special subject, valid for life unless cancelled by lawful authority; provided that the college courses shall include special methods of teaching the subject on which the certificate is issued.

Teachers who devote the major portion of their time to teaching or supervising special subjects shall be required to hold a high school certificate or a special certificate, as provided for in this law, on the special subject in which they give instruction or supervise work. [Id.]

Art. 2889a. **Special certificate.**—Any person who for six years or more has been the holder of a State first grade certificate or its equivalent, and who can furnish evidence of successful experience in teaching in the public schools for six or more sessions subsequent to September 1, 1910, shall be entitled to receive a State permanent first grade certificate.

Any person who has been engaged in teaching a special subject in the public school for a period of four years, and who has been employed to teach the said subject during the last three years prior to September 1, 1925, shall be exempt from the requirement to hold a teacher's special certificate so long as he or she continues to be employed to teach the same subjects; provided that any person who has been engaged in the teaching of music, or writing and drawing in the public schools of Texas for ten years shall be exempt from the present law and be given a life certificate in that subject.

Any teacher who applies for a Texas teachers' certificate on credentials from another state may be granted by the State Superintendent an emergency certificate valid for four months, while the record is being completed, prior to determining the kind and class of certificate, if any, to be issued to the applicant. The applicant shall be required to pay the same fee for the issuance of an emergency certificate as is required by law to be paid on application for other teacher's certificates.

Any person who is employed to teach any trade or industry in the public schools may, upon application to the State Superintendent, signed by the majority of the board of trustees of the school desiring his services, be issued a temporary permit to teach said trade without being required to hold the special certificate prescribed by law; provided that no permit may be

granted for a longer term than two years and provided further that the fee for issuing said permit shall be the same as is required by law for the issuance of teacher's certificates.

The provisions of this Act are cumulative of the laws now in force regulating the issuance of teacher's certificates and all laws and parts of laws in conflict with the provisions expressed herein are hereby repealed. [Id., p. 449.]

Art. 2890. Certificates from other States.—The holders of diplomas or certificates from other States, who desire certificates valid in Texas, shall present such diplomas or certificates to the State Superintendent, who shall require the State Board of Examiners to make investigations as to the value of such diplomas or certificates as measured by the standards for certificates in this State; and the State Superintendent shall have the power to issue to the holder of a diploma or certificate from another State such Texas certificate as, in his judgment, the holder is entitled to receive, when the value of his diploma or certificate is estimated by the standards required for Texas certificates; provided that no certificates may be issued if the said diploma or certificate is not estimated to equal the lowest State certificate issued in Texas. [Acts 1911, p. 189; Acts 1920, 3rd C. S., p. 112.]

Art. 2891. City certificates.—A city or town which has a scholastic population of one thousand or more and has become an independent school district and which levies a local tax for educational purposes or which maintains a system of free schools for nine months in each year, and which has employed a superintendent of city schools, may have a city Board of Examiners. Said Board of Examiners shall in all cases consist of the city superintendent of the city schools; together with two other persons who shall be appointed by him, and who shall be teachers. The city Board of Examiners is hereby authorized to issue certificates valid only in the city in which they are issued; such certificates shall be temporary.

Temporary city certificates shall be of three classes, as follows: Second Grade, First Grade, and High School. A temporary city certificate shall be good for two years, unless cancelled by lawful authority, and a second city certificate shall not be issued to any person. The further regulation of the issuance of such certificates shall be provided for by the board of trustees of such cities or towns; provided, that no city or town shall make the requirements for a temporary certificate inferior to the requirements provided by law for any State certificates of the corresponding grades. Any city or town may at the discretion of the superintendent of city schools, employ a teacher of any special branch not included in the requirements of a State certificate, without requiring an examination or a teacher's certificate. Nothing in this article shall prevent the board of trustees of any city or town from recognizing the certificate issued in any other such city or town in this State and validating the same in the city or town so recognizing.

A superintendent of schools in any city or town of this State shall be required to be the holder of a State first grade or State permanent certificate, and no school board may legally contract with any superintendent who is not the holder of a State first grade or State permanent certificate; provided, however, this certificate requirement shall not apply to a superintendent who has held a position as city or town superintendent for a period of ten consecutive years in the school in which he or she is employed. [Acts 1921, p. 243.]

CHAPTER EIGHTEEN.

COMPULSORY EDUCATION.

| | | | |
|------------------------------|-----------------|---|-----------------|
| Attendance requirements..... | Article 2892 | Powers and duties..... | Article 2896 |
| Exemptions..... | 2893 | Superintendent shall furnish list, etc. | 2897 |
| Excuses for absences..... | 2894 | Parole of pupil..... | 2898 |
| Attendance officer..... | 2895 | | |

Art. 2892. **Attendance requirements.**—Every child in this State who is eight years and not more than fourteen years old shall be required to attend the public schools in the district of its residence, or in some other district to which it may be transferred, as provided by law, for a period of not less than one hundred days during each scholastic year. The period of compulsory school attendance at each school shall begin at the opening of the school term unless otherwise authorized by the district school trustees and notice given by the trustees prior to the beginning of such school term; provided that no child shall be required to attend school for a longer period than the maximum term of the public school in the district where such child resides. [Acts 1915, p. 93; Acts 1923, p. 255.]

Art. 2893. **Exemptions.**—The following classes of children are exempt from the requirements of this law:

1. Any child in attendance upon a private or parochial school which shall include in its course a study of good citizenship, and shall make the English language the basis of instruction in all subjects.

2. Any child whose bodily or mental condition is such as to render attendance inadvisable, and who holds definite certificate of a reputable physician specifying this condition and covering the period of absence.

3. Any child who is blind, deaf, dumb or feeble-minded, for the instruction of whom no adequate provision has been made by the school district.

4. Any child living more than two and one-half miles by direct and traveled road from the nearest public school supported for the children of the same race and color of such child and with no free transportation provided.

5. Any child more than twelve years of age who has satisfactorily completed the work of the seventh grade of a standard elementary school of seven grades, and whose services are needed in support of a parent or other person standing in parental relation to the child, may, on presentation of proper evi-

dence to the county superintendent, be exempted from further attendance at school. [Id.]

Art. 2894. Excuses for absences.—Any child not so exempt may be excused for temporary absence due to personal sickness, sickness or death in the family, quarantine, severe storm which has destroyed bridges and made the regular means of travel dangerous, or for unusual causes acceptable to the teacher, principal or superintendent of the school in which said child is enrolled; provided that the excuses are in writing and signed by the parent or guardian of said child. Any case so excused may be investigated by the authorities discharging the duties of attendance officer for the school from which said child is so excused. [Id.]

Art. 2895. Attendance officer.—The county school trustee of any county having a scholastic population of more than three thousand may elect a school attendance officer for said county upon petition of at least fifty resident freeholders of said county setting forth good reasons why said county should have an attendance officer. A public hearing shall be had on said petition after due notice thereof given by publication in a newspaper published at the county seat for three consecutive weeks, or if there be no such newspaper, then by posting printed notices in two public places within the county and one at the courthouse door of said county. If, after such hearing, said trustees believe that a school attendance officer is necessary to the proper enforcement of the provisions of this law, and that the schools of said county will be benefited by having said attendance officer, the said board may elect such officer as herein provided.

The board of trustees of any independent district having a scholastic population of more than two thousand may in like manner elect an attendance officer for said district.

Such attendance officer may have his salary paid from the available school funds belonging to said county or district, not exceeding two dollars per day for the time actually employed in discharging his duty. In any county or independent district where such attendance officer is not so elected, the duties of said attendance officer shall devolve upon the school superintendents and peace officers of such county or district who shall perform the same without additional pay. Counties or independent school districts which may avail themselves of the option to elect school attendance officers may elect the probation officer or some officer or officers of the juvenile court of said county to serve as such attendance officer. [Id.]

Art. 2896. Powers and duties.—The attendance officer shall have power to investigate all cases of unexcused absences from school, to administer oaths and to serve legal process, to enforce the provisions of this law, to keep records of all cases of any kind investigated by him in the discharge of his duties, and to make reports of his work as the State Superintendent may require. Nothing in this law shall be construed to authorize any

attendance officer to invade or enter without permission of the owner or tenant thereof, or the head of any family residing therein, any private home, or private residence, or any room or apartment thereof, except to serve lawful process upon any parent, guardian or other person standing in parental relation to any child affected by this law, or to forcibly take corporal custody of any child anywhere without permission of the parent or guardian thereof, or other person standing in parental relation to such child, except in obedience to valid process issued by a court of competent jurisdiction. [Id.]

Art. 2897. **Superintendent shall furnish list, etc.**—The county superintendent shall furnish to the superintendent of schools of each school district in the county, and to the principal of the school in case there be no superintendent, a complete list of all children of scholastic age belonging in said district, as shown by the last scholastic census and the record of transfers to and from said district. The superintendents and principals of the various schools of said county shall report to said county superintendent the names of all children subject to the provisions of this law who have not enrolled in said school, and the superintendent, principal or other official of private, denominational or parochial schools shall furnish to said county superintendent a list of all children of scholastic age enrolled in the school presided over by said official and the district in which said child was enumerated in the public school census. From such reports the county superintendent shall make up a complete list of all children within scholastic age enrolled in the various districts of said county who have not enrolled in some school and are not complying with the compulsory attendance law, and said list shall be furnished to the attendance officer. All notices, forms and blanks to be used by any of the superintendents, principals or officials of any school shall be prescribed by the State Superintendent. Any teacher giving instruction to any child within compulsory attendance age shall promptly report any unexcused absences to the attendance officer. [Id.]

Art. 2898. **Parole of pupil.**—Any child within the compulsory school attendance ages who shall be insubordinate, disorderly, vicious or immoral in conduct, or who persistently violates the reasonable rules and regulations of the school which he attends, or who otherwise persistently misbehaves therein so as to render himself an incorrigible, shall be reported to the attendance officer who shall proceed against such child in the juvenile court. If such child is found guilty in said court the judge shall have the power to parole said child, after requiring the parent or other person standing in parental relation, to execute a bond in the sum of not less than ten dollars, conditioned that said child shall attend school regularly and comply with all the rules and regulations of said school. If the superintendent or principal of any school shall report to the attendance officer for said school that said child has violated the conditions of his parole, said attendance officer shall proceed against such child

before the judge of the juvenile court, and if such child shall be found guilty of violating the conditions of said parole, the bond shall forthwith be declared forfeited and shall be collected in the same manner as other forfeited bonds under the general laws of this State, and the proceeds of same shall be paid into the available school fund of the common or independent school district. The judge of said court may, after a fair and impartial hearing given to said child, again parole said child, requiring such bond as he may deem prudent, and require said child to again enter school. If said child shall violate the conditions of the second parole and shall be convicted of same he shall be committed to a suitable training school as may be agreed upon by the parent of the child and the judge of the juvenile court in which the child is convicted. [Id.]

CHAPTER NINETEEN.

MISCELLANEOUS PROVISIONS.

| Article | Article |
|---------------------------------------|------------------------------------|
| Non-sectarian schools..... | Registers and reports..... |
| Separate schools..... | Shall attend summer schools..... |
| Where children may attend school..... | Elementary agriculture..... |
| Scholastic age..... | Cotton classing..... |
| Scholastic year..... | Cotton classing: standards..... |
| Powers of trustees over pupils..... | Cotton classing: instructors..... |
| Trustees' powers: eminent domain..... | Cotton classing: certificates..... |
| School terms..... | Free kindergartens..... |
| Governing boards: appointment..... | Building specifications..... |
| Oath..... | Examination of plans..... |
| Definitions..... | Unauthorized payments for con- |
| Agents for book publishers..... | struction..... |
| Prescribed studies..... | |

Art. 2899. [2896] **Non-sectarian schools.**—No part of the public school fund shall be appropriated to or used for the support of any sectarian school. [Acts 1905, p. 263.]

Art. 2900. [2897-8] **Separate Schools.**—All available public school funds of this State shall be appropriated in each county for the education alike of white and colored children, and impartial provisions shall be made for both races. No white children shall attend schools supported for colored children, nor shall colored children attend schools supported for white children. The terms "colored race" and "colored children," as used in this title, include all persons of mixed blood descended from negro ancestry. [Id.]

Art. 2901. [2899] **Where children may attend school.**—Every child in this State of scholastic age shall be permitted to attend the public free schools of the district or independent district in which it resides at the time it applies for admission, notwithstanding that it may have been enumerated elsewhere, or may have attended school elsewhere part of the year. [Id.]

Art. 2902. [2894-2900] **Scholastic age.**—All children, without regard to color, over seven years of age and under eighteen years of age at the beginning of any scholastic year, shall be entitled to the benefit of the public school fund for that year. The board of school trustees of any city or town or independent or common school district shall admit to the benefits of the public schools any person over seven and not over twenty-one years

old at the beginning of the scholastic year, if such person or his parents or legal guardian reside within said city, town or district. [Id; Acts 1913, p. 175; Acts 1915, p. 183.]

Art. 2903. [2901] **Scholastic year.**—The scholastic year shall commence on the first day of September of each year and end on the thirty-first day of August thereafter. [Acts 1905, p. 263; Acts 1915, p. 183.]

Art. 2904. [2902] **Powers of trustees over pupils.**—The trustees of schools shall have the power to admit pupils over and under scholastic age, either in or out of the district, on such terms as they may deem proper and just; provided, that in admitting pupils over and under the scholastic age, the school shall not be overcrowded to the neglect and injury of pupils within the scholastic age. They may suspend from the privileges of schools any pupil found guilty of incorrigible conduct, but such suspension shall not extend beyond the current term of the school. [Id.]

Art. 2905. **Trustees' powers: eminent domain.**—The county school trustees shall have power to purchase and lease real property for all the common school districts, and the independent school districts of their county having less than 150 scholastics, and the trustees of all independent school districts having 150 scholastics or more shall have power to purchase and lease real property for their district, for the purpose of supplying playgrounds, agricultural tracts and sites upon which to build school houses and such other buildings as are necessary for the schools of said districts, and to acquire such real property and easements therein by the exercise of the right of eminent domain. [Acts 1917, p. 323.]

Art. 2906. [2903] **School terms.**—Public schools shall be taught for five days in each week. Schools shall not be closed on legal holidays unless so ordered by the trustees. A school month shall consist of not less than twenty school days, inclusive of holidays, and shall be taught for not less than seven hours each day, including intermissions and recesses. [Acts 1905, p. 263; Acts 1915, p. 183.]

Art. 2907. **Governing boards: appointment.**—Each member of the governing board of the University of Texas, the Agricultural and Mechanical College, of the normal colleges, and of the College of Industrial Arts, shall be a qualified voter, and shall be selected from different portions of the State. One-third of the membership of each such board shall be biennially nominated by the Governor and appointed by and with the advice and consent of the Senate, and shall hold their offices for six years, respectively. [Acts 1913, p. 191.]

Art. 2908. [2766] **Oath.**—County superintendents, county judges and all school officers shall take the official oath. [Acts 1905, p. 263.]

Art. 2909. **Definitions.**—As used in this title:

1. State Superintendent means the State Superintendent of Public Instruction.
2. State Board means the State Board of Education.

3. County superintendent means county superintendent of public instruction.

Art. 2910. [2904] **Agents for book publishers.**—No member of the board of trustees of any public school, nor teacher in any of the public schools in this State, nor county or city superintendent of public schools shall, during the term of his office as trustee or superintendent, or during the time of his employment as teacher, act as agent or attorney for any textbook publishing company selling textbooks in this State. Nor shall any person interested in the publication of textbooks, or in selling the same to be used in the public schools of this State, be eligible to serve as school trustee, county or city superintendent of schools, or as teacher in any of the public schools of this State. If, after election as trustee, county or city superintendent or employment as teacher, any person filling such position accepts the agency or attorneyship of any textbook publishing company, the acceptance of such agency or attorneyship shall work a forfeiture of the office or place in the public schools held at the time of the acceptance of such agency or attorneyship. [Acts 1905, p. 263.]

Art. 2911. [2783] **Prescribed studies.**—All public schools in this State shall be required to have taught in them orthography, reading in English, penmanship, arithmetic, English grammar, modern geography, composition, physiology and hygiene, including the effects of alcoholic stimulants and narcotics on the human system, mental arithmetic, Texas history, United States history, civil government, elementary agriculture, cotton grading and other branches as may be agreed upon by the trustees or directed by the State Superintendent; provided, that the subject of elementary agriculture shall not be required to be taught in independent school districts having a scholastic population of three hundred or more, unless so ordered by the school boards. Suitable instruction shall be given in the primary grades once each week regarding kindness to animals and the protection of birds and their nests and eggs. Elementary agriculture shall include certain practical field studies and laboratory experiments as prescribed by the county school trustees in conformity to law and the requirements of the State Superintendent. Each summer normal institute and each county teachers' institute shall employ at least one instructor who shall be selected because of his special preparation to give instruction in agriculture. [Acts 1905, p. 262; Acts 1907, p. 316; Acts 1915, p. 134.]

Art. 2912. [2784] **Registers and reports.**—Teachers shall keep daily registers, in which the attendance, names, ages and studies of the pupils shall be recorded, and such other matters as may be prescribed by the State Superintendent. Said registers shall be open to the inspection of all parents, school officers, and all other persons who may be interested. All teachers shall make monthly reports on such subjects as may be designated by the State Superintendent or county superintendent, to be ap-

proved by a majority of the trustees of the district, and shall file the same with the county superintendent when they present their vouchers for their month's salaries. They shall make such reports at the end of the school term as may be prescribed by the State Superintendent, and, until such term reports are made, the trustees shall not approve vouchers for last month's salaries, nor shall the county treasurers pay the same. [Acts 1905, p. 263.]

Art. 2913. [2785] **Shall attend summer schools.**—As far as possible all teachers in the public schools of this State shall attend the summer normal and county institutes. [Id.]

Art. 2914. [2731] **Elementary agriculture.**—The State Normal School Board of Regents, the boards of directors of the Agricultural and Mechanical College, of the College of Industrial Arts, and of the State University shall require the teaching of elementary agriculture for teachers in the summer sessions of said institutions and the State normal schools. [Acts 1909 p. 221.]

Art. 2915. **Cotton classing.**—The State Board is authorized and instructed to require the teaching of cotton classification in all the State normal schools, industrial schools, summer normal schools, teachers' institutes, and in all public schools; such subject shall not be required to be taught in independent school districts having a scholastic population of three hundred or more, or in districts where the cotton acreage is less than ten per cent of the total acreage planted to farm products, unless so ordered by the school board or trustees. The grades of cotton taught in all schools shall be those established and provided for by the United States Department of Agriculture and known as official types or "standards." The State Superintendent shall furnish full information to all schools required to teach the classification of cotton, as to how to obtain such types or "standards." [Acts 1913, p. 129.]

Art. 2916. **Cotton classing: standards.**—The commissioners court of all counties coming under the provisions of this law shall provide for at least one set of the official types or "standards" to be placed in charge of the county superintendent, who shall use them for the purposes of instruction in classification of cotton, lend them to summer normal schools and teachers' institutes held in his county, and have types of same made for the various schools in his county applying for same, provided, that such schools shall pay the cost of making said types. The school board or trustees of every school district required by the provisions of this law to teach cotton grading, shall furnish the county superintendent with samples of the different grades of cotton from which a set of types or "standards" shall be made by comparing them with the official types or "standards," and the county superintendents shall certify that the same have been carefully compared with the official types or standards in his office, and shall correctly label same, showing the grade thereof; provided, that nothing in this article shall prevent school

boards or trustees from purchasing the official types or standards direct from the United States Department of Agriculture. The State normal schools and the State industrial schools shall procure the official types or standards from the United States Department of Agriculture and pay for same out of the appropriation made by the Legislature for their support and maintenance. [Id.]

Art. 2917. **Cotton classing: instructors.**—The State normal and industrial schools shall employ a competent instructor to teach the practical art of grading and classing cotton, and the handling of cotton in all of its branches from the field to the factory. Summer normals and county institutes shall make provision for the employment of instructors in cotton classification in the same way that they employ instructors in other required branches. [Id.]

Art. 2918. **Cotton classing certificates.**—Students of any school in this State where cotton grading or classing is required to be taught shall be entitled to a certificate of proficiency after passing such examination as the faculty of the school or the county superintendent of the county in which they propose to teach may prescribe; provided, that the applicant must be able to class sixty per cent or more of the samples presented compared with the types or standards of the Department of Agriculture. [Id.]

Art. 2919. **Free kindergartens.**—The trustees of any school district in Texas, upon the petition of the parents or guardians of twenty-five or more children under the scholastic age down to and including five years, residing in said district, shall establish and maintain a kindergarten as a part of the public free schools of said district, for the training of children within said ages residing in said district, and shall establish such courses of training, study and discipline, and such rules and regulations governing such kindergartens as said trustees shall deem best. Any such petition for the establishment and maintenance of a free kindergarten shall be presented to the trustees of said district between the first day of June and the first day of August in any one year. The cost of establishing and maintaining such kindergartens shall be paid from the special school tax of said districts. Said kindergartens shall be a part of the public school system and shall be governed, as far as practicable in the same manner and by the same officers as is or may be provided by law for the government of the other public schools of the State. The trustees shall be empowered to employ to teach such kindergartens only those who hold State Kindergarten Certificates. [Acts 1917, p. 319.]

Art. 2920. **Building specifications.**—The public school buildings of Texas shall conform to the following requirements:

1. No window admitting light shall be so placed in a class room or study hall that it must be faced by pupils when seated at their desks. All such window openings shall not come lower than a point three and a half feet from the floor, and shall extend to a point within six inches of the ceiling; and the area of clear

window surface thereof shall not be less than one-sixth of the area of the floor space in said class room or study hall. No part of said class room or study hall shall be at a greater distance from the window than twice the height of the top of the window above the floor, except when adequate skylights are provided. The main light in all one-room schools shall come from the left of the pupils as they sit at their desks, and in all larger buildings this condition shall be approximated as nearly as architectural demands and the demands of ventilation will permit.

2. All school houses shall be provided with sufficient heating apparatus. All stoves, radiators or other sources of direct heat located within the class rooms or study halls shall be so jacketed, ventilated or otherwise protected that the desks upon the side adjoining same shall not be more than five degrees Fahrenheit hotter than the desks upon the opposite side of the room; and shall be equipped with an automatic temperature regulator that will regulate the temperature of said class room or study hall to within two degrees of any set standard.

3. Every class room or study hall shall be provided with an efficient apparatus whereby in cold weather a supply of thirty cubic feet per minute of fresh, warm air shall be supplied to each pupil in such manner as not to place any pupil in a disagreeable draft, and shall be provided with exhaust flue or flues, with inlets at or near the floor line, so arranged as to effectively carry out of the room the cold and impure air without placing any pupil in a disagreeable draft.

4. All interior wood work in school buildings shall be without such unnecessary fluting, turning or carvings as catch dust and microbes, and all floors shall have their surfaces made impervious to water and germs by a coat of boiling paraffin oil or other floor dressing having similar effect, applied immediately after the floor is laid.

5. All school buildings of two or more stories shall be provided with not less than two widely separated flights of stairs, and no stair shall have winding treads, but every tread shall be full width and turns be made flat landings not less than four feet wide, and there shall be one such landing between floors. All stairs shall have a hand rail on each side and of such size and so placed that it can be held easily by the pupils using said stairs.

6. All outside doors and all doors leading from class rooms or study halls shall be hung so as to open outward. [Acts 1913, p. 244.]

Art. 2921. Examination of plans.—No public school building shall be constructed in Texas at an expense of more than four hundred dollars, until the board of school trustees of the district or city or town in which the work is to be done shall have first secured a school building permit from the officer legally authorized to grant such permit, certifying that the plans and specifications of said proposed building conform to the regulations prescribed in the preceding article. The petition for said permit shall be made in writing, and shall set forth such details of the

plans and specifications as are necessary to pass upon the legality of the lighting, heating, ventilation, sanitation and fire protection in such proposed building. For buildings in a common school district the county superintendent of the county in which the school is to be located, and for buildings of an independent school district or in a city or town that has assumed control of its schools, the superintendent of public schools in that district or city or town, is hereby authorized, empowered and required to examine all plans for all proposed public school buildings, costing over four hundred dollars, and to grant permits only for such buildings, as conform to the requirements of this law, and to make a report to the State Superintendent of all such permits granted, transmitting all evidence. [Id.]

Art. 2922. **Unauthorized payments for construction.**—No person charged with the duty of disbursing school funds or of authorizing disbursement of school funds in this State shall pay or authorize the payment of any vouchers or in any other manner pay out any sum of public money for the construction of any school building at an expense of more than four hundred dollars until the board of school trustees of said district or city or town has secured from the properly constituted authority a legal permit for such work. Any disbursing officer failing to observe the provisions of this law shall be held liable for such amount as is paid out on account of such building, as is not legally permitted. [Id.]

**CHAPTER NINETEEN A.
RURAL HIGH SCHOOLS.**

| | | | |
|---------------------------------------|---------------|--|---------------|
| Authority to establish..... | Article 2922a | Districts classified..... | Article 2922g |
| How classed..... | 2922b | Outstanding bonds..... | 2922h |
| Area..... | 2922c | Warrants..... | 2922i |
| County line districts..... | 2922d | Deposit and disbursement of funds..... | 2922j |
| Control of..... | 2922e | Control by and of trustees..... | 2922k |
| Elementary schools—how abolished..... | 2922f | Tax..... | 2922l |

Art. 2922a. **Authority to establish.**—In each organized county in this State and in any county which shall hereafter be organized, the county board of school trustees shall have the authority to form one or more rural high school districts, by grouping contiguous common school districts having less than four hundred scholastic population and independent school districts having less than one hundred and fifty scholastic population, for the purpose of establishing and operating rural high schools. Provided, also, that the county board may annex one or more common school districts to a common school district having four hundred or more scholastic population or to an independent district having one hundred and fifty or more scholastic population upon the approval of the board of trustees of the common school district having four hundred or more scholastic population, or of the independent district having one hundred and fifty or more scholastic population, as the case may be; providing that when one or more common school districts are so annexed to a common school district having four hundred or more scholastic population, or to an independent district having one hundred and fifty, or more

scholastic population, as the case may be, a board of trustees shall be elected from the district at large and shall have the management and control of the schools thereof; provided, however, that the existing board of trustees of the said common or independent district shall have control of the district as enlarged until the time for the next election and qualifications of trustees for common and independent districts, as provided by General Law.

Art. 2922b. **How classed.**—Rural high school districts as provided for in the preceding article shall be classed as common school districts, and all other districts, whether common or independent, composing such rural high school district shall be referred to in this Act as elementary school districts; provided that all independent school districts enlarged by the annexation thereto of one or more common school districts as provided for in Article 2922a shall retain its status and name as an independent school district, and shall continue to operate as an independent school district under the provisions of the existing laws and the laws hereafter enacted governing other independent school districts, except as otherwise provided for herein.

Art. 2922c. **Area.**—No rural high school district, as provided for herein, shall contain a greater area than one hundred square miles, or more than seven elementary school districts, except that the county school board of school trustees may form rural high school districts, as provided in Article 2922a, containing more than one hundred square miles, upon a vote of a majority of the qualified electors in the said proposed rural high school district voting at an election called for such purpose; and provided further, that the said board of county school trustees may form a rural high school district containing more than seven elementary districts upon a vote of a majority of the qualified voters in each of the elementary districts within such proposed rural high school district.

Art. 2922d. **County line districts.**—The county board of trustees of two or more adjoining counties shall have the authority, upon the written order of a majority of the members of each county board concerned, to establish a county line rural high school district, and to designate the county which shall have supervision of said county line rural high school district. Said county line rural high school district shall be governed as other rural high school districts herein provided for.

Art. 2922e. **Control of.**—The control and management of the schools of a rural high school district, established under the provisions of this Act, shall be vested in a board of seven trustees, elected by the qualified voters of the said district at large, who shall be elected and serve in accordance with the provisions of General Law relative to common school districts, except as may be otherwise provided herein; and provided that such elementary district included in such rural high school district must be the residence of at least one member of said board. Any vacancy shall be filled for the unexpired term by appointment by the county board of trustees. Provided that for a rural high

school district formed with more than one hundred square miles of territory, or containing more than seven elementary districts, as provided in this Act, the board of trustees, as herein provided for, shall be elected from the district at large. Should any rural high school district fail to elect a trustee or trustees as provided for in this Act, the county board of trustees shall appoint said trustee or trustees. Four of said trustees shall be elected each odd number of years and three on each even number of years on the first Saturday in April. The trustees of the first board shall draw for terms. In the event a rural high school district is created subsequent to the date for the election of trustees of common school districts, as provided by General Law, it shall be the duty of the county board to appoint a board of trustees for the district, as prescribed herein, to serve until the next date for the election of common school district trustees. In the election of rural high school district trustees, at least one voting box shall be provided in each elementary district composing the high school district.

The present board of trustees of all elementary school districts which may be included within a rural high school district, as herein provided, shall continue in control of their respective districts until the close of the current scholastic year, but they shall make no contract effecting the expenditure of any school funds subsequent to September 1, 1925, nor shall they have any other authority in the management and control of the schools of the said districts after September 1, 1925. The boards of trustees of rural high school districts shall immediately upon their election and organization proceed to make contracts for the operation of all schools under their control. The first board of trustees herein provided for shall be elected on the first Saturday in April, 1925, and annually thereafter an election shall be held as provided for by law for holding trustee elections in common school districts.

Art. 2922f. Elementary schools—how abolished.—The county board of school trustees shall not have the authority to abolish or consolidate any elementary school district already established except upon the vote of a majority of the qualified electors residing in such elementary district; provided that when any school within an elementary district fails to have an average daily attendance the preceding year of at least twenty pupils it may be discontinued by the board of trustees of said rural high school district, and said district may be consolidated by the county board of school trustees with some other district or districts for elementary school purposes; provided that if there is more than one white or one colored school in such elementary school district the board of trustees of the said rural high school districts or an independent district, as the case may be, may consolidate such white or colored schools of the elementary district; and provided that the board of trustees of a rural high school district may transfer the pupils of one elementary district to another within the rural high school dis-

tract, when the transfer is made from an elementary district of lower classification to one of higher classification; and provided further that the board of trustees of a rural high school district may transfer pupils from an elementary district to any other elementary district within the rural high school district upon application of the parents or guardian of the said pupils.

Whenever one or more common school districts are annexed to a common school district or to an independent district under the provisions of Section 1, such common or independent district shall maintain elementary schools of such classification as the county board may designate in each district so annexed, for the same length of term provided for the schools of the said common school district or independent district. Provided such schools may be discontinued by the local board of trustees when the average daily attendance of any such schools for the preceding year is less than twenty.

Art. 2922g. Districts classified.—The county board of school trustees shall classify the elementary schools in each rural high district and designate the number of grades that shall be taught in such schools, and when such classification is made the board of trustees of the rural high school districts shall maintain a school of such classification for the same length of term as all other schools within said rural high school district. The board of trustees of a rural high school district shall have a right to be heard by the county board of trustees relative to the classification of schools within their districts and shall have the right of appeal from such classification from the county board of school trustees to the State Superintendent of Public Instruction.

Art. 2922h. Outstanding bonds.—In the event any of the elementary districts included within a rural high school district or the common school districts annexed to a common or independent district, or the common school or independent district to which one or more common school districts are annexed, as herein provided for, have outstanding bonded or other valid indebtedness, then at an election for that purpose, or some future date, to be designated by the proper authorities, as provided by General Law, the question as to whether or not the said rural high school district, common school district, or independent school district as the case may be, shall assume and pay off such outstanding bonds or other indebtedness and whether a tax shall be levied therefor may be submitted to the qualified taxpaying voters of such high school, common or independent district. If a majority of the votes cast at such an election favor the assumption of such indebtedness then such indebtedness shall become valid and subsisting obligations of the said rural high school districts, common school districts, or independent districts; and the board of trustees of such districts shall annually thereafter levy and collect sufficient taxes to pay the interest on the bonds so assumed as it accrues, and create a sinking fund which, in addition to the sinking funds already accumulated in the original bonded district or districts, will pay off and retire the said out-

standing bonds when they shall become due. The said election providing for the assumption of such bonded or other indebtedness shall be called and held in accordance with existing provisions of law relating to elections for the issuance of bonds by common and independent school districts.

Art. 2922i. Warrants.—All funds of every nature to which a rural high school district may be entitled shall be paid out on warrants issued by the secretary and signed by the secretary and president of the board of trustees and approved by the county superintendent of public instruction. The board of school trustees shall select its own president and secretary, each of whom shall be a member of the board. The secretary shall keep a complete itemized account of all receipts and disbursements in a well-bound book owned and paid for by the district, and his accounts shall be approved by the county superintendent and by the county board of school trustees at the end of each scholastic year. No school funds shall be allotted or apportioned and paid to any rural high school district for the following year thereafter until this report is submitted to and approved by the county superintendent and the county board of school trustees.

Art. 2922j. Deposit and disbursement of funds.—All funds belonging to a rural high school district shall be deposited in the county depository and disbursed in the same manner as other funds are disbursed from such depository under the depository law in so far as same are applicable.

Art. 2922k. Control by and of trustees.—All rural high schools within a rural high school district herein provided for shall be under the immediate control of the board of school trustees for such rural high schools, and such board of school trustees shall be under the control and supervision of the county superintendent and county board of school trustees, and shall be subject to the same provisions of law and restrictions that common school districts are now subject to, except where otherwise provided herein.

Art. 2922l. Tax.—The board of trustees of a rural high school district provided for in this Act shall have the power to levy and collect an annual ad valorem tax not to exceed one dollar on the hundred dollars valuation of taxable property of the district for the maintenance of schools therein, and a tax not to exceed fifty cents on the one hundred dollars valuation of taxable property of the district for the purpose of purchasing, constructing, repairing or equipping public free school buildings within the limits of such district, and the purchase of necessary sites therefor; provided that the amount of maintenance tax, together with the amount of bond tax of the district shall never exceed one dollar on the one hundred dollars valuation of taxable property; and provided further that no such tax shall be levied and no such bonds shall be issued until after an election shall have been held wherein a majority of the qualified tax-paying voters, voting at said election, shall have voted in favor of the levying of said tax, or of the issuance of said bonds, or both, as the case may be, and which election shall be held in accordance with the

law now governing such elections in common school districts, provided that the local taxes previously authorized by a district or districts included in a rural high school district or annexed to a common or independent school district, as provided for herein, shall be continued in force until such time as a uniform tax may be provided for the benefit of the rural high school district or said common or independent district as enlarged by the annexation of the said common school districts thereto. The board of trustees of any rural high school district may appoint an assessor of taxes who shall assess the taxable property within the limits of said district within the time provided by existing laws, and said assessment shall be equalized by the board of equalization composed of three members appointed by the board of trustees of said district. The said board of equalization shall be composed of legally qualified voters residing in said district, and shall have the same power and authority, and be subject to the same restrictions that now govern such boards in independent school districts. The tax assessor herein provided for shall receive such compensation for his services as the trustees of said district may allow, not to exceed two (2) per cent of taxes assessed by him. The county tax collector shall collect such tax and shall receive one-half of one per cent for his services for collecting such tax. Such tax when collected shall be deposited in the county depository to the credit of such rural high school district. The tax assessor herein provided for shall make a complete list of all assessments made by him, and when approved by the board of trustees shall be submitted to the county tax collector not later than September first of each year.

TITLE 50.
ELECTIONS.

| Chapter | Page | Chapter | Page |
|---------|--|---------|--|
| 1 | Miscellaneous provisions..... 807 | 8 | Conducting elections and re- turns thereof..... 829 |
| 2 | Time and place..... 808 | 9 | Contesting elections..... 839 |
| 3 | Officers of election..... 810 | 10 | Constitutional amendments..... 848 |
| 4 | Ordering elections..... 813 | 11 | Presidential electors..... 849 |
| 5 | Suffrage..... 814 | 12 | United States Senators..... 851 |
| 6 | Official ballot..... 824 | 13 | Nominations..... 856 |
| 7 | Arrangement and expenses of election..... 826 | 14 | Limiting expenditures in primary..... 877 |

CHAPTER ONE.

MISCELLANEOUS PROVISIONS.

| | Article | | Article |
|----------------------------------|---------|---------------------------|---------|
| Applicable to all elections..... | 2923 | Ineligibility..... | 2927 |
| County judge failing to act..... | 2924 | Ineligibility bars..... | 2928 |
| Blanks furnished..... | 2925 | Injunction may issue..... | 2929 |
| To certify death of officer..... | 2926 | | |

Art. 2923. [3081] [1810] [1759] **Applicable to all elections.**—The provisions of this title shall apply to all elections held in this State, except as otherwise provided herein. [Acts 1st C. S. 1905, p. 520.]

Art. 2924. [3079] [1806] [1755] **County judge failing to act.**—Whenever, by this title, any duty is devolved upon a county judge, and that office is vacant, or such officer from any cause fails to perform such duty, any two or more of the county commissioners of the county may and shall perform such duty.

Art. 2925. [2937] **Blanks furnished.**—At least thirty days before each general election the Secretary of State shall prescribe forms of all blanks necessary under this title and furnish same to each county judge. [Acts 1st C. S. 1905, p. 528, Sec. 32.]

Art. 2926. [3080] [1018] [1757] **To certify death of officer.**—When any State or district officer, member of Congress, member of the Legislature or notary public shall die, the county judge of the county where such death occurs or of the county where such officer resided, shall immediately certify the fact of the death of such officer to the Secretary of State. [Acts 1863, p. 16; G. L. Vol. 5, p. 604.]

Art. 2927. [3082] **Ineligibility.**—No person shall be eligible to any State, county, precinct or municipal office in this State unless he shall be eligible to hold office under the Constitution of this State, and unless he shall have resided in this State for the period of twelve months and six months in the county, precinct, or municipality, in which he offers himself as a candidate, next preceding any general or special election, and shall have been an actual bona fide citizen of said county, precinct, or municipality for more than six months. No person ineligible to hold office shall ever have his name placed upon the ballot at any general or special election, or at any primary election where candidates are selected under primary election laws of this State; and no such ineligible candidate shall ever be voted upon, nor

have votes counted for him, at any such general, special, or primary election. [Acts 1895, p. 81; G. L., Vol. 10, p. 811; Acts 1919, p. 17.]

Art. 2928. [3083] **Ineligibility bars.**—Neither the Secretary of State, nor any county judge of this State, nor any other authority authorized to issue certificates, shall issue any certificates of election or appointment to any person elected or appointed to any office in this State, who is not eligible to hold such office under the Constitution of this State and under the above article; and the name of no ineligible person, under the Constitution and laws of this State, shall be certified by any party, committee, or any authority authorized to have the names of candidates placed upon the primary ballots at any primary election in this State; and the name of no ineligible candidate under the Constitution and laws of this State shall be placed upon the ballot of any general or special election by any authority whose duty it is to place names of candidates upon official ballots. [Id; Acts 2nd C. S. 1919, p. 97.]

Art. 2929. **Injunction may issue.**—The district court shall have authority to issue writs of injunction and all other necessary process at the suit of any interested party, or of any voter, to enforce the provisions of the above two articles and to protect thereunder the rights of all parties and the public; for such purpose, jurisdiction and authority is conferred upon all district courts of this State and all cases filed hereunder shall have first right of precedence upon trial and appeal. [Acts 1919, p. 18.]

CHAPTER TWO.

TIME AND PLACE.

| | | | |
|-------------------------------|--------------|------------------------------------|--------------|
| Time and place..... | Article 2930 | Precincts in cities and towns..... | Article 2934 |
| In cities and towns..... | 2931 | Unorganized counties..... | 2935 |
| Held in public buildings..... | 2932 | Where to vote..... | 2936 |
| Election precincts..... | 2933 | | |

Art. 2930. [2810 to 2912-3088] **Time and place.**—A general election shall be held on the first Tuesday after the first Monday in November, A. D. 1926, and every two years thereafter, at such places as may be prescribed by law, after notice given as prescribed by law. Special elections shall be held at such times and places as may be fixed by law providing therefor. In all elections, general, special, or primary, the polls shall be open from eight o'clock a. m. to seven o'clock p. m. The election shall be held for one day only. [Acts 1st C. S. 1905, p. 520.]

Art. 2931. [2918-19-2964] **In cities and towns.**—All provisions of this title which prescribe qualifications for voting and which regulate the holding of elections shall apply to elections in cities and towns. In towns or cities incorporated under the general laws, the governing body may provide for city or town elections that there shall be one or more polling places; and, in such case, the certified list of poll taxpaying voters for all election precincts in which voters reside who are to vote at any such polling place shall be used therefor. In all cities and towns in which the number of electors at the last municipal election does

not exceed four hundred in number, but one election poll shall be opened at any municipal election; and all officers of such towns and cities to be elected shall be voted for at such poll. [Id; Acts 1897, p. 10.]

Art. 2932. **Held in public buildings.**—In all cases where it is practicable so to do, all elections shall be held in some school house, fire station or other public building within the limits of the election precinct in which such election is being held. No charge shall be made for the use of such building, except that any additional expense actually incurred by the authorities in charge of such building on account of the holding of the election therein shall be repaid to them by the party who would be liable for the expenses of holding the election under the existing law. If there be no public building so available, such election may be held in some other building. [Acts 1917, p. 357.]

Art. 2933. [2913-17] **Election precincts formed.**—Each commissioners court may, if they deem it proper, at each August term of the court, divide their respective counties, and counties attached thereto for judicial purposes, into convenient election precincts, each of which shall be differently numbered and described by natural or artificial boundaries or survey lines by an order to be entered upon the minutes of the court. They shall immediately thereafter publish such order in some newspaper in the county for three consecutive weeks. If there be no newspaper in the county, then such copy of such order shall be posted in some public place in each precinct in the county. No election precinct shall be formed out of two or more justice precincts, nor out of the parts of two or more justice precincts. The commissioners court shall cause to be made out and delivered to the county tax collector, before the first day of each September a certified copy of such last order for the year following. [Acts 1st C. S. 1905, p. 520.]

Art. 2934. [2914] **Precincts in cities and towns.**—The commissioners court, in establishing new election precincts, shall divide any city or town into as may election precincts as they may see proper, none of which shall have resident therein more than three hundred and fifty voters as ascertained by the vote of the preceding general city or town election. Every ward in every incorporated city, town or village shall constitute an election precinct, unless there shall have been cast in said ward, at the last general city or town election held therein, more than three hundred and fifty votes. Cities and towns, and towns and villages incorporated under the general laws shall not necessarily constitute election precincts. No precinct shall be made out of parts of two wards. This article shall not apply to cities, towns and villages of less than ten thousand inhabitants; and, in such cities, towns and villages, the justice precincts in which said cities, towns and villages are situated may be divided into election precincts without regard to the wards of such cities, towns and villages, and without reference to the number of votes to be cast. [Id; Sec. 8.]

Art. 2935. [2915] [1709] **Unorganized counties.**—Each unorganized county which is attached for judicial purposes to an

organized county shall be attached for election purposes, to some one of the commissioners precincts of such organized county, and voters in such unorganized county shall be authorized to vote in any election for commissioner of such commissioners precinct; provided, when more than one election precinct has been established by law in such unorganized county, each election precinct therein shall be attached, for election purposes, severally to one of the commissioners precincts of such organized county; and voters in such election precincts shall be authorized to vote in any election for commissioner of the commissioners precinct to which such election precinct has been attached. [Acts 1885, p. 88; G. L. Vol. 9, p. 708.]

Art. 2936. [2916] [1732] **Where to vote.**—All voters shall vote in the election precinct in which they reside. [Acts 1881, p. 97; G. L. Vol. 9, p. 189.]

CHAPTER THREE.

OFFICERS OF ELECTION.

| | Article | | Article |
|----------------------------|---------|-------------------------------|---------|
| In small precincts..... | 2937 | Agreed supervisors..... | 2942 |
| In large precincts..... | 2938 | Pay of judges and clerks..... | 2943 |
| Qualifications..... | 2939 | Precinct judges served..... | 2944 |
| Disqualifications..... | 2940 | In unorganized counties..... | 2945 |
| Appointed supervisors..... | 2941 | | |

Art. 2937. [2920] **In small precincts.**—The commissioners court at the February term shall appoint from among the citizens of each voting precinct in which there are less than one hundred voters who have paid their poll tax and received their certificates of exemption, two reputable qualified voters as judges of the election, selected from different political parties, if practicable, who shall continue to act until their successors are appointed. When the bounds of the precinct are changed so that one or more judges reside outside of the precinct for which they were appointed, the court shall appoint others to fill such vacancy or vacancies. One of the judges who shall, in all cases belong to the party that at the last general election cast the largest vote for Governor throughout the State shall be designated as the presiding judge at elections; he shall appoint two competent and reputable qualified voters of different political parties if practicable, to act as clerks of the election. The order appointing all judges shall be entered of record. The presiding judge shall act in receiving and depositing the votes in the ballot boxes, and the other judge shall act in counting the votes cast; one clerk shall keep the poll list of qualified voters, and upon the poll list he shall write at the time of voting the name and number of each voter; the other clerk shall act as canvassing clerk, and shall keep the tally list of votes counted. Said officers shall perform such other duties as the presiding judge may direct. [Acts 1st C. S. 1905, p. 533, Sec. 57.]

Art. 2938. [2921] **In large precincts.**—For every precinct in which there are one hundred citizens or more who have paid their poll tax or received their certificates of exemption, the commissioners court shall appoint four judges of election, who

shall be chosen when practicable from opposing political parties, one of whom shall be designated as presiding judge. The presiding and one associate judge shall act in receiving and depositing the votes in the ballot box, and the other two judges shall act in counting the votes cast. The presiding judge shall appoint four competent and reputable clerks who have paid their poll tax, and of different political parties, when practicable; two of said clerks shall assist in keeping poll lists and the list of qualified voters; upon the poll lists they shall write the name and number of each voter, and at the time voted. Two clerks shall be canvassing clerks, who shall keep tally lists of votes counted and perform such other duties as the presiding judge may direct. At the close of the canvassing and during its progress, the tally clerks shall compare their tally lists and certify officially to their correctness. Provided, that in all elections held under the provisions of this title, other than general elections, local option elections and primary elections, the officers to be appointed by the commissioners court to hold said elections shall be a presiding judge, and assistant judge and two clerks, whose compensation shall be two dollars per day, and two dollars extra to the presiding judge for making return of the election. [Id; Sec. 58.]

Art. 2939. Qualifications. All supervisors, judges and clerks of any general or primary election shall be qualified voters of the election precinct in which they are named to serve. [Acts 2nd C. S. 1923, p. 75.]

Art. 2940. [2922] Disqualifications.—No one who holds an office of profit or trust under the United States or this State, or in any city or town in this State or within thirty days after resigning or being dismissed from any such office, except a notary public, or who is a candidate for office, or who has not paid his poll tax, shall act as judge, clerk or supervisor of any election, nor shall any one act as chairman or as member of any executive committee of a political party, either for the State or any district, county or city, who has not paid his poll tax, or who is a candidate for office, or who holds any office of profit or trust under either the United States or this State, or in any city or town in this State; or who may be enjoying gratuitous passage on street cars or on other public service corporations, by reason of his appointment as a special policeman, or any one who has any connection, whatever, with the city, whereby the city is justified in issuing to any such person free transportation on the street cars, or franks entitling him to the free use of public service corporations, or any person who is regularly employed in any capacity by the city for whose services a salary or wages is paid, except a notary public. [Id; Sec. 60; Acts 1911, p. 18.]

Art. 2941. [2923] Appointed supervisors.—The chairman of the county executive committee, for each political party that has candidates on the official ballot, or if he fail to act, any three members of such committee, may, not less than five days before the general election, nominate one supervisor of election for each voting precinct, who has paid his poll tax, by presenting his name to the county judge, who shall indorse his approval

on the certificate of his nomination if he is a reputable citizen, but not otherwise. Thereupon, on his presenting such nomination and its approval to the presiding judge of the precinct, he shall be permitted to sit conveniently near the judges, so that he can observe the conduct of the election, including the counting of the votes, the locking and sealing of the ballot boxes, their custody and safe return. He shall not be permitted to enter into any conversation with the judges or clerks regarding the election while it is progressing, except to call the attention of the judges or clerks to any irregularity or violation of the law that he may observe. Before he shall be permitted to act as supervisor, he shall take an oath, to be administered by the presiding judge, that he will mention and note any errors he may see in testing or counting the votes, and that he will well and truly discharge his duties as supervisor impartially, and will report in writing all violations of the law and irregularities that he may observe to the next grand jury. [Acts 1st C. S. 1905, p. 534, Sec. 59.]

Art. 2942. [2924] **Agreed supervisors.**—Any one-fifth of the candidates whose names appear on the official ballot on the day preceding the election or prior thereto may agree in writing signed by them upon two supervisors who, when selected, shall be sworn as election officers. Said supervisors shall be qualified voters of the county in which they may serve as such supervisors, and while the election is being held shall remain in view of the ballot boxes until the count is concluded. It shall be their duty to be present at the marking of the ballot of any voter, by the judge of said election, not able to make his own ballot, to see that said ballot is marked in accordance with the wishes of the voter, and to see that each ballot is correctly called. Said supervisors shall note any fraud or irregularity occurring and report same to the next grand jury. [Acts 2nd C. S. 1909, p. 451.]

Art. 2943. [2925-26] **Pay of judges and clerks.**—Judges and clerks of general and special elections shall be paid three dollars a day each, and thirty cents per hour each for any time in excess of a days work as herein defined. The judge who delivers the returns of election immediately after the votes have been counted shall be paid two dollars for that service, provided the polling place of his precinct is at least two miles from the courthouse, and provided also he shall make returns of all election supplies not used when he makes return of the election. Ten working hours shall be considered a day within the meaning of this article. The compensation of judges and clerks of general and special elections shall be paid by the county treasurer of the county where such services are rendered upon order of the commissioners court of such county. [Acts 1921, p. 216.]

Art. 2944. [2927] **Precinct judges served.**—Precinct judges for all general elections shall be served with copies of the order of the commissioners court properly certified to by the clerk of the said court, designating the number, name and bounds of the election precinct and of their appointment as judges. Such service shall be made by the sheriff or a constable within ten

days after the entry of such order, and return shall be made thereof on a copy showing when, where and how he executed the same. [Acts 1st C. S. 1905, p. 522, Sec. 11.]

Art. 2945. [2928] [1708] **In unorganized counties.**—The commissioners court to which any unorganized county is attached for judicial purposes shall appoint some suitable person in each of such unorganized counties to serve as presiding officer of elections in said unorganized county in the same manner as in the appointment of presiding officers in election precincts in organized counties. [Acts 1881, p. 97; G. L. Vol. 9, p. 189.]

CHAPTER FOUR.

ORDERING ELECTIONS, ETC.

| Article | | Article |
|---------|-------------------------------|---------|
| 2946 | Proclamation by Governor..... | 2950 |
| 2947 | Order by county judge..... | 2951 |
| 2948 | Writs of election..... | 2952 |
| 2949 | Failure to order..... | 2953 |
| | Notice of election..... | |
| | Municipal elections..... | |
| | To fill vacancy..... | |
| | In case of a tie..... | |

Art. 2946. [2929] **Proclamation by Governor.**—Notice shall be given to the people of all elections for State and district officers, electors for president and vice-president of the United States, members of Congress, members of the Legislature, and all officers who are elective every two years. Such notices shall be by proclamation by the Governor ordering the election, not less than thirty days before the election, issued and mailed to the several county judges. [Acts 1st C. S. 1905, p. 528, Sec. 30.]

Art. 2947. [2930] **Order by county judge.**—The county judge, or if his office is vacant or if he fails to act, then two of the county commissioners, shall order an election for county and precinct officers, and all other elections which under the law the county judge may be authorized to order. The county judge or county commissioners, as the case may be, shall issue writs of election ordered by him or them, in which shall be stated the day of election, the office or offices to be filled by the election or the question to be voted on, or both, as the case may be. [Id; Sec. 31.]

Art. 2948. [2931] [1725] [1682] **Writs of election.**—The writs of election and copies of the form of returns shall be delivered to the sheriff of the county, who shall, previous to the day of election, deliver the same to the presiding officer of each election precinct in which the election is ordered to be held, and in case there is no presiding officer in any such election precinct, the same shall be delivered to the qualified voter of such election precinct who resides at or nearest to the voting place in such precinct.

Art. 2949. [2932] **Failure to order.**—A failure from any cause, on the part of the Governor, or the county judge or commissioners court, or of both, to order or give notice of any general election shall not invalidate the same if otherwise legal and regular. [Acts 1st C. S. 1905, p. 528, Sec. 31.]

Art. 2950 [2933] **Notice of election.**—The county judge shall cause notice of a general election or any special election to be published by posting notice of election at each precinct thirty

days before the election; which notice shall state the time of holding the election, the office to be filled, or the question to be voted on; provided, that in local option, stock law and road tax elections, or any other special election specially provided for by the laws of this State, the notices of election shall be given in compliance with the laws governing said elections respectively. If a vacancy occurs in the State Senate or House of Representatives during the session of the Legislature, or within ten days before it convenes, then twenty days notice of a special election to fill such vacancy shall be sufficient. Posting notice of an election shall be made by the sheriff or a constable, who shall make return on a copy of the writ, how and when he executed the same. [Id; Sec. 33.]

Art. 2951. [2934] **Municipal elections.**—In all city, town and village elections, the mayor, or if he fails to do so, then the governing body shall order elections pertaining alone to municipal affairs, give notice and appoint election officers to hold the election, unless a different method be prescribed by the charter of such city, town or village; but, in all cases, supervisors may be selected as in general elections, and judges and clerks shall each be selected from different political parties when practicable. [Id; Sec. 34.]

Art. 2952. [2935] **To fill vacancy.**—In all cases of vacancy in a civil office in the State, caused by death or resignation or otherwise, the vacancy of which is to be filled by election, the officer authorized by this title to order elections shall immediately make such order, fixing the day, not exceeding thirty days after the first public notice of such order to fill the unexpired term. [Id; Sec. 35.]

Art. 2953. [2936] [1805] [1754] **In case of a tie.**—At any election, if there be an equal number of votes given to two or more persons for the same office, except executive offices as provided in the Constitution, and no one elected thereto, the officer to whom the returns are made shall declare such election void as to such office only, and shall immediately order another election to fill such office; and notice shall be given, and such other election shall be held in the same manner as the general election. [Acts 1876, p. 310; G. L. Vol. 8, p. 1146; P. D. 3606.]

CHAPTER FIVE.

SUFFRAGE.

| | Article | | Article |
|--------------------------------------|---------|--------------------------------------|---------|
| Not qualified to vote..... | 2954 | Removal to another county or | |
| Qualifications for voting..... | 2955 | precinct..... | 2967 |
| Absentee voting..... | 2956 | Exemption certificate in cities..... | 2968 |
| To vote in city elections..... | 2957 | Becoming of age..... | 2969 |
| "Residence"..... | 2958 | Poll tax books..... | 2970 |
| Liable to poll tax..... | 2959 | Poll tax deputy..... | 2971 |
| Exempt from poll tax..... | 2960 | Collector may administer oaths..... | 2972 |
| Mode of paying poll tax..... | 2961 | Proof of residence..... | 2973 |
| Paying poll tax in large cities..... | 2962 | False swearing reported..... | 2974 |
| Receipt mailed..... | 2963 | Lists of voters..... | 2975 |
| Not to pay tax..... | 2964 | Duplicates kept..... | 2976 |
| Form of receipt..... | 2965 | Statement of receipts..... | 2977 |
| Removal to another ward..... | 2966 | | |

Art. 2954. [2938] **Not qualified to vote.**—The following classes of persons shall not be allowed to vote in this State:

1. Persons under twenty-one years of age.
2. Idiots and lunatics.
3. All paupers supported by the county.
4. All persons convicted of any felony, except those restored to full citizenship and right of suffrage, or pardoned.
5. All soldiers, marines and seamen employed in the service of the army or navy of the United States. [Acts 1st C. S. 1905, p. 520.]

Art. 2955. [2939] **Qualifications for voting.**—Every person subject to none of the foregoing disqualifications who shall have attained the age of twenty-one years and who shall be a citizen of the United States, and who shall have resided in this State one year next preceding an election, and the last six months within the district or county in which he or she offers to vote, shall be deemed a qualified elector. The electors living in an unorganized county may vote at an election precinct in the county to which such county is attached for judicial purposes; provided that any voter who is subject to pay a poll tax under the laws of this State or ordinances of any city or town in this State, shall have paid said tax before offering to vote at any election in this State and holds a receipt showing that said poll tax was paid before the first day of February next preceding such election; and, if said voter is exempt from paying a poll tax and resides in a city of ten thousand inhabitants or more, he or she must procure a certificate showing his or her exemptions, as required by this title. If such voter shall have lost or misplaced said tax receipt, he or she shall be entitled to vote upon making and leaving with the judge of the election an affidavit that such tax was paid by him or her, or by his wife or by her husband before said first day of February next preceding such election at which he or she offers to vote, and that said receipt has been lost or misplaced. In any election held only in a subdivision of a county for the purpose of determining any local question or proposition affecting only such subdivision of the county, then in addition to the foregoing qualifications, the voter must have resided in said county for six months next preceding such election. The provisions of this article as to casting ballots shall apply to all elections including general, special and primary elections. [Acts 1st C. S. 1905, p. 520; Acts 1st C. S. 1917, p. 62; Acts 4th C. S. 1920, p. 10; Acts 1921, p. 217; Acts 1923, p. 318.]

Art. 2956. [2939] **Absentee voting.**—Any qualified elector, as defined by the laws of this State, who expects to be absent from the county of his or her residence on the day of the election may vote subject to the following conditions, to-wit: At some time not more than ten days nor less than three days prior to the date of such election such elector shall make his or her personal appearance before the county clerk of his or her residence, and if personally unknown to such clerk, shall be identified by at least two reputable citizens of such county, and shall deliver to such clerk his or her poll tax receipt or exemption

certificate, entitling him or her to vote at such election, and said clerk shall deliver to such elector one ballot which has been prepared in accordance with the law for use in such election which shall then and there be marked by said elector apart and without the assistance or suggestion of any person and in such manner as said elector shall desire same to be voted, which ballot shall be folded and placed in a sealed envelope and delivered to said clerk who shall keep same so sealed, and who shall also keep said poll tax receipt or certificate open to the inspection of any person who may wish to examine or see same until the second day prior to said election, and said clerk shall on said second day place the said poll tax receipt or certificate together with the said envelope containing said marked ballot, in another envelope which shall be by said clerk then mailed to the presiding judge of the voting precinct in which said elector lives. Or at some time not more than twenty days nor less than ten days prior to the date of such election, such elector shall make his or her personal appearance before a notary public, and if personally unknown to such notary public, shall be identified by at least two reputable citizens, and shall deliver to such notary public his poll tax receipt or exemption certificate, entitling said elector to vote at such election, or if such elector shall have lost or misplaced his or her poll tax receipt, he or she shall be entitled to vote upon making affidavit that such poll tax was actually paid by him or her before said first day of February next preceding such election at which he or she offers to vote and that said receipt has been lost, or misplaced, and in such case the affidavit so made shall be sent by the officer administering the oath to the county clerk of the county in which such elector resides. Such county clerk receiving the affidavit shall verify same by examining the poll tax records of the county wherein said elector resides, or where he claims his residence to be. Said notary public shall mail same to the county clerk of the county of residence of such elector so named, and upon receipt of the poll tax receipt or exemption certificate, the county clerk shall mail to such elector one ballot which has been prepared in accordance with the law for use in such election under registered letter marked "Official ballot for such elector (giving elector's name) not to be opened except in the presence of a notary public," printed on outside of letter. Such elector shall make oath before such notary public that such ballot was then and there marked by such elector apart and without assistance or suggestion of any other person, in such manner as said elector shall desire same to be voted, which ballot shall be folded and placed in a sealed envelope together with such affidavit which shall be marked on the outside of said envelope "Official ballot of such elector (giving elector's name)" and mailed by such notary public to the county clerk of the county wherein such elector votes, who shall keep same so sealed, and who shall also keep said poll tax receipt or certificate open to the inspection of any person who may wish to examine or see same

until the second day prior to said election, and said clerk shall on said day place the said poll tax receipt or certificate together with the said sealed envelope containing said marked ballot in another envelope which shall be by said clerk then mailed to the presiding judge of the voting precinct in which said elector lives. The postage for the entire correspondence herein made necessary shall be provided by said elector. In the presence of the election officers provided by law, and on the day of such election and between the hours of two and three o'clock the said presiding judge of same in the precinct of the residence of said elector shall open the envelope containing said poll tax receipts and marked ballots and publicly announce that the ballot of such named electors is proposed to be cast, at which time any person who desires to challenge said vote and the right of same to be cast, shall be heard to present such challenge, and if there be no challenge of same, said vote shall be cast and counted according to the law; and if there be any challenge of such vote, legal cause for same shall be heard and decided according to the law provided in the case of challenge. In case no challenge is made, such poll tax receipt, after same is marked "Voted" as provided by law, shall be mailed back to the said county clerk. But in case of challenge, if challenged, such poll tax receipt together with affidavits relating thereto shall be mailed by said judge of election to the county clerk of such county who shall keep same for thirty days and if no demand be made for the production of same before any body or persons in authority within said time, said county clerk shall deliver such receipt to the owners thereof. When voted, the judge of election shall mark opposite the name of such absentee voter the word "Absentee." The provisions of this article shall apply to all elections, including general, special and primary elections. [Id.]

Art. 2957. [2940] **To vote in city elections.**—All qualified electors of this State, as described in the two preceding articles who shall have resided for six months immediately preceding an election within the limits of any city or incorporated town shall have a right to vote for mayor and all other elective officers; but, in all elections to determine the expenditure of money or assumption of debt, or issuance of bonds, only those shall be qualified to vote who pay taxes on property in such city or incorporated town. [Acts 1st C. S. 1905, p. 521, Sec. 3.]

Art. 2958. [2941] **"Residence".**—The "residence" of a single man is where he usually sleeps at night; that of a married man is where his wife resides, or if he be permanently separated from his wife, his residence is where he sleeps at night; provided that the residence of one who is an inmate or officer of a public asylum or eleemosynary institute, or who is employed as a clerk in one of the departments of the government at the capitol of this State, or who is a student of a college or university, unless such officer, clerk, inmate or student has become a bona fide resident citizen in the county where he is employed, or is such student, shall be construed to be where his home was before

he became such inmate or officer in such eleemosynary institution or asylum or was employed as such clerk or became such student; and if on payment of his poll tax he would be a qualified voter, he shall be permitted to return during the month of January in each year to his home to pay his poll tax or obtain his certificate of exemption, and shall be permitted to return again to his home to vote at any general or primary election. The inmates of the Confederate Home situated within the limits of the city of Austin shall, after obtaining their certificates of exemption, be entitled to vote for State, district, municipal and county officers. [Id; Sec. 4.]

Art. 2959. [2942] **Liable to poll tax.**—A poll tax shall be collected from every person between the ages of twenty-one and sixty years who resided in this State on the first day of January preceding its levy, Indians not taxed, persons insane, blind, deaf or dumb, and those who have lost a hand or foot, or permanently disabled, excepted. It shall be paid at any time between the first day of October and the first day of February following; and the person when he pays it, shall be entitled to his poll tax receipt, even if his other taxes are unpaid. [Id; Acts 4th C. S. 1920, p. 11.]

Art. 2960. [2943] **Exempt from poll tax.**—Every person who is more than sixty years old or who is blind or deaf or dumb, or is permanently disabled, or has lost one hand or foot, shall be entitled to vote without being required to pay a poll tax, if he has obtained his certificate of exemption from the county tax collector when the same is required by the provisions of this title. [Id.]

Art. 2961. [2944] **Mode of paying poll tax.**—If the taxpayer does not reside in a city of ten thousand inhabitants or more, his poll tax must either be paid by him in person or by some one duly authorized by him in writing to pay the same, and to furnish the collector the information necessary to fill out the blanks in the poll tax receipt. Such authority and information must be signed by the party who owes the poll tax, and must be deposited with the tax collector and filed and preserved by him. [Id.]

Art. 2962. [2945] **Paying poll tax in large city.**—In all cases where the taxpayer resides in a city of ten thousand inhabitants or more, the tax must be paid in person by the taxpayer entitled to the receipt, except as provided by this article. If a person residing in a city of ten thousand inhabitants who is subject to pay a poll tax, intends to leave the precinct of his residence before the first day of October with the intention not to return until after the first day of the following February, and does not return before that time, he shall be entitled to vote, if possessing all other legal qualifications, by paying his poll tax or obtaining his certificate of exemption through an agent authorized by him in writing, which shall state truly his intention to depart from the precinct, the expected period of his absence, and every fact necessary to enable the tax collector to

fill the blanks in his receipt. Such authority in fact, must be sworn to by the citizen, and certified to by some officer authorized to administer oaths. It shall be deposited with the tax collector and kept in his office. [Id.]

Art. 2963. **Receipt mailed.**—When, in cases permitted by this title, the tax is paid by an agent, the tax receipt shall not be delivered to such agent, but shall be sent by mail to the taxpayer or kept and delivered to him in person by the tax collector. [Id.]

Art. 2964. [2946] **Not to pay tax.**—No candidate for office shall pay the poll tax for another. No person shall for or on behalf of any candidate for office or person interested in any question to be voted on, pay the poll tax for another; provided, that any person who has bought the property of another, which property is legally bound for the payment of any poll tax, may pay the poll tax of such former owner; but the collector in such case shall not issue a poll tax receipt authorizing any person to vote, but shall give the party paying the same an ordinary memorandum receipt therefor; but such memorandum receipt shall not state either the race, occupation or residence of the taxpayer. [Id; Sec. 16.]

Art. 2965. [2949-50] **Form of receipt.**—Each poll tax receipt and its duplicate shall show the name of the party for whom it was issued, the payment of the tax, age, his race, the length of time he has resided in the State, the length of time he has resided in the county, the voting precinct in which he lives, except when he lives in an unorganized county, his occupation, his post-office address, or, if he lives in an incorporated city, ward, street and number of his residence, if numbered, and the length of time he has resided in such city or town. The poll tax receipt shall be in the following form, and numbered consecutively in each book provided for in this title:

Poll Tax Receipt. No. _____

State of Texas, County of _____ . Received of _____
 on the _____ day of _____ A. D. 19____ the sum of _____
 dollars, in payment of poll tax for the year A. D. 19_____.

The said taxpayer being duly sworn by me, says that he is _____ years old, that he resides in voting precinct No. _____ in _____ County, that his race is _____, that he has resided in Texas _____ years, and in _____ County _____ years, that he is by occupation _____, that his post-office address is _____ (If in an incorporated city or town, a blank must be provided for the ward, street and number of residence in lieu of his post-office address, and length of time he has resided in such city or town.) All of which I certify.

(Signed) _____

(Seal)

Tax Collector _____ County, Texas.

Art. 2966. [2951] **Removal to another ward.**—If a citizen in a city of ten thousand inhabitants, after receiving his poll tax receipt or certificate of exemption, removes to another ward in the same city before the next election, he may vote at any general election in the ward of his new residence by presenting his poll

tax receipt or certificate of exemption to the precinct election judges, or by making affidavit that it has been lost or misplaced; which affidavit shall be left with the judges and forwarded with the election returns. But in all such cases if the removal was to the ward of his new residence in the same city before the certified list of voters was delivered to the precinct judges, he shall appear before the tax collector not less than five days before such election or primary election and obtain a corrected receipt or certificate; and his name shall be added to the list of voters for the precinct of his new residence; and he shall not vote in that event unless his name appears on the certified list of voters. [Id; Sec. 21.]

Art. 2967. [2952] Removal to another county or precinct.—If a citizen after receiving his poll tax receipt or certificate of exemption, removes to another county or to another precinct in the same county, he may vote at an election in the precinct of his new residence in such other county or precinct by presenting his poll tax receipt or certificate of exemption or his affidavit of its loss to the precinct judges of election, and state in such affidavit where he paid such poll tax or received such certificate of exemption, and by making oath that he is the identical person described in such poll tax receipt or certificate of exemption, and that he then resides in the precinct where he offers to vote and has resided for the last six months in the district or county in which he offers to vote and twelve months in the State. But no such person shall be permitted to vote in a city of ten thousand inhabitants or more, unless he has first presented to the tax collector of his residence a tax receipt or certificate, not less than four days prior to such election or primary election or made affidavit of its loss and stating in such affidavit where he paid such poll tax or received such certificate of exemption; and the collector shall thereupon add his name to the list of qualified voters of the precinct of his new residence; and, unless such voter has done this and his name appears in the certified list of voters of the precinct of his new residence, he shall not vote. [Id.; Sec. 22.]

Art. 2968. [2953] Exemption certificate in cities.—Every person who is exempted by law from the payment of a poll tax and who is in other respects a qualified voter, who resides in a city of ten thousand inhabitants or more, shall after the first day of October and before the first day of February following, before he offers to vote, obtain from the tax collector of the county of his residence a certificate showing his exemption from the payment of a poll tax. Such exempt person, shall on oath, state his name, county of his residence, occupation, race, age, the length of time he has resided in Texas, the length of time he has resided in the county, and the length of time he has resided in the city, and the ward and voting precinct in which his residence is located, the street and number of his residence, if numbered. He shall also state the grounds on which he claims exemption from the payment of a poll tax. Such certificate shall

be detached from said book, leaving thereunder a duplicate carbon or other copy thereof which shall contain the same description; and the original shall be delivered, bearing its proper number, to the citizen in person to identify him in voting. Certificates of exemption for each precinct shall be numbered consecutively, beginning at one. They shall be in the following form:

Certificate of Exemption from Poll Tax.

State of Texas, County of _____ No. _____

I, _____, Tax Collector for said county, Texas, do hereby certify that _____ personally appeared before me on the _____ day of _____ A. D. and being sworn, said name is _____, that his race is _____, that he is _____ years old, that his occupation is _____, that he has resided in Texas for _____ years, in the county of _____ for _____ years, and in the city of _____ for _____ years, and that he now resides in precinct No. _____, in ward No. _____; and on _____ street, and in house No. _____ (if numbered) that he is exempt from the payment of poll tax by reason of _____ and that he is a qualified voter under the Constitution and laws of Texas.

(Signed) _____

(Seal)

Tax Collector _____ County, Texas.

Art. 2969. [2954] **Becoming of age.**—Every person who will reach the age of twenty-one years after the first day of January and before the day of a following election at which he or she wishes to vote, and who possesses all the other qualifications of a voter under the Constitution and laws of Texas shall be entitled to vote at such election, and it shall not be necessary for such person to have paid a poll tax or to have obtained a certificate of exemption in order to entitle such person to vote at such election. If the right of such person to vote is challenged on the ground of non-age, if such person shall make affidavit that he or she, has attained the age of twenty-one years on the day of such election, such person shall be entitled to vote at such election upon filing such affidavit with the judge of election. This law shall not apply to cities having a population of five thousand or more according to the preceding Federal census. [Id.; Acts 2nd. C. S. 1923, p. 45.]

Art. 2970. [2956] **Poll tax books.**—Each commissioners court before the first day of October every year, shall furnish to the county tax collector a blank book for each voting precinct, which shall be marked with the name and number of the precinct for which it is intended. Each book shall contain a sufficient number of blank poll tax receipts for each voting precinct not in a city of ten thousand inhabitants or more, and not exceeding three hundred and fifty blank poll tax receipts and certificates of exemptions for each precinct in a city of ten thousand inhabitants or more, of which not more than sixty shall be

certificates of exemptions, and a greater or less number of each in the same proportion when sufficient for the voters of the precinct. Each receipt and certificate shall, in each such book, be bound immediately over a duplicate copy thereof; which duplicate copy, when filled out, shall correspond with the receipt or certificate in its number, the name, length of residence in the State or county, the voting precinct, race, occupation and post-office address of the citizen to whom the tax receipt or certificate of exemption is given. If the voting is in a city, the receipt or certificate and duplicate must show the ward, street and number, if numbered, of the citizen's residence (in lieu of post-office address); and the length of time he has resided in such city. The receipts and certificates shall be numbered in consecutive order. Similar blank books of poll tax receipts shall be furnished to such unorganized county attached to such county for judicial purposes, except that the voting precinct need not appear therein. When the tax receipt or certificate is delivered to the citizen, it shall be detached from the book and retained by him for his future use and identification in voting. [Acts 1st C. S. 1905, p. 520, Sec. 14.]

Art. 2971. [2957] Poll tax deputy.—In all counties containing a city of ten thousand inhabitants or more, other than the county seat, such collector shall have a duly authorized and sworn deputy to represent him for the purpose of accepting poll taxes and giving receipts therefor, who shall keep his office for such purpose at some convenient place in such city during the entire month of January of each year, and he shall publish four weeks notice of the authority of such deputy and the location of the office. [Id.; Sec. 17.]

Art. 2972. [2958] Collector may administer oaths.—The county collector is authorized to administer oaths and certify thereto under the seal of his office in every case where an oath is required in complying with any portion of this title connected with his official duties. [Id.; Sec. 24.]

Art. 2973. [2959] Proof of residence.—If the county collector does not personally know one who applies to pay his poll tax or secure his certificate of exemption from its payment, as being a resident in the precinct which such person claims as that of his residence, it shall be the duty of such collector to require proof of such residence; and if he has reason to believe such person has falsely stated his age, occupation, precinct of his residence, or the length of his residence in the State, county and city, he shall require proof of such statement; and, if on inquiry, he is satisfied that said person has sworn falsely, he shall make a memorandum of the words used in such statement, and present the same to the foreman of the next grand jury. [Id.; Sec. 26.]

Art. 2974. [2960] False swearing reported.—Whenever the county collector shall have reason to believe that a citizen who has paid his poll tax or received a certificate of exemption has sworn falsely to obtain the same, he shall report the facts upon

which such belief is founded to the next grand jury organized in the county. [Id.; Sec. 20.]

Art. 2975. [2961] **Lists of voters.**—Before the first day of April every year, the county tax collector shall deliver to the board that is charged with the duty of furnishing election supplies separate certified lists of the citizens in each precinct who have paid their poll tax or received their certificates of exemption, the names being arranged in alphabetical order, and to each name its appropriate number, as shown by the duplicates retained in his office, with a description of the voter as to his residence, his voting precinct, length of his residence in the State and county, his race, occupation and post-office address if not in a city of more than ten thousand inhabitants. If the county has any unorganized county or counties attached to it for judicial purposes, the tax collector shall also deliver to said board, before the first day of April of each year, as many certified lists of the electors resident in such unorganized county or counties, who have paid their poll tax or received the certificate of exemption as there are election precincts in his county; which lists shall be identical with those of poll tax payers in his own county, except that the voting precinct shall not be stated. The tax collector of any county containing a town or city of more than ten thousand inhabitants shall also furnish to said board, not less than four days prior to any primary or general election, supplemental lists in the form herein prescribed, of all poll tax paying voters who have, since paying their poll tax, removed to each voting precinct in each such city or town in the county from another county or in another precinct in the same county. Said board shall furnish each presiding judge of a precinct the certified list and supplemental list of the voters of his precinct at the time when he furnishes other election supplies. Such certified lists of qualified voters shall be in the following form:

Voters in Election Precinct.

No. _____
 Name _____
 Precinct _____
 Age _____
 Length of residence in State _____
 Length of residence in county _____
 Occupation _____
 Race _____
 Length of residence in city and ward _____
 Street and number of residence _____
 Post-office address _____

[Id.; Sec. 29.]

Art. 2976. [2962] **Duplicates kept.**—The county collector shall keep securely in a safe place the duplicates for each precinct from which such poll tax receipts and certificates of exemption have been detached, and they must remain there except when taken out for examination, which must always be

done in his presence, but they shall be burned by the county judge at the expiration of three years. [Id. Sec. 29.]

Art. 2977. [2963] **Statement of receipts.**—On or before the tenth day of March of each year, the tax collector shall make a statement to the county clerk showing how many poll tax receipts have been issued and to whom issued in each voting precinct in the county. Such statement shall become a record of the commissioners court. [Id.; Sec. 28.]

CHAPTER SIX.

OFFICIAL BALLOT.

| | | | |
|---------------------------|--------------|--------------------------------|---------|
| Official ballot..... | Article 2978 | Constitutional amendment and | Article |
| Death or declination..... | 2979 | other questions..... | 2982 |
| Form of ballot..... | 2980 | Form by local authorities..... | 2983 |
| How to mark ballot..... | 2981 | Ballots furnished..... | 2984 |
| | | Voters provide form..... | 2985 |

Art. 2978. [2964-5-6-7-70] **Official ballot.**—In all elections by the people, the vote shall be by official ballot, which shall be numbered, and elections so guarded and conducted as to detect fraud and preserve the purity of the ballot. No ballot shall be used in voting at any general, primary or special election held to elect public officers, select candidates for office or determine questions submitted to a vote of the people, except the official ballot, unless otherwise authorized by law. At the top of the official ballot shall be printed in large letters the words "Official Ballot". It shall contain the printed names of all candidates whose nominations for an elective office have been duly made and properly certified. The names shall appear on the ballot under the head of the party that nominates them, except as otherwise provided by this title. No name shall appear on the official ballot except that of a candidate who was actually nominated (either as a party nominee or as a non-partisan or independent candidate) in accordance with the provisions of this title. The name of no candidate shall appear more than once upon the official ballot, except as a candidate for two or more offices permitted by the Constitution to be held by the same person. The name of no candidate of any political party that cast one hundred thousand votes or more at the last preceding general election shall be printed on any official ballot for a general election, unless nominated by primary election, on primary election day, except as herein otherwise provided. [Acts 1st C. S. 1905, p. 520.]

Art. 2979. [2968] **Death or declination.**—If a nominee dies or declines his nomination, and the vacancy so created shall have been filled, and such facts shall have been duly certified in accordance with the provisions of this title, the Secretary of State or county judge, as the case may be, shall promptly notify the official board created by this law to furnish election supplies that such vacancy has occurred and the name of the new nominee shall then be printed upon the official ballot, if the ballots are not already printed. If such declination or death

occurs after the ballots are printed, or due notice of the name of the new nominee is received after such printing, the official board charged with the duty of furnishing election supplies shall prepare as many pasters bearing the name of the new nominee as there are official ballots, which shall be pasted over the name of the former nominee on the official ballot before the presiding judge of the precinct indorses his name on the ballot for identification. No paster shall be used except as herein authorized, and if otherwise used the names pasted shall not be counted. [Id. Sec. 50.]

Art. 2980. [2969] **Form of ballot.**—All ballots shall be printed with black ink on clear white paper of uniform style and of sufficient thickness to prevent the marks thereon to be seen through the paper. The tickets of each political party shall be placed or printed on one ballot, arranged side by side in columns separated by a parallel rule. The space which shall contain the title of the office and the name of the candidate shall be of uniform style and type on said tickets. At the head of each ticket shall be printed the name of the party. When a party has not nominated a full ticket, the titles of those nominated shall be in position opposite the same office in a full ticket, and the titles of the officers shall be printed in the corresponding positions in spaces where no nominations have been made. In the blank columns and independent columns, the titles of the offices shall be printed in all blank spaces to correspond with a full ticket. When presidential electors are to be voted on, their names shall appear at the heads of their respective tickets. When Constitutional amendments or other propositions are to be voted on, the same shall appear once on each ballot in uniform style and type. [Id.]

Art. 2981. **How to mark ballot.**—When a voter desires to vote a ticket straight, he shall run a pencil or pen through all other tickets on the official ballot, making a distinct marked line through such ticket not intended to be voted; and when he shall desire to vote a mixed ticket he shall do so by running a line through the names of such candidates as he shall desire to vote against in the ticket he is voting, and by writing the name of the candidate for whom he desires to vote in the blank column and in the space provided for such office; same to be written with black ink or pencil, unless the names of the candidates for which he desires to vote appear on the ballot, in which event he shall leave the same not scratched. [Id. Sec. 53.]

Art. 2982. [2971] **Constitutional amendment and other questions.**—When a Constitutional amendment or other question submitted by the Legislature is to be voted on, the form in which it is submitted shall, if the Legislature has failed to prescribe a form be described by the Governor in his proclamation in such terms as to give the voter a clear idea of the scope and character of the amendment, and printed once at the bottom of each ballot as described by this title, the words “for” and “against” under it. If a proposition or question is to be voted

on by the people of any city, county or other subdivision of the State, the form in which such proposition shall be voted on shall be prescribed by the local or municipal authority submitting it. [Id. Sec. 4.]

Art. 2983. [2972] **Form by local authorities.**—At the election of school district officers or school officers for a city, town or village, at which no officer is to be elected, or election of officers of fire departments, any ballot may be used prescribed by local authorities. [Id. Sec. 51.]

Art. 2984. [2973-4] **Ballots furnished.**—For each voting precinct, there shall be furnished one and a half times as many official ballots as there are qualified voters in the precinct, as shown by the list required to be furnished by the tax collector to precinct judges. The official ballots to be counted before delivery and sealed up and together with the instruction cards, with poll lists, tally sheets, distance markers, returning blanks and stationery, shall be delivered to the precinct judges, and the number of each indorsed on the package, and entered of record by the county clerk in the minutes of the commissioners court. In like manner, shall be sent the list of qualified voters for the precinct certified to by the collector. [Id. Secs. 44 and 48.]

Art. 2985. [2975] **Voters provide form.**—If, from any cause, the official ballots furnished for an election precinct have been exhausted or not delivered to the precinct judges, the voters may provide their own ballot after the style of the official ballot described in this title. [Id. Sec. 47.]

CHAPTER SEVEN.

ARRANGEMENTS AND EXPENSES OF ELECTION.

| | Article | | Article |
|------------------------------|---------|-------------------------------------|---------|
| Voting booths..... | 2986 | Board to provide supplies..... | 2992 |
| Booths and guard rails..... | 2987 | Judge to procure..... | 2993 |
| Open to view..... | 2988 | Collector's fees..... | 2994 |
| When booth not required..... | 2989 | Sheriff's and constable's fees..... | 2995 |
| Ballot boxes marked..... | 2990 | Expenses for election supplies..... | 2996 |
| Ballot boxes..... | 2991 | Municipal elections..... | 2997 |

Art. 2986. [2976] **Voting booths.**—Voting booths shall be furnished and used at elections at each voting precinct in towns or cities of ten thousand inhabitants or more. [Acts 1st. C. S. 1905, p. 529, Sec. 37.]

Art. 2987. [2977] **Booths and guard rails.**—There shall be one voting booth or place for every seventy citizens who reside in the voting precinct and who at the last general election paid their poll tax or obtained certificates of exemption from its payment, provided, the judges of the election may provide as many more booths and places as they deem necessary. Each polling place, whether provided with voting booths or not, shall be provided with a guard rail, so constructed and placed that only such persons as are inside of such guard rail can approach the ballot boxes or compartments, places or booths at which the voters are to prepare their votes, and that no person outside of the guard rail can approach nearer than six feet of

the place where the voter prepares his ballot. The arrangement shall be such that neither the ballot boxes nor the voting booths nor the voters while preparing their ballots shall be hidden from view of those outside the guard rail, or from the judges, and yet the same shall be far enough removed and so arranged that the voter may conveniently prepare his ballot for voting in secrecy. Where voting booths are required they shall have three sides closed and the front side open, shall be twenty-two inches wide on the inside, thirty-two inches deep and six feet four inches high, contain a shelf for the convenience of the voter in preparing his ballot; and shall be so constructed with hinges that they can be folded up for storage when not in use. The voting booths shall be so arranged that there shall be no access to them through any doors, window or opening except through the front of the booth; and the same care shall be observed in precincts where there are no booths in protecting the voter from intrusion while he is preparing his ballot. [Id. Secs. 38 and 41.]

Art. 2988. [2978] **Open to view.**—All booths and voting places shall be properly lighted. Every guard rail shall be provided with a place for entrance and exit. The arrangement of the polling place shall be such that the booths or places prepared for voting can only be reached by passing within the guard rail; and the booths, ballot boxes, election officers and every part of the polling place, except the inside of the booths, shall be in plain view of the election officers and persons outside the guard rail, among whom may be one challenger for each political party and no more. [Id. Sec. 40.]

Art. 2989. [2980] **When booth not required.**—When voting booths are not required, a guard rail shall be so placed that no one not authorized can approach nearer than six feet of the voter while he is preparing his ballot; and a shelf for writing shall be prepared for him, with black lead pencil, and so screened that no other person can see how he prepares his ballot. [Id. Sec. 42.]

Art. 2990. [2981] **Ballot boxes marked.**—For each election precinct, there shall be provided four ballot boxes to be marked as follows: "Ballot box No. 1 for election precinct No." (giving name and number of precinct); "Ballot box No. 2 for election precinct No."; "Ballot box No. 3 for election precinct No."; "Ballot box No. 4 for election precinct No." [Id. Sec. 43.]

Art. 2991. [2982] **Ballot boxes.**—All ballot boxes shall be securely made of metal or wood, provided with a top, hinges, lock and key, and an opening shall be made at the top of each just large enough to receive a ballot when polled.

Art. 2992. [2983] **Board to provide supplies.**—The county judge, county clerk and sheriff shall constitute a board, a majority of whom may act, to provide the supplies necessary to hold and conduct the election, all of which shall be delivered to the presiding judges of the election by the sheriff or any constable of the county, when not called for and obtained in per-

son by the precinct judges. Said board shall file with the commissioners court a written report of their action as to supplies furnished by the county, giving a detailed statement of the expenses incurred in procuring such supplies. [Id. Secs. 38 and 39.]

Art. 2993. [2984] **Judge to procure.**—If, from any cause, ballot boxes, voting booths, guard rails or other election supplies have not been received by the presiding judge, he shall procure them, and they shall be paid for as other election supplies. If the certified list of qualified voters is not in his possession at least three days before the election, he shall send for and procure them. [Id. Sec. 45.]

Art. 2994. [2984] **Collector's fees.**—The tax collector shall be paid fifteen cents for each poll tax receipt and certificate of exemption issued by him, to be paid pro rata by the State and county, in proportion to the amount of poll tax received by each; and this shall include his compensation for administering oaths, furnishing certified lists of qualified voters in election precincts for use in all general elections and primary conventions, when desired, and for all duties required of him under this title; provided, that collectors, whose salaries are fixed by the fee bill, shall receive ten cents for each poll tax receipt and certificate of exemption issued by him; and such fees are not to be accounted for as fees of office. [Id. Sec. 144.]

Art. 2995. [2987] **Sheriff's and constable's fees.**—The sheriff or any constable for serving copies of the order designating the bounds of election precincts, or the election judges, posting notices, and for serving all other writs or notices prescribed by this title, shall be paid the amounts allowed by law for serving civil process. For delivering election supplies to precinct judges, when they are not obtained by such judges in person, the sheriff or constable shall be paid such amount as the commissioners court may allow, not to exceed two dollars for each election precinct. [Id. Sec. 145.]

Art. 2996. [2988] **Expenses for election supplies.**—All expenses incurred in providing voting booths, stationery, official ballots, wooden or rubber stamps, tally sheets, polling lists, instruction cards, ballot boxes, envelopes, sealing wax and all other supplies required for conducting a general or special election shall be paid for by the county, except the cost of supplying booths for cities. All accounts for supplies furnished or services rendered shall first be approved by the commissioners court, except the accounts for voting booths for cities. [Id. Sec. 147.]

Art. 2997. [2989-90] **Municipal elections.**—The expense of all city elections shall be paid by the city in which same are held. In all elections in incorporated cities, towns and villages, the mayor, the city clerk, or the governing body shall do and perform each act in other elections required to be done and performed respectively by the county judge, the county clerk, or the commissioners' court. [Id. Sec. 45.]

CHAPTER EIGHT.

CONDUCTING ELECTIONS AND RETURNS THEREOF.

| Article | | Article | |
|--------------------------------------|------|--|------|
| Officers of election sworn..... | 2998 | Announcement of vote..... | 3021 |
| Preliminary arrangements..... | 2999 | Status of count announced..... | 3022 |
| Instruction card posted..... | 3000 | Privileged from arrest..... | 3023 |
| Presiding judge absent..... | 3001 | Loitering near polls..... | 3024 |
| Powers of presiding judge..... | 3002 | Conveying to polls..... | 3025 |
| To inspect ballot boxes..... | 3003 | Returns of elections..... | 3026 |
| Present poll tax receipt..... | 3004 | To be stored..... | 3027 |
| Announcer..... | 3005 | Ballots delivered to county clerk..... | 3028 |
| Examination of challenged voter..... | 3006 | To retain poll and tally list..... | 3029 |
| Vote challenged..... | 3007 | Commissioners to open returns..... | 3030 |
| Delivery of ballot..... | 3008 | Returns not estimated..... | 3031 |
| Marked ballot..... | 3009 | Certificates of election..... | 3032 |
| Aid to voter..... | 3010 | Returns for certain State and dis- | |
| Officers not to electioneer..... | 3011 | trict officers..... | 3033 |
| Depositing ballot..... | 3012 | Such returns counted..... | 3034 |
| Mutilated ballots..... | 3013 | Governor to give certificate..... | 3035 |
| Bystanders excluded..... | 3014 | Returns for Governor and Lieu- | |
| Defective ballots in Box No. 4..... | 3015 | tenant Governor..... | 3036 |
| Deposit and count..... | 3016 | Returns for legislators..... | 3037 |
| Examining ballots..... | 3017 | Certificate of legislator..... | 3038 |
| Ballots not counted..... | 3018 | County judge to certify to Secre- | |
| If nominee dies before election..... | 3019 | tary of State..... | 3039 |
| Supervisors may be present..... | 3020 | Commission to officers..... | 3040 |

Art. 2998. [2991] **Officers of election sworn.**—Before opening the polls, the presiding judge of election and each of the other judges and clerks shall repeat in an audible voice: “I solemnly swear that I will not in any manner request or seek to persuade or induce any voter to vote for or against any candidate or candidates, or for or against any proposition to be voted on; and that I will faithfully perform this day my duty as officer of the election, and guard as far as I am able, the purity of the ballot box. So help me God.” [Acts 1st C. S. 1905, p. 533, Sec. 56.]

Art. 2999. [2992] **Preliminary arrangements.**—The judges and clerks of election for each precinct, and supervisors if any, shall meet at the polling place at least half an hour before the time for opening the polls, and shall proceed to arrange the guard rail, the space within the guard rail, the voting booths, if any, and the furniture for the orderly and legal conduct of the election. The judges of election shall then examine the ballot boxes and the blank official ballots, and shall deposit such ballots as are found to be defective in printing in ballot box No. 4 for mutilated or returned ballots. They shall examine the sample ballots, instruction cards, distance markers, tally sheets, return sheets, certified list of voters, rubber stamps and all things required for the election. The package of official ballots shall remain in the custody of the judges and the polling clerks, and shall not be opened until the morning of the election and at the polling place. The judges shall cause to be placed at the distance of one hundred feet from the entrance of the room at which the election is held visible distance markers in each direction of approaches to the polls, on each of which shall be printed in large letters the words: “Distance markers. No electioneering or loitering between this point and the entrance to the polls.” The judges shall examine the ballot boxes and then relock them, after all present can see they are empty. The ballot clerks with

official ballots, the presiding officer of the election, the poll clerk, the election supplies and the certified lists of qualified voters for the precinct, and the supervisors, if any, shall be as conveniently near each other as practicable within the polling place. [Id. Sec. 55.]

Art. 3000. [2993] **Instruction card posted.**—Before the election begins, one instruction card shall be posted conspicuously near each distance marker and one posted up in each voting booth where it can be read. When there are no voting booths, one shall be posted up in plain view at the place prepared for the voter to make out his ballot. [Id. Sec. 56.]

Art. 3001. [2994] **Presiding judge absent.**—If no presiding judge was appointed or fails to act or fails to attend on election day, the voters present may appoint their own presiding officer, who has paid his poll tax, and they may also appoint the necessary assistant judges of election. When a presiding officer who has been appointed by a commissioners court fails to act in conducting an election, and one is selected by the voters present, the judges and clerks at such election shall, in making their returns of election, certify to that fact, and state that the acting judges were appointed by the voters present. When an assistant judge or clerk having been appointed fails to act at the opening of the polls or during the election, the presiding judge shall appoint in his place another with the same qualifications, and return a certificate of such appointment with each election return. [Id. Sec. 83.]

Art. 3002. [2995] **Power of presiding judge.**—Judges of election are authorized to administer oaths to ascertain all facts necessary to a fair and impartial election. The presiding judge of election, while in the discharge of his duties as such, shall have the power of the district judge to enforce order and keep the peace. He may appoint special peace officers to act as such during the election and may issue warrants of arrest for felony, misdemeanor or breach of peace committed at such election, directed to the sheriff or any constable of the county, or such special peace officer, who shall forthwith execute any such warrants, and, if so ordered by the presiding judge, confine the party arrested in jail during the election or until the day after the election, when his case may be examined into before some magistrate, to whom the presiding judge shall report it; but the party arrested shall first be permitted to vote, if entitled to do so unless he is drunk from the use of intoxicating liquor, then he shall not be permitted to vote until he is sober. [Id. Sec. 67.]

Art. 3003. [2996] **To inspect ballot boxes.**—Before the balloting begins, the presiding judge shall unlock ballot box No. 1, and after all the officers of the election and supervisors have inspected the same to see that it is empty, relock it and place it within view, where it shall remain until removed to make room for ballot box No. 2. A like examination shall be made of ballot box No. 2. [Id. Sec. 68.]

Art. 3004. [2997] **Present poll tax receipt.**—No citizen

shall be permitted to vote, unless he first presents to the judge of election his poll tax receipt or certificate of exemption issued to him before the first day of February of the year in which he offers to vote, except as otherwise permitted in this title, unless the same has been lost or mislaid, or left at home, in which event he shall make an affidavit of that fact, which shall be left with the judges and sent by them with the returns of the election; provided, that, if since he obtained his receipt or certificate he removes from the precinct or county of his residence, he may vote on complying with other provisions of this title. [Id. Sec. 66.]

Art. 3005. [2998] **Announcer.**—One election judge shall receive from the voter his poll tax receipt or certificate of exemption, when he presents himself to vote; the voter shall announce his name, and the judge after comparing the appearance of the party with the description given in the certified list of qualified voters of the precinct made out by the county collector, and being satisfied that it accords therewith, shall pronounce in an audible voice the name of the voter, and his number as given in the list of qualified voters. If the voter has lost, mislaid or left at home his receipt or certificate, and shall present his affidavit of that fact, and if his appearance tallies with that given for the same number and name on the list of qualified voters, or if the voter presents his affidavit of removal from some other precinct or county, in cases where the same is permitted by this title, together with his receipt or certificate or affidavit of the loss thereof, and the judges of election shall be satisfied that he paid his poll tax or received his certificate of exemption before the first day of the preceding February, the judge shall in like manner pronounce in an audible voice the name and number of the elector on the certified list of qualified voters with the word, "correct." [Id. Sec. 71.]

Art. 3006. [2999] **Examination of challenged voter.**—When a person offering to vote shall be objected to by an election judge or a supervisor or challenger, the presiding judge shall examine him upon an oath touching the points of such objection, and, if such person fails to establish his right to vote to the satisfaction of the majority of the judges, he shall not vote. If his vote be received, the word, "sworn," shall be written upon the poll list opposite the name of the voter. [Id. Sec. 73.]

Art. 3007. [790-3000] **Vote challenged.**—In any election, State, county or municipal, being held in any city or town of ten thousand inhabitants or more according to the preceding Federal census, when the right of any elector to vote is challenged, the following proceedings shall be had:

1. The judges of election shall refuse to accept such vote of such elector unless in addition to his own oath he proves by the oath of one well known resident of the ward that he is a qualified voter at such election and in such ward.

2. When such vote is accepted, the word "challenged" shall be written on the ballot, and the judges shall cause the clerk of

election to make a minute of the name of the elector and the party testifying under oath as to his qualifications, and such memoranda shall be kept by the county clerk of the county for six months after such election is held, subject to order of the district judge. [Acts 1891, p. 47; G. L. Vol. 10, p. 49.]

Art. 3008. [3001] **Delivery of ballot.**—When the judges are satisfied as to the right of the citizen to vote, the judge shall stamp in legible characters with a stamp of wood or rubber the poll tax receipt or certificate of exemption with the words: "Voted _____ day of _____, A. D. 19 _____." Or write the same words in ink and then return said receipt or certificate to the voter, and shall at the same time deliver to him one official ballot on the blank side of which the presiding judge shall have previously written his signature. The voter shall then immediately repair to a voting booth or a place prepared for voting by the election officers, and there prepare his ballot in the manner provided by law. [Id. Sec. 72.]

Art. 3009. [3002-3119] **Marked ballot.**—At either a general, special or primary election, any judge may require a citizen to answer under oath before he secures an official ballot whether he has been furnished with any paper or ballot on which is marked the names of any one for whom he has agreed or promised to vote or for whom he has been requested to vote, or has such paper or marked ballot in his possession, and he shall not be furnished with an official ballot until he has delivered to the judge such marked ballot on paper, if he has one. [Id. Secs. 70 and 127.]

Art. 3010. [3003] **Aid to voter.**—Not more than one person at the same time shall be permitted to occupy any one compartment, voting booth or place prepared for a voter, nor shall any assistance be given a voter in preparing his ballot, except when a voter is unable to prepare the same himself because of some bodily infirmity, such as renders him physically unable to write or is over sixty years of age and is unable to read and write, in which case two judges of such election shall assist him, they having been first sworn that they will not suggest, by word or sign or gesture, how such voter shall vote; and they will confine their assistance to answering his questions, to naming candidates, and the political parties to which they belong, and that they will prepare his ballot as such voter himself shall direct; provided that the voter must in every case explain in the English language how he wishes to vote, and no judge of the election shall use any other than the English language in aiding the voter, or in performing any duty as such judge of the election. Where any assistance is rendered in preparing a ballot other than as herein allowed, the ballot shall not be counted, but shall be void for all purposes. If the election be a general election, the judges who assist such voters shall be of different political parties, if there be such judges present, and if the election be a primary election one or more supervisors may be present when the assistance herein permitted is being given, but each super-

visor must remain silent except in cases of irregularity or violation of the law. [Id. Sec. 82; Acts 4th C. S. 1918, p. 54; Acts 1919, p. 94.]

Art. 3011. [3004] **Officers not to electioneer.**—No election judge, clerk or other person connected with the holding of an election, shall on election day, indicate by words, sign, symbol or writing to any citizen, how he shall or should not vote; provided, nothing herein shall interfere with the operation of the preceding article. [Acts 1st C. S. 1905, p. 533, Sec. 65.]

Art. 3012. [3005] **Depositing ballot.**—When a citizen shall have prepared his ballot, he shall fold the same so as to conceal the printing thereon, and so as to expose the signature of the presiding judge on the blank side, and shall, after leaving the booth, hand to the numbering judge his ballot. If the judges are satisfied that the ballot returned is the one delivered to the voter, the numbering judge shall number the ballot, writing on the blank side the number opposite the voter's name on the voting list, and shall stamp or write the same with the word "voted," and deposit the ballot in the ballot box. The letter, "v" shall, at the same time, be marked by any clerk on the certified list or supplemental list of qualified voters opposite the voter's name thereon, and the voter shall at once leave the polling place. [Id. Sec. 74.]

Art. 3013. [3006-3119] **Mutilated ballots.**—At any general or primary election no voter shall be entitled to receive a new ballot in lieu of one mutilated and defaced, until he first returns such ballot. No one shall be supplied with more than three ballots in succession, when they are mutilated or defaced. A register shall be kept by the clerks as the voting progresses of the mutilated or defaced ballots, which shall be deposited in box No. 4. [Id. Secs. 75 and 138.]

Art. 3014. [3007] **Bystanders excluded.**—From the time of opening the polls until the announcement of the results of the canvass of votes cast and the signing of the official returns, the boxes and official ballots shall be kept at the polling place in the presence of one or more of the judges and supervisors, if any. No person, except those admitted to vote, shall be admitted within the room where the election is being held, except the judges, clerks, persons admitted by the presiding judge to preserve order, and supervisors of election. [Id. Sec. 76; Acts 4th C. S. 1918, p. 54.]

Art. 3015. [3008] **Defective ballots in Box No. 4.**—In ballot box No. 4 shall be deposited, in addition to ballots defectively printed, all defaced and mutilated ballots, and, when the polls are closed, all the ballots that have not been voted. The box shall be locked and so returned sealed to the county clerk, with a statement which shall be placed therein signed by the presiding judge of the number of ballots received by him, the number of mutilated or defaced ballots that the box contained, and also the number of ballots not given to voters, as well as those defectively printed, so that, after adding such numbers, all ballots

delivered to the election officers may be accounted for. Such ballot box shall, when the returns of votes cast are canvassed by the commissioners court, be opened, the ballots counted and a record made of what they have found to be its contents. [Acts 1st. C. S. 1905, p. 533, Sec. 69.]

Art. 3016. [3009] **Deposit and count.**—At the expiration of one hour after voting has begun, the receiving judges shall deliver ballot box No. 1 to the counting judges, who shall at once deliver in its place ballot box No. 2, which shall again be opened and examined in the presence of all the judges and securely closed and locked; and, until the ballots in box No. 1 have been counted, the receiving judge shall receive and deposit ballots in ballot box No. 2. Ballot box No. 1 shall, on its receipt by the counting judges, be immediately opened and the tickets taken out by one of them, one by one, when he shall read and distinctly announce while the ticket remains in his hand, the name of each candidate voted for thereon, which shall be noted on the tally sheets, and shall then deliver the ballot to the other counting judge, who shall place the same in box No. 3, which shall remain locked and in view until the counting is finished, when said box shall be returned with the other boxes, locked and sealed, to the county clerk. Ballot boxes Nos. 1 and 2 shall be used by the receiving judge and the counting judge alternately, as above provided, as often as the counting judge has counted and exhausted the ballots in either box. [Id. Sec. 80.]

Art. 3017. [3010] **Examining ballots.**—No officer of election shall unfold or examine the face of a ballot when received from an elector, nor the indorsement on the ballot, except the signature of the judge, or the words stamped thereon, nor compare it with the clerk's list of voters when the ballots are counted, nor shall he permit the same to be done; nor shall he examine or permit to be examined the ballots after they are deposited in a ballot box, except as herein provided for in canvassing the votes, or in cases especially provided by law. [Id. Sec. 77.]

Art. 3018. [3011-12] **Ballots not counted.**—The counting judges and clerks shall familiarize themselves with the signature of the judge who writes his name on each ballot that is voted, and shall count no ballot where two or more are folded together, or that does not bear the judge's signature or is unnumbered, or if, on examination by the judges, such signature is found to be a forgery. If the names of two or more persons are upon a ballot for the same office, when but one person is to be elected to that office, such ballot shall not be counted for either of such persons. [Id. Secs. 78; Acts 1876, p. 308; G. L. Vol. 8, p. 1144.]

Art. 3019. [3013] **If nominee dies before election.**—If a nominee dies or declines the nomination before the election, and no one is nominated to take his place, the votes cast for him shall be counted and return made thereof; and, if he shall have received a plurality of the votes cast for the office, the vacancy

shall be filed as in case of a vacancy occurring after the election. [Acts 1st C. S. 1905, p. 533, Sec. 78.]

Art. 3020. [3014] **Supervisors present.**—The election supervisors may be present when the ballots are being examined and the vote called off and noted on the tally sheets. [Id. Sec. 80.]

Art. 3021. [3015] **Announcement of vote.**—At each change of the boxes, one judge shall announce at the outer door of the voting place the number of votes already cast. [Id. Sec. 81.]

Art. 3022. [3016-17] **Status of count announced.**—Immediately upon the closing of the polls, and at intervals of two hours thereafter, a judge shall make a correct but unofficial memorandum of the total number of votes counted for each candidate at that time, such memorandum being in the order in which the names of the candidates appear upon the ballot; and thereupon he shall publicly announce from such memorandum the status of the count at the door of the building where the counting is in progress. This memorandum shall thereafter be accessible to the public, and especially newspaper reporters, who may call for information; and the presiding judge or an associate judge may furnish reporters information concerning the status of the count at other times after the polls have closed. The announcement of the status of the count shall continue as aforesaid until the count has been completed, when a correct but unofficial announcement of the total number of votes received by each candidate shall be announced as above provided. This article shall also apply so as to require the same reports from judges of primary elections. No judge or clerk shall make any statement, nor give information in any manner, of the number of votes or any other fact regarding their opinion of the state of the polls, after the closing thereof, except as herein permitted. [Id. Sec. 76 and 78.]

Art. 3023. [3018] [1807] **Privilege from arrest.**—In all cases except treason, felony or breach of peace, voters shall be privileged from arrest during their attendance at elections, and in going to and returning therefrom. [Id. Sec. 63; P. D. 3625.]

Art. 3024. [3019] **Loitering near polls.**—The election judges shall prevent loitering and electioneering while the polls are open, within one hundred feet of the door through which voters enter to vote, and within one hundred feet of the place where the voter is required to prepare his ballot; and, for this purpose, they may appoint a special constable to enforce this authority. [Id. Sec. 84.]

Art. 3025. [3020] **Conveying to polls.**—No vehicle shall be used by any person to convey voters to the voting places unless the voter is physically unable to go to or to enter the polling place without assistance, in which event two of the judges of different political parties, if there are such, may deliver an official ballot to him at the entrance to the polling place and permit him to make out his ballot and deliver it there. [Id. Sec. 85.]

Art. 3026. [3024-5] **Return of elections.**—When the ballots

have all been counted, the managers of the election in person shall make out triplicate returns of the same, certified to be correct, and signed by them officially, showing: First, the total number of votes polled at such box; second, the number polled for each candidate; one of which returns, together with the poll lists and tally lists, shall be sealed up in an envelope and delivered by one of the precinct judges to the county judge of the county; another of said returns, together with poll lists and tally lists, shall be delivered by one of the managers of election to the county clerk of the county to be kept by him in his office open to inspection by the public for twelve months from the day of the election; and the other of said returns, poll and tally lists shall be kept by the presiding officer of the election for twelve months from the day of the election. In case of vacancy in the office of county judge, or the absence, failure or inability of that officer to act, the election returns shall be delivered to the county clerk of the county who shall safely keep the same in his office, and he, or the county judge, shall deliver the same to the commissioners court on the day appointed by law to open and compare the polls. [Acts 1883, p. 50; Acts 1st. C. L. 1905, p. 541 Sec. 91; G. L. Vol. 9, p. 357.]

Art. 3027. [3026] **To be stored.**—One of the precinct judges shall deliver the returns of election with certified lists of qualified voters, with all stationery, rubber stamps and blank forms and other election supplies not used, to the county judge, immediately after the votes have been counted. He shall provide for the safe storage of the voting booths in some place in the precinct, and notify the county judge. [Acts 1st C. S. 1905, p. 541, Sec. 91.]

Art. 3028. [3027-28] **Ballots delivered to county clerk.**—Immediately after counting the votes by the managers of election, the presiding officer shall place all the ballots voted, together with one poll tax list and one tally list, into a wooden or metallic box, and shall securely fasten the box with nails, screws or locks, and he shall, within ten days after the election, Sundays and the days of election excluded, deliver said box to the county clerk of his county, or to the county to which the unorganized county is attached for judicial purposes, whose duty it shall be to keep the same securely; and, in the event of any contest growing out of elections within one year thereafter, he shall deliver said ballot box to any competent officer having a process therefor, from any tribunal or authority authorized by law to demand such ballot box; provided, that all questions arising at any election board shall be settled and determined by the presiding officer, and the judges, anything in any law to the contrary notwithstanding. If no contest grows out of the election within one year after the day of such election, the said clerk shall destroy the contents of said ballot box by burning the same. [Acts 1876, p. 308; G. L. Vol. 8, p. 1144; Acts 1881, p. 97; G. L. Vol. 9, p. 189.]

Art. 3029. [3029] [1749] [1704] **To retain poll and tally**

list.—The presiding officer shall retain in his custody one poll list and one tally list of the election, and shall keep the same for one year after election, subject to the inspection of any one interested in such election.

Art. 3030. [3030] [1753] [1705] **Commissioners to open returns.**—On the Monday next following the day of election, and not before, the commissioners court shall open the election returns and estimate the result, recording the state of the polls in each precinct in a book to be kept for that purpose; provided, that, in the event of a failure from any cause of the commissioners court to convene on the Monday following the election to compute the votes, then said court shall be convened for that purpose upon the earliest day practicable thereafter. [Acts 1883, p. 50; G. L. Vol. 9, p. 357.]

Art. 3031. [3031] [1754] [1706] **Returns not estimated.**—No election returns shall be opened or estimated, unless the same have been returned in accordance with the provisions of this title.

Art. 3032. [3032-34] **Certificates of election.**—After an estimate of the result of an election has been made as provided for in this title, the county judge shall deliver to the candidate or candidates for whom the greatest number of votes have been polled for county and precinct officers a certificate of election, naming therein the office to which such candidate has been elected, the number of votes polled for him and the day on which such election was held and shall sign the same and cause the seal of the county court to be thereon impressed. If the county constitutes a senatorial or representative district of itself, the commissioners court shall at the same time make an estimate of the votes polled for members of the Legislature; and the county judge shall give a like certificate of election, as provided herein to the person receiving the highest number of votes for senator or representative, and shall also transmit a duplicate of such certificate to the Secretary of State. [Acts 1883, p. 50; G. L. Vol. 9, p. 357.]

Art. 3033. [3035] [1757] **Returns for certain State and district officers.**—In all elections for State or district officers, except members of the Legislature, representatives and Senators in the United States Congress, and for the adoption or rejection of proposed Constitutional amendments, the county judge shall, on the Monday next following the day of election, or as soon thereafter as the commissioners court shall have opened the returns and estimated the result as provided in article 3030 make out duplicate returns of the election; one of which he shall immediately transmit to the seat of government of the State, sealed in an envelope, directed to the Secretary of State, and endorsed, "Election Returns for _____ county, for _____" (filling the first blank with the name of the county and the other blank with the name of the office for which the election was held, or a designation of the proposed amendments to the Constitution voted upon, as the case may be); and the other of

such returns shall be deposited in the office of the clerk of the county court of the county where such election was held. [Acts 1897, p. 31; G. L. Vol. 10, p. 1085.]

Art. 3034. [3036] [1758] [1710] **Such returns counted.**—On the fortieth day after the election, the day of election excluded, and not before, the Secretary of State in the presence of the Governor and Attorney General, or in case of vacancy in either of said offices, or of inability or failure of either of said officers to act, then in the presence of either one of them, shall open and count the returns of the election. [Acts 1883, p. 50; G. L. Vol. 9, p. 357.]

Art. 3035. [3037] [1759] [1711] **Governor to give certificate.**—When the returns have been counted, the Governor shall immediately make out, sign and deliver a certificate of election, with the seal of the State thereto affixed, to the person or persons who shall have received the highest number of votes for each or any of said offices. [Id.]

Art. 3036. [3038-9] **Returns for Governor and Lieutenant Governor.**—Each county judge shall promptly make duplicate returns of the election for Governor and Lieutenant Governor, carefully sealed in an envelope, one of which shall be transmitted to the seat of Government in this State, directed to the Speaker of the House of Representatives and indorsed as provided in Article 3033 and the other of said returns shall be deposited in the office of the county clerk of said county. Said transmitted returns directed to the Secretary of State shall be kept by him with the package and seal thereon to remain unbroken until the organization of the next Legislature, when he shall, on the first day thereof, deliver them to the Speaker of the House of Representatives. [Id.]

Art. 3037. [3040-1] **Returns for legislators.**—When an election shall have been held for members of the Legislature in any district composed of more counties than one, the county judge to whom the returns in each county are made, and who is not authorized to give certificates of election to such members of the Legislature, shall make out and send complete returns of such election for members of the Legislature in his county immediately after examining and recording the same, to the county judge of the county who may by law be authorized to give certificates of election to such members for such district. Said returns shall be sealed in an envelope, and the name of the officer forwarding them shall be written across the seal, and the envelope shall be indorsed, "Election Returns," and directed to the county judge of the proper county and transmitted by mail or other safe and expeditious conveyance. [Id.]

Art. 3038. [3042-3] **Certificate of legislator.**—The county judge to whom the returns named in the preceding article are forwarded, or in case of a vacancy in that office, or of inability or failure to act on the part of such officer, then the county clerk of such county shall, upon the thirtieth day after the election, Sunday excluded if Sunday be the thirtieth day, open and count

said returns in the presence of at least two qualified voters of said district, and, after recording the same, shall give a certificate or certificates of election under seal of said court to the person or persons receiving the highest number of votes for senator or representative in that district. Said certificate shall state the number of votes received by the person to whom the same is given; and the officer giving such certificate shall immediately forward a duplicate of the same to the Secretary of State. If all the election returns of the district shall have been received by the returning officer of the district before the said thirtieth day, then he may count said returns and issue the certificate of election as provided for in the preceding article at any time before said thirtieth day. [Id.]

Art. 3039. [3044] [1766] [1718] **County judge to certify to Secretary of State.**—At the expiration of thirty days from an election, and from time to time thereafter as the officers may qualify, each county judge shall make out and certify to the Secretary of State a tabular statement showing who were elected, and to what office, and the date of qualification, giving the number of the precinct, of precinct officers, and he shall also certify the result of the vote for members of the Legislature; and he shall in like manner report to the Secretary of State all special elections to fill a vacancy in any county or precinct office, certifying when and how the vacancy occurred. [Acts 1863; G. L. Vol. 5, p. 604; P. D. 3604.]

Art. 3040. [3045] [1809] [1758] **Commission to officers.**—The Governor shall commission all officers except Governor, members of Congress, electors for President and Vice-President of the United States, members of the Legislature and municipal officers. [Acts 1876, p. 310; G. L. Vol. 8, p. 1146.]

CHAPTER NINE.
CONTESTING ELECTIONS.

| | Article | | Article |
|---|---------|--------------------------------------|---------|
| By whom tried..... | 3041 | Measure of damages..... | 3058 |
| Notice of contest..... | 3042 | For Legislature..... | 3059 |
| Reply to notice of contest..... | 3043 | Depositions taken..... | 3060 |
| Service of notice..... | 3044 | Who may take such depositions..... | 3061 |
| Where to file papers..... | 3045 | How depositions may be returned..... | 3062 |
| Cause to have precedence..... | 3046 | Referred to committee..... | 3063 |
| Evidence and procedure..... | 3047 | Hearing by committee..... | 3064 |
| To execute bond..... | 3048 | Procedure by house..... | 3065 |
| Failure to file bond..... | 3049 | Contest for State office..... | 3066 |
| Execution of bond by contestant certified..... | 3050 | United States Senator..... | 3067 |
| To commission contestant..... | 3051 | For presidential electors..... | 3068 |
| Failure of contestant to execute bond..... | 3052 | Other contested elections..... | 3069 |
| Fraudulent votes not counted..... | 3053 | Parties defendant..... | 3070 |
| Election declared void..... | 3054 | Constitutional amendment..... | 3071 |
| Bond subject to suit..... | 3055 | Power of court..... | 3072 |
| Appeal available..... | 3056 | To compel returns..... | 3073 |
| Taxing costs..... | 3057 | Decree..... | 3074 |
| | | Result final..... | 3075 |

Art. 3041. [3046-3050] **By whom tried.**—Contested elections for other purposes than the election of officers shall be tried by any district court of the county where the election was held. Contested elections for the following offices shall be tried:

1. For district attorney, by any district judge of the district in the county where the candidate receiving the certificate of election shall reside.

2. For district judge, by the district judge of and in the county of the adjoining district, the county seat of which is nearest to the residence of the candidate receiving the certificate of election, and in counties having two or more district courts, then by the district court of the adjoining district in said county.

3. For any justice of the Supreme Court or Court of Criminal Appeals, in any district court of Travis County, and for any justice of any court of Civil Appeals by any district court in the county where said court of Civil Appeals has its sittings.

4. For any county office, by any district court of the county where the election was held. [Acts 1895, p. 58; G. L. Vol. 10, p. 788.]

Art. 3042. [3051] [1798] **Notice of contest.**—Any person intending to contest the election of any one holding a certificate of election for any office mentioned in this law, shall, within thirty days after the return day of election, give him a notice thereof in writing and deliver to him, his agent or attorney, a written statement of the ground on which such contestant relies to sustain such contest. By the “return day” is meant the day on which the votes cast in said election are counted and the official result thereof declared. [Id.]

Art. 3043. [3052] [1799] **Reply to notice of contest.**—The person holding such certificate shall, within ten days after receiving such notice and statement, deliver, or cause to be delivered, to said contestant, his agent or attorney, a reply thereto in writing. [Id.]

Art. 3044. [3053] [1800] **Service of notice.**—The notice, statement and reply required by the two preceding articles may and shall be served by any person competent to testify, and shall be served by delivering the same to the party for whom they are intended in person, if he can be found in the county, if not found, then upon the agent or attorney of such person, or by leaving the same with some person over the age of sixteen years at the usual place of abode or business of such person.

Art. 3045. [3054] [1801] **Where to file papers.**—If the contest be for the validity of an election for any State office, except the office of Governor and Lieutenant-Governor, or for any district office, except members of the Legislature, or for any county office, a copy of the notice and statement of the contestant and of the reply thereto of the contestee served on the parties shall be filed with the clerk of the court having jurisdiction of the case. [Id.]

Art. 3046. [3055] [1802] **Cause to have precedence.**—When the notice, statement and reply have been filed with the clerk of the court, he shall docket the same as in other causes, and the said contest shall have precedence over all other causes. If the office contested for be that of district clerk, then a clerk

pro tem shall be appointed as is provided by law in suits where the clerk is a party to the suit. [Id.]

Art. 3047. [3056] [1803] **Evidence and procedure.**—In trials of all contests of election, the evidence shall be confined to the issues made by the statement and reply thereto, which statement and reply may be amended as in civil cases. As to the admission and exclusion of evidence, the trial shall be conducted under the rules governing proceedings in civil causes. [Id.]

Art. 3048. [3057] [1804] **To execute bond.**—Whenever the validity of an election for an officer other than for members of the Legislature is contested, the contestee shall, within twenty days after the service of said notice and statement of such contest upon him, file with the clerk of the court in which such contest is pending a bond with two or more good and sufficient sureties, payable to the contestant, to be approved by said clerk, in an amount to be fixed by said clerk, and not less than double the probable amount of salary or fees or both, as the case may be, to be realized from the office being contested for a period of two years; conditioned that, in the event the decision of the contest shall be against such contestee and in favor of the contestant, such contestee will pay over to such contestant whatever sum may be adjudged against him by a court having jurisdiction of the subject matter of such bond. [Id.]

Art. 3049. [3058] **Failure to file bond.**—If the contestee fails to file the bond as required in the preceding article, and within the time therein prescribed, said clerk shall notify the contestant immediately of such failure; and such contestant shall have the right, within ten days after such notice, to file a like bond payable to the contestee, conditioned that, in the event the decision of the contest is against him and in favor of the contestee, he will pay over to such contestee whatever sum may be adjudged against him, the said contestant, by a court having jurisdiction of the subject matter of such bond. [Id.]

Art. 3050. [3059] **Execution of bond by contestant certified.**—Immediately upon the filing of said bond by the contestant, the clerk shall certify in writing, and under his official seal, to the Governor, that the contestee failed to give the required bond, and that the contestant has given such bond in accordance with law. [Id.]

Art. 3051. [3060] **To commission contestant.**—Upon receiving such certificate from the clerk, the Governor shall issue a commission to the said contestant for the office in controversy pending such contest; and thereupon the contestant, upon qualifying in said office as required by law, shall exercise all the rights and powers and perform all the duties of said office for the full term thereof, unless it shall otherwise be determined and ordered by the court upon the trial of such contest. [Id.]

Art. 3052. [3061] **Failure of contestant to execute bond.**—The Governor shall issue the commission to the contestee at the time provided by law as in other cases, unless he has been noti-

fied of the failure of such contestee to file the bond required by article 3048, in which event the Governor shall withhold the issuance of such commission until after the time allowed the contestant to file such bond has elapsed; but, if the said contestant shall also fail to file bond as provided in article 3049, and within the time therein required, the clerk shall certify all the facts in the case under his official seal to the Governor, who shall thereupon issue the commission to the contestee. [Id.]

Art. 3053. [3062] **Fraudulent votes not counted.**—If any vote or votes are found upon the trial of any contested election to be illegal or fraudulent, the trial court shall subtract such vote or votes from the poll of the candidate who received the same, and after a full and fair investigation of the evidence shall decide to which of the contesting parties the office belongs. [Id.]

Art. 3054. [3063] **Election declared void.**—If it appears on the trial of any contest provided for in article 3045 that it is impossible to ascertain the true result of the election as to the office about which the contest is made, either from the returns of the election or from any evidence within reach, or from the returns considered in connection with other evidence, or should it appear from the evidence that such a number of legal voters were, by the officers or managers of the election, denied the privilege of voting as, had they been allowed to vote, would have materially changed the result, the court shall adjudge such election void, and direct the proper officers to order another election to fill said office; which election shall be ordered and held and returns thereof made in all respects as required by the general election laws of the State. [Id.]

Art. 3055. [3064] **Bonds subject to suit.**—The bonds required to be filed by the contestant and contestee under the provisions of this chapter shall remain on file in the office of the clerk where filed, and may be sued upon as other bonds. [Id.]

Art. 3056. [3065-6] **Appeal available.**—Either the contestant or contestee may appeal from the judgment of the district court to the Court of Civil Appeals, under the same rules and regulations as are provided for appeals in civil cases; and such cases shall have precedence in the Court of Civil Appeals over all other cases. In case of appeal as provided for in this article, the clerk shall, without delay, make up the transcript and forward the same to the clerk of the Court of Civil Appeals for that district. [Id.]

Art. 3057. [3067] [1804] **Taxing costs.**—The costs in all contested election cases shall be taxed according to the laws governing costs in civil cases, except when otherwise specially provided, and bond for cost may be required as in civil suits. [Id.]

Art. 3058. [3068] **Measure of damages.**—Where the contest shall have been decided against one of the parties and the other party shall have filed a bond and performed the duties of the office under the provisions of this chapter, the bond so filed

shall inure to the benefit of the successful party in any suit thereon in a court having jurisdiction of the amount in controversy; and the measure of damages recoverable, besides cost of suit, shall be the salary, fees, and emoluments of office of which he has been deprived, less such reasonable expenses as the party holding the office shall have incurred in executing the duties of the office; provided, that he shall have acted in good faith in receiving the certificate of election or commission for the office. [Id.]

Art. 3059. [3069] [1804] **For legislature.**—If the contest be for the validity of an election for members of the Legislature, a copy of the notice, the statement, and the reply served upon the parties as required by this chapter, shall, within twenty days after the service thereof, be filed with the district returning officer to whom the returns of such election were made, who shall envelope the same, together with a certified copy of the poll book or register of the votes of each precinct and county returned to him in said election, and shall seal the said envelope and write his name across the seals, and address the package to the President of the Senate or Speaker of the House of Representatives, as the case may be, to the care of the Secretary of State, and shall forward the same by mail or other safe conveyance to the seat of government, so as to reach there, if possible, before the convening of the Legislature. [Id.]

Art. 3060. [3070] **Depositions taken.**—At any time after filing said papers with said returning officer, either party to said contest may proceed, at his own expense, to take such written testimony as he may deem proper, having first served the opposite party, his agent or attorney, with a copy of the interrogatories he intends to propound to each witness, and the name of the officer before whom the same will be answered as well as the time and place of taking such testimony. [Id.]

Art. 3061. [3071] **Who may take such depositions.**—Any officer authorized by the law of this State to administer oaths, upon being satisfied as to any costs, including his own fees, that may accrue in the taking of such testimony, shall proceed upon the application of the party desiring it, to summon the witness or witnesses named in the interrogatories and take his or their answers in writing and under oath to such interrogatories and cross interrogatories as may be propounded in writing. [Id.]

Art. 3062. [3072] **How depositions may be returned.**—The answers of each witness shall be reduced to writing and signed by such witness, and sworn to by such witness before the officer taking the same, and shall be certified to by such officer and sealed in an envelope; and the name of said officer shall be written by him across the seals; and he shall forward the same without delay by mail or other safe conveyance to the President of the Senate or Speaker of the House of Representatives, as the case may be, to the care of the Secretary of State, at the seat of government. [Id.]

Art. 3063. [3075] **Referred to committee.**—The notice and statement of contest and the other papers pertaining thereto shall immediately after the organization of the Legislature be opened by the President of the Senate or by the Speaker of the House of Representatives, as the case may be; and the same shall be referred to the committee on privileges and elections of the House in which the contest is pending, which committee shall proceed without delay to fix a time for the hearing of said case, and, after due notice to the parties thereto shall investigate the issues between said parties, hearing all the legal evidence that may be presented to said committee, and shall as soon thereafter as practicable report their conclusions of law and fact in respect to said case to the house by which said committee was appointed, accompanied by all the papers in the cause, and the evidence taken therein, with such recommendations as may to them seem proper. Any one or more of the committee dissenting from the views of the majority may present a minority report. [Id.]

Art. 3064. [3074] **Hearing by committee.**—The rules of evidence and the laws in force respecting the admissibility of evidence, the taking of depositions and the issuance and service of process in the district courts of this State shall be observed by said committee, so far as the same may be applicable. Said committee shall have the power to send for persons and papers, and the chairman of said committees shall have the power to issue all process necessary to secure the attendance of witnesses and the production of papers, ballot boxes and other documents before said committee, and such process shall be executed by the sergeant-at-arms of the house in which the contest is pending, or by such other person as the presiding officer of said house may designate. [Id.]

Art. 3065. [3075] **Procedure by house.**—The house in which the contest is pending shall, as soon as practicable after the report of the committee has been received, fix a day for the trial of the contest, and shall proceed to determine whether the contestant or contestee, or either of them, is entitled to the contestant's seat; provided, the said house may hold the election void after full consideration of all the evidence and for the reasons prescribed in article 3054, and in such case the Governor shall at once be notified of the vacancy. Such fees shall be paid to the witnesses and the officers serving the process as shall be prescribed by the rules of the house in which said contest is pending, and no mileage or per diem shall be paid to either of the parties to said contest until said case is determined, and in no case shall any mileage or per diem be paid to any party against whom any contest is decided. [Id.]

Art. 3066. [3076] **Contest for State office.**—If the contest be for the validity of an election for Governor, Lieutenant-Governor, Comptroller, State Treasurer, Land Commissioner or Attorney General, the same shall be tried and determined by both houses of the Legislature in joint session, and the provisions of

this chapter governing in case of a contest for the validity of an election for members of the Legislature shall apply to and govern in a contest for the offices above named, as far as applicable. [Id. Const. Art. 4, Sec. 3.]

Art. 3067. **United States Senator.**—If the nomination of any candidate for United States Senator be contested, the same shall be conducted under the provisions of the law regulating contests before party election committees or the courts for State officers. [Acts 1st C. S. 1913, p. 101.]

Art. 3068. [3181] **For presidential electors.**—Any person intending to contest the election of any or all of the persons duly declared elected as electors of president and vice-president, shall within fifteen days from the said fourth Monday in November, file with the Secretary of State a written statement of the ground on which such contestant relies to sustain such contest, and shall within such time, notify the contestee thereof in writing, and deliver to him, his agent or attorney, a copy of said statement. The contestee shall, within ten days after receiving such notice, file with the Secretary of State his reply thereto in writing. The contest shall, as soon thereafter as possible, be tried and determined by the State Board of canvassers, consisting of the Governor, Attorney General and Secretary of State, or any two of them; and their decision shall be rendered at least six days before the time fixed by law for the meeting of the electors. Such decision, in which two at least of such board shall join, shall be final, and certificates of election, in accordance therewith shall at once be issued by the Secretary of State to the proper parties. Where not otherwise herein provided, the provisions of law relating to contests for the validity of an election for members of the Legislature shall apply to such contests for presidential electors. [Acts 1897, p. 24; G. L. vol. 10, p. 1079.]

Art. 3069. [3077] **Other contested elections.**—If the contest be for the validity of an election held for any other purpose than the election of an officer or officers in any county or part of a county or precinct of a county, or in any incorporated city, town or village, any resident of such county, precinct, city, town or village, or any number of such residents, may contest such election in the district court of such county in the same manner and under the same rules, as far as applicable, as are prescribed in this chapter for contesting the validity of an election for a county office.

Art. 3070. [3078] **Parties defendant.**—In any case provided for in the preceding article, the county attorney of the county, or if there is no county attorney, the district attorney of the district, or the mayor of the city, town or village, or the officer who declared the official result of said election, or one of them, as the case may be, shall be made the contestee, and shall be served with notice and statement, and shall file his reply thereto as in the case of a contest for office; but in no case shall the costs of such contest be adjudged against such contestee, or

against the county, city, town or village which they may represent, nor shall such contestee be required to give any bond upon an appeal. [Id.]

Art. 3071. **Constitutional amendment.**—Within sixty days from the date of any election upon any proposed amendment to the Constitution, and not thereafter, any citizen of this State who is a qualified voter, shall have the right to contest said election by filing his petition in a district court of Travis County, fully stating his grounds for contest, naming the Secretary of State as contestee; and thereupon the district judge, in whose court the contest is filed, shall make an order for the issuance, and the clerk of said court or the judge thereof, shall issue a writ of injunction enjoining the Secretary of State from tabulating, estimating or canvassing the returns of said election and from ascertaining or declaring the result of said election until said contest is finally determined. Citation shall be issued and served upon the Secretary of State as in other civil cases. At the time of filing such petition, contestant shall cause to be published in a daily newspaper printed in Texas, for at least ten days before appearance day, a brief notice to all parties interested that such suit has been filed. The Secretary of State shall within twenty days from service of citation file a formal answer, but shall not be liable for any costs. Any qualified citizen or citizens adversely interested in such contest may appear by counsel of their own choosing upon either side of the contest, but opponents of the contest shall have the right to direct and control the pleadings of the Secretary of State and the conduct of the contest upon the part of the contestees; and contestants shall jointly and not severally plead in the cases. The said court shall cause the party contesting the result of said election and the parties adversely interested to form issues and shall as near as may be conform the hearing and determination of such contest to the proceedings usual in courts in contested election cases. The court shall permit contestants to amend their petition, include therein allegations charging fraud, irregularities or mistakes, upon such terms as to the court may seem just, and likewise the contestees shall have the right both to contest the charges made by the contestant and to make counter charges, but the court shall bring the parties to issue with all possible dispatch. Said contestant shall be required to give a good and sufficient bond to be approved by the clerk of the court wherein said contest is filed, conditioned that the said contestant will pay, in the event he is defeated in said contest, all the costs that may be incurred in the trial of said contest. He shall not be permitted to file any such contest and give in lieu of the bond herein provided for any affidavit of inability to pay the costs as provided for by law. [Acts 1911, p. 144.]

Art. 3072. **Power of court.**—The said court shall have the power to appoint commissioners to sit at such places as the court may designate for the purpose of hearing testimony, reducing

same to writing and reporting same to said court, said court shall also have the power to issue all orders that may be necessary or proper to compel the production before said court or any commissioner appointed by said court of all ballot boxes and instrumentalities used in connection with said election that may be necessary or proper to determine the issues raised by such contest, and to send by proper process to any county in the State, for the officers of the election or the custodians of ballot boxes for the purpose of aiding in, ascertaining and determining any matter or thing necessary or proper in connection with the trial of said contest. The said court may proceed to the trial of said issue raised by said contest after having given the contestants and the contestees full and fair opportunity to produce before said court the evidence upon such issues. The court may adjourn the said hearing from time to time and may, before the final determination of said cause, make such orders and decrees as to the court may seem just and proper, requiring any election officers to make such certificate of the result of such election as in the judgment of the court such officers should have made in making the returns of such election. Upon the trial of said cause, the court shall have full power and authority to hear and determine all matters and things necessary or proper to the determination of the question whether a majority of the legal votes cast in said election, either in favor of or against said proposed amendment, including the manner of holding the election, any frauds or irregularities in the conduct thereof, or in the making of the returns thereof illegal votes cast at said election or legal votes prevented from being cast, false calculations, certificates or returns, and to exercise all powers of the court, in order to fully inquire into and ascertain the true and correct result of such election, free from any fraud, irregularity or mistake. [Id.]

Art. 3073. **To compel returns.**—The said court shall have full authority when the result of such election in any voting precinct box shall have been ascertained and determined, to order and compel the proper officers thereof to make true and correct returns of such election in such voting box as finally determined by said court, to the proper officers of such county and when the result in any county shall have been ascertained and determined by said court, to order and compel the proper returning officers of such county to make true and correct returns of the result of said election in said county as to said amendment as ascertained by said court to the Secretary of State, and to order the Secretary of State to make his returns, tabulations, canvassings, countings and certificates in accordance with the result of such election as finally ascertained and determined by the court. [Id.]

Art. 3074. **Decree.**—The said contest shall have precedence in said court over all causes pending therein. Either party may appeal as in other civil cases and the same shall have precedence over all other causes pending in the appellate courts to

which the appeal or writ of error is taken, except such cases as may be entitled to precedence over said cause by virtue of some provision of the Constitution of this State. Upon final judgment in said appellate court, it shall enter a decree ordering and directing the Secretary of State to declare the true result of said election as judicially determined and ascertained by said court, and the Secretary of State shall make his tabulations, canvassings and certificates of the results of such election in accordance with the final judgment of said court, and said amendment shall be adopted or rejected in accordance with the final result of said election as finally determined by the judgment of said court. [Id.]

Art. 3075. **Result final.**—The result of said contest shall finally settle all questions relating to the validity of said election, and it shall not be permissible to again call the legality of said election in question in any other suit or proceeding. If no contest of said election is filed and prosecuted in the manner and within the time herein provided for, it shall be conclusively presumed that said election as held and the result thereof as declared are in all respects valid and binding upon all courts, provided, that pending such contest the enforcement of all laws in relation to the subject matter of such contest shall not be suspended, but shall remain in full force and effect. [Id. Sec. 15.]

CHAPTER TEN.

CONSTITUTIONAL AMENDMENTS.

Art. 3076. **Officers named.**—Whenever any proposed amendment to the Constitution of this State is to be voted upon by the qualified voters of this State, either at an election held for that purpose, or at any election for the State officers, the county chairman of any organization advocating, and the county chairman of any organization opposing the adoption of such amendment, or if such county chairman fails to act, then three members of the county executive committee of any organization advocating, or three members of the county executive committee opposing the adoption of such Constitutional amendment may at any time not less than five days before the election at which such proposed amendment is to be voted upon, nominate one judge, one clerk and one supervisor to serve as judge, clerk and supervisor, respectively, for the voting box for which they are so selected, who shall be qualified voters of the voting precinct or box for which they are chosen, by presenting in writing to the county judge of the county the names of such judges, clerks and supervisors so selected. Such county judge shall appoint the parties nominated to act in such capacities at the respective voting precincts and boxes for which they are respectively selected. If the county judge fails or refuses to appoint such officers, they shall apply to the officers and

judges of the voting precinct or box for which they were respectively nominated, and the manager and judges of such precinct or box shall permit such persons so selected to act in the capacities named. [Acts 1911, p. 144.]

Art. 3077. **Duties of election officers.**—Such judges, clerks and supervisors shall serve in addition to the election officers provided for by the general election laws, and they shall receive the same compensation. Said judges and clerks shall assist in holding and conducting said election, and in receiving and counting the votes cast. Said supervisor shall have the right to watch the conduct of the election, including the counting of the votes, locking and sealing the ballot boxes, their custody and safe return. [Id. Sec. 3.]

Art. 3078. **Discovering fraud.**—Any supervisor who shall discover any fraud or irregularity in the conduct of an election or in counting the votes or in making returns thereof, within five days after said election, shall file a written sworn report with the county clerk of the county in which he resides, setting out fully any irregularity or fraud or semblance thereof occurring in said voting precinct or box that would in any manner affect the true result of said election in said voting precinct. Said county clerk shall keep said report on file in his office and shall permit the same to be inspected upon application by any citizen of this State. Such supervisor shall call the attention of the officers holding such election to any fraud, irregularity or mistake, illegal voting attempted, or legal voting prevented, or other failure to comply with the law governing such election at the time it occurs, if practicable, and if he has knowledge thereof at the time; and he shall not report any matter to which he should have called but did not call attention at the time, unless he shows some good and sufficient reason therefor. [Id. Sec. 4.]

CHAPTER ELEVEN.

PRESIDENTIAL ELECTORS.

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|------------------------------|---------|--------------------------|---------|
| | Article | | Article |
| Time of election..... | 3079 | To count returns..... | 3083 |
| Governor's proclamation..... | 3080 | Electors to convene..... | 3084 |
| Returns..... | 3081 | Pay of electors..... | 3085 |
| Returns by counties..... | 3082 | | |

Art. 3079. [3176-7] **Time of election.**—On the Tuesday after the first Monday in November, A. D. 1928, and on the Tuesday next after the first Monday in November every four years thereafter, the qualified voters for members of the State Legislature shall elect at such regular election from among the resident citizens over twenty-one years of age and not members of either house of the Congress of the United States, as many electors of president and vice-president of the United States as the State of Texas may at the time be entitled to elect, and each such qualified voter shall be authorized to vote for the whole number of electors that the State will then be empowered to elect. [Acts 1848, p. 104; G. L. Vol. 3, p. 104.]

Art. 3080. [3184] [1819] [1768] **Governor's proclamation.**—The Governor shall issue a proclamation under the seal of the State, and have the same published for at least forty days before an election for electors, in some newspaper printed at Austin, requiring the county judge, or other proper officer or officers, of each county in the State to cause said election to be held at each precinct in the county at the time and for the purpose prescribed in this chapter. [Id. P. D. 3662.]

Art. 3081. [3178] [1813] [1762] **Returns.**—The officers conducting said elections within three days after holding said election shall compute the number of votes given for each person there voted for as an elector, and shall make out in writing, seal up, certify and transmit the result of said election to the county judge or other proper officer of their county, in the same manner prescribed by the laws regulating elections for members of the State Legislature. [Id. P. D. 3646.]

Art. 3082. [3179] [1814] **Returns by counties.**—On the Monday next following the day of election, or as soon thereafter as the commissioners court shall have opened the election returns, and estimated the result, in accordance with law, the county judge shall make duplicate returns of the election, one of which he shall at once send sealed in an envelope, directed to the Secretary of State at Austin, and endorsed "Election Returns for _____ County for Presidential Electors," (filling the blank with the name of the county) and the other of such returns shall be deposited in the office of the county clerk of the county where such election was held. [Id. P. D. 3647; Acts 1897, p. 24; G. L. Vol. 10, P. 1079.]

Art. 3083. [3180] [1815] **To count returns.**—The Secretary of State, in the presence of the Governor and Attorney General, or either of them, on the fourth Monday in November next after said election, shall open all the election returns received by him, and correctly add up all the votes cast in the several counties for each of the said electors, and cause the result thereof, with the names of those elected, to be published forthwith in some newspaper printed at Austin, and shall issue certificates of election to the persons so elected. [Id. P. D. 3648.]

Art. 3084. [3181-2-3] **Electors to convene.**—On or before the meeting of the electors the Governor shall cause three lists of the names of such electors to be made out and delivered to them, as required by Act of Congress. The electors so chosen shall convene in the Capitol at Austin on the second Monday in January next after their election, and vote for president and vice-president of the United States, and make returns thereof as is or may be required by the laws of the United States. If any person so chosen elector shall, by death or other disabling cause, fail to attend by the hour of two o'clock in the afternoon of the day fixed by law, and vote as required by law, or if any such person shall be legally disqualified to serve as elector, a majority of the qualified electors present, after having convened, may appoint some other person to act as elector in the place of any such

absent or disqualified person, and shall immediately report their action to the Secretary of State. [Acts 1848, p. 104; G. L. Vol. 3, p. 104; Acts 1879, p. 24; G. L. Vol. 10, p. 1079.]

Art. 3085. [3185] [1820] [1769] **Pay of electors.**—Such electors shall receive the same pay for mileage in traveling to and from Austin and the same pay daily while engaged there in the duties required of them by law, as that allowed by law to the members of the Legislature.

CHAPTER TWELVE.

UNITED STATES SENATORS.

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|-----------------------------------|---------|---------------------------------------|---------|
| | Article | | Article |
| Election day..... | 3086 | Second primary..... | 3094 |
| Vacancy..... | 3087 | Conduct of election..... | 3095 |
| State laws apply..... | 3088 | Candidate not nominated..... | 3096 |
| Name on ballot..... | 3089 | Vacancy: application to get on | |
| Nomination at primary..... | 3090 | ballot..... | 3097 |
| All laws apply..... | 3091 | Request to enter special primary..... | 3098 |
| Application to get on ballot..... | 3092 | If two Senators..... | 3099 |
| Requisites of application..... | 3093 | | |

Art. 3086. **Election day.**—An election for the election of a Senator from Texas to the Congress of the United States shall be held on the first Tuesday after the first Monday in November of every year immediately preceding the fourth day of March when the term of any United States Senator from the State of Texas to the Congress of the United States is to expire. At such election no person shall be qualified to vote for any candidate for United States Senator unless he is a qualified elector in any election held to elect members of the most numerous branch of the Legislature of this State. [Acts 1st. C. S. 1913, p. 101.]

Art. 3087. **Vacancy.**—When any vacancy occurs in the representation of this State in the United States Senate, the Governor of this State shall within ten days issue writs of election to fill such vacancy, which election shall be held not less than sixty days nor more than ninety days after such vacancy occurs, provided, if the Congress or Senate is in session at the time of such vacancy or should convene before such election or before the result of the same can be officially ascertained under law, the Governor shall make temporary appointment of a suitable and qualified person to represent the State in the United States Senate, until the election and qualification of a Senator can be made. [Id.]

Art. 3088. **State laws apply.**—Every law regulating or in any manner governing elections or the holding of primaries in this State shall be held to apply to each election or nomination of a candidate for a United States Senator so long as they are not in conflict with the Constitution of the United States or of any law or statute enacted by the Congress of the United States regulating the election of United States Senators or the provisions of this law. The returns from any election held for United States Senator shall be made, the result ascertained and

declared, a certificate of election issued, as provided for the election of representatives in Congress, by this title. [Id.]

Art. 3089. **Name on ballot.**—The name of no candidate for United States Senator shall be placed upon the official ballot of any party or of any organization as the nominee of said party or organization for said office unless the said candidate has been duly nominated and selected as herein provided. [Id.]

Art. 3090. **Nomination at primary.**—Each party desiring to nominate a candidate for United States Senator shall, if such election is to be held on the first Tuesday after the first Monday in November of any year, nominate or select such candidate at a general primary election to be held throughout the State on the fourth Saturday in July next preceding such election for United States Senator. [Id.]

Art. 3091. **All laws apply.**—At each primary election held in this State for the nomination of a candidate for United States Senator, each provision of the laws of this State which has for its object the protection of the ballot and the safe-guarding of the public against fraudulent voting, illegal methods, undue influence, corrupt practices, and in fact each restriction of whatever kind or character as applied to any election held in this State whether general, special or primary shall be held to apply to a primary election held for or when a candidate for United States Senator is to be nominated when not in conflict with the provisions of this law. When the law with reference to holding senatorial primaries is silent, the election officers in securing supplies, in conducting the election and in making returns and in canvassing the votes shall in every particular follow the methods provided by law covering primary elections or general elections held for the purpose of nominating or electing State, district, county, and precinct officers. [Id.]

Art. 3092. **Application to get on ballot.**—Any person affiliating with any political party who desires his name to appear on the general official primary ballot of said party as a candidate for the nomination of such party for United States Senator shall file with the State chairman of said party not later than the first Monday in June preceding such general primary his written request that his name shall be placed on the official ballot of said party as a candidate at the aforesaid general primary for the nomination as a candidate for United States Senator before the party with which he affiliates. [Id.]

Art. 3093. **Requisites of application.**—Any person who is thirty years of age or over, and who has been for nine years a citizen of the United States and is a bona fide inhabitant of the State who desires his name to appear on the official ballot at any primary election as a candidate for the nomination of said party as a candidate for United States Senator shall address his application to the State chairman of the party with which he affiliates setting forth:

1. That he is a candidate for the nomination of his party as a candidate for United States Senator.

2. His age, occupation, county of his address and post-office address.

3. That he is a member in good faith of the political party upon whose ballot he wishes his name to appear and that if he voted at the preceding election he voted for the nominees of said party.

4. That he will, during his term of office, if elected, endeavor to truly respect the wishes of his constituency and to abide by and support such measures as may be endorsed by the primary voters of his party in this State as declared by their vote at a primary election.

Said application shall be signed by the candidate and duly acknowledged before some person authorized to take acknowledgments. Twenty-five qualified voters may likewise join in a request that the name of any person affiliating with such party be placed upon the official ballot as a candidate for United States Senator, giving the occupation, county of residence and post-office address of such person, signing and acknowledging same as above provided, and may file the same with the State chairman on or prior to the date above mentioned with the same effect as if such request had been filed by the party named therein as a candidate for such nomination. All such petitions or requests filed by twenty-five voters shall be endorsed by the person in whose favor the request is made showing his willingness to qualify for the position, if elected. All requests, whether made by the candidate or by petition shall be considered filed with the State chairman when they are sent from any point within the United States by registered mail, on or before the date mentioned, addressed to the State chairman at his post-office address. [Id.]

Art. 3094. **Second primary.**—No person shall be declared the nominee of any political party for United States Senator unless he has complied with every requirement of this law and all laws applicable thereto and has received a majority of all the votes cast at said primary election for all the candidates for that party for United States Senator. If at the first primary election no candidate receives a majority of the vote polled by his party for all the candidates for United States Senator before said party, the State Executive Committee or State chairman thereof shall call a second primary election for the purpose of determining the choice of the party as between the two candidates receiving the largest number of votes at the first primary election. Said second primary shall be held on the fourth Saturday in August, immediately after the first primary is held. At such second primary, only the two candidates in each party receiving the highest votes shall be voted upon. [Id.]

Art. 3095, **Conduct of election.**—At each primary held for the nomination of a candidate for United States Senator, the election shall be conducted by the duly appointed and constituted election officers of the several polling places and voting precincts

throughout the State who shall be paid as provided by law for holding elections in other cases. No person shall vote for any candidate for the nomination for United States Senator who does not belong to the same political party with which the voter affiliates and when any voter attempts to vote for any person as a candidate for the nomination for United States Senator, and is challenged he shall, before being permitted to vote, make an affidavit that he is a bona fide member of said party and if he voted in the preceding general election held for the election of State officials, he voted for the nominees of the party whose ticket he desires to vote. Upon making such affidavit he shall be permitted to vote. [Id.]

Art. 3096. Candidate not nominated.—Any person who has not been defeated at the primary election preceding the general or special election for United States Senators, desiring to have his name appear upon the official ballot at any general election as a candidate for United States Senator who is not the nominee of any political party or political organization may do so only upon presenting a petition to the Secretary of State signed by at least ten per cent of the qualified voters in the State of Texas as measured by the total vote for Governor at the preceding general election. Said petition shall conform in every particular to the requirements of the laws of this State with reference to placing the name of any candidate, other than the nominee of any party upon the official ballot, but in no case shall the name of any person be placed upon the official ballot at any general election as a candidate for United States Senator as the nominee of any party unless he has been nominated under the provisions of this law and has complied with every provision of the laws of this State with reference to the nomination of candidates for United States Senators. [Id.]

Art. 3097. Vacancy: application to get on ballot.—Any person desiring to have his name appear upon the official ballot as a candidate for United States Senator at any special election held for the purpose of filling a vacancy in the United States Senate, when no party primary is held, may do so by presenting his application to the Secretary of State which shall set forth:

1. That he is a candidate for United States Senator.
2. His age, occupation, the county of his residence and his post-office address.
3. That he is a member in good faith of the political party upon whose ballot he wishes his name to appear, that if a voter at the preceding election he voted for the nominees of said party.
4. That he will during the term of his office, if elected, endeavor to truly respect the wishes of his constituency and to abide by and support such measures as may be endorsed by the primary voters of his party in this State, and that he will use all honorable means at his command to secure the appointment for such applicants for positions in the Federal service as received a majority of the votes at any primary held by the members of

his party to determine their wishes with reference thereto. Said application to be signed by the candidate and properly acknowledged before some person authorized to take acknowledgments. The Secretary of State shall upon receipt of the application which conforms to the above requirements, issue his instructions to the county clerks of this State directing that the name of the applicant shall be printed on the official ballot in the column under the title of the office for which he is a candidate. [Id.]

Art. 3098. Request to enter special primary.—Any candidate who desires his name to appear on the official ballot for a special primary as a candidate for the nomination of such party for the office of United States Senator shall file with the State chairman of his party, not later than fifteen days prior to the date of such primary, his written request that his name be placed upon such official ballot as a candidate for the nomination of United States Senator, giving his age and occupation, the county of his residence and post-office address, which shall be signed by him and acknowledged by him before some officer, and also twenty-five qualified voters may likewise join in a request that the name of any person affiliating with such party be placed upon the official ballot as a candidate for United States Senator, giving the occupation, county of residence and post-office address of such person, signing and acknowledging same as above provided, and may file the same with the State chairman within the time above mentioned with the same effect as if such request had been filed by the party named therein as a candidate for such nomination. The chairman and secretary of the State committee shall forthwith cause to be mailed to the chairman and secretary of every county committee of the party in the State the name of such candidate for United States Senator, with instructions that it be placed on the official ballot of such county. All requests shall be considered filed with the State chairman when they are sent from any point within the United States by registered mail, or by telegraph, addressed to the State chairman at his post-office address. On the first Saturday following such special primary election, the county executive committee of each county in the State, shall meet and canvass the returns of such election, and shall immediately thereafter certify by its chairman and secretary the result of said election and forward same to the State chairman. The State executive committee shall meet at a time not later than fifteen days after the date of said special primary and canvass and tabulate the returns of said election as certified by the county chairman, and the candidate receiving the majority of the number of votes cast at such primary shall be the nominee of the party for such office; and the State chairman shall order the name of such candidate placed upon the official ballot of said party. Provided, however, if at the first primary election no candidate receives a majority of the votes polled by his party for all the candidates for United States Senator before said party, the State executive committee or State chairman thereof shall call a second primary election for the purpose of de-

termining the choice of the party as between the two candidates receiving the largest number of votes at the first primary election. Said second primary shall be held on the third Saturday following the first primary, and at such primary, only the two candidates in each party receiving the two highest votes shall be voted upon. [Id.]

Art. 3099. **If two Senators.**—When there are two Senators to be elected from Texas to Congress, each candidate offering his name for election shall designate in his application for a position on the ticket whether in a general or special election or primary, whether he is a candidate for the short term or long term. [Id.]

CHAPTER THIRTEEN.

NOMINATIONS.

1. BY PARTIES OF ONE HUNDRED THOUSAND VOTES AND OVER.

| Article | Article | | |
|---------------------------------------|---------|---|------|
| "Primary election"..... | 3100 | Boxes and ballots returned..... | 3128 |
| Nominated at primary..... | 3101 | To publish nominees..... | 3129 |
| Date of primary..... | 3102 | Objections to nomination..... | 3130 |
| Where to vote..... | 3103 | Names printed on ballot..... | 3131 |
| Officers of primary..... | 3104 | To post names of candidates..... | 3132 |
| Judges of primary..... | 3105 | Referendum on platform demands..... | 3133 |
| Majority or plurality vote..... | 3106 | County and precinct conventions..... | 3134 |
| White primary..... | 3107 | District conventions..... | 3135 |
| Expenses at primaries..... | 3108 | Place for State convention..... | 3136 |
| Ballot at primary..... | 3109 | State committee to canvass..... | 3137 |
| Test on ballot..... | 3110 | State convention to canvass..... | 3138 |
| Request to go on ballot..... | 3111 | State convention..... | 3139 |
| Request for district office..... | 3112 | Certificate of nomination..... | 3140 |
| Candidate for county office..... | 3113 | Convention vote..... | 3141 |
| Certificates to county committee..... | 3114 | Mandamus..... | 3142 |
| Primary committee..... | 3115 | Spirit of law..... | 3143 |
| Must pay pro rata expenses..... | 3116 | Statement of expenses..... | 3144 |
| Order of names on ballot..... | 3117 | Expenses of manager..... | 3145 |
| County executive committees..... | 3118 | Contest of primary..... | 3146 |
| Supplies..... | 3119 | Place for hearing contest..... | 3147 |
| Booths..... | 3120 | Contest before executive committee..... | 3148 |
| Lists of voters..... | 3121 | Ballot boxes opened..... | 3149 |
| Precaution against fraud..... | 3122 | To certify findings..... | 3150 |
| Return of ballots..... | 3123 | Appeal to district court..... | 3151 |
| Returns of election..... | 3124 | By district court..... | 3152 |
| Canvass of result..... | 3125 | Appeal from district court..... | 3153 |
| Tie in primary..... | 3126 | | |
| Tabulated statement..... | 3127 | | |

Art. 3100. [3085] **"Primary election."**—The term "primary election," as used in this chapter, means an election held by the members of an organized political party for the purpose of nominating the candidates of such party to be voted for at a general or special election, or to nominate the county executive officers of a party. [Id.]

Art. 3101. [3084] **Nominated at primary.**—On primary election day in 1926, and every two years thereafter, candidates for Governor and for all other State offices to be chosen by vote of the entire State, and candidates for Congress and all district offices to be chosen by the vote of any district comprising more than one county, to be nominated by each organized political party that cast one hundred thousand votes or more at the last general election, shall, together with all candidates for offices to be filled by the voters of a county, or of a portion of a county, be nominated in primary elections by the qualified voters of such party. [Acts 1st C. S. 1905, p. 549.]

Art. 3102. [3086] **Date of primary.**—The fourth Saturday in July 1926, and every two years thereafter shall be general primary election day, and primary elections to nominate candidates for a general election shall be held on no other day, except when specially authorized. No person shall be declared the nominee of any political party at any primary election for any State or district office unless he has complied with every requirement of all laws applicable to primary and other elections, and has received a majority of all the votes cast at such primary elections for all candidates for such office. If at the general primary election for any political party, no candidate becomes the nominee for any State or district office under this article, a second primary election shall be held by such political party, in the State or such district, or districts, as the case may be, on the fourth Saturday in August succeeding such general primary election, and only the name of the two candidates who received the highest number of votes for any office for which nomination was made at the general election shall be placed on the official ballot as candidates for such office at such second primary. The second primary election shall be conducted according to the law prescribed for conducting the general primary election, and the candidates receiving a majority of all votes cast for the office to which they aspire shall be declared the nominee for their respective offices. Any political party may hold a second primary election on the fourth Saturday in August to nominate candidates for any county or precinct office, where a majority vote is required to make nomination; but at such second primary, only the two candidates who received the highest number of votes at the general primary for the same office shall have their names placed upon the official ballot. Nominations of candidates to be voted for at any special election shall be made at a primary election at such time as the party executive committee shall determine, but no such committee shall ever have the power to make such nominations. All precincts in the same county and all counties in the same district shall vote on the same day. Nominations of party candidates for offices to be filled in a city or town shall be made not less than ten days prior to the city or town election at which they are to be chosen, in such manner as the party executive committee for such city or town shall direct, and all laws prescribing the method for conducting county primary elections shall apply to them. [Id. Acts 4th C. S. 1918, p. 191.]

Art. 3103. [3087] **Where to vote.**—The places of holding primary elections of political parties in the various precincts of the State shall not be within one hundred yards of the place at which such elections or conventions are held by a different political party. When the chairmen of the executive committees of the different parties cannot agree on the places where precinct primary elections to be held on the same day shall be held,

such places in each precinct shall be designated by the county judge, who shall cause public notice thereof to be given at once in some newspaper in the county, or if there be none, by posting notices in some public place in the precinct. [Acts S. S. 1905, p. 549.]

Art. 3104. [3089] **Officers of primary.**—All the precinct primary elections of a party shall be conducted by a presiding judge, to be appointed by a chairman of the county executive committee of the party, with the assistance and approval of at least a majority of the members of the county executive committee. Such presiding judge shall select an associate judge and two clerks to assist in conducting the election; two supervisors may be chosen by any one-fourth of the party candidates, who, with the judges and clerks, shall take the oath required of such officers in general elections. Two additional clerks may be appointed, but only when, in the opinion of the presiding judge, there will be more than one hundred votes polled at the primary election in the precinct. [Id.]

Art. 3105. [3090] **Judges of primary.**—Judges of primary elections have the authority, and it shall be their duty, to administer oaths, to preserve order at the election, to appoint special officers to enforce the observance of order and to make arrests, as judges of general elections are authorized and required to do. Such judges and officers shall compel the observance of the law that prohibits loitering or electioneering within one hundred feet of the entrance of the polling place, and shall arrest, or cause to be arrested, any one engaged in the work of conveying voters to the polls in carriages or other mode of conveyance, except as permitted by this title. [Id.]

Art. 3106. [3091-2] **Majority or plurality vote.**—The county executive committee shall decide whether the nomination of county officers shall be by majority or plurality vote, and, if by a majority vote, the committee shall call as many elections as may be necessary to make such nomination, and in case the committee fails to so decide, then the nomination of all such officers shall be by a plurality of the votes cast at such election. [Id.]

Art. 3107. **White primary.**—In no event shall a negro be eligible to participate in a Democratic party primary election held in the State of Texas, and should a negro vote in a Democratic primary election, such ballot shall be void and election officials shall not count the same. [Acts 2nd C. S. 1923, p. 74.]

Art. 3108. [3094] **Expenses of primary.**—At the meeting of the county executive committee provided in Article 3117, the county committee shall also carefully estimate the cost of printing the official ballots, renting polling places where same may be found necessary, providing and distributing all necessary poll books, blank stationery and voting booths required, compensation of election officers and clerks and messengers, to report the result in each precinct to the county chairman, as provided for

herein, and all other necessary expenses of holding such primaries in such counties, and shall apportion such cost among the various candidates for nomination for county and precinct offices only as herein defined, and offices to be filled by the voters of such county, or precinct only, (candidates for State offices excepted), in such manner as in their judgment is just and equitable, giving due consideration to the importance and emoluments of each such office for which a nomination is to be made, and shall, by resolution, direct the chairman to immediately mail to each person whose name has been requested to be placed on the official ballot a statement of the amount of such expenses so apportioned to him, with the request that he pay the same to the county chairman on or before the fourth Monday in June thereafter. [Acts S. S. 1905, p. 549.]

Art. 3109. [3095] **Ballot at primaries.**—The vote at all general primaries shall be by official ballot, which shall have printed at the head the name of the party, and under such head the names of all candidates, those for each nomination being arranged in the order determined by the various committees as herein provided for, beneath the title of the office for which the nomination is sought. The voter shall erase or mark out all names he does not wish to vote for. The official ballot shall be printed in black ink upon white paper, and beneath the name of each candidate thereof for State and district offices, there shall be printed the county of his residence. The official ballot shall be printed by the county committee in each county, which shall furnish to the presiding officer of the general primary for each voting precinct at least one and one-half times as many of such official ballots as there are poll taxes paid for such precinct, as shown by the tax collector's list. Where two or more candidates are to be nominated for the same office, to be voted for by the qualified voters of the same district, county or justice precinct, such candidates shall be voted for and nominations made separately, and all nominations shall be separately designated on the official ballots by numbering the same, "1," "2," "3," etc., printing the word "No.," and the designating number after the title of the office for which such nominations are to be made. Each candidate for such nomination shall designate in the announcement of his candidacy, and in his request to have his name placed on the official ballot, the number of the nomination for which he desires to become a candidate, and the names of all candidates so requesting shall have their names printed beneath the title of the office and the number so designated. Each voter shall vote for only one candidate for each such nomination. [Id.]

Art. 3110. [3096-7] **Test on ballot.**—No official ballot for primary election shall have on it any symbol or device or any printed matter, except a uniform primary test, reading as follows: "I am a..... (inserting name of political party or organization of which the voter is a member) and pledge myself

to support the nominee of this primary;" and any ballot which shall not contain such printed test above the names of the candidates thereon, shall be void and shall not be counted.

Art. 3111. [3098-9] **Request to go on ballot.**—The request to have the name of any person affiliating with any party placed on the official ballot for a general primary as a candidate for the nomination of such party for any State office shall be governed by the following:

1. Such request shall be in writing signed and duly acknowledged by the person desiring such nomination, or by twenty-five qualified voters. It shall state the occupation, county of residence and post-office address of such person, and if made by him shall also state his age.

2. Any such request shall be filed with the State chairman not later than the first Monday in June preceding such primary, and shall be considered filed if sent to such chairman at his post-office address by registered mail from any point in this State.

3. On the second Monday in June preceding each general primary, the State committee shall meet at some place to be designated by its chairman who shall not less than three days prior to such meeting notify by mail all members of said committee and all persons whose names have been requested to be placed upon the official ballot of such designation. Such committee at this meeting by resolution shall direct their chairman to certify to each county chairman the names and county of residence of such candidates as shown by such requests. Copies of such certificates shall be immediately furnished to each newspaper in the State desiring to publish the same, and one copy shall at once be mailed to the chairman of the executive committee of each county. [Id.; Secs. 108-9.]

Art. 3112. [3100] **Request for district office.**—Any person desiring his name to appear on the official ballot as a candidate for the nomination for chief justice or associate justice of the Court of Civil Appeals, or for representative in Congress, or for State Senator, or for representative, or district judge or district attorney in representative or judicial districts composed of more than one county, shall file with the chairman of the executive committee of the party for the district, said request with reference to a candidate for a State nomination, or if there be no chairman of such district executive committee, then with the chairman of each county composing such district, not later than the first Monday in June preceding the general primary. Such requests may likewise be filed not later than said date by any twenty-five qualified voters resident within such district, signed and duly acknowledged. Immediately after said date each such district chairman shall certify the names of all persons for whom such requests have been filed to the county chairman of each county composing such district. [Id.; Sec. 110.]

Art. 3113. [3101] **Candidate for county office.**—Any person desiring his name to appear on the official ballot for the gen-

eral primary, as a candidate for the nomination for any office to be filed by the qualified voters of a county or a portion thereof, or for county chairman, shall file with the county chairman of the county of his residence, not later than Saturday before the third Monday in June preceding such primary, a written request for his name to be printed on such official ballot as a candidate for the nomination or position named therein, giving his occupation and post-office address, giving street and number of his residence, if within a city or town, such request to be signed and acknowledged by him before some officer authorized to take acknowledgment to deeds. Such request similarly signed and acknowledged by any twenty-five qualified voters resident in the county may be filed on or before said date, requesting that the name of any person named therein may be placed on the official ballot as a candidate for any county or precinct office or chairmanship, with like effect as if such request was filed by the person named as a candidate therein; which request shall be endorsed by the candidate named therein, showing his consent to such candidacy, if nominated. [Id. Sec. 111.]

Art. 3114. [3102] **Certificates to county committee.**—At the meeting of the county executive committee provided for in Article 3117, the county chairman shall present to the committee the certificates of the chairman of the State and the various district executive committees, showing the names of all persons whose names are to appear on the official ballot as candidates for State and district offices. [Id.]

Art. 3115. [3103] **Primary committee.**—Subject to the approval of the committee, the county chairman shall appoint a subcommittee of five members to be known as the primary committee, of which he shall be ex-officio chairman. This subcommittee shall meet on the second Monday in July and make up the official ballot for such general primary in such county, in accordance with the certificates of the State and district chairman and the request filed with the county chairman, and place the name of the candidates for nomination for State, district, county and precinct officers thereon in the order determined by the county executive committee as herein provided. [Id.]

Art. 3116. [3104] **Must pay.**—No person's name shall be placed on the ballot of a district, county or precinct office who has not paid to the county executive committee the amount of the estimated expenses of holding such primary, apportioned to him by the county executive committee, as hereinbefore provided. No candidates for nomination for State Senator or Representative in the Legislature shall be required to pay more than one dollar to any county executive committee or other person for any particular county, as his portion of such expenses for holding such primary. Candidates for United States Senator or for Congressman-at-Large and all those who are candidates for State offices to be voted upon by the qualified voters of the whole State shall pay to the chairman of the State executive committee one

hundred dollars, and shall not be required to pay any other sum or sums to any other person or committee to have their names placed on the ticket as such candidate. [Id.; Acts 3rd C. S. 1923, p. 170.]

Art. 3117. [3105-6] **Order of names on ballot.**—The various county committees of any political party, on the third Monday in June preceding each general primary, shall meet at the county seat and determine by lot the order in which the names of all candidates for all offices requested to be printed on the official ballot shall be printed thereon. [Acts 1st C. S. 1905, p. 549.]

Art. 3118. [3107-9] **County executive committees.**—There shall be for each political party required by this law to hold primary elections for nomination of its candidates, a county executive committee, to be composed of a county chairman, and one member from each election precinct in such county; the committeeman from such election precinct shall be chairman of his election precinct, and the said county chairman shall be elected on the general primary election day; the county chairman by the qualified voters of the whole county, and the precinct chairman by the qualified voters of their respective election precincts. Said county and precinct chairman shall assume the duties of their respective offices on Saturday following the run-off primary immediately after the committee has declared the results of the run-off primary election. Said county chairman shall be ex-officio a member of the executive committee of all districts of which his county is a part, and the district committee thus formed shall elect its own chairman. Any vacancy in the office of chairman, county or precinct, or any member of such committee shall be filled by a majority vote of said executive committee. The list of election precinct chairmen and the county chairmen so elected, shall be certified by the county convention to the county clerk, along with the other nominees of said party. If there are no requests filed for candidates for county and precinct chairman, a blank space shall be left on the ticket beneath the designation of such position. [Acts 1st C. S. 1905, p. 549.]

Art. 3119. [3112-13] **Supplies.**—The executive committee shall have a general supervision of the primary in such county, and shall be charged with the full responsibility for the distribution to the presiding judge of all supplies necessary for holding same in each precinct. If the duly appointed presiding officer shall fail to obtain from the executive committee the supplies for holding such election, such committee shall deliver the same to the precinct chairman for such precinct, and, if unable to deliver the same to such presiding officer or precinct chairman not less than twenty-four hours prior to the time of opening the polls for such primary, such committee shall deliver the same to any qualified voter of the party residing in such precinct, taking his receipt therefor, and appointing him to hold such elec-

tion in case such presiding officer or precinct chairman shall fail to appear at the time prescribed for opening the polls. [Id.]

Art. 3120. [3114] **Booths used for primary.**—The voting booths, ballot boxes and guard rails, prepared for a general election, may be used for the organized political party nominating by primary election that cast over one hundred thousand votes at the preceding general election. [Id.]

Art. 3121. [3115-6-7] **Lists of voters.**—The county tax collector shall deliver to the chairman of the county executive committee of each political party, for its use in primary elections, at least five days before election day, certified and supplemental lists of the qualified voters of each precinct in the county, arranged alphabetically and by precincts, and such chairman shall place the same for reference in the hands of the election officers of each election precinct before the polls are open. No primary election shall be legal, unless such list is obtained and used for reference during the election. Opposite the name of every voter on said list shall be stamped, when his vote is cast, with a rubber or wooden stamp, or written with pen and ink the words, "primary—voted", with the date of such primary under the same. For each list of all the qualified voters of the county who have paid their poll taxes or received their certificates of exemption, the collector shall be permitted to charge not more than five dollars, the same to be paid by the party or its chairman so ordering said lists; provided, that the charge of five dollars shall be in full for the certified lists of all the voters of the county arranged by precincts, as herein provided. [Id.]

Art. 3122. [3118] **Precaution against fraud.**—The same precautions required by law to secure the purity of the ballot box in general elections, in regard to the ballot boxes, locking the ballot boxes, sealing the same, watchful care of them, the secrecy in preparing the ballot in the booth or places prepared for voting shall be observed in all primary elections. [Id. Sec. 135.]

Art. 3123. [3121] **Return of ballots.**—Returns shall be made within four days to the chairman of the executive committee by the precinct judges, of the ballot boxes containing the ballots voted, locked and sealed, tally sheets, return sheets, ballots mutilated and defaced, and ballots not voted, for which he shall account to the executive committee of the county. [Id. Sec. 136.]

Art. 3124. [3122] **Returns of election.**—All returns of precinct primary elections, properly signed and certified as correct by the judges and clerks thereof, showing the vote cast for each candidate, shall be sealed and immediately delivered, after such primary election, to the chairman of the county executive committee of the party. Such party chairman shall give notice to the members of the county executive committee to assemble at the county seat of the county on the first Saturday after the first primary election; and said returns shall then be opened under

the direction of such executive committee and canvassed by them. [Id. Sec. 131.]

Art. 3125. [3123-25] **Canvass of result.**—Each county executive committee shall meet the first Saturday after each primary election to canvass the result of such election, make a list of the candidates who have received the highest vote for office, and the chairman of the executive committee shall certify to the same and deliver it to the county clerk of the county.

Art. 3126. [3124] **Tie in primary.**—If it appears that for a county or precinct office, the largest vote has been cast for two candidates for the same office, and that they have each received the same number of votes, the chairman of the executive committee shall, in the presence of the executive committee or the county convention, as the case may be, cast lots for the nomination in such manner as they may direct and in the presence of rival candidates, if they desire to be present, and declare and certify the name of that candidate who is successful by lot. [Id. Sec. 133.]

Art. 3127. [3126-7] **Tabulated statement.**—The chairman of the executive committee in each county shall, as soon as the vote cast in the primary election has been counted and canvassed as herein provided for, prepare a tabulated statement of the votes cast in his county for each candidate for each nomination for a State, district, county or precinct office, and of that cast for county chairman, as shown by the canvass made by the county executive committee, and shall immediately mail such statement as to a State or district office, in a sealed envelope by registered letter, to the chairman of the State executive committee, and district executive committee, respectively, who shall present the same to the State and district committee at its meeting to be held as herein provided. As to candidates for Governor, or for an office to be filled by all the voters of the State, or of any district composed of more than one county, the chairman of the county executive committee and its secretary shall certify the number of votes cast for each of such candidates and cause the same to be published in some newspaper of the county, if there be one, and deliver his certificate of the vote cast for each candidate for such office to the president of the next State convention of the party of the manner required in this title, and certify the vote cast for each district office to the chairman of the district committee. [Id. Secs. 117-131.]

Art. 3128. [3129] **Boxes and ballots returned.**—Ballot boxes after being used in primary elections shall be returned with the ballots cast, or contained in each box as they were deposited by the election judges, locked and sealed, to the county clerk, and, unless there be a contest for a nomination in which fraud or illegality is charged, they shall be unlocked and unsealed by the county clerk and their contents destroyed by the county clerk and the county judge without examination of any

ballot, at the expiration of sixty days after such primary election. [Id. Sec. 143.]

Art. 3129. [3130] **To publish nominees.**—The county clerk shall cause the names of the candidates who have received the necessary vote to nominate, as directed by the county executive committee, for each office, to be printed in some newspaper published in the county, and if none, then he shall post a list of such names in at least five public places in the county, one of which shall be upon the courthouse door. [Id., Sec. 131.]

Art. 3130. [3131] **Objections to nomination.**—All objections to the regularity or validity of the nomination of any person, whose name appears in said list, shall be made within five days after such printing or posting, by a written notice filed with the county clerk, setting forth the grounds of objections. In case no such objection is filed within the time prescribed, the regularity or validity of the nomination of no person whose name is so printed or posted, shall be thereafter contested.

Art. 3131. [3132] **Name printed on ballot.**—After said names have been so printed or posted for the period above required, the said clerk shall cause the names to be printed on the official ballot in the column for the ticket of that party. [Id. Sec. 131.]

Art. 3132. [3133] **To post names of candidates.**—Each county clerk shall post in a conspicuous place in his office, for the inspection of the public, the names of all candidates that have been lawfully certified to him to be printed on the official ballot, for at least ten days before he orders the same to be printed on said ballot; and he shall order all the names of the candidates so certified printed on the official ballot as otherwise provided in this title. [Id. Sec. 132.]

Art. 3133. [3110] **Referendum on platform demands.**—No political party in this State, in convention assembled, shall place in the platform or resolutions of the party they represent any demand for specific legislation on any subject, unless the demand for such specific legislation shall have been submitted to a direct vote of the people, and shall have been endorsed by a majority of all the votes cast in the primary election of such party; provided, that the State executive committee shall, on petition of ten per cent of the voters of any party, as shown by the last primary election vote, submit any such question or questions to the voters at the general primary next preceding the State convention. [Acts 1907, p. 328.]

Art. 3134. [3134] **County and precinct conventions.**—On the first Saturday after primary election day for 1926, and each two years thereafter, there shall be held in each county a county convention of each party, to be composed of one delegate from each precinct in such county for each twenty-five votes, or a major fraction thereof, cast for the party's candidate for Governor at the last preceding election, which delegates shall be elected by the voters of each precinct on primary election day,

in such manner as may be prescribed by the county executive committee at their meeting on the second Monday in June, which convention shall elect one delegate to the State and several district conventions for each three hundred votes, or a major fraction thereof, cast for the party's candidate for Governor in such county at the last preceding general election; and the delegates to said convention so elected, or such of them as may attend the said convention, shall cast the vote of the county in such conventions. Immediately upon the adjournment of each such county convention, the president thereof shall make out a certified list of the delegates to each of said conventions chosen by such county convention and shall sign the same, the secretary of such convention attesting his signature, and shall forward such certified list by sealed registered letter to the chairman of the State and district executive committees, who shall present the same to the respective committees at its meeting prior to the convention; and from such certified list, the respective committees shall prepare a temporary roll of those selected as delegates to such convention; provided, that no proxies shall be allowed to, or recognized in, any convention held by authority of this title, where a delegate from the county is present in the convention. [Id. Sec. 115.]

Art. 3135. [3136] **District conventions.**—On the fourth Saturday in August succeeding each general primary, there shall be held in each district within the State in which any candidate or candidates for any district office are to be elected at the succeeding general election, a district convention, which shall be composed of delegates from the county or counties composing such district, selected in the manner herein provided; notice of the time and place of holding such convention shall be given by the executive committee of such district at least ten days prior to such meeting. Before such convention assembles, the executive committee of such district shall meet and elect a chairman of such committee, shall prepare a list of the delegates from the various counties composing such district which have been certified to the district committee by the chairman of the various county committees, shall tabulate the vote cast in the various counties for each candidate for district office, which has been certified to such committee as provided in this chapter and shall also prepare a statement, showing the number of convention votes which each county in such district is entitled to cast in said convention upon the basis set forth in Article 3141, and shall present such list of delegates, tabulated vote and convention vote to the convention when it assembles. The district convention shall then canvass the returns of the votes cast in all of the counties of the district for each candidate as presented to them by the district committee, and shall declare the person found to have received the largest number of votes at the primary in the district for such office the nominee of the party for such office; and the chairman and the secretary of the conven-

tion shall forthwith certify such nomination to the Secretary of State, who shall certify all district nominations to the various county clerks. But, in the event there is only one name on the ballot for a district office without an opponent, the district chairman shall, as soon as practicable after the primary election, certify that the person on the ballot is the nominee of the party and that there shall be no convention held for the purpose of declaring the result; provided further that it shall be the duty of the county clerk of each county of this State to certify to the Secretary of State on or before the fourth Saturday in August succeeding any general primary the total vote cast in his county for each and every district officer; in the event no district convention be held as herein provided for, the Secretary of State shall ascertain from the returns so certified who has received the largest vote for such office, and shall certify such fact to each county clerk in such district not later than October first of such year. [Id. p. 547; Acts 1907, p. 329; Acts 1915, p. 26.]

Art. 3136. [3137] **Place for State convention.**—At the meeting of the State executive committee held on the second Monday in June preceding each general primary election, the said committee shall decide upon and publish the place where the State convention of the party shall be held on the second Tuesday in August thereafter. [Acts 1st C. S. 1905, p. 545, Sec. 109.]

Art. 3137. [3138] **State committee to canvass.**—On the third Monday after the fourth Saturday in July 1926, and every two years thereafter the State executive committee shall meet at a place selected at the meeting held on the second Monday in June preceding, and shall open and canvass the returns of the primary elections held on the fourth Saturday in July as to candidates for State offices, as certified by various county chairmen, and shall prepare a tabulated statement showing the number of votes received by each such candidate in each county, which statement shall be approved by the State committee and certified by its chairman. If such returns show that for any State office no candidate received a majority of all the votes cast for all candidates for such office, such committee shall prepare a list of the two candidates receiving the highest vote for each office for which no candidate received a majority of votes cast at such primary for such office and shall certify same to the county chairmen of the several counties to be placed upon the official ballot as candidates for office at the second primary election to be held on the fourth Saturday in August thereafter. On the second Monday after the fourth Saturday in August 1926, and every two years thereafter, the State executive committee shall meet at the place selected for the meeting of the State convention and shall open and canvass the returns of the second primary election held to nominate candidates for State offices as certified by the various county chairman to the State chairman, and shall prepare a tabulated statement showing the

number of votes received by each such candidate in each county, which statement shall be approved by the State committee and certified by its chairman. At this meeting the State committee shall also prepare a complete list of the delegates elected to the State conventions from each county, as certified to the State chairman by each county chairman. The State chairman shall present said tabulated statement and said list of delegates to the chairman of the State convention immediately after its temporary organization on the following day, for its approval or disapproval. [Id. Sec. 119; Acts 4th C. S. 1918, p. 192.]

Art. 3138. [3139] **State convention to canvass.**—The State convention shall canvass the vote cast in the entire State for each candidate for each State office as shown by the statement thereof presented to it by the State committee, and shall declare the candidates for each State office who has received a majority of votes cast for all candidates for such office in the first primary election, if any candidate receives a majority of all the votes cast for all the candidates for such office at said primary election, and if no candidate received such majority, then it shall declare the candidate who received a majority of all votes cast for such office at the second primary election, the nominee of the party for such office; and the chairman and the secretary of the State convention shall forthwith certify all such nominations to the Secretary of State. [Acts 1st C. S. 1905, p. 550; Acts 2nd C. S. 1905, p. 4; Acts 1907, p. 329; Acts 4th C. S. 1918, p. 193.]

Art. 3139. [3140] **State convention.**—All party State conventions to announce a platform of principles and announce nominations for Governor and State offices shall, except as otherwise provided, meet at such places as may be determined by the parties respectively on the Tuesday after the second Monday after the fourth Saturday in August 1926, and every two years thereafter and they shall remain in session from day to day until all nominations are announced and the work of the convention is finished. Said convention shall elect a chairman of the executive committee and thirty-one members thereof, one from each senatorial district of the State, the members of said committee to be those who shall be recommended by the delegates representing the counties composing the senatorial districts respectively, each county voting its convention strength, each of whom shall hold said office until his successor is elected; and, in case of a vacancy, a majority of the members of said committee shall fill the same by electing some eligible person thereto. [Acts 1st C. S. 1905, p. 549; Acts 4th C. S. 1918, p. 193.]

Art. 3140. [3141] **Certificate of nomination.**—Every certificate of nomination made by the president of the State convention, or by the chairman of any executive committee, must state when, where, by whom, and how the nomination was made. [Acts S. S. 1905, p. 549.]

Art. 3141. [3142] **Convention vote.**—Each county in the State or district convention shall be entitled to one vote for each five hundred votes, or major fraction thereof, cast for the candidate for Governor of the political party holding the convention, at the last preceding primary election. In case, at such primary election, there were cast for such candidate for Governor less than five hundred votes in any county, then all such counties shall have one vote. [Acts 1907, p. 329.]

Art. 3142. [3143] **Mandamus.**—Any executive committee or committeeman or primary officer, or other person herein charged with any duty relative to the holding of the primary election, or the canvassing, determination or declaration of the result thereof, may be compelled by mandamus to perform the same in accordance with the provisions of this title. [Acts S. S. 1905, p. 557.]

Art. 3143. [3144] **Spirit of law.**—No immaterial error made by any officer of a primary election, or any immaterial violation of the primary election laws by an elector, shall vitiate any election held under this title, nor be the cause of throwing out the vote of any election precinct. [Id. Sec. 137.]

Art. 3144. [3145] **Statement of expenses.**—Within ten days after a final election, all candidates for office at such election shall file a written itemized statement, under oath, with the county judge of the county of their residence, of all the expenses incurred during the canvass for the office, and for the nomination, including amounts paid to newspapers, hotel and traveling expenses, and such statement shall be sworn to and filed, whether the candidate was elected or defeated, which shall at all times be subject to the inspection of the public. [Id. Sec. 90.]

Art. 3145. [3146] **Expenses of manager.**—Every person who manages any political headquarters for any political party, or for any candidate before any election, and every clerk or agent of such manager for such headquarters or candidate, and every other person whomsoever who expends money, gives any property or thing of value, or promises to use influence, or give a future reward to promote or defeat the election of any candidate, or to promote or defeat the success of any political party at any election, shall, within ten days after such election, file with the county judge of the county in which the political headquarters was located, and with the county judge of the county where such manager, clerk, or other person, as the case may be, resides, an itemized statement of all moneys or things of value thus given or promised, for what purpose, by whom supplied, in what amount and how expended, and what reward was given or promised, by whom and to whom, and what influence was promised, by whom promised, and to whom said promise was given. He shall state whether he has been informed, or has reason to believe, that the person thus aiding or attempting to defeat a party or candidate was an officer, stockholder, agent or employe of, or was acting for or in the interest of any corporation, giv-

ing his name, and, if so, what corporation; and he shall if he has no positive knowledge, state the source of his information or the reasons for his belief, as the case may be; all of which shall be sworn to and subscribed before the county judge, who shall file and preserve the same, which shall at all times be subject to the inspection of the public. [Id. Sec. 89.]

Art. 3146. [3147] **Contest of primary.**—In all contests for a primary election or nomination of a convention, based on charges of fraud or illegality in the method of conducting the elections or in selecting the delegates to the convention, or in certifying to the convention, or in nominating candidates in State, district, county, precinct or municipal conventions, or in issuing certificates of nomination from such conventions, the same shall be decided by the executive committee of the State, district, or county, as the nature of the office may require, each executive committee having control, in its own jurisdiction, or in term time or vacation by the district court of the district where the contestee resides; said executive committee and the district courts having concurrent jurisdiction. [Acts 2d. C. S. 1909, p. 452, Sec. 141.]

Art. 3147. [3148] **Place for hearing contests.**—In all contests between candidates for State office, the committee shall hold its hearing in the city of Austin unless some other place is agreed upon by the parties; and in all contests between candidates for any district, county, municipal or precinct office, the committee may hold its hearing, at its election, either in the county of the residence of the contestee or in any county where the fraud or illegality complained of is alleged to have occurred, or at such other place as the parties may agree upon. [Id. Sec. 141.]

Art. 3148. [3149] **Contest before executive committee.**—The complaining candidate, if he desires to file a contest with the executive committee, shall, within five days after the result has been declared by the committee or convention, cause a notice to be served on the chairman or some member of the executive committee, in which he shall state specifically the ground of his contest; also shall serve or cause to be served on the opposing candidate a copy of such notice, at least five days prior to the date set for hearing by the committee. If special charges of fraud or illegality in the conduct of the election, or in the manner of holding the convention, or in the manner of making nominations, are made, and not otherwise, the chairman, or, in case he fails or refuses, any member of the committee, shall within twenty days after the primary election, or the convention, convene the executive committee, who shall then examine the charges, hear evidence and decide in favor of the party who in their opinion was nominated in the primary election, or in the convention; provided, that, before any advantage can be taken of the disregard or violation of any directory provision

of the law, it must appear that, but for such disregard or violation, the result would have been different. [Id.]

Art. 3149. [3150-3155] **Ballot boxes opened.**—Either the district court or the executive committee may, if in its opinion the ends of justice require it, unlock and unseal the ballot boxes used in the precinct where fraud or illegality is charged to have been used, and examine their contents, after which they shall be sealed and delivered to the county clerk. [Id.]

Art. 3150. [3151-2] **To certify findings.**—When the committee has decided the contest, unless notice of appeal to the district court is given, the executive chairman shall certify its findings to the officers charged with the duty of providing the official ballot; and the name of the candidate in whose favor the executive committee shall find shall be printed on the official ballot for the general election. If such appeal is not perfected in the manner and time as herein provided, the chairman of the executive committee trying such contest shall certify the name of the party held by the executive committee to have been nominated to the proper office, to be placed on the official ballot. [Id.]

Art. 3151. [3153] **Appeal to district court.**—Where contests are originally filed with the executive committee, either party shall have the right to appeal from the final decision of the executive committee to the district court having jurisdiction; and said contest shall there be tried de novo by said court. The party taking such appeal shall, within three days from the final decision of the executive committee, file written notice of such appeal with the chairman or secretary of such executive committee. Upon the filing of such notice of appeal, the secretary of said executive committee shall prepare a certificate showing that such contest had been tried and determined by such executive committee, the decision of such committee, and that notice of appeal had been given, and shall file same, together with all papers filed in such contest, in the district court, or with the district judge in vacation, of the district having jurisdiction of such appeal, within ten days after the decision of the executive committee is rendered; and the filing of such certificate and papers in said court, or with said judge in vacation, shall be held to perfect such appeal. And if for any cause the secretary of said executive committee shall fail or refuse to file such certificate and other papers pertaining to such appeal, in the district court of such district, or with the judge of such district, within ten days after such decision has been rendered by said committee, then in such event the contestant may prepare a brief statement of the action of said committee in such contest, and perfect his appeal by filing same with said district court, or with the judge of said district, within fifteen days after such decision by the executive committee. [Id. Sec. 141.]

Art. 3152. [3154 to 3157] **By district court.**—In State, district, county, precinct or municipal offices, the certificate of

nomination issued by the president or chairman of the nominating convention, or chairman of the county executive committee, shall be subject to review, upon allegations of fraud or illegality, by the district court of the county in which the contestee resides, or the judge of said court in vacation; provided, that such allegations are filed in said court within ten days after the issuance of said certificate; and when said allegations are so filed, or the appeal from the decision of the executive committee is perfected, the judge of the district court shall set same down for hearing, either in term time or vacation, at the earliest practical time; and a copy of said grounds of contest, together with the notice of the date set for hearing, shall be prepared and issued by the district clerk and be served upon the contestee five days before the hearing before said court or judge, and the parties to said contest shall have the right to summon witnesses. The said court or judge shall determine said contest; and the decision of said court or judge shall be final as to all district, county, precinct, or municipal offices. A certified copy of the judgment of said court or judge shall be transmitted by the clerk thereof to the officers charged with the duty of providing the official ballot, and the name of the candidate in whose favor said judgment shall be rendered shall be printed in the official ballot for the general election. [Id.]

Art. 3153. [3158] **Appeal from district court.**—In all contests for State offices before the district court, exercising either its original or appellate jurisdiction, either party may appeal to the Court of Civil Appeals. Such appeal shall be advanced on the docket of said appellate court and have precedence of all other cases. [Id.]

2. BY PARTIES OF 10,000 AND LESS THAN 100,000 VOTES.

| | | | |
|------------------------------|---------|----------------------------|---------|
| | Article | | Article |
| May nominate..... | 3154 | For district officers..... | 3156 |
| State committee to determine | | Nominations certified..... | 3157 |
| mode..... | 3155 | Illegal participation..... | 3158 |

Art. 3154. [3159] **May nominate.**—Each political party, whose nominee for Governor in the preceding general election received as many as ten thousand and less than one hundred thousand votes, may nominate candidates for State, district and county offices under the provisions of this law by primary election, and they may nominate candidates for State offices at a State convention, which shall be held the second Tuesday in August, and which shall be composed of delegates selected in the various counties and county conventions held on the first Saturday after primary election day, which shall be composed of delegates from the general election precinct in such counties elected therein at primary conventions, held in such precincts on the fourth Saturday in July. [Acts S. S. 1905, p. 542, Sec. 99.]

Art. 3155. [3160] **State committee to determine mode.**—The State committee of all such parties shall meet at some place in the State to be designated by the chairman thereof on the

Second Tuesday in May, and shall decide, and by resolution declare, whether they will nominate State, district and county officers by convention or primary elections, and shall certify their decision to the Secretary of State. [Id.]

Art. 3156. [3161] **For district offices.**—Nominations for district offices made by such parties shall be made by conventions held on the same days as herein prescribed for district conventions of other parties, composed of delegates elected thereto at county conventions held on the same day herein prescribed for such county conventions of other parties all of which county conventions shall nominate candidates for county offices of such party. [Id.]

Art. 3157. [3162] **Nominations certified.**—All nominations so made by a State or district convention shall be certified by the chairman of the State or district committee of such party to the Secretary of State, and a nomination made by a county convention, by the chairman of the county committee. [Id.]

Art. 3158. [3163] **Illegal participation.**—No person shall be allowed to participate in any such convention who has participated in the convention or primary of any other party held on the same day. [Id.]

3. NON-PARTISAN AND INDEPENDENT CANDIDATES.

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| | Article | | Article |
| Non-partisan and independent candidates | can- | Must consent to run | 3161 |
| didates | 3159 | | Independent candidates | 3162 |
| Oath to application | 3160 | | |

Art. 3159. [3164] **Non-partisan and independent candidates.**—The name of a non-partisan or independent candidate may be printed on the official ballot in the column for independent candidates, after a written application signed by qualified voters addressed to the Secretary of State and delivered to him within thirty days after primary election day as follows: If for a State office to be voted for throughout the State, one per cent of the entire vote of the State cast at the last preceding general election; if for a congressional, supreme judicial, senatorial, representative, flatorial or judicial district office, three per cent of the entire vote cast in any such district at the last preceding general election; provided, that the number of signatures need not exceed five hundred for any congressional, senatorial or judicial office, nor for any other office that is not filled by all the voters of the State. No application to the Secretary of State shall contain the name of more than one candidate, and no citizen shall sign such application, unless he has paid his poll tax or received his certificate of exemption; provided, that, if the office is one to which two or more persons are to be elected, his application may be for as many candidates as there are persons to be elected to that office; and provided, also that no person who has voted at a primary election shall sign an application in favor of any one for an office for which a nomination was made at such primary election. [Id., Secs. 94-95.]

Art. 3160. [3166] **Oath to application.**—To every citizen who signs such application, shall be administered the following oath, which shall be reduced to writing and attached to such application, viz: "I know the contents of the foregoing application; I have participated in no primary election which has nominated a candidate for the office for which I (here insert the name) desire to be a candidate; I am a qualified voter at the next general election under the constitution and laws in force, and have signed the above application of my own free will." One certificate of the officer before whom the oath is taken may be so made as to apply to all to whom it was administered. [Id. Sec. 96.]

Art. 3161. [3167] **Must consent to run.**—The Secretary of State shall, on receipt of the application which conforms to the above requirements, issue his instruction to the county clerks of this State, or of the district, as the case may require, directing that the name of the citizen, in whose favor the application is made, shall be printed on the official ballot in the independent column under the title of the office for which he is a candidate; provided, that the citizen, in whose favor the application is made, shall first file his written consent with the Secretary of State to become a candidate, within thirty days after primary election day. [Id. Sec. 97.]

Art. 3162. [3168] **Independent candidates.**—Independent candidates for office at a county, city or town election may have their names printed upon the official ballot on application to the county judge, if for a county office, or to the mayor, if for a city or town office, such application being in the same form and subject to the same requirements herein prescribed for applications to be made to the Secretary of State in case of State or district independent nomination; provided, that a petition of five per cent of the entire vote cast in such county, city or town at the last general election shall be required for such nomination. [Id. Sec. 98.]

4. BY PARTIES WITHOUT STATE ORGANIZATIONS.

Art. 3163. [3169] **Parties without State organization.**—Any political party without a State organization desiring to nominate candidates for county and precinct offices only may nominate such candidates therefor under the provisions of this title by primary elections or by a county convention held on the legal primary election day, which convention shall be composed of delegates from various election precincts in said county, elected therein at primary conventions held in such precincts between the hours of eight a. m. and ten p. m. of the preceding Saturday. All nominations made by any such parties shall be certified to the county clerk by the chairman of the county committee of such party, and, after taking the same course as

nominations of other parties so certified, shall be printed on the official ballot in a separate column, headed by the name of the party; provided, a written application for such printing shall have been made to the county judge, signed and sworn to by three per cent of the entire vote cast in such county at the last general election. [Id. Sec. 100.]

5. FOR CITY AND TOWN ELECTIONS.

Art. 3164. [3170] **Executive committee.**—Each incorporated city or town in this State, whether incorporated under the general or special laws, may make nominations for office in the following manner: In each of said cities and towns there shall be an executive committee for each political party, consisting of a city chairman and one member for each ward in such city or town, and in case such city or town is not divided into wards, for either political or election purposes, then there shall be selected four members of said committee, in addition to the city chairman. If any city or town shall be divided into wards, for either political or election purposes, or both, then such party executive committee shall consist of one member from each ward and a city chairman of such executive committee. Provided, however, that no city or town in this State shall have a smaller number than four executive committeemen and a chairman of such executive committee. In all cities and towns which now have no executive committee, the county chairman of the party desiring to make nominations in such cities and towns shall appoint an executive committee to serve until the next city election shall be held, and in each city and town in this State in which a political party may desire to make nominations, there shall be held, at least thirty days prior to the regular city election, an election at which there may be nominated by such political party, officers to be elected at the next city election, and at which election there shall be selected the executive committee for such party in said city or town herein provided for, and in all such city primary elections, the provisions of the law relating to primary elections and general elections shall be observed. The executive committee herein provided for may decide whether or not nominations shall be made by such political party in such city or town; provided, that upon petition being made to said city or county chairman, signed by twenty-five per cent of the voters of the party in such city, as shown by the last general State election, requesting that party nominations be made for city officers, then said city executive committee, through an order of its chairman, shall order a primary election or mass convention of the qualified voters of the party, as may be petitioned for by the voters presenting said petition, and it shall thereupon be the duty of said city executive committee to grant such request as shall be contained in such petition, and such primary election or mass convention shall be ordered, and

it shall be mandatory upon such city or county chairman to order such election or mass convention to be held within ten days from the time such petition is presented. At such primary election or mass convention a new executive committee shall be selected to serve during the ensuing term; provided that this law shall not be construed so as to prevent independent candidates for city offices from having their names upon the official ballot, as provided for by law. This article shall not repeal the provisions of any charter heretofore or hereafter specially granted to any city in this State. [Id.; Acts 1911, p. 18.]

6. MISCELLANEOUS.

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| Nomination declined..... | Article 3165 | National convention..... | Article 3167 |
| Party name..... | 3166 | | |

Art. 3165. [3172-3] Nomination declined.—A nominee may decline and annul his nomination by delivering to the officer with whom the certificate of his nomination is filed, ten days before the election, if it be for a city office, and twenty days in other cases, a declaration in writing, signed by him before some officer authorized to take acknowledgments. Upon such declination (or in case of death of a nominee), the executive committee of a party, or a majority of them for the State, district or county, as the office to be nominated may require, may nominate a candidate to supply the vacancy by filing with the Secretary of State in the case of State or district officers, or with the county judge in the case of county or precinct officers, a certificate duly signed and acknowledged by them, setting forth the cause of the vacancy, the name of the new nominee, the office for which he was nominated and when and how he was nominated. No executive committee shall ever have power of nomination, except where a nominee has died or declined the nomination as provided in this article. [Id. Sec. 118.]

Art. 3166. [3174] Party name.—No new political party shall assume the name of any pre-existing party; and the party name printed on the official ballot shall not consist of more than three words. [Id.]

Art. 3167. [3175] National convention.—Any political party desiring to elect delegates to a national convention, shall hold a State convention at such place as may be designated by the State executive committee of said party, on the fourth Tuesday in May, 1928, and every four years thereafter. Said convention shall be composed of delegates duly elected by the voters of said political party in the several counties of the State at primary conventions to be held on the first Saturday in May 1928, and every four years thereafter. Said primary conventions shall be held between the hours of ten o'clock a. m. and eight o'clock p. m. These primary conventions shall elect delegates to the county convention of the several counties, which shall be held on the first Tuesday after the first Saturday in May 1928, and every four years thereafter. The qualified voters of each voting

precinct of the county shall assemble on the date named, and shall be presided over by a chairman who shall have been previously appointed by the county executive committee of the party, and shall be a qualified voter in said election precinct. Said convention may elect from among their number a secretary and such other officers as may be necessary to conduct its business. The chairman of said convention shall possess all the power and authority that is given to election judges under the provisions of this title. Before transacting any business, the chairman shall cause to be made a list of all qualified voters present. The name of no person shall be entered upon said list, nor shall he be permitted to vote or to participate in the business of such convention, until it is made to appear that he is a qualified voter in said precinct, from a certified list of the qualified voters, the same as is required in conducting a general election. After the convention is so organized it shall elect its delegates to the county convention and transact such other business as may properly come before it. The officers of said convention shall keep a written record of its proceedings, including a list of the delegates elected to the county conventions, which shall constitute the returns from said convention. The same shall be signed officially, sealed up and safely transmitted by the officers thereof to the chairman of the county executive committee of the party to be used by them in making up the roll of the delegates to the county convention. [Acts 1st. C. S. 1905, p. 555, Sec. 139.]

CHAPTER FOURTEEN.

LIMITING EXPENDITURES IN PRIMARY.

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|-------------------------------|---------|-----------------------------|---------|
| | Article | | Article |
| Definitions | 3168 | Campaign contributions..... | 3171 |
| Appointing manager..... | 3169 | Sworn statement..... | 3172 |
| Limiting expenditures..... | 3170 | Leave name off ticket..... | 3173 |
| Money paid by candidates..... | 3170a | | |

Art. 3168. **Definitions.**—The word “candidate” shall mean any person who has announced to any other person or to the public that he is a candidate for the nomination for any office which the laws of this State require to be determined by a primary election. The words “county nomination” shall mean the nomination for any office to be filled by the choice of the voters residing in only one county or less than one county. The words “district nomination” shall mean the nomination for any office to be filled by the choice of the voters residing in more than one county. The words “State nomination” shall mean the nomination for any office to be filled by the choice of the voters of the entire State. In all cases where second primary elections may be held in compliance with any law of this State, the first and second primary elections shall for the purposes of this law be considered together as one primary election. [Acts 1919, p. 139.]

Art. 3169. **Appointing manager.**—Every candidate for a State or district nomination may designate a campaign man-

ager by written appointment filed with the Secretary of State. Every candidate for a county nomination may designate a campaign manager by written appointment to be filed with the county clerk of his county, and each candidate for State or district nomination, or the lawfully designated campaign manager of such candidate, may also designate an assistant campaign manager for each county affected by such candidacy by written appointment to be filed with the county clerk of the county. Any campaign manager or assistant campaign manager designated as provided in this article may be removed by the designation of a successor, and all vacancies occurring by such removal or by death, resignation or otherwise, may be filled in the manner provided for original designations. [Id.]

Art. 3170. **Limiting expenditures.**—No candidate for any nomination to be determined by primary election and no campaign manager for such candidate shall himself or by or through any other person or persons, or on behalf of any other person or persons, directly or indirectly, give, pay or expend any money or pay or give anything of value or promise to give, pay or expend any money or to pay or to give anything of value, or authorize any expenditure or assume any pecuniary liability in furthering or opposing the candidacy of any persons for any nomination to be determined by a primary election in this State, except for the following purposes only, to-wit:

1. For the traveling expenses of the candidate, or of his campaign manager or assistant campaign manager as defined by this chapter, or of a secretary for such candidate.

2. The payment of fees or charges for placing the name of the candidate upon the primary ballot, and for holding and making returns of the election.

3. The hire of clerks and stenographers and the cost of clerical and stenographic work and of addressing, preparing and mailing campaign literature.

4. Telegraph and telephone tolls, postage, freight and express charges.

5. Printing and stationery.

6. Procuring and formulating lists of voters.

7. Headquarters or office rent.

8. Newspaper and other advertising and publicity.

9. Renting of halls or providing places for public meetings and all expenses of advertising and other expenses usually incident to holding such meetings.

No expenditures authorized by this article may lawfully be made or authorized or liability therefor incurred by any person other than a candidate himself, or his lawfully designated campaign manager or assistant campaign manager, or by some clerk or other agent lawfully authorized, in writing, by a campaign manager or assistant campaign manager, provided that no campaign manager or assistant campaign manager shall have

more than one person so authorized to act for him at the same time.

The expenditure of any money or the giving, paying or promising to give or pay any money or anything of value, directly or indirectly by any candidate for nomination or by any campaign manager or assistant campaign manager or any authorized clerk or other employe of such campaign manager or assistant campaign manager, in furthering or opposing the candidacy of any person for nomination in a primary election, except in the manner and for the purposes authorized by the provisions of this article is expressly prohibited, and the total amount expended and authorized for these purposes and for any and all purposes connected with furthering or opposing the candidacy of any person for a nomination to be determined by a primary election by any candidate or campaign manager, shall not exceed the following amounts for each candidate for each of the following offices, to-wit:

| | |
|--|-------------|
| For United States Senator..... | \$10,000.00 |
| For Governor..... | 10,000.00 |
| For all other officers to be chosen by voters of the entire State, including Judges of Courts of Last Resort, district members of Congress, and members of Congress at large | 2,500.00 |
| For members of the Court of Civil Appeals..... | 1,500.00 |
| For district attorney or district judge..... | 600.00 |
| For member of the State Senate..... | 1,000.00 |
| For member of the House of Representatives..... | 300.00 |
| For county officers in counties having a population of 50,000 or more | 750.00 |
| For county officers in counties having a population of 30,000 or more, and less than 50,000..... | 500.00 |
| For county officers in counties having a population of less than 30,000..... | 300.00 |
| (The preceding Federal census to determine the population of a county.) | |
| For any other position which the law may provide shall be chosen in primary election..... | 100.00 |

Four-fifths of the sums stipulated in this article as the limits of expenses to be incurred by candidates and their campaign managers may be expended in the campaign preceding the first primary, and the remainder in the campaign preceding the second primary.

The limits fixed by this article for all State and district nominations shall include and cover all amounts expended or authorized to be expended by such candidate or his campaign manager and also all amounts paid or distributed to assistant campaign managers for use of expenditure in their respective counties. Any such assistant campaign manager may himself and through his lawfully authorized agent, expend in his county out of contributions made to the campaign fund by citizens of

his county and collected by him or out of monies furnished him by the candidate or his campaign manager or from all such sources together, for lawful purposes permitted by this chapter, a sum which shall not exceed ten dollars for each one hundred qualified voters on the current poll tax list of such county, provided that such sum shall in no event exceed in the aggregate the sum of five hundred dollars for any county. The aggregate sums stipulated in this article as the maximum amounts that may be expended by candidates and their campaign managers shall be construed to embrace all expenditures herein authorized to be made in counties by assistant campaign managers. The expenditure of any money or the giving or promising to give or pay any money or any thing of value by any candidate or by any campaign manager or his clerk or agent, or assistant campaign manager or his clerk or agent in furthering of or opposition to the candidacy of any person for any nomination in a primary election in excess of the amount fixed and prescribed by this article, is hereby prohibited and declared to be unlawful. [Id.]

Art. 3170a. Money paid by candidates.—The amount of money paid to the State, district or county committee of any political party by any candidate for political nomination to office for the purpose of placing his or her name upon the primary ballot of such political party, shall not be included in the amount of money limited by law for campaign expenses. [Acts 1925, p. 334.]

Art. 3171. Campaign contributions.—It shall be lawful for any person other than a corporation to make campaign contributions to be paid directly to the candidate or his lawfully designated and appointed campaign manager or by citizens of any county to the lawfully designated and appointed assistant campaign manager for such county, such contributions to be used for lawful purposes. It shall be lawful for any one or more citizens residing in any locality to raise by voluntary contributions a fund not exceeding fifty dollars for the purpose of defraying the expenses of any political meeting to be held in such locality, such expense to include the cost of advertising such meeting, or hiring halls or providing other places for holding the same, or providing music therefor, or the bona fide traveling expenses and hotel bills of speakers, provided that a statement of all receipts and disbursements for such purposes signed and sworn to by the person or persons receiving and disbursing the same shall be filed with the county clerk of the county in which such meeting is held, within twenty-four hours after it is held. It shall be lawful for any person to expend a sum which shall not in the aggregate exceed ten dollars for postage, or telegraph or telephone tolls, or for cost of any correspondence or any other lawful purpose out of his own funds where the sum is not to be repaid to him in behalf of any one candidate. It shall be lawful for any person to contribute bona fide his own personal services and personal traveling expenses, including hotel bills

while traveling, to the support of any candidacy. Except as expressly permitted by the foregoing provisions of this article, it shall be unlawful for any person other than candidates for nomination to be determined by primary elections or the campaign managers or assistant campaign managers of such candidates lawfully designated as provided in this chapter, or the agents of such campaign managers or assistant campaign managers lawfully authorized as provided in this chapter, either himself or by or through any other person or on behalf of any other person directly or indirectly to give, pay or expend any money or give or pay anything of value, or promise to give, pay or expend, any money, or authorize any expenditure or assume any pecuniary liability for the purpose of aiding or defeating or helping to defeat the nomination at any such primary election of any candidate for any nomination to be determined thereby. [Id.]

Art. 3172. Sworn statement.—Each candidate for nomination in a primary election and every campaign manager or assistant campaign manager for any such candidate, is hereby required to keep an accurate record of all funds received and disbursed for campaign purposes, which record shall be preserved for a period of twelve months, and shall be open to inspection of all opposing candidates and qualified voters. Every candidate and campaign manager is hereby required to file a sworn statement of all moneys previously received or disbursed by him, including money borrowed and liabilities incurred but not paid, not more than thirty nor less than twenty-five days prior to the date of the primary election, and not more than twelve nor less than eight days prior to the date of the primary election, and not more than ten days after the date of the primary election. Each such statement shall include all items contained in all statements previously made in accordance with the requirements of this article, if any, and shall include the names of all contributors to any campaign fund handled by the party making the same, and the names of all persons from whom any money has been received or from whom any money has been borrowed for such fund, and the names of all persons to whom disbursements exceeding ten dollars in amount have been made and the purpose of such disbursements. Such statement shall also set forth that it is as full and explicit as the party making it is able to make, and the party making it shall make the following affidavit, which shall be filed with said statement:

“I do solemnly swear that the foregoing statement, filed herewith, correctly shows all moneys received by me and disbursed by me or in my behalf or with my knowledge or consent through or by any other person in connection with the candidacy of _____ for the nomination for _____ before the _____ primary election, and that I have neither directly nor indirectly arranged or assented to, encouraged or connived at the spending of any money other than as shown in said statement, and that I have not violated any provision of the laws

of Texas governing primary elections or the expenditure of funds in connection with a candidacy for a nomination in such primary election in letter or in spirit."

Such statements and oaths shall be filed within the times required by this article by candidates for State and district nominations and their campaign managers with the Secretary of State, and by candidates for county nominations and their campaign managers and by the assistant campaign managers of candidates for State and district nominations with the county clerk of the county in which they reside. [Acts 1913, p. 144; Acts 1919, p. 143.]

Art. 3173. **Leave name off ticket.**—Any candidate who shall knowingly violate, or who shall knowingly permit or assent to the violation of any provision of this chapter by any campaign manager or assistant campaign manager, or other person, shall thereby forfeit his right to have his name placed upon the primary ballot, or if nominated in the primary election, to have his name placed on the official ballot at the general election. Proceedings by quo warranto to enforce the provisions of this article, or to determine the right of any candidate alleged to have violated any provision of this chapter, to have his name placed on the primary ballot, or the right of any nominee alleged to have violated any provision of this chapter to have his name placed upon the official ballot for the general election, may be instituted at the suit of any citizen in the district court of any county, the citizens of which are entitled to vote for or against any candidate who may be charged in such proceedings with any such violation. All such proceedings so instituted shall be advanced, and summarily heard and disposed of by both the trial and appellate courts. [Id.]

TITLE 51.
ELEEMOSYNARY INSTITUTIONS.

| | | | |
|---------------------------|------|---------------------------|------|
| Chapter | Page | Chapter | Page |
| 1 General provisions..... | 883 | 3 Other institutions..... | 894 |
| 2 State Hospitals..... | 885 | | |

CHAPTER ONE.

GENERAL PROVISIONS.

| | | | |
|-------------------------------|---------|------------------------------|---------|
| | Article | | Article |
| Management | 3174 | Funds | 3179 |
| Duties of superintendent..... | 3175 | Duty of Treasurer..... | 3180 |
| Powers of superintendent..... | 3176 | Interest in contracts..... | 3181 |
| Accounts | 3177 | Disbursements | 3182 |
| Reports | 3178 | Support and maintenance..... | 3183 |

Art. 3174. **Management.**—Each eleemosynary institution established by law shall be managed and controlled in accordance with the provisions of this title. The general control, management and direction of the affairs, property and business of such institutions is vested in the State Board of Control.

Art. 3175. **Duties of superintendent.**—Each superintendent shall: 1. Receive and discharge patients and pupils, superintend repairs and improvements, and see that all moneys intrusted to him are judiciously and economically expended. He shall keep an accurate and detailed account of all moneys received and expended by him, specifying the sources from which they were received, and to whom and on what account paid out.

2. Keep a register of all patients and pupils received and discharged and a full record of all operations of the institution.

3. On November 1st, of each year, submit to the Board an inventory of all the personal property belonging to the asylum, in which the estimated value shall be set opposite each article.

Art. 3176. **Powers of superintendent.**—The superintendent shall be the administrative head of the institution to which he is appointed. He shall have the following powers:

1. To establish such rules and regulations for the government of the institution in his charge, as he deems will best promote the interest and welfare of its inmates.

2. Where not otherwise provided by law, to appoint the subordinate officers, teachers, attendants, and other employes, and to fix their salaries.

3. To remove for good cause, with the consent of the Board, any officer, teacher or employe.

4. The care and custody of the buildings, grounds, furniture, and other property pertaining to the institution.

Art. 3177. **Accounts.**—The superintendent of each asylum shall be the chief disbursing officer of the institution and subject to the rules of the Board of Control, shall have general charge over everything connected with the institution over which he presides. He shall attend to the enforcement of the laws relating to such institution and to the by-laws provided by such Board, and shall see that the employes faithfully perform their duties. He shall admit members of the Board into every

part of the asylum, and exhibit to them at their request, all books, papers and accounts of the institution pertaining to its business, management, discipline and government, and shall furnish the Board copies, abstracts and reports as it may require.

Art. 3178. **Reports.**—On January 1st, and July 1st, of each year, the superintendent of each institution shall report to the Governor and to the Board of Control, a full sworn statement of all moneys and choses of action received by such superintendent and how disbursed or otherwise disposed of. Such report shall show in detail the operations of the institution for the term, accompanied with such suggestions and recommendations as the superintendent may deem important to the well-being of the institution, the number of employes and the salaries of each, the number of inmates received and discharged and the number still in said institution. The report shall state the general condition of the inmates, and contain an estimate of the appropriations needed for maintenance.

Art. 3179. **Funds.**—All funds of every character received by or belonging to the institutions, other than money appropriated for their support from time to time by the Legislature, shall as soon as received, be paid over to the State Treasurer by the Board, superintendent or other person receiving them. The Treasurer shall place such sums to the credit of the general revenue fund.

Art. 3180. **Duty of Treasurer.**—The State Treasurer shall keep an exact account of the moneys received by him belonging to the institutions, from what source received, and to whom paid out and on what account. To each annual report that he may be required by law to make to the Governor or to the Legislature, he shall append a full report of such account showing the receipts and expenditures thereof for the year for which such report is made.

Art. 3181. [128] **Interest in contracts.**—No member of the Board of Control, superintendent or other person connected with the asylums shall sell or be in any way concerned in the sale of any merchandise, supplies or other articles to the asylums, or have any interest in any contract therewith.

Art. 3182. [129] **Disbursements.**—The appropriations made from time to time by the Legislature for the maintenance of the asylums shall remain on deposit in the State Treasury and be paid out as are other public funds upon the warrant of the Comptroller. The Comptroller shall not draw his warrant upon the Treasurer unless the account upon which such warrant is drawn is certified as just and correct by the superintendent and is approved by the Board. [Act 1875, p. 67.]

Art. 3183. **Support and maintenance.**—The Legislature from time to time shall make suitable provision in the general appropriation bill or otherwise for the proper support and maintenance of each asylum and eleemosynary institution of this State.

CHAPTER TWO.

STATE HOSPITALS.

| | Article | | Article |
|--|---------|---------------------------------|---------|
| Superintendent | 3184 | Certificate of physicians | 3193e |
| Name | 3185 | Certificate of physicians | 3193f |
| Discharged convict | 3186 | Received temporarily | 3193g |
| Applicable to other institutions | 3187 | Private patients | 3193h |
| Divided into districts | 3188 | Temporary absence | 3193i |
| Price for care | 3189 | Money and clothing | 3193j |
| Board of Control shall appoint | 3190 | Restraining patients | 3193k |
| Clinic | 3191 | Instruments of restraint | 3193l |
| State Psychopathic Hospital | 3192 | Record of restraints | 3193m |
| Who may be admitted | 3193 | Guardians of insane | 3193n |
| Necessary certificate | 3193a | Constitutionality | 3193o |
| Jury not necessary | 3193b | Transportation | 3194 |
| Confinement in jails | 3193c | Transportation home | 3195 |
| Warrant to sheriff | 3193d | Escape | 3196 |

Art. 3184. **Superintendent.**—The superintendent of each State hospital shall be a married man, a skilled physician, and experienced in the treatment of insanity. He shall reside at the asylum with his family, and shall devote his time exclusively to the duties of his office, and may be removed by the State Board of Control for good cause.

Art. 3185. **Name.**—The names of the various insane hospitals and asylums, and the State Epileptic Colony and the State Colony for Feeble Minded, shall be changed, and those institutions which have been heretofore created for the care and treatment of the insane, epileptic and feeble minded, shall hereafter be designated as follows:

(a) The East Texas Hospital for Insane, which is located at Rusk in Cherokee County, Texas, shall hereafter be known as the Rusk State Hospital; and it is hereby so named.

(b) The Northwest Texas Insane Asylum which is located at Wichita Falls in Wichita County, Texas, shall hereafter be known as the Wichita Falls State Hospital; and it is hereby so named.

(c) The North Texas Hospital for the Insane which is located at Terrell in Kaufman County, Texas, shall hereafter be known as the Terrell State Hospital; and it is hereby so named.

(d) The Southwestern Insane Asylum which is located at San Antonio in Bexar, County, Texas, shall hereafter be known as the San Antonio State Hospital; and it is hereby so named.

(e) The State Lunatic Asylum which is located at Austin, in Travis County, Texas, shall hereafter be known as the Austin State Hospital; and it is hereby so named.

(f) The State Colony for Feeble Minded which is located at Austin, in Travis County, Texas, shall hereafter be known as the Austin State School; and it is hereby so named.

(g) The State Epileptic Colony which is located at Abilene in Taylor County, Texas, shall hereafter be known as the Abilene State Hospital; and it is hereby so named.

Art. 3186. [144] **Discharged convict.**—When a convict shall be discharged from any State penitentiary and is insane at the time of his discharge and shall be adjudged by a court of competent jurisdiction within thirty days after his discharge to be insane and that he should be placed under restraint, he shall be delivered to the superintendent of the State penitentiary to

be conveyed to one of the State hospitals. The expenses incurred in such adjudication and in keeping and conveying such patient to the hospital including such clothing as shall be necessary for his comfort, shall be paid by the State upon the certificate of the superintendent. [Acts 1895, p. 164.]

Art. 3187. Applicable to other institutions.—All laws now in force in any way affecting the East Texas Hospital for the Insane, the Northwest Texas Insane Asylum, the North Texas Hospital for Insane, the Southwestern Insane Asylum, the State Lunatic Asylum, the State Colony for Feeble Minded and the State Epileptic Colony, shall apply to the Rusk State Hospital, the Wichita Falls State Hospital, the Terrell State Hospital, the San Antonio State Hospital, the Austin State Hospital, the Austin State School and the Abilene State Hospital, subject to such changes in said laws as shall be hereinafter made.

Art. 3188. Divide into districts.—The Board of Control shall divide the State into hospital districts, may change the districts from time to time, and shall designate the State Hospitals to which insane, epileptic and feeble minded persons from each district shall be admitted and may transfer patients from one institution to another. All such persons within any such districts committed, shall be committed to the State Hospital designated for that district.

Art. 3189. Price for care.—The Board of Control, directly or through an authorized agent or agents, may make contracts fixing the price for the support of patients in any State hospital or psychopathic hospital at a sum not to exceed the actual cost of such patient or for such part thereof as such relative or estate may be able and agree to pay, and binding the persons making such contracts to payment thereunder. The Board of Control is authorized to demand investigation to determine whether or not a patient is possessed of or entitled to property and whether or not some other person is legally liable for his support and to pay therefor. The county judge having jurisdiction, may from time to time, upon the request of the Board of Control, cite the guardian of such patient, or other persons legally liable for his support, to appear at some regular term of the county court of civil business, then and there to show cause why the State should not have judgment for the amount due it for the support and maintenance of such patient; and, if sufficient cause be not shown, judgment may be entered against such guardian or other persons for the amount found to be due the State, which judgment may be enforced as in other cases. The certificate of the superintendent of the State hospital or psychopathic hospital wherein such patient is being treated, as to the amount due shall be sufficient evidence to authorize the court to render judgment. The county attorney shall appear and represent the State in all cases provided for in this section.

Art. 3190. Board of Control shall appoint.—The superintendent of the psychopathic hospitals hereinafter mentioned shall be appointed by the Board of Control. Each superintendent shall be a well qualified physician thoroughly trained in psychia-

try, and experienced in hospital management. He shall reside at the hospital and shall devote his whole time exclusively to the duties of his office. Each superintendent shall be appointed for an indefinite time, his continuance in service being determined by the character of administration rendered by the hospital, and shall receive a salary of (\$4,000.00) dollars per annum, payable monthly; provided that any superintendent may be dismissed by the Board of Control for good cause, the reasons for such dismissal to be specified in writing, and filed with the Secretary of State.

Art. 3191. **Clinic.**—The Board of Control may through its agents and institutions, develop a mental hygiene clinic service for co-operation with the State Department of Public Instruction and local boards of education in the study of the mental and physical health of children who are seriously retarded in school progress or in mental development, and of all children who present problems in personality development.

Art. 3192. **State psychopathic hospital.**—There shall be established and maintained a Psychopathic Hospital at Galveston to be known as the Galveston State Psychopathic Hospital, and one at Dallas to be known as the Dallas State Psychopathic Hospital. The Galveston State Psychopathic Hospital shall be a hospital for the treatment of nervous and mental diseases both in the hospital and out patient clinic, and shall be available as a part of the teaching facilities in mental medicine for the State Medical College. The Dallas State Psychopathic Hospital shall be a hospital for the treatment of nervous and mental diseases both in the hospital and in out patient clinic.

Art. 3193. **Who may be admitted.**—A person alleged to be insane, and who is not held on a criminal charge, may be committed to and confined in an institution for the custody and treatment of the insane and of other persons suffering from mental illnesses upon an order made by a county judge of the county in which the alleged insane person resides or may be, adjudging such person to be insane, upon a certificate of insanity made by two properly qualified and licensed physicians, accompanied by a verified petition therefor, or upon such certificate and petition and after a hearing to determine such question, as hereinafter provided. The Board of Control shall prescribe and furnish forms for such certificates and petitions, which shall be made only upon such forms. An insane person shall be committed only to an institution for the treatment of insane and of other persons suffering from mental illnesses, or to the care and custody of a relative; provided, that any person or someone for him may demand a jury trial as to his mental state.

Art. 3193a. **Necessary certificate.**—No person shall be committed to any institution for the treatment of the insane and other mentally ill persons, unless there has been filed with the county judge a certificate of the insanity of such person by two properly qualified and licensed physicians, nor without an order therefor, signed by the county judge, stating that he finds that the person committed is insane, and is a proper subject for treatment in a hospital for the insane, and either that he has been an

inhabitant of the State for the six months immediately preceding such time or that provision satisfactory to the Board of Control has been made for his maintenance, or that by reason of insanity he would be dangerous if at large. The order of commitment shall also authorize the custody of the insane person either at the institution to which he shall first be committed or at some other institution to which he may be transferred by order of the Board of Control. Neither of the physicians mentioned in this section shall be a relative of the person applying for the order, or of the person alleged to be insane, nor shall he be a manager, superintendent, proprietor, officer, stockholder, or have any pecuniary interest, directly or indirectly, or be an attending physician in the institution to which it is proposed to commit such alleged insane person.

Art. 3193b. Jury not necessary.—The judge to whom such application for commitment is made, may, if no demand is made for a jury trial in behalf of the alleged insane person, proceed forthwith to determine the question of insanity, and if satisfied that the alleged insane person is insane, may immediately issue and order for the commitment of such person to an institution for the custody and treatment of the insane.

Upon the demand of any relative or near friend in behalf of such alleged insane person, the judge shall, or he may upon his own motion, issue an order directing the hearing of such application before him at a time not more than five days from the date of such order, which shall be served upon the parties interested in the application and upon such other persons as the judge, in his discretion may name. Upon such day, or upon such other day to which the proceedings shall be legally adjourned, he shall hear the testimony introduced by the parties and examine the alleged insane person if deemed advisable, at some place which may be either in the court house of the county or at the residence or place of detention of the person named, and render a decision in writing as to such person's insanity. If it be determined that such person is insane the judge shall forthwith issue his order committing him to an institution for the custody and treatment of the insane and other mentally ill persons, or make such other order as is herein provided for; provided in any proceedings under this Act the person alleged to be insane and appearing before the county judge, or any person interested in such person, shall have the right to demand for such alleged insane person a trial by jury, which shall be granted as in other cases, or the county judge may, in his discretion, issue a warrant to the sheriff or his deputy, directing him to summon a jury of six men to hear and determine whether the alleged insane person is insane.

Art. 3193c. Confinement in jails.—In no case shall any insane person be confined in any other place than an institution for the treatment of the insane and other mentally ill persons, for a period longer than thirty days, nor shall such person be committed as a disorderly person to any prison, jail or lockup for criminals, except when in the judgment of the county health officer no other quarters suitable for the detention of such in-

sane person can be provided. The county health officer in the county wherein an insane or alleged insane person may be shall see that such person is cared for in a place suitable for the comfortable, safe and humane confinement of such person, pending the determination of the question of his insanity and until his transfer to an institution for the treatment of the insane and other mentally ill person. If, in case of emergency, any such person is so placed or detained in a jail or other lockup, he shall forthwith be examined by a physician and shall be furnished suitable medical care and nursing. The reasonable expense for board, lodging, medical care, nursing, clothing and all other necessary expenses incurred by the county health officer under this section, shall be allowed by the commissioners' court and paid out of the general fund of the county. In all cases of commitment of an insane person to jail or other place of temporary restraint, a notice of such commitment, giving the name and condition of patient and character of place to which he is committed, shall be sent immediately to the State Board of Control by the judge ordering the commitment.

Art. 3193d. [161] **Warrant to sheriff.**—Immediately after any person is adjudged insane the county judge shall communicate with the superintendent of the State Hospital or Psychopathic Hospital of the district in which said person resides or may be at the time, and if notified by the latter that there is a vacancy in the institution, he shall issue a warrant to the sheriff or some other suitable person, directing him to convey the insane person to the hospital without delay. The county judge may permit, by special order, the assistance of one additional person to such office in cases where he deems such assistance necessary. Each female committed to any institution for the treatment of the insane and of other mentally ill persons shall be accompanied by a female attendant, unless accompanied by her father, brother, husband or son, during conveyance to such institution.

Art. 3193e. **Certificate of physicians.**—If a person is found by two properly qualified and licensed physicians to be in such mental condition that his commitment to an institution for the treatment of the insane and other mentally ill persons is necessary for his proper care or observation, he may be committed by the county judge to a State Hospital for thirty-five days pending the determination of his insanity; within thirty days after such commitment, the superintendent of the institution to which the person has been committed shall discharge him if he is not insane, and shall notify the judge who committed him, or if he is insane he shall report the patient's mental condition to the judge with the recommendation that he shall be committed as an insane person or discharged to the care of his guardian, relatives, or friends, if he is harmless and can properly be cared for by them, within the said thirty-five days, the committing judge may authorize a discharge as aforesaid, or he may commit the patient to the institution as an insane person, if, in his opinion, such commitment is necessary. If in the opinion of the judge,

additional medical testimony as to the mental condition of the alleged insane person is desirable, he may appoint a physician to examine and report thereon.

Art. 3193f. Certificate of physician.—The superintendent of any institution for the treatment of the insane and other mentally ill person, may, without the order of the county judge, receive into his custody and detain in such institution for not more than five days any person whose case is certified to be one of violent and dangerous insanity, or of other emergency, by two properly qualified and licensed physicians, which certificate shall be filed with a county judge as the certificate required in Article 3193a. Any peace officer shall, upon the request of the applicant or of one of the said physicians, cause the arrest and delivery of such person to such superintendent. The person apply for such admission shall within five days cause the alleged insane person to be committed to or removed from the institution, and upon his failure so to do, he shall be liable to the State for the expenses incurred and to a penalty of fifty dollars (\$50.00), which may be recovered by the State.

Art. 3193g. Received temporarily.—The superintendent of any institution for the care of the insane and of other mentally ill persons, may, when requested by a physician or by a health officer, or peace officer, receive and care for as a patient in such institution, for a period not exceeding ten days, any person needing immediate care and treatment because of mental derangement other than delirium tremens or drunkenness. Such request for admission of a patient shall be put in writing and shall be filed at the institution at the time of the patient's reception or with twenty-four hours thereafter, together with the applicant's statement in the form procured or approved by the Board of Control giving such information as it deems advisable. Any such patient deemed by the superintendent as unsuitable for such care shall, upon the request of the superintendent, be removed forthwith from the institution by the party requesting his reception, and if he is not so removed, such person shall be liable to the State for all reasonable expenses incurred under this article on account of the patient, which may be recovered by the State. The superintendent shall cause every such patient either to be examined by two physicians, properly qualified and licensed, who shall cause application to be made for this admission or commitment to such institution, or to be removed therefrom before the expiration of said period of ten days unless he signs a request to remain therein as a voluntary patient as hereinafter provided. Reasonable expenses incurred for the examination of the patient and his transportation to the institution shall be allowed by the commissioners' court and paid out of the general fund of the county in which the patient resides or may be at the time of application.

Art. 3193h. Private patients.—The superintendent of any institution to which an insane or other mentally ill person may be committed, may receive and detain therein as a boarder and patient any person who is desirous of submitting himself to

treatment, and who, being mentally competent to make such application, makes written application therefor; and any such person who desires to so submit himself for treatment may make such written application. No such person shall be detained more than three days after having given written notice of his intention or desire to leave the institution. Whenever any such person is received into any institution, the superintendent thereof shall give immediate notice of such reception to the Board of Control.

Art. 3193i. **Temporary absence.**—The superintendent of any institution, after the examination as hereinafter provided, may permit any inmate thereof temporarily to leave such institution in charge of his guardian, relatives, friends, or by himself, for a period not exceeding twelve months, and may receive him when returned by any such guardian, relative, friend, or upon his own application, within such period, without any further order of commitment, but no patient, who has been charged with, or convicted of, some offense and been adjudged insane in accordance with the provisions of the code of criminal procedure, shall be permitted to temporarily leave such institution without the approval of the governor, nor shall such permission terminate or in any way affect the original order of commitment. The superintendent may require as a condition of such leave of absence, that the person in whose charge the patient is permitted to leave the institution, shall make reports to him of the patient's condition. Any such superintendent, guardian, relative or friend may terminate such leave of absence at any time and authorize the arrest and return of the patient. Any peace officer of this State shall cause such patient to be arrested and returned upon the request of any such superintendent, guardian, relative or friend. Any patient, except such as are charged with, or convicted of some offense, and have been adjudged insane in accordance with the provisions of the code of criminal procedure, who has returned to the institution at the expiration of twelve months may be granted an additional leave by the superintendent or upon his recommendation.

Art. 3193j. **Money and clothing.**—No patient in a State hospital shall be discharged therefrom or permitted to leave on a temporary visit without suitable clothing; and the Board of Control may furnish the same, and such an amount of money, not exceeding twenty dollars (\$20.00) as they may consider necessary. Inquiry shall be made into the future situation of every patient about to be discharged or permitted to be temporarily absent, and precautionary medical advice shall be given him. No patient shall be discharged or permitted to be temporarily absent from any institution without a personal examination of his mental condition made by one of the hospital physicians within forty-eight hours of his departure, the result of which shall be entered in his case record.

Art. 3193k. **Restraining patients.**—No restraint in the form of muffs, waist straps, wristlets, anklets, camisoles, lock chairs, lock cribs, protection sheets or other devices interfering with

free movement shall be imposed upon any patient in any institution unless applied in the presence of the superintendent or of the physician or of an assistant physician of the institution, or on his written order, which order shall be preserved in the files or records of the institution. Such device shall be applied only in cases of extreme violence, active, homicidal and suicidal condition, physical exhaustion, infectious disease or following an operation or acts which have caused serious bodily injury; except that in case of emergency, restraint may be imposed without the presence of the superintendent, physician or assistant physician and without a written order; but each emergency case after the imposition of such restraint shall be immediately reported to the superintendent or to the physician or assistant physician of the institution who shall immediately investigate the case and approve or disapprove of the restraint imposed.

Art. 3193l. **Instruments of restraint.**—The superintendent or head physician of every institution, or in his absence, one of the assistant physicians shall personally keep under lock and key all implements or devices of restraint not in actual use.

Art. 3193m. **Record of restraints.**—The superintendent or head physician of each institution shall cause to be kept in a book provided for the purpose, records of all cases wherein restraint is used. Such record shall be open for inspection at all times by the director of the division of mental hygiene, by the Board of Control and by all other persons having control of the institution and other State officers, and shall contain a complete record relative to the restraint, including the cause for the same, the form used, the name of the patient, the time when the patient was placed under restraint and the time when he released. Restraint as here used shall include therapeutic and chemical restraint and confinement in a strong room as well as seclusion in solitary confinement, except when patients are placed in single rooms at night, but shall not include the prolonged bath, the hot or cold pack, or a medication when it is used as a remedial measure and not as a form of restraint.

3193n. **Guardians of insane.**—Nothing herein shall be held to affect or repeal the provisions of any law now existing or hereafter enacted relating to the appointment of guardians of insane persons, or persons of unsound mind.

Art. 3193o. In the event that any article or provision of this Act should for any reason be held unconstitutional by the courts of this State, the same shall not affect any other article or provision of this Act, and the Legislature does hereby declare that it would have enacted each and all of the provisions of this Act without reference to any other article or provision. [Acts 1925, p. 407.]

Art. 3194. [145] [146] **Transportation.**—The expenses of conveying all public patients to the asylum shall be borne by the counties respectively from which they are sent; and said counties shall pay the same upon the sworn account of the officer or person performing such service, showing in detail the actual expenses incurred in the transportation. In case any public patient is possessed of property sufficient for the purpose, or any

person legally liable for his support is so possessed of property, the county paying the expenses of such transportation shall be entitled to reimbursement out of the estate of the lunatic or the property of the person legally liable for his support, which may be recovered by the county on suit brought therefor. [Acts 1876, p. 140.]

Art. 3195. [147] [149] **Transportation home.**—The expense of conveying to their homes public patients discharged from the asylums, and the necessary clothing furnished to them at the time of their discharge, shall be paid by the State. Any officer who may convey a patient to the asylum in accordance with the provisions of the preceding article shall be paid for such service out of the funds of the asylum at the rate of ten cents per mile for himself and each necessary guard he may employ, going and returning and the same for the patient going, the distance to be determined by the superintendent, according to the most direct traveled route. [Id. p. 119.]

Art. 3196. [148] **Escape.**—If any person confined in the asylum shall escape therefrom, it shall be the duty of any peace officer to apprehend and detain him and report the same to the county judge of the county, and also to the superintendent of the asylum, and upon the order of either to convey such patient back to the asylum. [Id. p. 119.]

PASTEUR HOSPITAL.

| | | | |
|---------------------------|--------------|--------------------------|--------------|
| Admission to..... | Article 3197 | Disposition of fees..... | Article 3200 |
| Expenses of patients..... | 3198 | Assistant physician..... | 3201 |
| Laws applicable..... | 3199 | | |

Art. 3197. [166] **Admission to.**—Any person affected with hydrophobia within this State shall be admitted to the Pasteur Hospital or department for the treatment of hydrophobia, under the management of the Austin State Hospital, such admission to be upon the certificate of a practicing physician and the recommendation of any county judge in this State. [Acts 1903, p. 195.]

Art. 3198. [167] **Expense of patients.**—All indigent persons afflicted with hydrophobia in the State shall be treated at the expense of the State at said Pasteur Hospital, but the county in which such indigent persons reside shall pay the traveling expenses of such persons to and from Austin and the necessary living expenses of such persons while in Austin undergoing said treatment, such expenses to be paid upon the order of the commissioners court of the county in which such persons reside when satisfactory showing is made to said court as to indigency and the reasonableness and the necessity of the expense. All non-indigent persons shall be kept, treated and maintained at said hospital at their own expense or that of the relatives, friends or guardians. [Id. Acts 1907, p. 321; 1917, p. 359.]

Art. 3199. [168] **Laws applicable.**—Laws pertaining to the introduction and control of said patients shall be the same as

those applying to the Austin State Hospital. [Acts 1907, p. 320.]

Art. 3200. [169] **Disposition of fees.**—All fees collected from non-indigent patients shall be used as the Board and superintendent may direct for the support and maintenance of said hospital. [Id.]

Art. 3201. [170] **Compensation of assistant physician.**—The board may allow such additional compensation, not to exceed two hundred and fifty dollars per annum, to the assistant physician who does the work of this department, out of such fees collected as may be justified by the extra labor done by said assistant. [Id.]

CHAPTER THREE.

OTHER INSTITUTIONS.

Art. 3202. [195] **Application for admission.**—Application for the maintenance, care and education of all deaf, dumb and blind children shall be made by the parent or guardian of such child or children to the superintendent of the asylum under such rules as may be prescribed. [Acts 1st. C. S. 1901, p. 20.]

DEAF AND DUMB ASYLUM.

| | | | |
|------------------------|-----------------|------------------|-----------------|
| To teach printing..... | Article 3203 | Instructor | Article 3205 |
| Public printing..... | 3204 | | |

Art. 3203. [190] **To teach printing.**—A certain number of the pupils at the Deaf and Dumb Asylum, to be designated by the superintendent, shall each year receive instruction in the art of printing in all its branches; and the studies of such pupils shall be so arranged as not to interfere with such instruction and the execution of any public printing by them for the State. [Acts 1875, p. 91.]

Art. 3204. [193] **Public printing.**—Any public printing for the State may be executed at the Deaf and Dumb Asylum without regard to any contract with an individual to do the public printing thereof. [Id. Acts 1875, S. S. p. 35.]

Art. 3205. [191] [192] **Instructor.**—The board shall employ a competent practical printer as instructor at said asylum in the art of printing; and the person so employed shall also discharge such other duties as the Board may require. His compensation shall not exceed one thousand dollars annually, and he may be discharged at any time by the Board. [Acts 1875, p. 91.]

TEXAS SCHOOL FOR THE BLIND.

| | | | |
|------------------------|-----------------|---------------|-----------------|
| Board of trustees..... | Article 3206 | Oculist | Article 3207 |
|------------------------|-----------------|---------------|-----------------|

Art. 3206. **Board of trustees.**—The Board of Trustees of the Texas School for the blind shall be composed of the Governor, the Lieutenant Governor and the Attorney General of Texas, of which Board the Governor shall be chairman, and the superin-

tendent of the Texas School for the Blind shall be secretary; and said Board shall take the title to any real estate acquired under this law to "The Board of Trustees of the Texas School for the Blind," and their successors as trustees, for the use and benefit of the State of Texas. [Acts 1st C. S. 1915, p. 36.]

Art. 3207. [188] [189] **Oculist.**—The Board of Control shall appoint a skilled oculist for the blind asylum. Such oculist must be married and shall attend regularly at the asylum and administer treatment to all cases of curable blindness among its pupils. He shall hold his office for two years, and the Board of Control may remove him for good cause. [Acts 1883, p. 109.]

STATE ORPHAN HOME.

| | | | |
|--------------------------|---------|---------------------------|---------|
| | Article | | Article |
| Superintendent | 3208 | Children admitted | 3211 |
| Industrial manager | 3209 | Removal of children | 3212 |
| Matron | 3210 | | |

Art. 3208. [197] [200] **Duties of Superintendent.**—The superintendent shall keep a carefully prepared list containing the name and age of each child, as well as such other data concerning the history of said child as the Board may prescribe, and said lists shall be recorded in a well-bound book for said purpose, and subject to the inspection of all persons who may desire to examine its contents. He shall annually deliver to the proper authorities a list of all children within the scholastic age, and see that their pro rata of the public free school fund is set aside to their credit, and that they are provided with proper educational facilities. He shall promptly answer all inquiries, by mail or otherwise concerning the orphans under his charge, and promptly inform the Board when an opportunity is presented to secure a good and permanent home for any child under his charge. [Acts 1887, p. 129; 1899, p. 303.]

Art. 3209. [198] **Industrial manager.**—The Board shall elect an industrial manager for said home whose duties and salary shall be prescribed by the Board, subject to legislative appropriation, not to exceed fifteen hundred dollars per annum. [Id.]

Art. 3210. [203] **Matron.**—A matron of said Home shall be chosen by the superintendent, with the consent of the Board, whose salary shall not exceed forty-five dollars per month. [Acts 1887, p. 129.]

Art. 3211. [199] **Children admitted.**—All children under the age of fourteen years, shall be admitted subject only to such restrictions as the Board may deem requisite to the welfare of said Home. [Id.]

Art. 3212. [201] **Removal of children.**—No person shall be permitted to remove a child from said home except under such lawful rules and regulations as the Board may adopt. In no case shall a child be removed therefrom by any person other than the natural guardian of said child, or the duly qualified guardian of the person of such child, or the parent of said child by adoption. [Id.]

CONFEDERATE HOME.

| | | | |
|----------------------------------|--------------|--------------------------------|--------------|
| Duties of board..... | Article 3213 | Application for admission..... | Article 3216 |
| Superintendent..... | 3214 | Wife of inmate..... | 3217 |
| Secretary to superintendent..... | 3215 | | |

Art. 3213. [205] **Duties of Board.**—The State Board of Control shall be governed in its regulations of the affairs of the Confederate Home by the laws relative to the Deaf, Dumb and Blind institutions of this State so far as the same may be applicable, and shall make such rules and regulations as may be necessary for the internal government, discipline and management of the home, and shall have power to enforce compliance with said rules and regulations by discharging from the home, if in its judgment it be necessary, any inmate who may violate said rules and regulations. Said Board shall make such examination from time to time as it may deem necessary, as to the qualifications and record as a soldier in the Confederate army or navy of any inmate, and discharge at once any inmate who procured admission to the home by fraud or misrepresentation. Said Board shall, every three months, cause to be examined by a board of physicians consisting of the home physician and two others not connected with the home, any inmate who may be designated by the superintendent and the home physician or by any member of the Board, as to the physical condition of such inmate and if it be shown from said examination and report of said examining board of physicians that any inmate so examined has sufficiently recovered from his disabilities to be able to earn a living, such inmate shall be given an honorable discharge from the home, with transportation to the place from which he entered the home; provided, however, that such inmate be given twenty days notice of his dismissal, and that he be subject to all rules and regulations governing the home during said twenty days, or such part of that time as he may remain in the home after said notice of dismissal be given. The two physicians assisting the home physician in such examination shall be selected by the Board, and shall be paid for such service two dollars and fifty cents each for each examination so made. Said Board shall also have charge of all the property received from the John B. Hood Camp Confederate Veterans, or from any other source for the maintenance of said home. [Acts 1891, p. 14; 1895, p. 42.]

Art. 3214. [206] **Superintendent.**—The Board shall appoint a superintendent who shall be an ex-Confederate soldier or the son of an ex-Confederate soldier, whose duties of office shall be the supervision of the affairs of said home, keeping the accounts of same, and its general management, under the direction of the Board. He shall be under the control of said Board. He shall keep in a book prepared for that purpose, the name and age of each inmate, date of admission to the home, the company and regiment or other command or capacity in which the military service was performed, and the State from which he en-

tered the service, and such other data concerning the history of the inmates as the Board may prescribe. [Acts 1895, p. 42; 1921, p. 154.]

Art. 3215. [207] **Secretary to the superintendent.**—The superintendent of said home shall be authorized to employ one secretary who shall keep the books of the institution and discharge such other duties as may be required of him by the superintendent. He shall be furnished board and lodging similar to other employes of the home. [Acts 1903, p. 54.]

Art. 3216. [208] **Application for admission.**—All applications for admission to said home must show on the oath of the applicant:

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

Art. 3217. **Wife of inmate.**—Any woman who is the wife of a Confederate soldier and who is an inmate of the Confederate Woman's Home, and whose husband is an inmate of the Confederate Home, and who became the wife of such soldier prior to his admission into the Confederate Home, may on her request be transferred from the Confederate Woman's Home to the Confederate Home and may remain as an inmate of the Confederate Home with her husband as long as her husband remains an inmate of that institution, and while such inmate she shall be entitled to the same care, support, maintenance and privileges, and be subject to the same discipline, rules and regulations as other inmates of that institution; but the wife of any Confederate soldier so transferred to the Confederate Home shall be immediately transferred back to the Confederate Woman's Home on the death of her husband, or whenever for any reason her husband ceases to be an inmate of the Confederate Home or whenever in the judgment of the Board it will be to the interest

of the individual or of the institution to make such transfer. [Acts 1921, p. 95.]

CONFEDERATE WOMAN'S HOME.

| | | | |
|---------------------------------|--------------|----------------------|--------------|
| Home established..... | Article 3218 | Superintendent | Article 3220 |
| Duties and powers of board..... | 3219 | | |

Art. 3218. **Home established.**—There shall be established in or near the city of Austin, a home for the indigent wives and widows who are over sixty years of age, of disabled ex-Confederate soldiers and sailors who entered the Confederate service from Texas, or who came to the State prior to January 1, 1880, and whose disability is the proximate result of actual service in the Confederate army for at least three months, and also for women who aided the Confederacy. This institution shall be known as the Confederate Woman's Home. [Acts 1911, p. 50.]

Art. 3219. **Duties and powers of Board.**—The Board shall make suitable rules and regulations for the admission of women to the benefits of said home and for the internal government and management of said home. The Board shall also provide such attendants and nurses as may be deemed necessary in the management of the Home, and fix their compensation. The Board shall appoint a superintendent for the Confederate Woman's Home, with the approval of the Governor. [Id.]

Art. 3220. **Superintendent.**—Said superintendent must be the widow or daughter of a Confederate soldier, and shall reside in the Home and receive free board and lodging. She may hold office for a term of two years. [Id.]

DEAF, DUMB AND BLIND ASYLUM FOR COLORED YOUTHS.

| | | | |
|---------------------------------|--------------|----------------------|--------------|
| Powers and duties of board..... | Article 3221 | Superintendent | Article 3222 |
|---------------------------------|--------------|----------------------|--------------|

Art. 3221. [210] **Powers and duties of Board.**—The Board shall make all necessary rules and regulations for the government of the Deaf, Dumb and Blind Asylum for Colored Youths, to comport as nearly as may be practicable with the rules and regulations of the asylums for like purposes in this State. Said Board shall prescribe the duties of all subordinate officers or assistants in said asylum; shall appoint and may remove all such officers or assistants, determine their duties and their compensation. The admission of all applicants to said asylum, their treatment, instruction and continuance therein, all questions relating to their dismissal or removal, or voluntary departure from said asylum, or employment therein, or thereabout, shall be governed by the rules and regulations of the State asylums for white youths for the deaf and dumb and blind. [Acts 1887, p. 150.]

Art. 3222. [209] **Superintendent.**—The Board shall appoint a superintendent of said asylum. Said superintendent shall be a man of mature years and experienced and familiar with the duties required. [Id.]

ABILENE STATE HOSPITAL.

| | Article | | Article |
|------------------------------------|---------|--------------------------------------|---------|
| Support and management..... | 3223 | Application for public patients..... | 3228 |
| Who admitted..... | 3224 | Certificate of examination..... | 3229 |
| Preference in admission..... | 3225 | Duties of county judge..... | 3230 |
| Transfer of insane patients..... | 3226 | Transportation, etc..... | 3231 |
| Admission of private patients..... | 3227 | Public patients: expenses..... | 3232 |

Art. 3223. [232] **Support and management.**—The support and general management of the Abilene State Hospital shall be the same as is now provided for other branch asylums of this State. The Board and superintendent shall prepare and adopt by-laws, rules and regulations for the government of the hospital. [Acts 1899, p. 4; 1900, p. 16; 1901, p. 11; 1925, p. 408.]

Art. 3224. [213-218-219-220] **Who admitted.**—All persons afflicted with epilepsy who have been bona fide residents of this State for one year next preceding the filing of his application with the county judge as herein provided, shall be admitted into the Abilene State Hospital under the provisions of this subdivision, with the following exceptions:

1. Idiots and imbeciles who are afflicted with epilepsy.
2. Those who are infirm and bedridden or suffering from contagious or infectious disease.
3. By "idiot" and "imbecile" are meant children or persons who, by arrest of development before or soon after birth, have but little or no mind.

The classification of all patients admitted to the hospital shall be as follows:

1. Indigent public patients.
2. Non-indigent public patients.
3. Private patients.

Indigent public patients are those who possess no property of any kind, and have no one legally liable for their support and able to reimburse the State.

Non-indigent public patients are those who possess some property out of which the State may be reimbursed, or who have some one legally liable for their support and able to reimburse the State. [Acts 1903; Acts 1925, p. 408.]

Art. 3225. [228] **Preference in admission.**—When there is room in the hospital, the superintendent shall receive such patient, and when application is made for more patients than can be admitted, he shall give preference to indigent public patients over non-indigent public patients, and shall at all times give preference to both of the classes mentioned over private patients. [Id.]

Art. 3226. [214-15-16] **Transfer of insane patients.**—When any person is admitted to any insane asylum, and it shall be found that such person is an epileptic, such person shall at once be transferred to said hospital, and when so transferred shall have the same classification as that given him upon his admission to the insane asylum. The superintendents of the insane asylums shall transmit to the superintendent of the said hospital all transcripts of legal proceedings and histories of all

epileptics transferred which they may have. The expenses of the transportation of all patients and necessary attendants so transferred shall be paid out of the apportionment for the maintenance of the hospital. [Id.]

Art. 3227. [221] **Admission of private patients.**—Private patients may be admitted into said hospital upon application of parent, guardian or friend under such regulations as the Board and superintendent may prescribe, not in conflict with the provisions of this subdivision. Such patients shall be kept and maintained at the hospital at their own expense, or at the expense of their guardian, relatives or friends, and for the board and care of such patients, the superintendent may make a special contract at a rate of not less than five dollars per week; and at the time of the admission of any such patient into the hospital, his board must be paid in advance for six months and bond and security given for the prompt payment of all future expenses of such patient. All moneys so collected, shall be paid directly into the State Treasury and placed in the general fund. [Id.]

Art. 3228. [222] **Application for public patients.**—The parent, guardian, or friend of any epileptic not seeking admission as a private patient may make application in writing and under oath to the county judge of the county wherein such epileptic resides, for the admission of the epileptic into said hospital, which application shall show:

1. The name of the epileptic.
2. Sex.
3. Age and nativity.
4. Whether possessed of any property, and if so, what, and the estimated value thereof.
5. Whether the epileptic has any one legally liable for his support, if so, whom, what property possessed by such person, and the estimated value thereof.
6. Residence of the epileptic for the year next preceding the date of application.
7. Occupation, trade or employment.
8. Parent or parents, if living, or guardian, if any.
9. Name of husband or wife, if any.
10. Children, if any, number, age and sex.
11. Relatives similarly affected, insane, inebriate, consumptive or criminal. [Id.]

Art. 3229. [223] **Certificate of examination.**—Said application shall be accompanied with a certificate of a reputable practicing physician, stating that he has carefully examined the person for whose admission application is made and that such person is afflicted with epilepsy, and which certificate shall also show:

1. The age of the epileptic at first attack.
2. The date of last attack.
3. Physical condition.
4. Accompanying bodily disorders. [Id.]

Art. 3230. [223-224-225-226-227-229] **Duties of county judge.**—The county judge shall certify that the physician making such certificate is a reputable physician actively engaged in the practice of his profession, and has complied with the laws of this State granting license to physicians to practice medicine. If such judge is not satisfied as to the showing made in said application and certificate, or either, he may subpoena witnesses and examine them under oath touching such matters. If it be made to appear to the county judge that such epileptic is entitled to admission into the hospital under the provisions of this subdivision, he shall forward an application to the superintendent of the hospital for admission of such epileptic as an indigent or non-indigent patient, as the judge shall determine upon careful investigation, which application shall be accompanied with full copy of the proceedings had in such case, and the original shall be filed in the office of the county clerk. The county judge shall see that each patient admitted to the hospital is supplied with three full suits of substantial clothing. For all services needed in connection with such matters in each case, the county judge shall be paid three dollars by the county. [Id.]

Art. 3231. [230-231] **Transportation, etc.**—The expense of such clothing and the transportation of indigent public patients and necessary escort, and compensation to such escort, shall be paid by the county from which the patient shall be sent. Non-indigent public patients shall pay for such clothing, transportation and escort. In no case shall such escort be entitled to charge or receive more than two dollars per day and expenses actually necessary in going to and returning from the colony. [Id.]

Art. 3232. [219-220] **Expense of public patients.**—Indigent public patients shall be supported entirely at the expense of the State. Non-indigent public patients shall be kept and maintained at the expense of the State in the first instance; but in such cases the State shall have the right to be reimbursed for the support of such non-indigent patients, and the claim of the State for such support shall constitute a valid indebtedness against any such patient, or in case he has a guardian, against his estate, or against the person or persons who may be legally liable for his support and financially able to contribute thereto, and such claim may be collected by suit or other proceedings in the name of this State by the county or district attorney of the county from which said patient is sent, against such patient, his guardian, or the person or persons liable for his support as the case may be; such suit or proceeding to be instituted upon the written request of the superintendent of the hospital, accompanied by his certificate as to the amount due the State, which shall in no case exceed five dollars per week for board. In all such suits or proceedings the certificate of the superintendent shall be sufficient evidence of the amount due the State for the

support of such patient. Said attorney, upon such request being made, shall institute and conduct such suit or proceedings, and for which he shall be entitled to a commission of ten per cent of the amount collected. All moneys so collected, less such commission, shall be by the county attorney paid into the State Treasury and placed in the general funds. [Id.]

AUSTIN STATE SCHOOL.

| | Article | | Article |
|---------------------------------|---------|------------------------------------|---------|
| Definitions | 3233 | Release and parole of inmates..... | 3236 |
| Duties and powers of Board..... | 3234 | Escape and apprehension..... | 3237 |
| Accommodations for inmates..... | 3235 | Expenses of inmates..... | 3238 |

Art. 3233. Feeble minded persons defined.—A feeble minded child, as defined herein, is one of such feeble mental or moral powers as to be unable to profit by the ordinary methods of education as employed in the common schools. A feeble minded adult is one who is unable under ordinary circumstances to protect and support himself as a law abiding citizen because of lack of mental power. [Acts 1915, p. 143.]

Art. 3234. Duties and powers of board.—The Board shall employ a superintendent and fix his salary and his duties, and for cause deemed sufficient by the Board, may remove him. The superintendent shall be a man of education, with training and experience in the work of institutions of this kind; he shall have power to appoint and remove the subordinate officers and employes; he shall be responsible to the Board for the details of management of the colony, and shall only exercise the power conferred upon him by law with the approval and consent of the Board. The Board shall also determine the number and fix the salaries of other officers and employes connected with the colony. [Id.]

Art. 3235. Accommodation for inmates.—The Board shall provide accommodations for only such number of inmates from year to year as can be advantageously cared for with the appropriation granted for that year, giving preference first to girls and women of child bearing age, and to those of both sexes who are most likely to profit by the special education and training. [Id.]

Art. 3236. Release and parole of inmates.—All persons committed or admitted to said institution shall remain in its custody as permanent wards of this State until released by the management thereof. The superintendent and Board may in their discretion and subject to revocation at any time, parole any such person in the custody of parent or guardian for an indefinite period. Notice of all paroles of longer duration than thirty days shall be sent by the superintendent on the date of the parole to the committing court. [Acts 1923, p. 172.]

Art. 3237. Escape and apprehension.—Any person who may escape or be enticed or taken from the colony without being released, or who may be detained under parole after the expiration or termination of such parole, shall be apprehended and de-

tained by any peace officer, who shall report the same to the county judge of the county where such person is found, and also to the superintendent of the school, and upon the order of either, convey such person back to the colony, and no writ shall be necessary therefor. Notice of such escape or detention shall be immediately sent to the committing court by the superintendent. Any officer who may convey a patient back to such institution under the provisions of this article shall be paid for such service out of the funds of the institution in the same manner as provided for conveying lunatics to asylums. [Id.]

Art. 3238. Expenses of inmates.—In all cases in which the parent or guardian of a feeble minded person is financially able to pay the expenses of supporting and training such feeble minded person in the school, in whole or in part, he shall be required to do so. In all other cases there shall be no fees or charges. [Acts 1915, p. 143; Acts 1925, p. 407.]

STATE TUBERCULOSIS SANATORIUM.

| | Article | | Article |
|---------------------------------|---------|--------------------------------------|---------|
| Duties of board..... | 3239 | No preference in admission..... | 3246 |
| Who admitted..... | 3240 | Regulation of admission..... | 3247 |
| Classification of patients..... | 3241 | Clothing, etc., expenses..... | 3248 |
| Application for admission..... | 3242 | Private additions to sanitarium..... | 3249 |
| Certificate of examination..... | 3243 | Plan of buildings..... | 3250 |
| Duties of county judge..... | 3244 | Rules of admission..... | 3251 |
| Duties of Health Officer..... | 3245 | | |

Art. 3239. Duties of Board.—The State Board of Control shall prepare and adopt by-laws, rules and regulations for the government of the entire colonies, prescribing the duties of all officers and employes, and for enforcing the necessary discipline and restraint of all patients. The Board shall appoint for each of said colonies a regularly licensed physician. The Board shall supply each colony with the necessary cooks, waiters, yard men, nurses, etc., for the operation and maintenance of such colonies. Each physician so appointed shall be superintendent of the institution under his control and shall have power to remove at will, and without assigning any cause whatever, any person employed in any colony over which he has such authority. All such physicians shall hold their office for two years and shall be removed only for just cause to be determined by the Board. [Id.]

Art. 3240. Who admitted.—Persons afflicted with tuberculosis who shall have been citizens of this State and of the county from which he or she comes at the time of filing of their application with the county judge as hereinafter provided, shall be admitted to said institutions. A citizen of this State is defined to be any person who has actually resided therein with the bona fide intention of being a citizen thereof for a period of twelve months next preceding the date of such application. [Id.]

Art. 3241. Classification of patients.—Patients admitted to said institutions shall be of three classes, to-wit:

1. Indigent public patients.
2. Non-indigent public patients.
3. Private patients.

Indigent public patients are those who possess no property of any kind nor have any one legally responsible for their support, and who are unable to reimburse the State. This class shall be supported at the expense of the State.

Non-indigent public patients are those who possess some property out of which the State may be reimbursed, or who have some one legally liable for their support. This class shall be kept and maintained at the expense of the State, as in the first instance, but in such case the State shall have the right to be reimbursed for the support of such patients, and the claim of the State shall constitute a valid lien against any property of any such patient or in case he has a guardian, against any property of his which is in the possession of said guardian, or against the person or persons who may be legally liable for his support and financially able to contribute as herein provided; and such claim may be collected by suit or other proceedings in the name of the State of Texas by the county or district attorney of the county from which said patient is sent, against such patient or his guardian or the person or persons liable for his support; and the suit may be brought in the county from which such patient was sent. Such suit shall be instituted upon the written request of the superintendent of said colony accompanied by a certificate as to the amount due the State, which in no case shall exceed five dollars per week for the board of such patient, together with the necessary cost incident to his transportation to said colony. In all suits or proceedings, the certificate of the superintendent shall be sufficient evidence of the amount due the State for the support of such patient. It shall be the duty of said attorney upon such request being made to institute and conduct such proceedings and for which he shall be entitled to a commission of ten per cent of the amount collected. All moneys so collected less such commission shall be by the county attorney paid to the superintendent of said colony, who shall receive and receipt for the same and shall use the same for the maintenance and improvement of said property.

Private patients may be admitted into said colonies upon application of parent or guardian or friend, under such regulations as the Board may prescribe, not in conflict with this law. Such patients shall be kept and maintained at the colony at their own expense for the board and care of such patients. The Board may make special contracts for private patients at a rate not to exceed ten dollars per week, payable in advance. All moneys collected shall be paid to the superintendent of such institution, who shall account for the same and for its use in the maintenance and improvement of said colony at which the same is received. [Id.]

Art. 3242. Application for admission.—The parent, guardian or friend of any patient seeking admission may make application in writing and under oath to the county judge of the county wherein such patient resides, for admission of said patient into said State colony, which application shall show:

1. The name of the patient.
2. The sex.
3. Age and nativity.
4. Whether possessing any property; if so, what, and the estimated value thereof, and where located.
5. Whether the patient has any one legally liable for his support; if so, whom; what property possessed by such person; the estimated value thereof, and where located.
6. Residence of patient for two years next preceding the date of application.
7. Occupation, trade or employment.
8. Parent or parents, if living, or guardian, if any.
9. Name of husband or wife, if any.
10. Children, if any; number, age and sex.
11. Relatives similarly affected, insane, invalid, consumptive, and such other information as may be required by the Board.

Art. 3243. Certificate of examination.—Said application shall be accompanied by the certificate of a reputable practicing physician, or in the case of indigent patients, by a certificate from the county physician, stating that he has thoroughly examined the person for whose admission application has been made, and that such person is suffering from tuberculosis, and the duration of said disease if known, and the accompanying bodily disorders. No person afflicted with any contagious, infectious or transmissible disease, other than tuberculosis, shall be admitted. It shall be the duty of the county judge to certify that the physician making the certificate is a reputable physician actively engaged in the practice of his profession, and has complied with the law of this State governing licenses to practice medicine. [Id.]

Art. 3244. Duties of county judge.—If the county judge is not satisfied as to the showing made in said application and certificate or either, he may subpoena witnesses and examine them under oath touching such matters, and if it be made to appear to the judge that such person is entitled to admission into the colonies under the provisions of this law, he shall forward an application for admission, together with the application hereinbefore described, to the State Health Officer. If such county judge shall find that the person for whom application is made is in fact not indigent, then he shall make application for such person as a non-indigent patient. [Id.]

Art. 3245. Duties of State Health Officer.—The State Health Officer shall receive such applications, alphabetically index and file the same in his office where they shall become a permanent

record. If the county judge shall determine not to make such application for any person, then such person may make an application direct to the State Health Officer, and if in the judgment and opinion of the State Health Officer such patient is entitled to admission into such colony, then he shall order him to be admitted upon his own motion, which order must be by him written, signed and filed with the superintendent of the institution into which such patient is admitted. [Id.]

Art. 3246. **No preference in admission.**—No patient in any State colony shall be discriminated against by virtue of the fact that he is an indigent, non-indigent or private patient, but they shall be treated alike, given equal facilities, equal attention and equal treatment. No patient in any such institution shall be permitted to give any officer, servant, agent or employe in any such institution any tip, pay or reward of any kind, and if such patient does so, it shall be a cause for his expulsion from said colony, and the discharge of any servant accepting the same; and the Board shall see that this provision is rigidly enforced. [Id.]

Art. 3247. **Regulation of admission.**—The State Health Officer shall keep on file an alphabetical index of applications of all patients, and patients shall be admitted according to their file number; reserving at all times not less than one-half of the accommodations afforded at each colony for indigent consumptives; one-fourth of the accommodations for non-indigent patients, and one-fourth for the accommodations for the private or pay patients; subject, however, to the control and discretion of the Board. If any applicant who complies with the provisions of this law applies for admission and said sanatoriums are full of patients, then such applicant shall have the right to furnish his own tent, bedding, and enter said sanatorium by paying the regular charges for board and treatment and complying in every respect with the law, rules and regulations governing said sanatorium. [Id.]

Art. 3248. **Clothing, etc., expenses.**—The county judge shall see that each patient admitted to the colony is supplied with three full suits of underwear and one neat top coat, all being such as may be prescribed by the State Health Officer; and the expenses of the clothing and transportation of public indigent patients shall be paid by the county from which the patient is sent. If any patient is admitted directly upon the certificate of the State Health Officer as an indigent patient, then the State Health officer shall supply such patient with such clothing and his certificate thereof shall be full evidence that the same was so supplied and of the value thereof, and the county from which said patient came shall be chargeable with said clothes and shall pay the same upon presentation of said certificate. Non-indigent public patients shall pay for their clothing and transportation themselves. [Id.]

Art. 3249. **Private additions to sanatorium.**—The Board is

hereby authorized, on request of any charitable fraternity or society in this State, to permit the erection, furnishing and maintenance by such fraternities or societies upon the grounds of said sanatorium, of dormitories and such other accommodations as may be desired by any such fraternity or society for the proper treatment and care of any member or members of such fraternity or society or for any members of their families, or for the widows and children of deceased members of such fraternity or society, who may be afflicted with tuberculosis, and which accommodations so erected shall be reserved for the preferential use of such members and members of their families and of the widows and children of deceased members of the fraternity or society so erecting, furnishing and maintaining such accommodations hereunder. The State shall be at no expense whatever in the erection, furnishing or maintenance of such accommodations, and the fraternity or society entering a patient or patients shall provide such pro rata part for the maintenance of such patient or patients as may be found just and equitable pending the next succeeding appropriation to be made by the Legislature for the maintenance of said Tuberculosis Sanatorium. "Children" under this article shall mean any minor child of a deceased member of such fraternity or society. Such accommodations or any part of them not being used or required by those entitled to such preference, may be used and occupied by other patients in said sanatorium at the discretion of the superintendent thereof and without any charge therefor against the State. [Acts 1917, p. 408.]

Art. 3250. Plan of buildings.—All matters pertaining to the location, construction, style or character of buildings, term of their existence and all other questions arising in connection with the granting of the permission to erect and maintain the accommodations contemplated in the preceding article, shall be arranged and agreed upon in writing by and between the Board on the part of the State, and the properly authorized officers, board or committee of each respective charitable fraternity or society, and such written agreement in each case shall be recorded at length upon the minutes of the Board and be duly reported to the State Health Officer in the next succeeding report of the superintendents of the sanatorium, accompanied with all documents pertaining to the matter, or full copies thereof. [Id.]

Art. 3251. Rules of admission.—The members of such charitable fraternities or societies, members of their families and the widows and children of deceased members thereof, shall be classified as indigent public patients, non-indigent public patients or private patients, according to the facts, the same as other patients of said Sanatorium are classified, and shall be admitted, maintained, cared for and treated in said sanatorium upon the same terms and conditions and under the same regulations as all other patients therein, save and except that they shall at all

times have the preference and right to occupy the accommodations erected and maintained hereunder by their several and respective fraternities or societies, when not already filled with others having the same preferential right. [Id.]

AMERICAN LEGION MEMORIAL SANATORIUM.

| | | | |
|-----------------------------|--------------|----------------------------|--------------|
| Management and control..... | Article 3252 | Admission of patients..... | Article 3254 |
| Advisory board..... | 3253 | | |

Art. 3252. Management and control.—The State tuberculosis sanatorium known as the American Legion Memorial Sanatorium of Texas, shall be operated, controlled and managed by the State Board of Control, and said Board shall appoint a superintendent for said sanatorium who shall reside at the sanatorium and who shall have authority to appoint and employ necessary employes, assistants and servants. The salary of each superintendent shall be five thousand dollars per annum and in addition thereto he shall be entitled to living quarters, heat, light, fuel and water. Said superintendent shall be required to give bond in the sum of five thousand dollars, conditioned upon the faithful performance of his duties and shall take the official oath.

The Board is hereby authorized to enter into negotiations and make any agreement with the accredited representatives of the United States Government, the United States Public Health Service or other Federal agent or agency for the purpose of leasing, and said Board is empowered to lease to the United States Government any or all of said Sanatorium for disabled tubercular ex-service men and women, for such time and on such terms as in the judgment of the Board may seem proper. In the event that no such lease is entered into, then said Sanatorium shall be operated, controlled and managed as herein provided. [Acts 1921, p. 37; 1921, 2nd C. S. p. 222.]

Art. 3253. Advisory Board.—The Governor shall appoint three competent licensed physicians, citizens of this State, experienced in the treatment of tuberculosis, who with the State Health Officer as chairman shall constitute the advisory board to advise with the superintendent in the management of the sanatorium and in the treatment and care of the patients. The members of said advisory board shall serve without compensation, but shall be entitled to be reimbursed for necessary traveling expenses, including hotel bills incurred in the actual performance of their duties. [Acts 1921, p. 37.]

Art. 3254. Admission of patients.—The superintendent and advisory board are hereby authorized to promulgate rules and regulations for the operation and maintenance of the Sanatorium, and shall prescribe rules for the admission of patients; provided in all cases priority and preferential rights of admission shall always be given to honorably discharged veterans of the World War. After such preference and priority shall be given, if there should be further available beds, then any bona

fide citizen of this State who has been such for at least six months next preceding the date of his application, having tuberculosis, shall be entitled to be admitted upon application to the superintendent; provided that if such person shall make affidavit, which affidavit shall never be required of any honorably discharged veteran of the World War, that he or she is unable to pay for admission and treatment, such person shall be admitted and treated free of charge. Such affidavit shall be prima facie evidence of the fact that such person is unable to pay. In the event the applicant shall not make an affidavit and is able to pay not exceeding five dollars per week, a charge of not exceeding five dollars per week shall be made for treatment of each such person. If the applicant is able to pay more than five dollars per week, he shall be required to pay not exceeding ten dollars per week.

The superintendent shall enter into contract or agreement with the United States Government or any authorized agent, agencies or representatives thereof to accept into said Sanatorium and treat any person otherwise eligible having tuberculosis, whereby the Sanatorium shall be compensated for treatment or service rendered such person, in such sum as may be agreed upon by both parties and as authorized and provided for by the laws of the United States; and the rules and regulations as are now or may be hereafter promulgated by the United States Public Health Service or other Federal agent or agency.

STATE HOME FOR DEPENDENT AND NEGLECTED CHILDREN.

| | Article | | Article |
|----------------------------------|---------|-------------------------|---------|
| Superintendent and officers..... | 3255 | Unruly child..... | 3258 |
| Rules and regulations..... | 3256 | Dismissal of child..... | 3259 |
| Commitment of child..... | 3257 | | |

Art. 3255. **Superintendent and officers.**—The State Board of Control shall employ as superintendent of the State Home for Dependent and Neglected Children a person of previous experience in a similar institution. Said board shall fix the salary of the superintendent and all employes, and shall have authority to remove the superintendent for cause, and its decision in such matters shall be final. Said Board shall also appoint a physician for said Home. [Acts 1919, p. 301.]

Art. 3256. **Rules and regulations.**—The board shall make necessary rules and regulations for the proper government of said Home, and shall see that the time of the children is properly distributed between the school of letters and the industrial and domestic pursuits according to what is deemed for their best interests and the facilities at hand. The superintendent shall from time to time make such recommendation to said board as may seem to the best interests of all the children committed to said home. It shall be the duty of said controlling board to give diplomas or certificates of proficiency for grades made in any school that may be established by the board. [Id.]

Art. 3257. Commitment of child.—Whenever any child under sixteen years of age is brought before any juvenile court upon petition of any person within this State, charged with being a dependent or neglected child, the court may, if in the opinion of the judge the Home for Dependent and Neglected children is the proper place for said child, commit such child to said Home during its minority. No child who is feebleminded, epileptic, insane or afflicted with a venereal, tubercular or other communicable disease shall be assigned to this institution until cured of such disease. No child shall be admitted to the Home until he has been examined by the physician of the Home and such physician has issued a certificate showing the exact condition in reference to said qualifications. The court committing any child to said Home shall prepare a transcript of all proceedings and attach thereto a certificate of the county health officer of such county to said transcript. If it be a girl or baby or infant committed to said Home, the judge of the court shall designate some reputable woman to convey said girl, baby or infant to said institution. The cost of conveying any child to said institution shall be paid out of the general fund of the county from which it may be committed but no compensation shall be allowed beyond actual and necessary expenses of the party conveying and the child conveyed. [Id.]

Art. 3258. Unruly child excluded.—All juvenile courts shall give preference to those children of tender age, and said courts shall not commit to said Home children under the age of sixteen years who are known to be habitual violators of the laws of this State or who have been committed to any other institution of this State or to the State School for the Training of Juveniles. The Board is authorized to refuse admittance to such juveniles, or if, after they are committed to said Home their conduct should be of such nature and character as to contaminate the interests of other children in said Home, the Board upon proper application, shall have the authority to transfer, and it shall be the duty of the superintendent of the State School for the Training of Juveniles to accept said child in said institution. [Id.]

Art. 3259. Dismissal of child.—No child shall be dismissed until some suitable home has been found for it, or it has become able to be self supporting and only then upon the written recommendation of the superintendent to the Board, or when any ward committed to said institution has become married with the consent of the Board and superintendent. Children may be placed for adoption only in homes where proper support and training can and will be given. Any child above the age of ten years and not adopted, but who goes out from this Home either under the custody of some adult or as self-supporting, shall continue under the supervision and guidance of the Board which shall require that the person or persons under whose care the child is placed or the child himself shall write bi-weekly letters to the controlling board for the first six months and monthly thereafter.

The board, the superintendent, or some other employe of said Home may visit the place where said child is adopted, living or employed, and it shall be the duty of the person having said child in adoption or custody to answer all questions asked by said visiting committee concerning the conduct, employment, treatment or conditions of said child. If in the judgment of the Board it should be to the best interests of said child that it be returned to said Home, the Board is hereby empowered to have it returned. [Id.]

STATE HOSPITAL FOR CRIPPLED AND DEFORMED CHILDREN.

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|-----------------------------|-----------------|----------------------------|-----------------|
| Hospital established..... | Article 3260 | Rules and regulations..... | Article 3262 |
| Management and control..... | 3261 | Donations..... | 3263 |

Art. 3260. **Hospital established.**—There is hereby established a State Hospital for Crippled and Deformed Children. The gift to the State of Texas by the Texas Public Health Association of the Walter Colquitt Memorial Children's Hospital, also known as the children's ward of the John Sealy Hospital on the premises of the University of Texas at Galveston, Texas, is hereby accepted by the State, and this hospital shall be the State Hospital for Crippled and Deformed Children. The term "crippled and deformed children" as used herein shall include children suffering from disease from which they may become crippled or deformed. [Acts 1915, p. 32.]

Art. 3261. **Management and Control.**—Said hospital shall be under the control and management of the Board of Regents of the University of Texas, which is hereby authorized and empowered to lease said hospital building to the city of Galveston in the same manner as the John Sealy Hospital buildings, and to require that provision be made in such hospital for the care and treatment of crippled and deformed children, who may be benefited or cured by treatment in said hospital, and for such other cases or patients as may be required in the interest of scientific study by the faculty and students of the Medical Department of the University of Texas.

Said Board of Regents may in its discretion receive in said hospital any sick or afflicted child who is not crippled or deformed, and who is not suffering from any communicable disease. [Id.]

Art. 3262. **Rules and regulations.**—The Board of Regents shall adopt such rules and regulations as it may deem necessary and proper for the admission, discharge, care and treatment of such children. It may require their parents or guardians to pay all or a part of the expenses of the care and treatment of patients when able to do so, otherwise it may require such payment of their home counties or cities. [Id.]

Art. 3263. **Donations.**—Said Board of Regents is authorized to accept donations for the support of crippled or deformed patients, and for the improvement of the hospital and building. [Id.]

TITLE 52.

EMINENT DOMAIN.

| | | | |
|----------------------------------|--------------|-----------------------------------|--------------|
| Procedure | Article 3264 | Damages paid first | Article 3268 |
| Eminent domain by counties | 3264a | Practice in case specified | 3269 |
| Rule of damages | 3265 | Property, how construed | 3270 |
| General provisions | 3266 | Property vested by judgment | 3271 |
| How costs awarded | 3267 | | |

Art. 3264. [6506] [6528] Procedure.—The exercise of the right of eminent domain shall in all cases be governed by the following rules:

1. When real estate is desired for public use by the State or by a county, or a political subdivision of a county, or by a city or town, or by the United States Government, or by a corporation having the right of eminent domain, the party desiring to condemn the property after having failed to agree with the owner of the land on the amount of damages shall file a statement in writing with the county judge of the county in which the land or a part thereof is situated. It shall describe the land sought to be condemned, state the purpose for which it is intended to be used, the name of the owner if known, and that the plaintiff and the owner have been unable to agree upon the value of the land or the damages. Where the land lies in two or more counties, in one of which the owner resides, the statement shall be filed in the county of the owner's residence.

2. When such statement is filed with the county judge, he shall, either in term time or vacation, appoint three disinterested freeholders of said county as special commissioners to assess said damages, giving preference to those that may be agreed upon between the parties.

3. The commissioners shall be sworn to assess said damages fairly and impartially and in accordance with law.

4. The commissioners shall promptly set a time and place for hearing the parties, and the day appointed shall be the earliest practicable day, and the place selected shall be as near as practicable to the property in controversy or at the county seat of the county in which the property is situated.

5. Notice in writing shall be issued by the commissioners to each of the parties interested, notifying them of the time and place selected for the hearing.

6. The notices shall be served upon the parties at least five days before the day set for the hearing, exclusive of the day of the service, and may be served by any person competent to testify, by delivering a copy of such notice to the party, his agent or attorney.

7. When the property sought belongs to the estate of a deceased person or a minor, or other person laboring under disability, and the estate has a legal representative, the notice shall be served upon such representative.

8. When the property belongs to a non-resident of the State, or if the owner is unknown, or if the residence of the owner is unknown, or the owner secretes himself so that the process of law cannot be served upon him, such notice may be served by publication in the manner provided for such service of citation by publication in other civil cases in the district or county court. When the owner is a non-resident of the State the notice may be served as provided in paragraph six hereof.

9. The person serving notice shall return the original to the commissioners on or before the day set for the hearing, with his return in writing thereon, stating how and when it was served.

10. When service of notice has been perfected, the commissioners shall at the time and place appointed or at any other time and place to which the hearing may be adjourned, proceed to hear the parties.

11. Commissioners shall have the power to compel the attendance of witnesses and production of testimony, administer oaths, and punish for contempt as fully and in the same manner as is provided by law for judges of the county courts.

Art. 3264a. **Eminent domain by counties.**—The right of Eminent Domain is hereby conferred upon counties of the State of Texas for the purpose of condemning and acquiring land, right of way or easement in land, private or public, except property used for cemetery purposes, where said land, right of way or easement is necessary in the construction of jails, courthouses, hospitals, delinquent and dependent schools, poor farms, libraries or for other public purposes, where such purpose is now or may hereafter be authorized by the Constitution or Statutes of this State.

All such condemnation proceedings shall be instituted under the direction of the commissioners' court, and in the name of the county, and the assessing of damages shall be in conformity to the Statutes of the State of Texas for condemning and acquiring right of way by railroads. That no appeal from the finding and assessment of damages by the commissioners appointed for that purpose shall have the effect of causing the suspension of work by the county in connection with which the land, right of way, easement, etc., is sought to be acquired. In case of appeal, counties shall not be required to give bond, nor shall they be required to give bond for costs. [Acts 1925, p. 300.]

Art. 3265. [6518-28] **Rule of damages.**—

1. The commissioners shall hear evidence as to the value of the property sought to be condemned and as to the damages which will be sustained by the owner, if any, by reason of such condemnation and as to the benefits that will result to the remainder of such property belonging to such owner, if any, by reason of the condemnation of the property, and its employment for the purpose for which it is to be condemned, and according

to this rule shall assess the actual damages that will accrue to the owner by such condemnation.

2. When the whole of a tract or parcel of a person's real estate is condemned, the damages to which he shall be entitled shall be the market value of the property in the market where it is located at the time of the hearing.

3. When only a portion of a tract or parcel of a person's real estate is condemned, the commissioners shall estimate the injuries sustained and the benefits received thereby by the owner; whether the remaining portion is increased or diminished in value by reason of such condemnation, and the extent of such increase or diminution, and shall assess the damages accordingly.

4. In estimating either the injuries or benefits, as provided in the preceding article, such injuries or benefits which the owner sustains or receives in common with the community generally and which are not peculiar to him and connected with his ownership, use and enjoyment, of the particular parcel of land, shall not be considered by the commissioners in making their estimate.

5. When the commissioners have assessed the damages, they shall reduce their decision to writing, stating therein the amount of damages due the owner, if any be found to be due, and shall date and sign such decision and file it together with all other papers connected with the case promptly with the county judge.

Art. 3266. [6507-28] General provisions.—

1. When the county judge is disqualified to act in the case, and the parties fail to agree upon a special judge, he shall certify such disqualification upon the petition or statement filed with him, and file it with the county clerk, who shall make a certified copy thereof and of the endorsement thereon and forward the same to the Governor, who shall appoint some person learned in the law to act as special judge, and such special judge when appointed and qualified, shall proceed with the case to its final conclusion, or the parties may agree upon a special judge.

2. The county judge may appoint other commissioners when one or more of those appointed shall fail to serve.

3. Commissioners shall receive for their services three dollars for each day they may be engaged in the performance of their duties, and may withhold their decision until their fees are paid.

4. The party seeking to condemn the property shall pay the expense of serving notice upon the owner, but may recover from the owner such expenses when it is decided that the owner shall pay the costs.

5. The commissioners may adjudge the costs against either party, and shall make a statement in writing of all the costs which have accrued and state therein the party against whom such costs have been adjudged, and shall sign such statement and deliver it with the other papers.

6. If either party be dissatisfied with the decision, such party

may within ten days after the same has been filed with the county judge file his objection thereto in writing, setting forth the grounds of his objection, and thereupon the adverse party shall be cited and the cause shall be tried and determined as in other civil causes in the county court.

7. If no objections to the decision are filed within ten days, the county judge, shall cause said decision to be recorded in the minutes of his court, and shall make the same the judgment of the court and issue the necessary process to enforce the same.

Art. 3267. [6529] [4470] [4204] **How costs awarded.**—The costs of the proceedings before the commissioners and in the court shall be determined as follows, to-wit: If the commissioners shall award greater damages than the plaintiff offered to pay before the proceedings commenced, or if objections are filed to the decision in the county court under the provisions of this title, and the judgment of the court is for a greater sum than the amount awarded by the commissioners, then the plaintiff shall pay all costs; but if the amount awarded by the commissioners as damages or the judgment of the county court shall be for the same or less amount of damages than the amount offered before proceedings were commenced, then the costs shall be paid by the owner of the property.

Art. 3268. [6530] [4471] [4205] **Damages paid first.**—If the plaintiff in the condemnation proceedings should desire to enter upon and take possession of the property sought to be condemned, pending litigation, it may do so at any time after the award of the commissioners, upon the following conditions, to-wit:

1. It shall pay to the defendant the amount of damages awarded or adjudged against it by the commissioners, or deposit the same in money in court, subject to the order of the defendant, and also pay the costs awarded against it.

2. In addition thereto, it shall deposit in said court a further sum of money equal to the amount of the damages awarded by the commissioners, and which shall be held, together with the award itself, should it be deposited in court instead of being paid, exclusively to secure all damages that may be awarded or adjudged against the plaintiff; and it shall also execute a bond with two or more good and solvent sureties, to be approved by the judge of the court in which such condemnation proceedings are pending, conditioned for the payment of any further costs that may be adjudged against it, either in the court below or upon appeal.

3. Should it be determined on final decision of the case that the right to condemn the property in question does not exist, the plaintiff shall surrender possession thereof, if it has taken possession pending litigation, and the court shall so adjudge and order a writ of possession for the property in favor of the defendant, and the court may also inquire what damages, if any,

have been suffered by the defendant by reason of the temporary possession of the plaintiff, and order the same paid out of the award or other money deposited; provided, that in any case where the award paid the defendant or appropriated by him exceeds the value of the property as determined by the final judgment, the court shall adjudge the excess to be returned to the plaintiff.

If the cause should be appealed from the decision of the county court, the appeal shall be governed by the law governing appeals in other cases; except the judgment of the county court shall not be suspended thereby. [Const. Art. 1, Sec. 17; Acts 1899, p. 105.]

Art. 3269. [6531] [4472] **Practice in case specified.**—When those having the right of eminent domain are sued for property or for damages to property occupied by it for the purpose for which it has the right to exercise such power, the court in which such suit is pending may determine all matters in dispute between the parties, including the condemnation of property, upon petition or cross-bill asking such remedy by defendant, but the plea for condemnation shall be admission of the plaintiff's title to such property. [Acts 1899, p. 18.]

Art. 3270. [6532] [4473] [4206] **Property, how construed.**—Except where otherwise expressly provided by law, the right secured or to be secured to any corporation or other plaintiff in this State, in the manner provided by this law, shall not be so construed as to include the fee simple estate in lands, either public or private, nor shall the same be lost by the forfeiture or expiration of the charter, but shall remain subject to an extension of the charter or the grant of a new charter without a new condemnation. [Acts 1861, p. 12.]

Art. 3271. [6534] [4475] [4208] **Property vested by judgment.**—Whenever acquired as hereinbefore provided, the judgment of the court shall vest such right in the company acquiring the same.

TITLE 53.

ESCHEAT.

| | Article | | Article |
|-------------------------------------|---------|-----------------------------------|---------|
| When estates shall escheat..... | 3272 | Execution of writ..... | 3281 |
| Petition for escheat..... | 3273 | Writ of seizure..... | 3282 |
| Citation..... | 3274 | Claimant not served may sue..... | 3283 |
| Citation by publication..... | 3275 | Appeal or writ of error..... | 3284 |
| Claimants may appear and plead..... | 3276 | Comptroller to keep accounts..... | 3285 |
| If no person appears..... | 3277 | Heir may sue..... | 3286 |
| Issue and trial..... | 3278 | Order in favor of claimant..... | 3287 |
| Judgment for State..... | 3279 | Review of probate decree..... | 3288 |
| Costs against State..... | 3280 | Suit for assets..... | 3289 |

Art. 3272. [3186] [1821] [1770] **When estates shall escheat.**—If any person die seized of any real estate or possessed of any personal estate, without any devise thereof, and having no heirs, or where the owner of any real or personal estate shall be absent for the term of seven years, and is not known to exist, leaving no heirs, or devisee of his estate, such estate shall escheat to and vest in the State. Where no will is recorded or probated in the county where such property is situated within seven years after the death of the owner it shall be prima facie evidence that there was no will, and where no lawful claim is asserted to, or lawful acts of ownership exercised in, such property for the period of seven years, and this has been proved to the satisfaction of the court, it shall be prima facie evidence of the death of the owner without heirs. Any one paying taxes to the State on such property, either personally or through an agent, shall be held to be exercising lawful acts of ownership in such property within the meaning of this title, and shall not be concluded by any judgment, unless he be made a party by personal service of citation, to such escheat proceedings, if a resident of this State, and his address can be secured by reasonable diligence, but, if he be a non-resident of the State or can not be found, the personal service of citation shall be made upon any agent of such claimant, if such agent, by the use of reasonable diligence, can be found; such diligence to include an investigation of the records of the office and inquiry of the tax collector and tax assessor of the county in which the property sought to be escheated is situated. [Acts 1885, p. 35. G. L. Vol. 9, p. 655; Acts 1907, p. 111.]

Art. 3273. [3187] [1822] [1771] **Petition for escheat.**—When the district or county attorney shall be informed, or have reason to believe, that any estate, real or personal, is in the condition specified in the preceding article, he shall file a sworn petition which shall set forth a description of the estate, the name of the person last lawfully seized or possessed of same, the name of the tenants or persons in actual possession, if any, and the names of the persons claiming the estate, if any such are known to claim or whose claim may be discovered by the exercise of reasonable diligence, and the facts or circumstances in consequence of which such estate is claimed to have escheated and

the diligence exercised to discover the claimants of same, praying that such property be escheated and for a writ of possession therefor in behalf of the State. [Id.]

Art. 3274. [3188] [1823] [1772] **Citation.**—The district clerk shall issue citation as in other civil causes for each defendant alleged in the petition to hold possession of or claim such estate and for each other person required by this title to be cited. [Id.]

Art. 3275. [3189] [1824] [1773] **Citation by publication.**—The clerk shall also issue a citation, setting forth briefly the contents of the petition, for all persons interested in the estate to appear and answer at the next term of court, which citation shall be published as required in other civil suits. [Acts 1885, p. 35; G. L. Vol. 9, p. 655.]

Art. 3276. [3190] [1825] [1774] **Claimants may appear and plead.**—All persons named in such petitions as tenants or persons in actual possession or claimants of the estate, and any other person claiming an interest in such estate, may appear and plead to such proceedings, and may traverse the facts stated in the petition. [Acts 1848, p. 211; G. L. Vol. 3, p. 211.]

Art. 3277. [3191] [1826] [1775] **If no person appears.**—Judgment shall be rendered by default in behalf of the State if no person after due notice shall plead within the time fixed by law. [Id.]

Art. 3278. [3192] [1827] [1776] **Issue and trial.**—If any person appears and denies the title set up by the State, or traverses any material fact in the petition, issue shall be made up and tried as other issues of fact. A survey may be ordered, as in other cases where the titles or boundaries of land are drawn in question. [Id.]

Art. 3279. [3193-95] **Judgment for State.**—If it appears upon the facts found that the property is subject to escheat, judgment shall be rendered that the State recover the same and at the discretion of the court, recover the costs against the defendant. If such judgment is for real estate, the court shall fix the minimum price at which the same shall be sold, and a writ of possession shall be awarded as in other civil suits, but shall not issue until after the expiration of two years from the date of the final judgment. If such judgment be for personal property, a writ of possession shall issue as in other cases of judgment for the recovery of personal property. Such writ of possession shall contain such description of the property as shall identify the same. [Id.; Acts 1907, p. 112.]

Art. 3280. [3194] [1829] [1778] **Costs against State.**—If it appears that the State is not entitled to such estate, the costs of such proceedings shall be taxed against the State, and certified by the clerk. The Comptroller shall, on such certificate being filed in his office, issue a warrant therefor on the treasury. [Acts 1848, p. 211; G. L. Vol. 3, p. 211.]

Art. 3281. **Execution of writ.**—Upon receiving the writ of possession for land provided in this title, the sheriff shall seize and advertise the same as is required for selling real estate under execution. If the price bid be less than the price fixed by the judge before whom the cause was tried, which minimum valuation shall be distinctly stated in the advertisement, there shall be no sale and the writ shall be returned to the court showing the same, and thereafter said real estate may be sold by the Attorney General in the same manner that lands bid in are sold. The proceeds of such sale, less the costs incurred in such suit including his commission, shall be paid by the sheriff into the State Treasury.

Art. 3282. [3197] [1831] [1780] **Writ of seizure.**—If the property recovered be personal property, a writ shall issue to the sheriff commanding him to seize such property and he shall dispose of the same by public auction in the manner provided by law for the sale of personal property under execution, and pay the proceeds of such sale less the costs of the court, into the State Treasury. [Acts 1885, p. 35. G. L. Vol. 9, p. 655.]

Art. 3283. [3196] [1830] [1779] **Claimant not served may sue.**—When title to real property, or any part thereof, is adjudged to the State, it shall be subject to divestiture at the suit of any claimant not personally served with citation in such escheat proceedings, who shall institute suit therefor against the State within two years after such judgment has become final, who shall, upon trial of such issue, be adjudged the owner of the property or any part thereof, for the recovery of which the suit is brought. [Acts 1907, p. 112.]

Art. 3284. [3198] [1832] [1781] **Appeal or writ of error.**—Any party who has appeared in any such proceedings, and also the district or county attorney on behalf of the State, shall have the right to prosecute an appeal or writ of error upon such judgment. [Acts 1848, p. 212. G. L. Vol. 3, p. 212.]

Art. 3285. [3199] [1833] [1782] **Comptroller to keep accounts.**—The Comptroller shall keep an account of money paid into the treasury, and of lands vested in the State under any provision of this title. [Id.]

Art. 3286. [3200] [1834] [1783] **Heir may sue.**—If any person appears after the death of the testator or intestate and claim any money paid into the treasury under this title, as heir, or devisee, or legatee thereof, he may file a petition against the State in the district court of the county where the estate was sold, stating the nature of his claim and praying that such money be paid to him. A copy of such petition shall be served on the district or county attorney at least twenty days previous to the return day of the process. [Id.]

Art. 3287. [3201] [1835] [1784] **Order in favor of claimant.**—If the court shall find that such person is entitled to recover such money as heir, devisee, legatee, or legal representa-

tive, it shall make an order directing the Comptroller to issue his warrant on the Treasury for the payment of the same, but without interest or costs; a copy of which order under the seal of the court shall be sufficient voucher for issuing such warrant. [Acts 1895, p. 189; G. L. Vol. 10, p. 919.]

Art. 3288. [3203-4] **Review of probate decree.**—When an estate owning property claimed by the State to be subject to escheat, shall have been administered in a probate court in this State, the State may have the judgment of such probate court reviewed in the district court, upon petition alleging that such administration was obtained by fraud or mistake of fact, and the case shall be tried in the manner prescribed by law for the revision and correction of any decree of the probate court. [Act Nov. 13, 1866, p. 236; G. L. Vol. 5, p. 1154.]

Art. 3289. [3205] [1839] [1788] **Suit for assets.**—All suits brought for the collection of the assets turned over to the Treasurer, under this title, shall be brought in the name of the State of Texas. [Id.]

TITLE 54.

ESTATES OF DECEDENTS.

| Chapter | Page | Chapter | Page |
|---|------|---|------|
| 1 Jurisdiction | 921 | 15 Removal and resignation..... | 953 |
| 2 Record books..... | 922 | 16 Allowance to widow and minor children..... | 955 |
| 3 General provisions..... | 923 | 17 Setting apart property to widow and children..... | 957 |
| 4 Application for probate..... | 928 | 18 Presentment of claims..... | 960 |
| 5 Probate of wills..... | 931 | 19 Classification and payment of claims..... | 964 |
| 6 Granting letters..... | 933 | 20 Hiring and renting..... | 968 |
| 7 Temporary administrator..... | 937 | 21 Sales..... | 969 |
| 8 Oath and bond of executor and administrator..... | 939 | 22 Report of sales..... | 975 |
| 9 Issuance of letters..... | 942 | 23 Heirship, etc., adjudication of..... | 976 |
| 10 Inventories, appraisement and list of claims..... | 943 | 24 Partition and distribution..... | 979 |
| 11 Rights, duties and powers of executors and administra- tors..... | 946 | 25 Final settlement..... | 986 |
| 12 Administration under a will..... | 948 | 26 Payment into treasury..... | 987 |
| 13 Subsequent executors and ad- ministrators..... | 951 | 27 Of community property..... | 990 |
| 14 Withdrawing estates from administration..... | 952 | 28 Transfer of administration..... | 994 |
| | | 29 Costs..... | 995 |
| | | 30 Appeals to district court..... | 997 |

CHAPTER ONE.

JURISDICTION.

| | Article | | Article |
|-------------------------------|---------|------------------------------|---------|
| Of the county court..... | 3290 | Venue for probate..... | 3293 |
| Of district court..... | 3291 | Concurrent jurisdiction..... | 3294 |
| Proceedings before death..... | 3292 | | |

Art. 3290. [3206] [1840] [1789] **Of the county court.**—The county court shall have general jurisdiction of a probate court. It shall probate wills, grant letters testamentary or of administration, settle the accounts of executors and administrators, and transact all business appertaining to the estates of deceased persons, including the settlement, partition and distribution of such estates. [Const. Art. 5, Sec. 16.]

Art. 3291. [3207] [1841] [1790] **Of district court.**—The district court shall have appellate jurisdiction and general control in probate matters over the county court for the probating of wills, granting letters testamentary or of administration, settling the accounts of executors and administrators and for the transaction of business appertaining to estates, and original jurisdiction and general control over executors and administrators under such regulations as may be prescribed by law. [Const. Art 5, Sec. 8.]

Art. 3292. [3208] [1842] [1791] **Proceedings before death.**—The probate of a will, or administration of an estate of a living person shall be void; but the bonds of the executor or administrator shall not be void but may be recovered upon.

Art. 3293. [3209] [1843] [1792] **Venue for probate.**—Wills shall be admitted to probate, and letters testamentary or of administration shall be granted:

1. In the county where the deceased resided, if he had a domicile or fixed place of residence in the State.

2. If the deceased had no domicile or fixed place of residence in the State, but died in the State, then either in the county where his principal property was at the time of his death, or in the county where he died.

3. If he had no domicile or fixed place of residence in the State, and died without the limits of the State, then in any county in this State where his nearest of kin may reside.

4. But if he has no kindred in this State, then in the county where his principal estate was situated at the time of his death. [Acts 1876, p. 93; G. L. Vol. 8, p. 929.]

Art. 3294. [3210] [1844] [1793] **Concurrent jurisdiction.**—When two or more courts have concurrent jurisdiction of an estate, the court in which application for letters testamentary or of administration thereon is first filed shall have and retain jurisdiction of such estate to the exclusion of such other court or courts.

CHAPTER TWO.

RECORD BOOKS.

| | | | |
|----------------------------|---------|----------------------------|---------|
| | Article | | Article |
| Judges probate docket..... | 3295 | Index | 3299 |
| Probate minutes..... | 3296 | Shall be evidence..... | 3300 |
| Claim docket..... | 3297 | Papers to be recorded..... | 3301 |
| Probate fee book..... | 3298 | | |

Art. 3295. [3211] [1845] [1794] **Judges probate docket.**—The clerk of the county court shall keep a record book to be styled, “Judge’s Probate Docket,” and enter therein:

1. The name of each deceased person upon whose estate proceedings are had or sought to be had.
2. The name of the executor or administrator of such estate, or of the applicant for letters.
3. The date of the filing of the original application for the probate of a will, or for letters testamentary or of administration.
4. A minute of all orders, judgments, decrees and proceedings had in the estate, with the date thereof.
5. Each estate shall be numbered upon the docket in the order in which the proceedings therein have been commenced, and each paper filed in an estate shall be numbered with the docket number of such estate.

Art. 3296. [3212] [1846] [1795] **Probate minutes.**—The clerk shall keep a record book, styled, “Probate minutes,” and enter therein in full all the orders, judgments, decrees and proceedings of the court, and record therein all papers of estates required by law to be recorded.

Art. 3297. [3213] [1847] [1796] **Claim docket.**—He shall also keep a record book to be styled, “Claim docket,” and enter therein all claims presented against an estate for approval by the court. This docket shall be ruled in sixteen columns at proper intervals from top to bottom, with a short note of the contents at the top of each column. One or more pages shall

be assigned to each estate. The following information shall be entered in the respective columns beginning with the first or marginal column: The names of claimants in the order in which their claims are filed; the amount of the claim; its date; when due; the date from which it bears interest; the rate of interest; when allowed by the executor or administrator; the amount allowed; the date of rejection; the date of filing; when approved; the amount approved; when disapproved; the class to which the claim belongs; when established by judgment of a court; the amount of such judgment. [Acts 1870, p. 169; P. D. 5673; G. L. Vol. 6, p. 343.]

Art. 3298. [3214] [1848] [1797] **Probate fee book.**—He shall keep a record book, styled, "Probate Fee Book," and enter therein each item of costs which accrues to the officers of the court, together with witness fees, if any, showing the party to whom such costs or fees are due, the date of the accrual of the same, and the estate or party liable therefor.

Art. 3299. [3215] [1849] [1798] **Index.**—He shall properly index each record book, and shall keep it open for public inspection, but shall not let it out of his office.

Art. 3300. [3216] [1850] [1799] **Shall be evidence.**—Said record books or certified copies therefrom shall be evidence in any court of this State.

Art. 3301. [3217] [1851] [1800] **Papers to be recorded.**—The following papers shall be recorded in the probate minutes:

1. All applications for the probate of wills when the probate has been granted.
2. The citation and return thereon.
3. The will and the testimony upon which the same was admitted to probate.
4. All bonds and oaths of executors and administrators.
5. The notice to persons holding claims against an estate.
6. All inventories and appraisements and lists of claims.
7. All exhibits and accounts.
8. All reports of hiring, renting or sale.
9. All applications for the sale of real estate.
10. All reports of commissioners of partition. [P. D. 5772.]

CHAPTER THREE.

GENERAL PROVISIONS.

| Article | Article | | |
|------------------------------------|---------|--|------|
| County court decrees..... | 3302 | Transfer of estate at death..... | 3314 |
| Shall avoid delay..... | 3303 | Contestant..... | 3315 |
| Trial by jury..... | 3304 | Call of docket..... | 3316 |
| Clerk to file papers..... | 3305 | Definitions..... | 3317 |
| Clerk shall issue notices..... | 3306 | Judge to sign minutes..... | 3318 |
| Judge may enforce obedience..... | 3307 | Attachment for property..... | 3319 |
| Withholding will from probate..... | 3308 | Accounts of executors..... | 3320 |
| Executions..... | 3309 | Filing accounts..... | 3321 |
| Citation in probate..... | 3310 | Executor, how qualified..... | 3322 |
| Service of citation..... | 3311 | Valid title through executor..... | 3323 |
| Common law applicable..... | 3312 | Enforcement of specific performance..... | 3324 |
| Evidence..... | 3313 | | |

Art. 3302. [3218-19] **County court decrees.**—All decisions,

orders, decrees and judgments of the county court in probate matters shall be rendered in open court at a regular term for civil and probate business, unless otherwise specially provided; and the same shall be entered on the records of the court during the term at which same are rendered.

Art. 3303. [3220] [1854] [1802a] **Shall avoid delay.**—The probate docket when taken up shall be disposed of with dispatch, without an adjournment of the court for more than three days at any time. The reason for an adjournment must appear upon the minutes. [Acts 1881, p. 31; G. L. Vol. 9, p. 123.]

Art. 3304. [3221] [1855] [1803] **Trial by jury.**—There shall be no trial by jury in probate matters in the county court.

Art. 3305. [3222] [1856] [1804] **Clerk to file papers.**—The county clerk shall file, all applications, complaints, partitions and all other papers permitted or required by law to be filed in said court in estates of decedents, and shall indorse on each paper the date filed, with the proper docket number and sign the same officially.

Art. 3306. [3223] [1857] [1805] **Clerk shall issue notices.**—The clerk shall issue necessary notices, citations, writs and process from said court in probate matters, without any order from the county judge, unless such order is required by some provision of this title. [Acts 1876, p. 129; G. L. Vol. 8, p. 965.]

Art. 3307. [3224] [1858] [1806] **Judge may enforce obedience.**—The county judge may enforce obedience to all his lawful orders against executors and administrators, by attachment and imprisonment, but no such imprisonment shall exceed three days for any one offense, except as hereinafter provided. [Id.]

Art. 3308. [3225] [1859] [1807] **Withholding will from probate.**—On written complaint that any person has the last will of any testator or testatrix, or any papers belonging to the estate of a testator or intestate, the county judge shall cause said person to be cited to appear before him, either in term time or vacation, and show cause why he should not deliver such will to the court for probate, or why he should not deliver such papers to the executor or administrator. Upon the return of such citation served, unless such delivery is made or good cause shown, if satisfied that such person had such will or papers at the time of filing the complaint, such judge may cause him to be arrested and imprisoned until he shall deliver them. [Id.]

Art. 3309. [3226] [1860] [1808] **Executions.**—Executions in probate matters shall be directed to the sheriff or any constable of a county, made returnable in sixty days, and shall be tested and signed by the clerk officially under the seal of the court. All proceedings under such executions shall be governed by the laws regulating proceedings under executions issued from the district court so far as applicable. [Id.]

Art. 3310. [3228] [1862] [1810] **Citation in probate.**—Ci-

tations in probate matters shall be in writing, dated and signed by the clerk officially under the seal of the court, and shall state substantially the nature of the proceeding which the party to be cited is called upon to answer, and the time and place he is required to appear.

Art. 3311. [3229-32] **Service of citation.**—A citation is served either by posting, by delivery in person or by publication, and the mode of service shall be governed by the following rules:

1. When the mode is not expressly provided by law, it must be served upon the party to be cited in person by delivering to him a true copy of such citation at least ten days exclusive of the day of service before the day upon which he is required to appear and answer.

2. When a citation is required to be posted, it shall be posted for ten days exclusive of the day of posting before the day upon which the party is required to appear and answer, at three of the most public places in the county, one of which must be at the courthouse door and no two in the same city or town unless otherwise provided by law.

3. When a citation is required to be posted, the original with three copies thereof shall be delivered by the clerk to the sheriff or constable of the proper county who shall post such copies in the manner prescribed in the preceding subdivision and return the original to the clerk stating in a written return thereon the time when and the place where he posted such copies.

4. Where a person is to be cited by publication, the publication shall be made in the same manner as in suits in the district court. [Acts 1876, p. 129; G. L. Vol. 8, p. 965.]

Art. 3312. [3233] [1867] [1815] **Common law applicable.**—The rights, powers and duties of executors and administrators shall be governed by the principles of the common law, when the same do not conflict with the provisions of the statutes of this State. [Id.]

Art. 3313. [3234-44] **Evidence.**—In proceedings arising under the provisions of this title, the rules relating to witnesses and evidence that govern in the district court shall apply so far as applicable except that where a will is to be probated and in other proceedings in estates where there is no opposing party or attorney of record upon whom notice and copies of interrogatories may be had, service may be had by posting notice of intention to take depositions for a period of twenty days as provided by laws governing posting of notices. When such notice is filed with the clerk, a copy of the interrogatories shall also be filed, and at the expiration of twenty days commission may issue for taking the depositions and the judge may file cross interrogatories where no one appears, if he so desires.

Art. 3314. [3235] [1869] [1817] **Transfer of estate at death.**—When a person dies, leaving a lawful will, all of his estate devised or bequeathed by such will shall vest immediately in the devisees or legatees; and all the estate of such person, not

devised or bequeathed, shall vest immediately in his heirs at law; subject however, to the payment of the debts of the testator or intestate, except such as may be exempted by law; and, whenever a person dies intestate, all of his estate shall vest immediately in his heirs at law, but with the exceptions aforesaid shall still be liable and subject in their hands to the payment of the debts of the intestate; but upon the issuance of letters testamentary or of administration upon any such estate, the executor or administrator shall have the right to the possession of the estate as it existed at the death of the testator or intestate, with the exception aforesaid; and he shall recover possession of and hold such estate in trust to be disposed of in accordance with law. [Id.]

Art. 3315. [3236] [1870] [1818]. **Contestant.**—Any person interested in an estate may, at any time before any character of proceeding is decided upon by the court, file opposition thereto in writing, and shall be entitled to process for witnesses and evidence, and to be heard upon such opposition as in other suits.

Art. 3316. [3237] [1871] [1819]. **Call of dockets.**—The county judge, at each regular term of his court for probate business, shall call the estates in their regular order upon both the probate and claim dockets and make such orders as may be necessary. He shall also see that the executors, administrators and officers perform the duties enjoined upon them by law in all matters pertaining to such estates.

Art. 3317. [3238] [1872] [1820]. **Definitions.**—When a term of the county court is mentioned in this title, a regular term of said court for probate business is meant, and when the word “docket” is used, the probate docket is meant, and when the word, “minutes” is used, the probate minutes are meant.

Art. 3318. [3239] [1873] [1821]. **Judge to sign minutes.**—The county judge, whenever he enters an order upon the minutes in vacation, shall date and sign the same officially; and, at the close of each term of his court, he shall in open court sign the minutes of such term officially, after all orders, judgments, decrees and proceedings of the term have been properly entered, and all papers required to be recorded therein have been so recorded.

Art. 3319. [3240] [1874] [1822]. **Attachment for property.**—Whenever complaint in writing, under oath, shall be made to the county judge, by any person interested in the estate of a decedent, that the executor or administrator is about to remove said estate, or any part thereof beyond the limits of the State, such judge may order a writ to issue, directed to the sheriff or any constable of any county in the State, commanding him to seize such estate, or any part thereof, and hold the same subject to such further orders as such judge may make on such complaint. No such writ shall issue unless the complainant shall give bond, in such sum as the said judge may require, payable to the executor or administrator of such estate conditioned for the payment of all damages and costs that may be recovered for the

wrongful suing out of such writ. [Acts 1876, p. 129; G. L. Vol. 8, p. 965.]

Art. 3320. [3241] [1875] **Accounts of executors.**—Executors and administrators shall make annual exhibits under oath, fully showing the condition of the estate; they shall make final settlement of the estates they represent within three years from the grant of letters, unless the time be extended by the court after satisfactory showing made under oath; and, upon failure in either case, shall be removed as provided by law. [Acts 1881, p. 31; G. L. Vol. 9, p. 123.]

Art. 3321. [3242] [1876] [1823] **Filing accounts.**—All exhibits made by executors or administrators, showing a list of claims allowed and approved, or established against the estate they represent, or showing the condition of said estate, and an account of all money received and paid out on account of said estate, returned to the court before the filing of the account for final settlement, shall be filed with the clerk. Notice of such filing shall be posted at the court house door for twenty days from the posting, after which time the county judge shall, in term time, examine said exhibit, and, if the same is found to be correct, render judgment of approval thereon and order said exhibit to be recorded. [Acts 1876, p. 109; G. L. Vol. 8, p. 945.]

Art. 3322. [3243] [1877] [1824] **Executor; how qualified.**—An executor or administrator shall be deemed to have duly qualified when he shall have taken the oath and given the bond required by law, and when said bond has been approved and filed. In case of an executor where no bond is required, he shall be deemed to have been duly qualified when he shall have taken the oath required by law.

Art. 3323. [3245] [1879] [1826] **Valid title through executor.**—When an executor or administrator, legally qualified as such has performed any acts as such executor or administrator in conformity with his authority and law, such acts shall continue to be valid to all intents and purposes, so far as regards the rights of innocent purchasers of any of the property of the estate from such executor or administrator, for a valuable consideration, in good faith, and without notice of any illegality in the title to the same, notwithstanding such acts or the authority under which they were performed may afterward be set aside, annulled and declared invalid.

Art. 3324. [3518-19-20] **Enforcement of specific performance.**—When any person shall sell property and enter into bond or other written agreement to make title thereto, and shall depart this life without having made such title, the owner of such bond or written agreement or his legal representatives, may file a complaint in writing in the county court of the county where the letters testamentary or of administration were granted and cause the executor or administrator to be cited to appear at a regular term of the court, and show cause why a specific performance of such bond or other written agreement should not be decreed. Such bond or other written agreement shall be

filed with such complaint, or good cause shown under oath why the same can not be so filed; and if it can not be so filed, the same or the substance thereof shall be set forth in the complaint. After service of the citation, the court shall hear such complaint and the evidence thereon, and, if satisfied from the proof that such bond or written agreement was legally executed by the testator or intestate, and that the complainant has a right to demand a specific performance thereof, a decree shall be made ordering the executor or administrator to make title to the property, according to the tenor of the obligation, fully describing the property in such decree. When a conveyance is made under the provisions of this article, it shall recite the decree of the court authorizing it, and, when delivered, shall vest in the person to whom made all the right and title which the testator or intestate had to the property conveyed; and such conveyance shall be prima facie evidence that all requirements of the law have been complied with in obtaining the same. [Acts 1876, p. 108; G. L. Vol. 8, p. 944.]

CHAPTER FOUR.

APPLICATIONS FOR THE PROBATE OF WILLS AND FOR LETTERS.

| | | | |
|----------------------------|---------|----------------------------------|---------|
| | Article | | Article |
| Time to file..... | 3325 | When written will cannot be pro- | |
| Limitation | 3326 | duced | 3330 |
| Settlement not barred..... | 3327 | Nuncupative will..... | 3331 |
| Requirements | 3328 | Letters of administration..... | 3332 |
| Written will..... | 3329 | | |

Art. 3325. [3247] [1880] [1827] **Time to file.**—All applications for the grant of letters testamentary or of administration upon an estate must be filed within four years after the death of the testator or intestate and not later. [Acts 1876, p. 94; Acts 1899, p. 244; P. D. 5505; G. L. Vol. 8, p. 930.]

Art. 3326. [3248] [1881] [1828] **Limitation.**—No will shall be admitted to probate after the lapse of four years from the death of the testator unless it be shown by proof that the party applying for such probate was not in default in failing to present the same for probate within the four years aforesaid; and in no case shall letters testamentary be issued where a will is admitted to probate after the lapse of four years from the death of the testator.

Art. 3327. [3249] [1882] [1829] **Settlement not barred.**—Where letters testamentary or of administration shall have once been granted, any person interested in the administration may proceed, after any lapse of time, to compel settlement of the estate when it does not appear from the record that the administration thereof has been closed. [P. D. 5507.]

Art. 3328. [3250] [1883] [1830] **Requirements.**—All applications for probate of wills, or for letters testamentary or of administration, shall be in writing and filed with the county clerk of the proper county. [Acts 1876, p. 94; G. L. Vol. 8, p. 930.]

Art. 3329. [3251-52] **Written wills.**—A written will shall be filed with the application for the probate thereof, and shall remain in the office of the clerk unless removed therefrom by order of the county or district court. An application for the probate of a written will produced in court shall state:

1. The name of the testator and that he is dead, and the time and place of his death.
2. The facts necessary to show that the court has jurisdiction of the estate.
3. The nature and probable value of the estate.
4. The name and residence of the executor named in the will, if any, and if none be named in the will, then the name and residence of the applicant.
5. That such executor or applicant is not disqualified by law from accepting letters, if letters be desired.

Art. 3330. [3253] [1886] [1833] **When written will cannot be produced.**—When a written will cannot be produced in court, in addition to the requirements of the preceding article, the application shall state:

1. The reason why such will cannot be produced.
2. The contents of such will, as far as known.
3. The date of such will and the executor appointed therein, if any, and the names of the subscribing witnesses thereto, if any.
4. The names and residences, if known, of all the heirs at law of the testator, and if not known, that fact shall be stated. Such application shall be sworn to by the applicant or some other credible person.

Art. 3331. [3254] [1887] [1834] **Nuncupative will.**—An application for the probate of a nuncupative will, in addition to the requirements of the second preceding article, shall state:

1. The substance of the testamentary words spoken.
2. The name and residence of the witness thereto.
3. The names and residence, if known, of the heirs at law of the testator, and, if not known, that fact shall be stated.
4. Such application shall be sworn to by the applicant or some other credible person.

Art. 3332. [3255] [1888] [1835] **Letters of administration.**—An application for letters of administration shall state:

1. The name of the deceased; that he is dead, and the time and place of his death, and that he died intestate.
2. The facts necessary to show that the court has jurisdiction of the estate.
3. The nature and probable value of the estate.
4. That a necessity exists for an administration upon such estate, setting forth the facts which show such necessity.
5. That the applicant is not disqualified by law to act as administrator.

THE CITATION.

| | Article | | Article |
|-----------------------------------|---------|-------------------------------|---------|
| Contents | 3333 | Application made by whom..... | 3339 |
| Service | 3334 | Administration prevented..... | 3340 |
| When will cannot be produced..... | 3335 | Bond to be filed..... | 3341 |
| Service of citation..... | 3336 | One creditor may apply for | |
| Service by publication..... | 3337 | several..... | 3342 |
| No action until service..... | 3338 | Lien upon estate..... | 3343 |

Art. 3333. [3256] [1889] [1836] Contents.—When an application for the probate of a written will, or for letters of administration, is filed with the clerk he shall issue a citation to all parties interested in such estate, which citation shall state:

1. That such application has been filed, and the nature of it.

2. The name of the deceased and of the applicant.

3. The time when, and the court by which, the application will be acted upon.

4. It shall cite all persons interested in the estate to appear at the time therein named and contest said application, should they desire to do so.

Art. 3334. [3257] [1890] [1837] Service.—The citation shall be served by posting for at least ten days, exclusive of the day of posting, before the first day of the term of the court to which it is returnable.

Art. 3335. [3258] [1891] [1838] When will cannot be produced.—When the application is for the probate of a nuncupative will, or a written will which cannot be produced in court, the citation shall contain substantially the statements made in the application for probate, and the time when, place where, and the court before which such application will be acted upon.

Art. 3336. [3259] [1892] [1839] Service of citation.—If the heirs of the testator be residents of this State, and their residence be known, the citation shall be served upon them by delivering to each of them in person a true copy of such citation, at least ten days, exclusive of the day of service, before the first day of the term of the court to which such citation is returnable.

Art. 3337. [3260] [1893] [1840] Service by publication.—Service of such citation may be made by publication for four successive weeks previous to the first day of the term of the court to which such citation is returnable, in the following cases:

1. When the heirs are non-residents of this State.

2. When their names or their residences are unknown.

3. When they are transient persons.

Art. 3338. [3261] [1894] [1841] No action until service.—No application shall be acted upon until the service of citation has been made in the manner and for the length of time in such case provided.

Art. 3339. [3262] [1895] [1842] Application made by whom.—Applications for the probate of a will may be made by the testamentary executor, or by any person interested in the estate of the testator, and application for letters of administration upon an estate may be made by any person. [Acts 1876, p. 95; G. L. Vol. 8, p. 931.]

Art. 3340. [3263] [1896] [1843] **Administration prevented.**—When application is made for letters of administration upon an estate by a creditor, and those interested in the estate do not desire an administration thereupon, they can defeat such application:

1. By the payment of the claim of such creditor.
2. By proof to the satisfaction of the court that such claim is fictitious, fraudulent, illegal or barred by limitation.
3. By executing a bond payable to, and to be approved by, the county judge in double the amount of such creditor's debt, conditioned that the obligors will pay the debt of such applicant upon the establishment thereof by suit in any court having jurisdiction of the amount in the county having jurisdiction of such estate. [P. D. 5558.]

Art. 3341. [3265] [1898] [1845] **Bond to be filed.**—The bond provided for, when given and approved, shall be filed with the clerk of the county court and recorded in the minutes, and any creditor, for whose protection it was executed, may sue thereon in his own name for the recovery of his debt.

Art. 3342. [3264] [1897] [1844] **One creditor may apply for several.**—Several creditors may authorize one of their number to apply for letters in behalf of them all; and, in such case, the grant of letters cannot be defeated without complying with the requirements of the two preceding articles as to all claims so represented. [P. D. 5559.]

Art. 3343. [3266] [1899] [1846] **Lien upon estate.**—A lien shall exist on all of the estate in the hands of the distributees of such estate, and those claiming under them with notice of such lien, to secure the ultimate payment of the bond provided herein.

CHAPTER FIVE.

PROBATE OF WILLS.

| Article | Article |
|--|--|
| Proof of written will produced in court..... | Will which cannot be produced in court..... |
| Proof of written will not produced..... | Testimony committed to writing..... |
| Proof of nuncupative will, when..... | Order entered will, etc., recorded when..... |
| Nuncupative will proved, how..... | Will probated in another State..... |
| Facts which must be proved..... | |

Art. 3344. [3267] [1900] [1847] **Proof of written will produced in court.**—A written will produced in court may be proved:

1. By the affidavit of one of the subscribing witnesses thereto, taken in open court and subscribed by such witness.
2. If all the witnesses are non-residents of the county, or those resident of the county are unable to attend court, by the testimony of any one or more of them taken by deposition.
3. If none of the witnesses are living,, by two witnesses to the handwriting of the subscribing witnesses thereto, and of the testator, if signed by him, proof may be either by affidavit taken in open court and subscribed by the witnesses, or by deposition.
4. If the will was wholly written by the testator, by two witnesses to his handwriting, which may be made by affidavit taken

in open court and subscribed to by the witnesses, or by deposition. [Acts 1876, p. 94; G. L. Vol. 8, p. 930.]

Art. 3345. [3268] [1901] [1848] **Proof of written will not produced.**—A written will which cannot be produced in court, may be proved in the same manner as provided in the preceding article, and the same amount and character of testimony shall be required to prove such will as is required to prove a written will produced in court.

Art. 3346. [3269] [1902] [1849] **Proof of nuncupative will, when.**—No nuncupative will shall be proved within fourteen days after the death of the testator; nor shall any such will be probated after six months have elapsed from the time of speaking the purported testamentary words, unless the same or the substance thereof, shall have been committed to writing within six days after making such will; nor shall any such will be probated, unless it be made in the time of the last sickness of the deceased, at his habitation, or where he has resided for ten days next preceding, except when the deceased is taken sick away from home and dies before he returns to such habitation. [Id.]

Art. 3347. [3270] [1903] [1850] **Nuncupative will proved.**—No nuncupative will shall be probated, unless it be proved by three credible witnesses that the testator called on some person to take notice or bear testimony that such is his will, or words of like import, and if the testimony of such witnesses differs materially as to the testamentary words spoken, or as to the testator's calling upon some one to witness the same, the will shall not be admitted to probate.

Art. 3348. [3271] [1904] [1851] **Facts which must be proved.**—Before admitting a will to probate, it must be proved to the satisfaction of the court:

1. That the testator, at the time of executing the will, was at least twenty-one years of age, or was married, that he was of sound mind, and that he is dead.

2. That the court has jurisdiction of his estate.

3. That citation has been served and returned in the manner and for the length of time required by law.

4. That the testator executed the will with the formalities and solemnities and under the circumstances required by law to make it a valid will.

5. That such will has not been revoked by the testator.

Art. 3349. [3272] [1905] [1852] **Will which cannot be produced in court.**—If the will be a written will which cannot be produced in court, the cause of its non-production must be proved, and such cause must be sufficient to satisfy the court that it cannot by any reasonable diligence be produced, and the contents of such will must be substantially proved by the testimony of a credible witness who has read it or heard it read.

Art. 3350. [3273] [1906] [1853] **Testimony committed to writing.**—All testimony taken in open court upon the hearing of an application to probate a will shall be committed to writing at

the time it is taken, and subscribed in open court by the witness or witnesses, and filed by the clerk. [Acts 1876, p. 95; G. L. Vol. 8, p. 931.]

Art. 3351. [3274] [1907] [1854] **Order entered; will, etc., recorded, when.**—Upon the hearing of an application for the probate of a will, if the court be satisfied from the evidence that such will should be admitted to probate, an order to that effect shall be entered upon the minutes; and such will, together with the application for probate thereof, and all the testimony in the case, shall be recorded in the minutes; provided, that the substance only of depositions shall be so recorded.

Art. 3352. [3276] [1909] [1856] **Will probated in another State.**—When application is made for the probate of a will which has been probated according to the laws of any of the United States or territories or of any country out of the limits of the United States, a copy of such will and the probate thereof attested by the clerk of the court in which such will was admitted to probate, and the seal of the court annexed, if there be a seal, together with a certificate from the judge or presiding magistrate of such court, that the said attestation is in due form, may be filed and recorded in the court, and shall have the same force and effect as the original will, if probated in said court; provided, that the validity of such will may be contested in the same manner as the original might have been. [Id.]

CHAPTER SIX.

GRANTING LETTERS.

| | Article | | Article |
|--|---------|---|---------|
| Persons disqualified..... | 3353 | Letters shall not be revoked, except..... | 3363 |
| Letters testamentary granted..... | 3354 | When will is discovered after administration..... | 3364 |
| When administration granted..... | 3355 | Executor of will proved in another State..... | 3365 |
| Administration not granted..... | 3356 | Bond required..... | 3366 |
| Letters granted in order..... | 3357 | Further administration..... | 3367 |
| Applicants equally entitled..... | 3358 | Executor removed; not reappointed..... | 3368 |
| May waive right..... | 3359 | Letters testamentary..... | 3369 |
| Letters revoked and granted to another..... | 3360 | Letters of administration..... | 3370 |
| Letters revoked and granted to executor upon attaining lawful age..... | 3361 | Order of court..... | 3371 |
| Executor absent from State..... | 3362 | Grant of letters may be opposed..... | 3372 |

Art. 3353. [3277] [1910] [1857] **Persons disqualified.**—Letters testamentary or of administration shall not be granted to any person of unsound mind or who is under twenty-one years of age, except a surviving husband or wife who may be under twenty-one years of age. [Acts 1876, p. 96; G. L. Vol. 8, p. 932.]

Art. 3354. [3278] [1911] [1858] **Letters testamentary granted.**—When a will has been probated, the court shall within twenty days thereafter, grant letters testamentary, if permitted by law, to the executor or executors appointed by such will, if any there be, or to such of them as are not disqualified, and are willing to accept the trust and qualify according to law. [Id.]

Art. 3355. [3279] [1912] [1859] **When administration granted.**—When any person shall die intestate, or where no executor is named in a will, or where the executor named shall

fail or neglect to accept and qualify within twenty days after the probate of the will, or shall neglect for a period of thirty days after the death of the testator to present the will for probate, then administration of the estate of such intestate, or administration with the will annexed of the estate of such testator shall be granted, should administration appear to be necessary.

Art. 3356. [3280] [1913] [1860] **Administration not granted.**—No administration upon any estate shall be granted unless there exists a necessity therefor, such necessity to be determined by the court hearing the application.

Art. 3357. [3281] [1914] [1861] **Letters granted in order.**—Letters testamentary or of administration shall be granted to persons who are qualified to act, in the following order:

1. To the person named as executor in the will of the deceased.
2. To the surviving husband or wife.
3. To the principal devisee or legatee of the testator.
4. To any devisee or legatee of the testator.
5. To the next of kin of the deceased, the nearest in the order of descent first, and so on.
6. To a creditor of the deceased.
7. To any person of good character residing in the county.

Art. 3358. [3282] [1915] [1862] **Applicants equally entitled.**—When applicants are equally entitled, letters shall be granted to the applicant who, in the judgment of the court, is most likely to administer the estate advantageously, or they may be granted to any two or three of such applicants. [P. D. 5512.]

Art. 3359. [3283] [1916] [1863] **May waive right.**—The surviving husband or wife, or, if there be no such survivor the heirs or any one of the heirs of the deceased, to the exclusion of any person not equally entitled, may, in open court, or by power of attorney, duly authenticated and filed with the clerk of the county court of the county having jurisdiction of the estate, renounce his right to the administration in favor of some other qualified person, and thereupon the court may grant letters to such other person.

Art. 3360. [3284] [1917] [1864] **Letters revoked and granted to another.**—Where letters have been granted to one, and another whose right thereto is prior and who has not waived such right and who is not disqualified, makes application for letters, the letters previously granted shall be revoked and other letters shall be granted to the person thus entitled.

Art. 3361. [3285] [1918] [1865] **Letters revoked and granted to executor upon attaining lawful age.**—Whenever any person named as executor in a will is under age, and letters of administration with the will annexed have been granted to any other person, such executor shall, upon proof that he has attained the age of twenty-one years and is not disqualified otherwise, be entitled to have such letters of administration, revoked and letters testamentary granted to him. And when

two or more persons are named executors in a will, any one or more of whom are minors when such will is admitted to probate, and letters testamentary have been issued to such only as are of full age, such minor or minors, upon attaining the age of twenty-one years, if not disqualified, shall be permitted to qualify and receive letters. [Id.]

Art. 3362. [3286] [1919] [1866] Executor absent from State.—Whenever a person named as executor in a will was absent from the State when the testator died, or when the will was proved, and was prevented from presenting the will for probate within thirty days after the death of the testator, or from accepting and qualifying as executor within twenty days after the probate of the will or when he shall have been prevented by sickness from so presenting the will or from so accepting and qualifying, he may accept and qualify as executor within sixty days after his return or recovery from sickness, upon proving to the court that he was so absent or prevented by sickness; and, if in the meantime letters of administration have been granted, such letters shall be revoked. [Id.]

Art. 3363. [3287] [1920] [1867] Letters shall not be revoked except.—Letters shall not be revoked and other letters granted under the provisions of either of the four preceding articles, unless application therefor has been filed and the executor or administrator has been cited to appear at a regular term of the court and show cause why such application should not be granted; but in such cases, when the letters are revoked, other letters may be granted without the posting of citation as in other cases.

Art. 3364. [3288] [1921] [1868] When will is discovered after administration.—Whenever letters of administration shall have been granted upon an estate, and it shall afterwards be discovered that the deceased left a lawful will, such will may be proved in the manner provided for the proof of wills; and, if an executor is named in such will, and he is not disqualified, he shall be allowed to qualify and accept as such executor, and the letters previously granted shall be revoked; but if no such executor be named in the will, or if the executor named be disqualified, or shall renounce the executorship, or shall neglect to accept and qualify within twenty days after the date of the probate of the will, or shall neglect for a period of thirty days after the discovery of such will to present it for probate, then administration with the will annexed of the estate of such testator shall be granted as in other cases. All acts done by the first administrator, previous to the qualification of the executor or administrator with the will annexed shall be as valid as if no such will had been discovered. [Id.]

Art. 3365. [3289] [1922] [1869] Executor of will proved in another State.—When a will has been admitted to probate in any State of the United States or territories thereof or in the District of Columbia or in any country without the limits of the United States, and the executor named in such will has

qualified, and a duly certified copy of such will and the probate thereof has been filed and recorded in any county court in this State having jurisdiction of the estate, together with the application of such foreign executor for the probate of such will, the same shall be admitted to probate; and letters testamentary shall be granted to such applicant and an order to that effect shall be entered upon the minutes of the court as in other cases; and if letters of administration have been previously granted by such court in this State to any person other than such foreign executor, such letters shall be revoked upon the application of such executor after service of citation upon the person to whom such letters were granted as required in other cases.

Art. 3366. [3290] [1923] [1870] **Bond required.**—In the case provided for in the preceding article, the executor shall be required to give bond as in other cases, notwithstanding any provision to the contrary in the will, and the order revoking the former letters shall not take effect until such executor has qualified in accordance with law. [P. D. 5517.]

Art. 3367. [3291] [1924] [1871] **Further administration.**—Whenever any estate is unrepresented by reason of the death, removal or resignation of the executor or administrator, the court shall grant further administration upon such estate when necessary, and with the will annexed, where there is a will, in the same manner and under the same regulations provided for the appointment of the original executors or administrators.

Art. 3368. [3292] [1925] [1872] **Executor, etc., removed; not reappointed.**—Whenever any person has been removed from the executorship or administration of an estate, he shall not afterward be appointed administrator thereof. [Id.]

Art. 3369. [3293] [1926] [1873] **Letters testamentary.**—Before granting letters testamentary, it must appear to the court:

1. That the person is dead.
2. That four years have not elapsed since his decease prior to the application.
3. That the court has jurisdiction of the estate.
4. That the will has been proved as prescribed by law.
5. That the person to whom the letters are to be granted is named as executor in the will.
6. That the person named as executor is not disqualified by law.

The first three subdivisions of this article have no application where letters of administration upon such estate have been previously granted in said court. [Id.]

Art. 3370. [3294] [1927] [1874] **Letters of administration.**—Before granting letters of administration, it must appear to the court:

1. That the person is dead.
2. That four years have not elapsed since his decease prior to the application.

3. That the court has jurisdiction of the estate.

4. That there is a necessity for an administration upon such estate.

5. That the person to whom the letters are about to be granted is entitled thereto by law and is not disqualified.

The first three subdivisions of this article have no application when letters testamentary or of administration have been previously granted upon such estate by said court. [Id.]

Art. 3371. [3295] [1928] [1875] **Order of court.**—When letters testamentary or of administration are granted by the court, an order to that effect shall be entered upon the minutes, which order shall state:

1. The name of the testator or intestate.

2. The name of the person to whom the grant of letters is made.

3. If bond is required, the amount thereof.

4. The order shall require the clerk of the court to issue letters in accordance with such order, when the person to whom such letters are granted shall have qualified according to law.

Art. 3372. [3296] [1929] [1876] **Grant of letters may be opposed, etc.**—When application is made for letters of administration, any person may at any time before the said application is granted, file his opposition thereto in writing, and may apply for the grant of letters to himself or to any other person; and, upon the trial, the court shall grant letters to the person that may seem best entitled to them, having regard to the provisions of this title, without further notice than that of the original application.

CHAPTER SEVEN.

TEMPORARY ADMINISTRATION.

| | | | |
|--|--------------|--|--------------|
| Temporary administrator, appointed when..... | Article 3373 | Judge may appoint temporary administrator..... | Article 3378 |
| Appointment without application..... | 3374 | Powers of temporary administrator..... | 3379 |
| Appointment perpetuated..... | 3375 | or..... | 3380 |
| Citation..... | 3376 | List, return of sales, etc..... | 3380 |
| If contested..... | 3377 | List, acted upon by court..... | 3381 |

Art. 3373. [3297] [1930] [1877] **Temporary administrator; appointed, when.**—Whenever it appears to the county judge that the interest of an estate requires the immediate appointment of an administrator, he shall, either in open court or in vacation, by writing under his hand and the seal of the court, attested by the clerk, appoint a suitable person temporary administrator with such limited powers as the circumstances of the case may require; and such appointment may be made permanent, as herein provided. [Acts 1876, p. 98; G. L. Vol. 8, p. 934; Acts 1921, p. 139.]

Art. 3374. [3298-99] **Appointment without application.**—Such appointment may be made either upon written application or none, and without citation. It shall define the powers conferred, and such appointment shall not become effective until the order of the court has been recorded in the minutes, and when the clerk has indorsed thereon a certificate that it has

been so recorded, he may deliver it to the person appointed upon his taking the oath and making the bond required by law. [Acts 1876, p. 98; G. L. Vol. 8, p. 934.]

Art. 3375. [3300] [1933] [1880] Appointment perpetuated.—The order of the court in making such appointment shall state that unless the same is contested at the next regular term of the court, after service of citation, the same shall be made permanent, provided the court is of the opinion that a permanent administrator is necessary. [Id.; Acts 1921, p. 140.]

Art. 3376. Citation.—Immediately after such appointment, the clerk shall issue citation; which shall state the name of the person appointed, when appointed, and the name of the deceased estate, and shall cite all persons interested in the welfare of the estate to appear at the term of the court named in such citation, and contest such appointment if they so desire; and, that, if such appointment is not contested at the term of court so named in the citation, then the same shall become permanent. [Acts 1921, p. 140.]

Art. 3377. If contested.—If such appointment is contested, the court shall hear and determine the same, and during the pendency of such contest, the person so appointed as temporary administrator shall continue to act; and, if such appointment is set aside, the court shall require the person so appointed to file in court, under oath, a complete exhibit of the condition of such estate, and what disposition, if any, he has made of the same, or any portion thereof. [Id.]

Art. 3378. [3301] [1934] [1881] Judge may appoint temporary administrator.—Pending a contest relative to the probate of a will, or the granting of letters of administration, the county judge may appoint a temporary administrator, with such limited powers as the circumstances of the case may require; and such appointment may continue in force until the termination of the contest and the appointment of an executor or administrator with full powers. [Acts 1876, p. 98; G. L. Vol. 8, p. 934.]

Art. 3379. [3302] [1935] [1882] Powers of temporary administrator.—Temporary administrators shall have and exercise only such rights and powers, as are specifically expressed in the order of the court appointing them, and any acts performed by them as such administrators that are not so expressly authorized shall be void.

Art. 3380. [3303] [1936] [1883] List, return of sales, etc.—At the expiration of the time for which a temporary administrator has been appointed, he shall file with the clerk of the court, duly verified, a list of all property of the estate which has come to his hands, a return of all sales made by him, and a full exhibit and account of all his acts as such administrator.

Art. 3381. [3304] [1937] [1884] List, acted upon by the court.—The list, return, exhibit and account filed by the temporary administrator, shall be acted upon by the court, and whenever temporary letters shall expire, or cease to be of effect

from any cause, the court shall immediately, either in term time or vacation, enter an order upon the probate minutes requiring such temporary administrator to forthwith deliver the estate remaining in his possession to the person legally entitled to the possession of the same.

CHAPTER EIGHT.

OATH AND BOND OF EXECUTORS AND ADMINISTRATORS.

| Article | Article | | |
|--|---------|--|------|
| Oath of executor or administrator..... | 3382 | When new bond may be required..... | 3392 |
| Oath of administrator..... | 3383 | Judge to require new bond..... | 3393 |
| Oath of temporary administrator..... | 3384 | Person interested may demand | |
| Oath filed with clerk..... | 3385 | new bond..... | 3394 |
| Bond of executors and adminis- | | Sureties may ask to be discharged..... | 3395 |
| trators..... | 3386 | Citation..... | 3396 |
| Form of bond..... | 3387 | Order requiring new bond..... | 3397 |
| Oath and bond..... | 3388 | Functions of executor, suspended..... | 3398 |
| When no bond required..... | 3389 | Sureties discharged..... | 3399 |
| Bond of married woman..... | 3390 | Bond shall not be void..... | 3400 |
| Husband or wife who is a minor..... | 3391 | | |

Art. 3382. [3305] [1938] [1885] **Oath of executor or administrator.**—Before the issuance of letters testamentary or of administration with the will annexed, the person named as executor or appointed administrator with the will annexed shall take and subscribe an oath in form as follows: “I do solemnly swear that the writing which has been offered for probate is the last will of....., so far as I know or believe, and that I will well and truly perform all the duties of executor of said will (or of administrator with the will annexed, as the case may be) of the estate of said.....” [Acts 1876, p. 100; G. L. Vol. 8, p. 936.]

Art. 3383. [3306] [1939] [1886] **Oath of administrator.**—Before the issuance of letters of administration, the person appointed administrator shall take and subscribe an oath in form as follows: “I do solemnly swear that....., deceased, died without leaving any lawful will, so far as I know or believe, and that I will well and truly perform all the duties of administrator of the estate of said deceased.” [Id.]

Art. 3384. [3307] [1940] [1887] **Oath of temporary administrator.**—Before the issuance of temporary letters of administration, the person appointed temporary administrator shall take and subscribe an oath in form as follows: “I do solemnly swear that I will well and truly perform the duties of temporary administrator of the estate of....., deceased, in accordance with law, and with the order of the court appointing me such administrator.” [Id.]

Art. 3385. [3308] [1941] [1888] **Oaths filed with clerk.**—The oaths prescribed by the three preceding articles may be taken before any officer authorized to administer oaths, and shall be filed with the clerk of the court granting the letters, and recorded in the minutes of such court.

Art. 3386. [3309] [1942] [1889] **Bond of executors and administrators.**—Before the issuance of letters testamentary or of

administration, the person to whom letters are granted shall enter into bond, to be approved by, and payable to, the county judge of the county, in such penalty as he may direct, not less than double the estimated value of the estate of the testator or intestate, except in case of temporary administrator, when the bond shall be in such sum as the county judge may direct; provided, bonds of executors and administrators may be made by either domestic or foreign corporations permitted to do business in this State, for the purpose of issuing surety, guaranty or indemnity bonds, guaranteeing the fidelity of executors, administrators and guardians, and may be accepted by the county judge. [Acts 1876, p. 100; Acts 1897, p. 58 G. L. Vol. 8, p. 936; G. L. Vol. 10, p. 1112.]

Art. 3387. [3310] [1943] [1890] **Form of bond.**—The following form, or the same in substance, may be used for the bonds of executors and administrators:

“The State of Texas,

“County of _____.

“Know all men by these presents, that we, A. B. as principal, and C. D. and E. F. as sureties, are held and firmly bound unto the county judge of the county of _____, and his successors in office, in the sum of _____ dollars; conditioned that the above bound A. B. who has been appointed executor of the last will and testament of J. C. deceased, (or has been appointed by the county judge of _____ County, administrator with the will annexed of the estate of J. C. deceased, or, has been appointed by the county judge of _____ County, administrator of the estate of J. C. deceased, or has been appointed by the county judge of _____ County, temporary administrator of the estate of J. C. deceased, as the case may be), shall well and truly perform all the duties required of him under said appointment.” [Acts 1876, p. 101; G. L. Vol. 8, p. 937.]

Art. 3388. [3311-12] **Oath and bond.**—The oath of an executor or administrator may be taken and subscribed, or his bond may be given and approved, either in term time or vacation, at any time before the expiration of twenty days from the probate of the will or the order granting the letters, or before his letters shall have been revoked for a failure to qualify within the time allowed, and such bonds shall be filed and recorded in the minutes of the court. [Id.]

Art. 3389. [3313] [1946] [1893] **When no bond required.**—When any testator directs in his will that no security shall be required of the person named therein as the executor, letters testamentary shall be issued to such person without any bond being required, when a will is probated in a Texas court. [Id.]

Art. 3390. [3314] [1947] [1894] **Bond of married woman.**—When a married woman is appointed executrix or administratrix, she may, jointly with her husband, or without her husband, if he be absent from the State, or insane, or refuses to join with her, execute such bond as the law requires and acknowledge the same before the county judge, county clerk or any notary pub-

lic of the county where the will was proved or letters were granted; and such bond shall bind her separate estate, but shall not bind her husband as surety unless signed by him and it is approved as such. [Id.]

Art. 3391. [3315] [1948] [1895] **Husband or wife who is a minor.**—When a surviving husband or wife under twenty-one years of age shall wish to accept and qualify as executor or executrix, or administrator or administratrix, he or she may execute such bond as the law requires and acknowledge the same before the county judge, county clerk or a notary public of the county in which the will was proved or letters of administration were granted, and such bonds shall be as valid as if he or she were of lawful age. [Id.]

Art. 3392. [3316] [1949] [1896] **When new bond may be required.** An executor or administrator may be required to give a new bond in the following cases:

1. When the sureties upon the bond or any one of them shall die, remove beyond the limits of the State, or become insolvent.
2. When, in the opinion of the county judge, the sureties upon any such bond are insufficient.
3. When, in the opinion of the county judge, any such bond is defective.
4. When the amount of any such bond is insufficient.
5. When the sureties or any one of them petition the court to be discharged from future liability upon such bond.
6. When the bond and the record thereof have been lost or destroyed. [Id.]

Art. 3393. [3317] [1950] [1897] **Judge to require new bond.**—When it shall be known to him that any such bond is in any respect insufficient or that it has, together with the record thereof, been lost or destroyed, he shall without delay cause the executor or administrator to be cited to show cause why he should not give a new bond.

Art. 3394. [3318] [1951] [1898] **Person interested may demand new bond.**—Any person interested in an estate may, upon application in writing filed with the county clerk of the county where the administration is pending, alleging that the bond of the executor or administrator is insufficient or defective, or has been, together with the record thereof, lost or destroyed, cause such executor or administrator to be cited to appear and show cause why he should not give a new bond. [Id.]

Art. 3395. [3319] [1952] [1899] **Sureties may ask to be discharged.**—The sureties upon the bond of an executor or administrator, or any one of these, may, at any time, present a petition to the county judge praying that such executor or administrator may be required to give a new bond and that he or they may be discharged from all liability for the future acts of such executor or administrator, whereupon such executor or administrator shall be cited to appear and give a new bond. [Id.]

Art. 3396. [3320] [1953] [1900] **Citation.**—The citations may be issued either in term time or in vacation, and require

the party cited to appear before the county judge on some day named therein, not later than ten days from the date of such citation, either in term time or in vacation, and five days personal service thereof, exclusive of the day of service, shall be sufficient.

Art. 3397. [3321] [1954] [1901] **Order requiring new bond.**—Upon the return of any such citation served, the county judge shall, on the day named therein for the hearing of the matter, whether in term time or vacation, proceed to inquire into the sufficiency of the reasons for requiring a new bond, and if satisfied that a new bond should be required he shall enter an order to that effect, stating in such order the amount of such new bond, and the time within which it shall be given, which shall not be later than twenty days from the date of such order. [Id.]

Art. 3398. [3322] [1955] [1902] **Functions of executor suspended.**—When an executor or administrator is required to give a new bond, the order requiring such bond shall have the effect to suspend the powers of such executor or administrator, and he shall not thereafter pay out any money of said estate or do any other official act, except to preserve the property of the estate, until such new bond has been given and approved. [Id.]

Art. 3399. [3323] [1956] [1903] **Sureties discharged.**—When a new bond has been given and approved, the sureties upon the former bond of such executor or administrator are thereby discharged from all liability for the future acts of such executor or administrator, and an order to that effect shall be entered upon the minutes of the court. [Id.]

Art. 3400. [3324] [1957] [1904] **Bond shall not be void.**—The bonds of executors and administrators shall not become void upon the first recovery, but may be put in suit and prosecuted from time to time until the whole amount thereof shall have been recovered.

CHAPTER NINE.

ISSUANCE OF LETTERS.

Art. 3401. [3325] [1958] [1905] **Clerk shall issue letters.**—Whenever an executor or administrator has been qualified in the manner required by law, the clerk of the court granting the letters testamentary or of administration shall forthwith issue and deliver the letters to such executor or administrator. [Acts 1876, p. 97; G. L. Vol. 8, p. 933.]

Art. 3402. [3326] [1959] [1906] **What constitutes letters.**—Letters testamentary or of administration shall be a certificate of the clerk of the court granting the same, attested by the seal of such court, and stating that such executor or administrator, as the case may be, has duly qualified as such as the law requires, the date of such qualification and the name of the deceased. [Id.]

Art. 3403. [3327] [1960] [1907] **Letters or certificate made evidence.**—Such letters or a certificate of the clerk of the

court which granted the same, under the seal of such court, that such letters have been issued, shall be sufficient evidence of the appointment and qualification of an executor or administrator and of the date of such qualification. [Id.]

Art. 3404. [3328] [1961] [1908] **Letters shall issue to each.**—When two or more persons qualify as executors or administrators, letters shall be issued to each of them so qualifying. [Id.]

Art. 3405. [3329] [1962] [1909] **Other letters.**—When letters have been destroyed or lost, the clerk may issue other letters in their stead, which shall have the same force and effect as the original letters.

CHAPTER TEN.

INVENTORY, APPRAISEMENT AND LIST OF CLAIMS.

| | | | |
|---|--------------|--|--------------|
| Appointment of appraisers..... | Article 3406 | May be cited to make, etc..... | Article 3417 |
| Failure to serve..... | 3407 | Order of the court..... | 3418 |
| Inventory and appraisement..... | 3408 | Erroneous inventory or list..... | 3419 |
| Appraisement sworn to..... | 3409 | New appraisement..... | 3420 |
| List of claims..... | 3410 | Order for the same..... | 3421 |
| Inventory and list sworn to..... | 3411 | Replaces original appraisement..... | 3422 |
| Returned within sixty days..... | 3412 | Not more than one re-appraisement..... | 3423 |
| Courts to approve or disapprove same..... | 3413 | Evidence..... | 3424 |
| Order of approval..... | 3414 | More than one executor or administrator..... | 3425 |
| Order of disapproval..... | 3415 | | |
| Duty of executor..... | 3416 | | |

Art. 3406. [3330] [1963] [1910] **Appointment of appraisers.**—When letters testamentary or of administration shall be granted, the county judge shall, by an order entered on the minutes of the court, appoint three or more disinterested persons, citizens of the county, any two of whom may act, to appraise the estate of the deceased. [Acts 1876, p. 103; G. L. Vol. 8, p. 939.]

Art. 3407. [3331] [1964] [1911] **Failure to serve.**—If from any cause such appointment be not made, or if the appraisers, or any of them so appointed fail to act, or if from any other cause a new appointment is required, the county judge shall by a like order, either in term time or vacation, appoint another appraiser or appraisers, as the case may require.

Art. 3408. [3332] [1965] [1912] **Inventory and appraisement.**—Every executor or administrator shall, immediately after he has qualified, with the assistance of any two or more of the appraisers appointed by the judge, make, or cause to be made, a full inventory and appraisement of all the estate of the testator or intestate, both real and personal, specifying in such inventory what portion of the estate is the separate property of the deceased, and what portion, if any, is represented as common property. [Id.]

Art. 3409. [3333] [1966] [1913] **Appraisement sworn to.**—The appraised value of each article of property shall be stated opposite such article in the inventory; and such appraisement shall be duly sworn to and subscribed by the appraisers making the same. [Id.]

Art. 3410. [3334] [1967] [1914] **List of claims.**—Such

executor or administrator shall also make and attach to said inventory a full and complete list of all claims due or owing to the testator or intestate, stating the nature of such claims, the name of the parties owning the same, the date thereof and the date when due, and the rate of interest each one bears, and shall also specify what portion of such claims is the separate property of the deceased, and what portion, if any, is represented as common property. [Id.]

Art. 3411. [3335] [1968] [1915] **Inventory and list sworn to.**—Such executor or administrator shall also attach to such inventory and list his affidavit sworn to before some officer of the county authorized by law to administer oaths, that the said inventory and list is a full and complete inventory and list of the property and claims of his testator or intestate that have come to his knowledge. [Id.]

Art. 3412. [3336] [1969] [1916] **Returned within sixty days.**—The inventory, appraisement and list shall be returned to the court granting the letters, either in term time or vacation, within sixty days from the date of granting such letters.

Art. 3413. [3337] [1970] [1917] **Courts shall approve or disapprove same.**—Upon return of such inventory, appraisement and list, the judge, either in term time or in vacation, shall examine the same and either approve or disapprove the same. [Id.]

Art. 3414. [3338] [1971] [1918] **Order of approval.**—Should the inventory, appraisement and list be approved by the judge, he shall cause an order to that effect to be entered upon the minutes, either in term time or vacation, and shall cause such inventory and list to be recorded upon said minutes.

Art. 3415. [3339] [1972] [1919] **Order of disapproval.**—Should the inventory, appraisement and list, or either of them, be disapproved, an order to that effect shall be entered upon the minutes, either in term time or in vacation, and such order shall further require the executor or administrator to return another inventory, appraisement and list, or either of them, within a time which shall be specified in such order, not to exceed ten days from the date of such order; and the judge may also, if he deems it necessary, appoint new appraisers.

Art. 3416. [3340] [1973] [1920] **Duty of executor.**—Whenever property or claims of the testator or intestate other than such as may be included in the inventory and list, which have been returned, shall come to the knowledge of the executor or administrator, he shall make and return an additional inventory or list, or both, of such newly discovered property or claims, or both, without delay; and, upon the return of any such additional inventory, the county judge shall, either in term time or vacation appoint appraisers and cause the property named in such additional inventory to be appraised as in the case of original appraisement. [Id.]

Art. 3417. [3341] [1974] [1921] **May be cited to make, etc.**—Any executor or administrator, on the written complaint of any person interested in the estate, shall be cited to appear

before the court in which the administration was granted, at a regular term thereof, and show cause why he should not be required to make and return an additional inventory or list of claims, or both. [Id.]

Art. 3418. [3342] [1975] [1922] **Order of the court.**—After hearing such complaint, the court shall, on sufficient proof that any property or claims of the estate have not been included in the inventory and list returned, require an additional inventory or list or both, to be made and returned, including such property or claims, in like manner as original inventories and lists, and within such time as may be fixed by the court by an order to that effect entered upon the minutes. [Id.]

Art. 3419. [3343] [1976] [1923] **Erroneous inventory or list.**—Any executor or administrator, on complaint in writing of any person interested in the estate, setting forth that an error has been made in the inventory or list of claims returned, and pointing out such error, shall be cited to appear at a regular term of the court and show cause why such alleged error should not be corrected; and, if upon hearing of such complaint it appear to the satisfaction of the court that such inventory or list is in any particular erroneous, such error shall be corrected and an order to that effect shall be entered upon the minutes, specifying such error and the correction thereof.

Art. 3420. [3344] [1977] [1924] **New appraisal.**—Any person interested in the estate who may deem any appraisal returned therein unjust or erroneous, may, upon complaint in writing, cause the executor or administrator to appear at a regular term of the court and show cause why a new appraisal should not be made. [Id.]

Art. 3421. [3345] [1978] [1925] **Order for same.**—Upon the hearing of such complaint, if the court be satisfied that such appraisal was erroneous, an order shall be entered upon the minutes appointing appraisers and requiring a new appraisal to be made and returned in like manner as original appraisements. [Id.]

Art. 3422. [3346] [1979] [1926] **Replaces original appraisal.**—When any such new appraisal is made, returned and approved by the court, it shall stand in place of the original appraisal. [Id.]

Art. 3423. [3347] [1980] [1927] **Not more than one reappraisal.**—Not more than one reappraisal shall be made, but any person interested in the estate may contest the approval of any appraisal by filing his objections thereto in writing at any time before such appraisal has been approved by the court. [Id.]

Art. 3424. [3348] [1981] [1928] **Evidence.**—All inventories and appraisements and lists of claims which have been taken, returned and approved in accordance with the provisions of this chapter, or the record thereof, or certified copies of either the originals or the record thereof, may be given in evidence in any of the courts of this State in any suit, by or

against the executor or administrator, but shall not be conclusive for or against him, if it be shown:

1. That there is other property belonging to the estate not inventoried; or,
2. That there are other claims belonging to the estate other than those named in the list; or,
3. That certain property or claims named in the list did not belong to the estate; or
4. That the property was not separate or common property as specified in such inventory or list; or,
5. That the property or any part thereof was sold legally and in good faith for less than the appraised value thereof. [Id.]

Art. 3425. [3349] [1982] [1929] **More than one executor or administrator.**—If there be more than one executor or administrator qualified as such, any one or more of them, on the neglect of the others, may return an inventory and appraisal and list of claims; and the executor or administrator so neglecting shall not thereafter interfere with the estate or have any power over the same; but the executor or administrator so returning shall have the whole administration, unless within sixty days after the return the delinquent or delinquents shall assign to the court in writing and under oath some reasonable excuse which the court may deem satisfactory; and, if no such sufficient excuse shall be assigned within said time, an order shall be entered upon the minutes removing such delinquent or delinquents and revoking his or their letters. [Id.]

CHAPTER ELEVEN.

RIGHTS, DUTIES AND POWERS OF EXECUTORS AND ADMINISTRATORS.

| | Article | | Article |
|---|---------|----------------------------------|---------|
| Care of property of estate..... | 3426 | May purchase and compromise..... | 3430 |
| Duty as to plantation, etc..... | 3427 | Acts valid..... | 3431 |
| Action of executor..... | 3428 | Conveyance of real estate..... | 3432 |
| Diligence to collect claims, and recover property..... | 3429 | | |

Art. 3426. [3350] [1983] [1930] **Care of property of estate.**—The executor or administrator shall take such care of the property of the estate of his testator or intestate as a prudent man would take of his own property, and if there be any buildings belonging to the estate, he shall keep the same in tenable repair, extraordinary casualties excepted, unless directed not to do so by an order of the court. [Acts 1876, p. 104; G. L. Vol. 8, p. 940.]

Art. 3427. [3351] [1984] [1931] **Duty as to plantation, etc.**—If there be a plantation, manufactory or business belonging to the estate and the disposition thereof is not specially directed by will, and, if the same be not required to be at once sold for the payment of debts, the executor or administrator shall carry on the plantation, manufactory or business, or cause the same to be done, or rent the same, as shall appear to be

for the best interests of the estate. He shall consider the condition of the estate and the necessity that may exist for future sale of such property for the payment of claims or legacies and shall not extend the time of renting any of the property beyond what may be consistent with the speedy settlement of the estate. [Id.]

Art. 3428. [3352] [1985] [1932] **Action of executor.**—Any person interested in the estate may, upon written complaint, after citation to the executor or administrator, at a regular term of the court upon good cause shown, obtain an order of the court, which shall be entered upon the minutes, controlling the action of such executor or administrator in regard to such plantation, manufactory or business. [Id.]

Art. 3429. [3353] [1986] [1933] **Diligence to collect claims and recover property.**—Every executor or administrator shall use ordinary diligence to collect claims due the estate and to recover possession of property of the estate and, if any executor or administrator shall wilfully neglect to use such diligence, he and the sureties on his bond shall be liable, at the suit of any person interested in the estate, for the use of the estate, for the amount of such claims or the value of such property as may have been lost by his neglect to use such diligence. [Id.]

Art. 3430. [3354-55] **May purchase and compromise.**—When an executor or administrator deems it for the interest of the estate to purchase or exchange property, or to take any claims or property for the use and benefit of the estate in payment of any debt due the estate, or to compound bad or doubtful debts due the estate, or to make compromises or settlements in relation to property or claims in dispute or litigation, he shall present an application in writing to the county court, at a regular term thereof, representing the facts; and, if the court is satisfied that it will be to the interest of the estate to grant the same, an order shall be entered showing the authority granted. The executor or administrator may also release mortgages upon payment of the debt secured thereby. [Id.]

Art. 3431. [3356] [1989] [1936] **Acts valid.**—Should there be more than one executor or administrator of the same estate at the same time, the acts of one of them as such executor or administrator shall be as valid as if all had acted jointly; and, in case of the death, resignation or removal of an executor or administrator, if there be a co-executor or co-administrator of such estate, he shall proceed with the administration as if no such death, resignation or removal had occurred.

Art. 3432. [3357] [1990] [1937] **Conveyance of real estate.**—The preceding article shall not be construed to authorize one of several executors to convey real estate, but in such case all the executors who have qualified as such and who are acting as such shall join in such conveyance.

CHAPTER TWELVE.

ADMINISTRATION UNDER A WILL.

| Article | Article | | |
|--|---------|--|------|
| Directions in will to be executed..... | 3433 | Estate may be partitioned..... | 3442 |
| Citation to executor..... | 3434 | Heirs required to give bond, etc..... | 3443 |
| Order of the court..... | 3435 | Failing to give bond, estate admin- istered, how..... | 3444 |
| Testator may provide that no action be had in court, etc..... | 3436 | Bond filed and recorded..... | 3445 |
| Creditor may sue executor..... | 3437 | Creditor may sue on bond..... | 3446 |
| Executor without bond, may be re- quired to give bond..... | 3438 | Costs of such proceeding..... | 3447 |
| Order requiring bond..... | 3439 | Executor may sell property..... | 3448 |
| Bond in such case..... | 3440 | Administration under will..... | 3449 |
| Failure to give bond..... | 3441 | Right of legatee or devisee..... | 3450 |
| | | Effect of naming executor in will..... | 3451 |

Art. 3433. [3358-59] Directions in will to be executed.—When a will has been probated, its provisions and directions shall be specifically executed, unless annulled or suspended by order of the court probating the same in a proceeding instituted for that purpose by some person interested in the estate. Such proceeding shall be by application in writing, filed with the clerk of the court, setting forth the objectionable provisions and directions in the will, and the grounds of objections. [P. D. 5623.]

Art. 3434. [3360] [1993] [1940] Citation to executor.—Upon the filing of such application, the clerk shall issue a citation for the executor or administrator to appear at a regular term of such court and answer such application; the substance of the application shall be stated in the citation; and such citation shall further direct such executor or administrator to refrain from executing the provisions and directions in the will that are objected to, until such application has been heard and decided by the court.

Art. 3435. [3361] [1994] [1941] Order of the court.—If it appears upon the hearing of such application that no material injury to the interests of the applicant will be occasioned by executing the provisions and directions of the will, and that such provisions and directions are legal, the objections shall be overruled, and the provisions and directions objected to shall be confirmed and executed, and an order to that effect shall be entered upon the minutes; otherwise, an order shall be entered upon the minutes of the court annulling the provisions and directions in the will to which objections are sustained, or suspending the execution of the same until the further order of the court.

Art. 3436. [3362] [1995] [1942] Testator may provide that no action be had in court, etc.—Any person capable of making a will may so provide in his will that no other action shall be had in the county court in relation to the settlement of his estate than the probating and recording of his will, and the return of an inventory, appraisement and lists of claims of his estate. [Acts 1876, p. 124; G. L. Vol. 8, p. 960.]

Art. 3437. [3363] [1996] [1943] Creditor may sue executor.—Any person having a debt or claim against the estate may enforce the payment of the same by suit against the executor; and, when judgment is recovered against the executor, the exe-

cution shall run against the estate of the testator in the hands of the executor that may be subject to such debt. The executor shall not be required to plead to any suit brought against him for money until after one year from the date of the probate of such will. [Id.]

Art. 3438. [3364] [1997] [1944] **Executor without bond may be required to give bond.**—Where no bond is required of an executor, any person having a debt, claim or demand against the estate, to the justice of which oath has been made by himself, his agent or attorney, or any person interested in such estate, whether in person or as the representative of another, may by complaint in writing filed in the court where such will is probated, cause such executor to appear at a regular term of the court and show cause why he should not be required to give bond. [Id.]

Art. 3439. [3365] [1998] [1945] **Order requiring bond.**—Upon hearing such complaint, if it appears to the court that such executor is wasting, mismanaging or misapplying such estate, and that thereby a creditor may probably lose his debt, or some person his interest in the estate, the court shall enter an order upon the minutes requiring such executor to give bond within ten days from the date of such order. [Id.]

Art. 3440. [3366] [1999] [1946] **Bond in such case.**—Such bond shall be for an amount equal to double the full value of the estate, to be approved by, and payable to, the county judge, conditioned that said executor will well and truly administer such estate, and that he will not waste, mismanage or misapply the same; which bond shall be filed, and approved by the county judge, and recorded in the minutes. [Id.]

Art. 3441. [3367] [2000] [1947] **Failure to give bond.**—Should the executor fail to give such bond within ten days after the order requiring him to do so, then the county judge, without citation, either in term time or in vacation, shall remove such executor and appoint some competent person in his stead, who shall administer the estate according to the provisions of such will, and who, before he enters upon the administration of said estate, shall take the oath required of executors and shall give the bond required in the preceding article. [Id.]

Art. 3442. [3368] [2001] [1948] **Estate may be partitioned.**—If such will does not distribute the entire estate of the testator, or provide a means for partition of said estate, the executor may file his final account in the court in which the will was probated, and ask partition and distribution of the estate; and the same shall be partitioned and distributed in the manner provided for the partition and distribution of estates administered under the direction of the court. [Id.]

Art. 3443. [3369] [2002] [1949] **Heirs required to give bond, when.**—When it is provided in a will that no action shall be had in the county court, except to probate and record the will and return an inventory of the estate, any person having a debt against such estate may, by written complaint filed in the court

where such will was probated, cause all the persons entitled to any portion of such estate under the will or as heirs at law to be cited to appear before such court at some regular term and execute an obligation, for an amount equal to the full value of such estate as shown by the inventory and list of claims, such obligation to be payable to the county judge, and to be approved by him, and conditioned that all obligors shall pay all debts that may be established against such estate in the manner provided by law. [Id.]

Art. 3444. [3370] [2003] [1950] **Failing to give bond, estate administered how.**—Upon the return of the citation served, unless such persons so entitled to any portion of the estate, or some of them, or some other person for them, shall execute such obligation to the satisfaction of the county judge, such estate shall thereafter be administered and settled under the direction of the court as other estates are required to be settled. [Id.]

Art. 3445. [3371] [2004] [1951] **Bond filed and recorded.**—If the obligation is executed and approved, it shall be filed and recorded in the minutes of the court, and the administration shall proceed as hereinbefore provided. [Id.]

Art. 3446. [3372] [2005] [1952] **Creditor may sue on bond.**—Creditors of the estate may sue on such obligation, and shall be entitled to judgment thereon for the amount of their debt, or they may have their action against those in possession of the estate. [Id.]

Art. 3447. [3373] [2006] [1953] **Costs of such proceeding.**—All costs of such proceeding shall be paid by the persons entitled to the estate, according to their respective interests therein. [Id.]

Art. 3448. [3374] [2007] [1954] **Executor may sell property.**—Whenever by the term of a will an executor is authorized to sell any property of the testator, no order of the county judge shall be necessary to authorize the executor to make such sale, and, when any particular directions are given by a testator in his will respecting the sale of any property belonging to his estate, the same shall be followed, unless such directions have been annulled or suspended by order of the court.

Art. 3449. [3376] [2009] [1956] **Administration under will.**—The administration of an estate under a will shall in all respects be governed by the provisions of the law respecting the administration of intestates' estates, except where it is otherwise provided by law or by the provisions and directions of the will.

Art. 3450. [3377] [2010] [1957] **Rights of legatee or devisee.**—Any devisee or legatee may obtain from the county judge of the county where the will was proved an order for the executor or administrator to deliver to him the property devised or bequeathed, provided that there will remain in the hands of such executor or administrator, after such delivery, a sufficient amount of the estate for the payment of all debts

against said estate. Such devisee shall first cause the executor or administrator, and the other devisees or legatees, if any, and the heirs, if any, to be cited to appear and show cause why such order should not be made. [Id.]

Art. 3451. [3378] [2011] [1958] **Effect of naming an executor in a will.**—The naming of an executor in a will shall not operate to extinguish any just claim which the deceased had against him; and, in all cases where an executor or administrator may be indebted to his testator or intestate, he shall account for the debt in the same manner as if it were cash in his hands; provided, however, that if said debt was not due at the time of receiving letters, he shall only be required to account for it from the date when it shall become due. [Id.]

CHAPTER THIRTEEN.

SUBSEQUENT EXECUTORS AND ADMINISTRATORS.

Art. 3452. [3379] [2012] [1959] **Subsequent administrator under will.**—When an administrator of the estate not administered has been, or shall be hereafter, appointed, he shall succeed to all the rights, powers and duties of the former executor or administrator, except such rights and powers conferred on the former executor by the will of the testator as are different from those conferred by this title in executors generally. [Acts 1876, p. 98; G. L. Vol. 8, p. 934.]

Art. 3453. [3380] [2013] [1960] **Powers.**—Such administrator may make himself, and may be made, a party to suits prosecuted by or against the former executor or administrator of the estate. He may settle with the former executor or administrator, and receive and receipt for all such portion of the estate as remains in his hands. He may bring suit on the bond or bonds of the former executor or administrator, in his own name as administrator, for all the estate that has not been accounted for by such former executor or administrator. [Id.]

Art. 3454. [3381] [2014] [1961] **Shall proceed, how.**—Such administrator shall proceed to administer such estate in like manner as if his administration was a continuation of the administration of the former executor or administrator, with the exceptions hereinbefore named. [Id.]

Art. 3455. [3382] [2015] **Executor after administration.**—Whenever an executor shall accept and qualify as such after letters of administration shall have been granted upon the estate, such executor shall, in like manner, succeed to the previous administrator, and he shall administer the estate in like manner as if his administration was a continuation of the former one, subject, however, to any legal directions of the testator contained in his will, in relation to the estate. [Id.]

Art. 3456. [3383] [2016] [1963] **Inventories to be returned.**—An executor or administrator who has been qualified as such to succeed a prior executor or administrator shall make and return to the court an inventory and appraisalment and

list of claims of the estate, within one month after being qualified, in like manner as is required of original executors and administrators; and they shall also in like manner return additional inventories and lists of claims. [Id.]

CHAPTER FOURTEEN.

WITHDRAWING ESTATES FROM ADMINISTRATION.

| | | | |
|--|-----------------|------------------------------|-----------------|
| Executor or administrator may be cited | Article 3457 | Lien on property | Article 3461 |
| May give bond | 3458 | Creditor may sue on bond | 3462 |
| Bond, filed and recorded | 3459 | Other creditors may sue | 3463 |
| Partition | 3460 | Creditor may sue distributee | 3464 |
| | | Order of discharge | 3465 |

Art. 3457. [3384] [2017] [1964] **Executor or administrator may be cited.**—At any time after the return of inventory, appraisement and list of claims of a deceased person, any one entitled to a portion of the estate, may, by a written complaint, filed in the court where such case is pending, cause the executor or administrator of the estate to be cited to appear at a regular term of the court and render an exhibit under oath of the condition of the estate. [Acts 1876, p. 126; G. L. Vol. 8, p. 962.]

Art. 3458. [3385] [2018] [1965] **May give bond.**—Upon the return of such citation served, the persons so entitled to such estate, or any of them, or any persons for them, may execute and deliver to the county judge an obligation payable to him, to be approved by such county judge for an amount equal to at least double the appraised value of the estate as ascertained by the appraisement and list of claims returned, conditioned that the persons who execute such obligation shall pay all the debts against the estate not paid that have been allowed by the executor or administrator and approved by the county judge, or that may have been established by suit, or that may be established by suit against said estate, and will pay to the executor or administrator any balance that may be found to be due him by the judgment of the court on his exhibit. [Id.]

Art. 3459. [3386] [2019] [1966] **Bond filed and recorded.**—When such bond has been given and approved, it shall be filed and recorded in the minutes; and the court shall thereupon enter an order upon the minutes directing and requiring the executor or administrator to deliver forthwith to such person or persons the portion or portions of such estate to which he or they are entitled. [Id.]

Art. 3460. [3387] [2020] [1967] **Partition.**—Any person so entitled to any portion of the estate may on written application to the court cause a partition and distribution of such estate to be made among the persons entitled thereto, in accordance with the provisions of this title respecting the partition and distribution of estates. [Id.]

Art. 3461. [3388] [2021] [1968] **Lien on property.**—A lien shall exist on all of said estate in the hands of the distributees,

and those claiming under them, with notice of such lien, to secure the ultimate payment of the aforesaid obligation. [Id.]

Art. 3462. [3389] [2022] [1969] **Creditor may sue on bond.**—Any creditor of such estate whose claim is unpaid, but has been allowed by the executor or administrator, and approved by the county judge or established by suit against the executor or administrator previous to the filing of such obligation, shall have the right to sue on such obligation in his own name, and shall be entitled to judgment thereon for the amount of his claim. [Id.]

Art. 3463. [3390] [2023] [1970] **Other creditors may sue.**—Any other creditor of such estate whose claim is not barred by limitation shall have the right to sue on such obligation, and shall be entitled to judgment thereon for such debt as he may establish against the estate. [Id.]

Art. 3464. [3391] [2024] [1971] **Creditor may sue distributee.**—Any creditor may sue any distributee, or he may sue all the distributees together, who have received any of the estate; but no one of such distributees shall be liable beyond his just proportion according to the estate he may have received in the distribution. [Id.]

Art. 3465. [3392] [2025] [1972] **Order of discharge.**—When an estate has been withdrawn from further administration under the provisions of this chapter, an order shall be entered upon the minutes discharging the executor or administrator and declaring the administration closed.

CHAPTER FIFTEEN.

REMOVAL AND RESIGNATION.

1. REMOVAL.

Art. 3466. [3393] [2026] [1973] **Without notice.**—An executor or administrator may be removed by the county judge without notice, at a regular term of the court, in the following cases:

1. When he neglects to qualify in the manner and within the time required in this title.

2. When he neglects to return to the court an inventory and appraisement and list of claims of the estate, in the manner and within the time required in this title.

3. When he has been required to give a new bond and neglects to do so within the time prescribed by the court.

4. When he absents himself from the State for a period of three months at one time, without permission of the court.

5. In such other cases as are specially provided for in this title. [Acts 1876, p. 99; G. L. Vol. 8, p. 935.]

Art. 3467. [3394] [2027] [1974]. **With notice.**—An executor or administrator may be removed by the county judge on his own motion, or on the complaint of any person interested in the estate, after being cited to answer such motion or complaint at a regular term of the court in the following cases:

1. When there shall appear sufficient grounds to believe that he has misapplied, embezzled or removed from the State, the property or any part thereof, committed to his charge, or that he is about to misapply, embezzle or remove from the State any of such property.

2. When it is proved that he has been guilty of gross neglect, or mismanagement in the performance of his duties as such executor or administrator.

3. When he fails to obey any order of the court consistent with this title, made in relation to the estate committed to his charge.

4. When he becomes of unsound mind, or from any other cause he is incapable of performing the duties of his trust.

5. When he fails to make an annual exhibit fully showing the condition of the estate he represents, or fails to make to the court any exhibit he is required to make by law.

6. When he fails to make a final settlement for three years after the grant of letters, unless the time be extended by the court, after satisfactory showing being made under oath. [Acts 1881, p. 31; G. L. Vol. 9, p. 123.]

Art. 3468. [3395] [2028] [1975] **Citation not served.**—In the cases enumerated in the preceding article, when proof is made that the executor or administrator has removed from the State, or is eluding the process of the court, the motion or complaint may be heard, though the citation be not served. [Acts 1876, p. 99; G. L. Vol. 8, p. 935.]

Art. 3469. [3396] [2029] [1976] **Order to state cause.**—When an executor or administrator is removed, the order to that effect shall set forth the cause of such removal. [Id.]

2. RESIGNATION

Art. 3470. [3397] [2030] [1977] **Application to resign.**—An executor or administrator may resign the administration of an estate, and in such case, he shall present to the court in which the administration is pending, a written application stating such wish, and accompany said application with a full and complete exhibit of the condition of the estate, together with his administration account; which exhibit and account shall both be verified by affidavit. [Acts 1876, p. 100; G. L. Vol. 8, p. 936.]

Art. 3471. [3398-99] **Citation.**—Upon the filing of such application, exhibit and account, the clerk shall make out a citation returnable to some regular term of the court; which citation shall state the presentation of such application, exhibit and account, the term of the court at which the same will be acted upon, and shall require all those interested in the estate to appear and contest the exhibit and account if they see proper. Such citation shall be published for at least twenty days in a newspaper printed in the county, if there be one; if not, then by posting copies thereof for a like period in the manner required for posting other citations. [Id.]

Art. 3472. [3400] [2033] [1980] **Exhibit and account.**—

At the return term of such citation, or at some other term to which it may have been continued, upon the county judge being satisfied that such citation has been published or posted, as the case may be, he shall proceed to examine such exhibit and account, and to hear all proof that may be offered in support of the same, and all objections, exceptions and proof offered against the same, and shall, if necessary, restate such exhibit and account, and shall audit and settle the same. [Id.]

Art. 3473. [3401] [2034] [1981] **Approval of same.**—If the court is satisfied that such executor or administrator has accounted for all said estate according to law, the county judge shall enter an order approving such exhibit and account, and requiring such executor or administrator to deliver the estate, remaining in his possession, to some person qualified by law to receive it. [Id.]

Art. 3474. [3402] [2035] [1982] **Order of discharge.**—When the estate has been delivered in accordance with the order of the court, the court shall enter an order either in term time or in vacation accepting the resignation of such executor or administrator and discharging him from such trust. [Id.]

Art. 3475. [3403] [2036] [1983] **Requisites of discharge.**—No executor or administrator shall be discharged until the exhibit and account required have been made, returned, settled and approved as provided in this chapter, nor until he has delivered the estate, if there be any remaining in his possession, as hereinbefore required.

CHAPTER SIXTEEN.

ALLOWANCE TO WIDOW AND MINOR CHILDREN.

| | | | |
|------------------------------------|---------|-----------------------------|---------|
| | Article | | Article |
| Allowance to widow and minors..... | 3476 | May take property for..... | 3481 |
| Amount of allowance..... | 3477 | Sale ordered..... | 3482 |
| Not made, when..... | 3478 | Allowance preferred..... | 3483 |
| Order fixing allowance..... | 3479 | Allowance proportioned..... | 3484 |
| To whom paid..... | 3480 | | |

Art. 3476. [3404] [2037] [1984] **Allowance to widow and minors.**—At the first regular term of the court after the original grant of letters testamentary or of administration, or at a subsequent term, thereafter within twelve months after the grant of such original letters, the court shall fix an allowance for the support of the widow and minor children of the deceased. [Acts 1876, p. 105; G. L. Vol. 8, p. 941.]

Art. 3477. [3405] [2038] [1985] **Amount of allowance.**—Such allowance shall be of an amount sufficient for the maintenance of such widow and minor children for one year from the time of the death of the testator or intestate. Such allowance shall be fixed with regard to the facts existing during the first year after such death. [Acts 1887, p. 73; G. L. Vol. 9, p. 871.]

Art. 3478. [3406] [2039] [1986] **Not made, when.**—No such allowance shall be made for the widow when she has separate property adequate to her maintenance; nor shall such allowance be made for the minor children when they have property in their own right adequate to their maintenance. [Id.; Acts 1876, p. 105; G. L. Vol. 8, p. 941.]

Art. 3479. [3407] [2440] [1987] **Order fixing allowance.**—When an allowance has been fixed, an order shall be entered stating the amount thereof, and directing the executor or administrator to pay the same in accordance with law.

Art. 3480. [3408] [2041] [1988] **To whom paid.**—The executor or administrator shall pay such allowance:

1. To the widow, if there be one, for the use of herself, and the minor children, if such children be hers.

2. If the widow is not the mother of such minor children, or some of them, the portion of such allowance necessary for the support of such minor child or children, of which she is not the mother, shall be paid to the guardian or guardians of such minor child or children.

3. If there be no widow, the allowance to the minor child or children shall be paid to the guardian or guardians of such minor child or children.

Art. 3481. [3409] [2042] [1989] **May take property for.**—The widow, or the guardian of the minor children, as the case may be, shall have the right to take in payment of such allowance, or any part thereof, any of the personal property of the estate at its appraised value as shown by the appraisement returns. [Id.]

Art. 3482. [3410] [2043] [1990] **Sale ordered.**—If there be no personal effects of the deceased that the widow or guardian is willing to take for such allowance, or not a sufficiency of them, and if there be no funds or not sufficient funds in the hands of such executor or administrator to pay such allowance, or any part thereof, then the county judge, so soon as the inventory and appraisement and list of claims are returned and approved, shall order a sale of so much of the estate for cash as will be sufficient to raise the amount of such allowance, or a part thereof, as the case may require. [Id.]

Art. 3483. [3411] [2044] [1991] **Allowance preferred.**—The allowance made for the support of the widow and minor children of deceased shall be paid in preference to all other debts or charges against the estate, except expenses of the funeral and last sickness of deceased.

Art. 3484. [3412] [2045] [1992] **Allowance apportioned.**—The said allowance shall be paid as follows:

1. If there be both widow and minor child or children, the widow shall be entitled to one-half and the minor child or children to the other half.

2. If there be a widow and no minor child or children, the widow shall receive the whole.

3. If there be a minor child or children and no widow, such minor child or children shall receive the whole.

CHAPTER SEVENTEEN.

SETTING APART THE HOMESTEAD AND OTHER EX-EMPT PROPERTY TO WIDOW AND CHILDREN.

| | | | |
|---------------------------------------|---------|--|---------|
| | Article | | Article |
| Court to set apart exempt prop-erty | 3485 | When estate is insolvent | 3494 |
| Allowance in lieu of exempt arti-cles | 3486 | Exempt property not considered | 3495 |
| Allowance limited | 3487 | When homestead not partitioned | 3496 |
| To whom delivered | 3488 | When homestead partitioned | 3497 |
| Allowance paid, how | 3489 | Separate and community home-stead | 3498 |
| To whom paid | 3490 | Homestead not liable for debts, except | 3499 |
| Sale to raise allowance | 3491 | Exempt property liable for debts | 3500 |
| Liens have preference | 3492 | Homestead rights of surviving husband | 3501 |
| When estate is solvent | 3493 | | |

Art. 3485. [3413] [2046] [1993] **Court to set apart exempt property.**—At the first term of the court after an inventory, appraisal and list of claims have been returned, the court shall by an order entered upon the minutes, set apart for the use and benefit of the widow and minor children and unmarried daughters remaining with the family of the deceased, all such property of the estate as may be exempt from execution or forced sale by the constitution and laws of the State with the exception of any exemption of one year's supply of provisions. [Acts 1876, p. 106; G. L., Vol. 8, p. 942.]

Art. 3486. [3414] [2047] [1994] **Allowance in lieu of exempt articles.**—In case there should not be among the effects of the deceased all or any of the specific articles so exempted, the court shall make a reasonable allowance in lieu thereof, to be paid to such widow and children, or such of them as there may be, as hereinafter directed. [Id.]

Art. 3487. [3415] [2048] [1995] **Allowance limited.**—The allowance in lieu of a homestead shall in no case exceed five thousand dollars and the allowance for other exempted property shall in no case exceed five hundred dollars, exclusive of the allowance provided in the preceding chapter. [Id.]

Art. 3488. [3416] [2049] [1996] **To whom delivered.**—The exempted property set apart to the widow and children shall be delivered by the executor or administrator without delay as follows:

1. If there be a widow and no children, or if the children be the children of the widow, the whole of such property shall be delivered to the widow.

2. If there be children and no widow, such property shall be delivered to such children if they be of lawful age, or to their guardian if they be minors, or the same may be equally divided among them, except the homestead.

3. If there be children of the deceased of whom the widow is not the mother, the share of such children in such exempted property, except the homestead, shall be delivered to such children if they be of lawful age, or to their guardian, if they be minors, or may be equally divided between them.

4. In all cases, the homestead shall be delivered to the widow, if there be one, and if there be no widow, to the guardian of the

minor children and unmarried daughters, if any, living with the family.

Art. 3489. [3417] [2050] [1997] Allowance paid, how.—The allowances made in lieu of any of the exempted property shall be paid either in money out of the funds of the estate that may come to the hands of the executor or administrator, or in any property of the deceased that such widow or children if they be of lawful age, or their guardian if they be minors, may choose to take at the appraisal, or a part thereof, or both, as they may select. [Id.]

Art. 3490. [3418] [2051] [1998] To whom paid.—Such allowance shall be paid by the executor or administrator in the following manner:

1. If there be a widow and no children, the whole to be paid to such widow.

2. If there be children and no widow, the whole to be paid to such children if they be of lawful age, or to their guardian if they be minors, or to be equally divided among them.

3. If there be both widow and children, the whole to be paid to such widow if she be the mother of such children, but if she be not the mother of such children, one-half to be paid to such widow and the other half to such children if they be of lawful age, or to their guardian if they be minors, or to be equally divided among them. [Id.]

Art. 3491. [3419] [2052] [1999] Sale to raise allowance.—If there be no property of the deceased that such widow or children are willing to take for such allowance, or not a sufficiency, and there be no funds, or not sufficient funds of the estate in the hands of such executor or administrator to pay such allowance, or any part thereof, the county judge, on the application in writing of such widow and children, shall order a sale of so much of the estate for cash as will be sufficient to raise the amount of such allowance, or a part thereof, as the case may require. [Id.]

Art. 3492. [3420] [2053] [2000] Liens have preference.—No property upon which there is a valid subsisting lien or encumbrance, shall be set apart to the widow or children as exempt property, or appropriated to make up allowances made in lieu of exempt property, or for the support of the widow or children, until the debts secured by such liens are first discharged. This article applies to all estates whether solvent or insolvent. [Id.; Acts 1917, p. 60.]

Art. 3493. [3421] [2054] [2001] When estate is solvent.—If, upon a final settlement of such estate, it shall appear that the same is solvent, the exempted property, except the homestead, which has been set apart to the widow or children or both, together with any allowance that has been received by them in lieu thereof, shall be subject to partition and distribution among the heirs and distributees of such estate in like manner as the other property of the estate. [Acts 1876, p. 106; G. L. Vol. 8, p. 942.]

Art. 3494. [3422] [2055] [2002] **When estate is insolvent.**—Should the estate, upon final settlement, prove to be insolvent, the title of the widow and children to all the property and allowances set apart or paid to them, under the provisions of this and of the preceding chapter, shall be absolute, and shall not be taken for any of the debts of the estate except as hereinafter provided. [Id.]

Art. 3495. [3423] [2056] [2003] **Exempt property, not considered.**—In ascertaining whether an estate is solvent or insolvent, the exempt property set apart to the widow or children, or the allowance in lieu thereof, and the allowance provided for in the preceding chapter, shall not be estimated or considered as assets of the estate.

Art. 3496. [3424] [2057] [2004] **When homestead not partitioned.**—The homestead shall not be partitioned among the heirs of the deceased during the lifetime of the widow, or so long as she may elect to use or occupy the same as a homestead, or so long as the guardian of the minor children of the deceased may be permitted under the order of the proper court having jurisdiction, to use and occupy the same. [Const. Art. 16, Sec. 52.]

Art. 3497. [3425] [2058] [2005] **When homestead partitioned.**—When the widow dies or sells her interest in the homestead, or elects to no longer use or occupy the same as a homestead, and when the proper court no longer permits the guardian of the minor children to use and occupy the same as a homestead, it may be partitioned among the respective owners thereof in like manner as other property held in common.

Art. 3498. [3426] [2059] [2006] **Separate and community homestead.**—The homestead rights of the widow and children of the deceased are the same whether the homestead be the separate property of the deceased or community property between the widow and the deceased, and the respective interests of such widow and children shall be the same in one case as in the other.

Art. 3499. [3427] [2060] [2007] **Homestead not liable for debts, except.**—The homestead shall not be liable for the payment of any of the debts of the estate, except for the purchase money thereof, the taxes due thereon or for work and material used in constructing improvements thereon; and in this last case only when the work and material are contracted for in writing, with the consent of the wife, given in the same manner as required in making a sale and conveyance of the homestead. [Const. Art. 16, Sec. 50.]

Art. 3500. [3428] [2061] [2008] **Exempt property liable for debts.**—The exempted property, other than the homestead, or any allowance made in lieu thereof, shall be liable for the payment of the funeral expenses and the expenses of last sickness of deceased, when presented within the time prescribed therefor, but such property shall not be liable for any other debts of the estate.

Art. 3501. [3429] [2062] [2009] **Homestead rights of sur-**

living husband.—On the death of the wife, leaving a husband surviving, the homestead shall descend and vest in like manner as other real property of the deceased, and shall be governed by the same laws of descent and distribution, but it shall not be partitioned among the heirs of the deceased during the lifetime of such surviving husband, or so long as he may elect to use or occupy the same as a homestead. [Const. Art. 16, Sec. 51.]

CHAPTER EIGHTEEN

PRESENTMENT OF CLAIMS.

| | Article | Article | |
|---|---------|---|------|
| Notice | 3502 | Failure to indorse or annex mem- orandum | 3517 |
| Copy of notice, filed and recorded..... | 3503 | When claim is allowed..... | 3518 |
| Posting of notice..... | 3504 | Claim shall be acted upon..... | 3519 |
| Notice to holders of recorded claims | 3505 | Action of the court..... | 3520 |
| Notice and affidavit to be filed..... | 3506 | May oppose approval of claim..... | 3521 |
| One notice sufficient..... | 3507 | May sue on rejected claim..... | 3522 |
| Penalty for neglect to give no- tice | 3508 | Judgment filed, etc..... | 3523 |
| Claims postponed if not presented in one year..... | 3509 | Costs of suit against claimant, when | 3524 |
| Exception | 3510 | Action of court on claim a judg- ment | 3525 |
| Claims for funeral expenses..... | 3511 | Claim of executor or administrator..... | 3526 |
| Absence of executor..... | 3512 | Action of court thereon, etc..... | 3527 |
| Joint obligation..... | 3513 | Application of law..... | 3528 |
| Affidavit to claim..... | 3514 | Claims not allowed..... | 3529 |
| Claim lost or destroyed..... | 3515 | No judgment in favor of claim..... | 3530 |
| Memorandum of allowance or re- jection | 3516 | | |

Art. 3502. [3430] [2063] [2010] **Notice.**—Executors or administrators within one month after receiving letters, shall publish in some newspaper printed in the county where the letters were issued, if there be one, a notice requiring all persons having claims against the estate of the testator or intestate to present the same within the time prescribed by law; which notice shall state the time of the original grant of letters testamentary or of administration, and the residence and post-office address of such executor or administrator, and shall be published once a week for four successive weeks. [Acts 1876, p. 106; G. L. Vol. 8, p. 942.]

Art. 3503. [3431] [2064] [2011] **Copy of notice, filed and recorded.**—A copy of such printed notice, together with the affidavit of the publisher, duly sworn to and subscribed before a proper officer, to the effect that it was published once a week for four consecutive weeks, shall be filed and recorded in the court where the cause is pending. [Id.]

Art. 3504. [3432] [2065] [2012] **Posting of notice.**—When no newspaper is printed in the county, the notice required shall be posted at the courthouse door of the county where the letters were issued, for four consecutive weeks, and a copy of such notice, with the return that such notice has been posted according to law, shall be filed and recorded. [Id.]

Art. 3505. Notice to holders of recorded claims.—An executor or administrator within four months after receiving letters shall give notice of the issuance of such letters, to each and all persons having a claim for money against the testator or intestate at the time of death, provided:

1. That such claim is secured by a deed of trust, mortgage, or

vendors, mechanics or other contractors lien upon real estate belonging to such testator or intestate.

2. That the instrument creating, extending, or transferring such lien is duly recorded prior to the death of such testator or intestate in the county in which the real estate covered by such lien is situated, and,

3. That the instrument creating, extending, or transferring such lien shall contain a statement of the residence and post-office address of the holder of such claim (whether original payee or transferee). Said notice stating the original grant of letters testamentary or of administration shall be given by mailing same by registered letter addressed to the record holder of such indebtedness or claim at the post-office address given in said instrument creating such lien, or in the last recorded extension or transfer of said lien in case same has been transferred of record. [Acts 1913, p. 253.]

Art. 3506. Notice and affidavit to be filed.—A copy of such notice together with return receipt and accompanied by the affidavit of the executor or administrator, stating that said notice had been mailed as required by law, and giving the name of the person to whom sent, shall be filed and recorded in the court from which the letters issued. [Id.]

Art. 3507. [3433] [2066] [2013] One notice sufficient.—If such notices have been given by a former executor or administrator, or by one where several are acting, it shall be sufficient. [Id.; Acts 1876, p. 106; G. L. Vol. 8, p. 942.]

Art. 3508. [3434] [2067] [2014] Penalty for neglect to give notice.—If the executor or administrator fails to give or cause such notices to be given, he and his sureties upon his bond shall be liable for any damage which any person may sustain by reason of such neglect, unless it appears that such person had such notice otherwise; and such executor or administrator shall be removed by the county judge at any regular term of the court on the complaint of any person interested in the estate after being cited to answer such complaint. [Id.]

Art. 3509. [3435] [2068] [2015] Claims postponed if not presented in one year.—All claims for money against a testator or intestate shall be presented to the executor or administrator within one year after the original grant of letters testamentary or of administration, otherwise the payment thereof shall be postponed until the claims which have been presented within one year and allowed by the executor or administrator and approved by the county judge have been first entirely paid. [Id.]

Art. 3510. [3435] [2068] [2015] Exception.—If the notice to holders of recorded claims has not been given by the executor or administrator as provided in this title, then failure of such holder to present his claim within one year shall not postpone the payment thereof, as provided in the preceding article, nor shall any of the provisions of said article apply to such claim. [Id.]

Art. 3511. [3436] [2069] [2016] Claims for funeral expenses.—Claims for funeral expenses and expenses of last sickness of the deceased shall be presented within sixty days after the original grant of letters testamentary or of administration

or the exempted property set apart to the widow and children, or allowances made them under the provisions of this title shall no longer be liable to the payment of such claims or any part thereof.

Art. 3512. [3437] [2070] [2017] **Absence of executor.**—If the executor or administrator absent himself from the State, the period of such absence shall not be computed in estimating the time mentioned in the three preceding articles. [Id.]

Art. 3513. [3438] [2071] **Joint obligation.**—When two or more persons are jointly bound for the payment of a debt, or for any other purpose, upon the death of either of said persons so bound, his estate may be charged by virtue of such obligation in the same manner as if the obligors had been bound severally as well as jointly. [Acts 1887, p. 17; G. L. Vol. 9, p. 815.]

Art. 3514. [3439] [2072] [2018] **Affidavit to claim.**—No executor or administrator shall allow claim for money against his testator or intestate, nor shall the county judge approve the same, unless such claim is accompanied by an affidavit that the claim is just and that all legal offsets, payments and credits known to affiant have been allowed. Such affidavit, if made by any other person than the owner of the claim, shall state further that the affiant is cognizant of the facts contained in his affidavit. [Acts 1876, p. 106; G. L. Vol. 8, p. 942.]

Art. 3515. [3440-1-2] **Claim lost or destroyed.**—If a claim is lost or destroyed, the claimant, or some one for him, may make affidavit to the fact of such loss or destruction, stating the amount, date and nature of such claim and when due, and that the same is just, and that all legal offsets, payments and credits known to affiant have been allowed, and that the claimant is still the owner of the same; and it must be proved by disinterested testimony taken in open court, or by deposition, before such claim is allowed. If such a claim is allowed or approved without such affidavit and proof, such allowance or approval shall be void.

Art. 3516. [3443] [2076] [2022] **Memorandum of allowance or rejection.**—When any claim for money against an estate is presented to the executor or administrator, properly authenticated, he shall indorse thereon or annex thereto a memorandum in writing signed by him, stating the time of its presentation, and that he allows or rejects the claim, or what portion thereof he allows or rejects, as the case may be. [Id.]

Art. 3517. [3444] [2077] [2023] **Failure to indorse or annex memorandum.**—When a claim for money against an estate is presented to the executor or administrator for his action, and he shall fail to indorse thereon, or annex thereto, such memorandum as required by the preceding article, such failure shall operate as a rejection of the claim, and shall authorize the claimant to bring suit to establish it, as if such claim had been rejected; and such executor or administrator shall be removed on the complaint of any person interested in such claim, after being cited to appear and answer such complaint, and upon proof of such failure. [Id.]

Art. 3518. [3445] [2078] [2024] **When claim is allowed.**—If a claim or a part thereof, be allowed by an executor or administrator, it shall be presented within twelve months after the issuance of original letters testamentary or of administration to the county clerk of the proper county who shall enter the same in its proper place upon the claim docket, and unless such claim is so presented within said time, the payment thereof, should it be approved either in whole or in part, shall be postponed until all other claims which have been allowed and approved within the time prescribed have been first entirely paid.

Art. 3519. [3446] [2079] [2025] **Claim shall be acted upon.**—All claims that have been allowed by the executor or administrator and entered upon the claim docket for the period of ten days shall be acted upon by the court at a regular term, and either approved in whole or in part or rejected, and they shall also at the same time be classified by the court.

Art. 3520. [3447] [2080] [2026] **Action of the court.**—When the court has acted upon a claim, such action shall be entered upon the claim docket and the date thereof, and the judge shall also indorse upon such claim or annex thereto, a memorandum in writing, dated and signed by him officially, stating the action of the court upon such claim, whether approved or disapproved, or if approved in part and rejected in part, stating the amount approved, and also stating the classification of such claim.

Art. 3521. [3448] [2081] [2027] **May oppose approval of claim.**—Any person interested in an estate may, at any time before the court has acted upon a claim, appear and object to the approval of the same, or any part thereof, in writing, and in such case the court shall hear proof and render judgment thereon.

Art. 3522. [3449] [2082] [2028] **May sue on rejected claim.**—When a claim for money against an estate has been rejected by the executor or administrator, either in whole or in part, the owner of such claim may, within ninety days after such rejection, and not thereafter, bring suit against the executor or administrator for the establishment thereof in any court having jurisdiction of the same. [Id.]

Art. 3523. [3450] [2083] [2029] **Judgment filed, etc.**—No execution shall be issued on a judgment obtained in such suit, but a certified copy of such judgment shall be filed with the county clerk of the county where the estate is pending within thirty days after the rendition of such judgment, and entered upon the claim docket, and shall be classified by the county judge, and have the same force and effect as if the amount thereof had been allowed by the executor or administrator, and approved by the county judge. [Id.]

Art. 3524. [3451] [2084] [2030] **Costs of suit against claimant, when.**—In suits to establish a claim after rejection, if the holder fails to recover judgment thereon for a greater amount than was allowed by the executor or administrator, he shall be adjudged to pay all costs of such suit. [Id.]

Art. 3525. [3452] [2085] [2031] **Action of court on claim**

a judgment.—The action of the court in approving or disapproving a claim shall have the force and effect of a final judgment, and when the claimant, or any person interested in the estate, shall be dissatisfied with such action, he may appeal therefrom to the district court, as from other judgments of the county court rendered in probate matters.

Art. 3526. [3453] [2086] [2032] **Claim of executor or administrator.**—The provisions of this chapter respecting the presentations of claims against an estate shall not be construed to apply to any claim of the executor or administrator against his testator or intestate; but an executor or administrator holding such claim shall file the same in the court granting his letters, verified by affidavit as required in other cases, within six months after he has qualified, or such claim shall be barred. [Id.]

Art. 3527. [3454] [2087] [2033] **Action of court thereon, etc.**—When such claim has been entered upon the claim docket, and acted upon by the court as in other cases of claims, an appeal from the judgment of the court may be taken as in other cases.

Art. 3528. [3455] [2088] [2034] **Application of law.**—The provisions of this chapter respecting the presentation of claims shall not be so construed as to apply to the claim of any heir, devisee or legatee when claiming as such, nor to any claim that accrues against the estate after the granting of letters testamentary or of administration for which the executor or administrator has contracted. [Id.]

Art. 3529. [3456] [2089] [2035] **Claims not allowed.**—No claim for money against his testator or intestate shall be allowed by an executor or administrator, nor shall any suit be instituted against him on any such claim after an order for partition and distribution has been made; but the owner of a claim not barred by the laws of limitation shall have his action thereon against the heirs, devisees or legatees of the estate, limited to the value of the property they may receive in such partition and distribution. [Id.]

Art. 3530. [3457] [2090] [2036] **No judgment in favor of claim.**—No judgment shall be rendered in favor of a claimant upon any claim for money which has not been legally presented to the executor or administrator, and rejected by him, either in whole or in part. [P. D. 5683.]

CHAPTER NINETEEN.

CLASSIFICATION AND PAYMENT OF CLAIMS.

| Article | Article | | |
|-------------------------------------|---------|-------------------------------------|------|
| Classification of claims..... | 3531 | Penalty | 3538 |
| Claims paid pro rata..... | 3532 | Payment of claims in full..... | 3539 |
| Order of payment of claims..... | 3533 | Payment of claims pro rata..... | 3540 |
| Claim not paid, unless..... | 3534 | Claims presented after twelve | |
| Owner may obtain order for pay- | | months..... | 3541 |
| ment..... | 3535 | Exhibit required..... | 3542 |
| Proceeds of sale of mortgaged prop- | | Liability of executor..... | 3543 |
| erty..... | 3536 | Executor not to purchase claim..... | 3544 |
| Exhibit of condition after twelve | | | |
| months..... | 3537 | | |

Art. 3531. [3458] [2091] [2037] **Classification of claims.**

—The claims against an estate shall be classed and have priority of payment as follows:

1. Funeral expenses and expenses of last sickness.
2. Expenses of administration and expenses incurred in the preservation, safe-keeping and management of the estate.
3. Claims secured by mortgage or other liens so far as the same can be paid out of the proceeds of the property subject to such mortgage or other lien, and when more than one mortgage or lien shall exist upon the same property, the oldest shall be first paid; but no preference shall be given to such claims secured by mortgage or other lien further than regards the property subject to such mortgage or other lien.
4. All claims legally exhibited within one year after the original grant of letters testamentary or of administration.
5. All claims legally exhibited after the lapse of one year from the original grant of letters testamentary or of administration. [Acts 1876, p. 115; P. D. 5674; G. L. Vol. 8, p. 951.]

Art. 3532. [3459] [2092] [2038] **Claims paid pro rata.**—Where there is a deficiency of assets to pay all claims of the same class, they shall be paid prorata; and no executor or administrator shall be allowed to pay any claims, whether the estate is solvent or insolvent, except with their pro rata amount of the funds of the estate that have come to hand. [Id.]

Art. 3533. [3460] [2093] [2039] **Order of payment of claims.**—Executors and administrators, when they have funds in their hands belonging to the estate, shall pay:

1. Funeral expenses and expenses of last sickness, if the claims therefor have been presented within sixty days from the original grant of letters testamentary or of administration, but if not presented within such time their payment shall be postponed until the allowances made to the widow and children, or either, are paid.
2. Allowances made to the widow and children, or either.
3. Expenses of administration and the expenses incurred in the preservation, safe-keeping and management of the estate.
4. Other claims against the estate in the order of their classification.

Art. 3534. [3461] [2094] [2040] **Claim not paid, unless, etc.**—No claim for money, or any part thereof, shall be paid until it has been approved by the county judge or established by the judgment of a court of competent jurisdiction.

Art. 3535. [3462] [2095] [2041] **Owner may obtain order for payment.**—When an executor or administrator has funds of the estate in his hands sufficient to pay a claim, or a part thereof, and fails to make such payment when required to do so by the owner, such owner may obtain an order of the court, at a regular term, directing such payment to be made, by making proof that such executor or administrator has funds of the estate in his hands which should be paid upon such claim, and that he has failed to make such payment; provided, such executor or administrator shall have first been cited on the written com-

plaint of such claimant, filed with the clerk, to appear and show cause why such order should not be made. [Id.]

Art. 3536. [3463] [2096] [2042] Proceeds of sale of mortgaged property.—Whenever an executor or administrator has in his hands the proceeds of a sale that has been made for the satisfaction of a mortgage or other lien, and such proceeds, or any part thereof, are not required for the payment of any debts against the estate that have a preference over such mortgage or other lien, he shall within twelve months after the grant of letters testamentary or of administration, pay such proceeds to the creditor or creditors having a right thereto; and, if he shall fail to do so, such creditor or creditors, upon proof thereof, may obtain an order from the county court, directing such payment to be made. [Id.]

Art. 3537. [3464] [2097] [2043] Exhibit of condition after twelve months.—At the first term of the court after the expiration of twelve months from the original grant of letters testamentary or of administration, the executor or administrator shall return to the court an exhibit in writing, sworn to and subscribed by him, setting forth a list of all claims against the estate that were presented to him within twelve months after said original grant of letters testamentary or of administration, specifying which have been allowed by him, which have been rejected and the date when rejected, which have been sued upon and the condition of the suit, also setting forth fully the condition of the estate. [Id.]

Art. 3538. [3465] [2098] [2044] Penalty.—Should such executor or administrator fail to return such exhibit, any person interested in the estate may, upon written complaint, filed with the clerk, cause him to be cited to appear at a regular term of the court and show cause why his letters should not be revoked and why he should not be fined for such failure; and, upon the hearing of such complaint, unless good cause be shown for such failure, the court shall revoke the letters of such executor or administrator and shall fine him in a sum not to exceed one hundred dollars. [Id.]

Art. 3539. [3466] [2099] [2045] Payment of claims in full.—If it shall appear from the exhibit, or from other evidence, that the estate is wholly solvent, and that the executor or administrator has in his hands sufficient funds for the payment of all character of claims against the estate, the county judge shall order immediate payment to be made of all claims allowed and approved or established by judgment. [Id.]

Art. 3540. [3467] [2100] [2046] Payment of claims pro rata.—If it appear that the funds on hand are not sufficient for the payment of all the said claims, or if the estate is insolvent and the executor or administrator has any funds in his hands, the county judge shall order such funds to be applied to the payment of all claims having a preference in the order of their priority, if they, or any of them, be still unpaid, and then to the payment pro rata of the other claims allowed and approved or

established, taking into consideration also the claims that were presented within twelve months, and in suit or on which suit may yet be instituted. [Id.]

Art. 3541. [3468] [2101] [2047] Claims presented after twelve months.—Claims for money against the estate presented to the executor or administrator after the expiration of twelve months from the original grant of letters, and allowed and approved or established by judgment, shall be paid by the executor or administrator at any time before the estate is finally closed, when he has funds of the estate in his hands over and above what may be sufficient to pay all debts of every kind against the estate that were presented within the twelve months and allowed and approved or established by judgment, or that may be so established; and an order for the payment of any such claim, upon proof that the executor or administrator has such funds, may be obtained from the county judge in like manner as is provided in this chapter for creditors to obtain payment. [Id.]

Art. 3542. [3469] [2102] [2048] Exhibit required.—At the third regular term after the expiration of twelve months from the original grant of letters testamentary or of administration, or at any term of the court thereafter, any person interested in the estate may, by a complaint in writing, filed in the county court, cause the executor or administrator to be cited to appear at a regular term of the court and make an exhibit in writing, under oath to the court, setting forth fully, in connection with the previous exhibits, the condition of the estate he represents; and if it shall appear to the court by said exhibit, or by other evidence, that said executor or administrator has any funds of the estate in his hands subject to distribution among the creditors of the estate, the county judge shall order the same to be paid out to them according to the provisions of this chapter; or any executor or administrator may voluntarily present such exhibit to the court, and, if he has any of the funds of the estate in his hands subject to distribution among the creditors of the estate, a like order shall be made. [Id.]

Art. 3543. [3470] [2103] [2049] Liability of executor.—Where an order is made by the county judge, for an executor or administrator to pay over money to any person other than the State Treasurer, and such executor or administrator shall neglect to make such payment when it is demanded by the person entitled thereto, his agent or attorney, such executor or administrator shall be liable on his official bond to the person in whose favor such order of payment was made, for damages upon the amount he shall so neglect to pay, at the rate of five per cent per month for each month he shall so neglect to make such payment after the same was so demanded, such damages to be recovered by suit against such executor or administrator and the sureties upon his bond before any court having jurisdiction of the amount claimed, exclusive of interest and such damages. [Id.]

Art. 3544. [3471] [2104] [2050] Executor not to purchase

claim.—No executor or administrator shall purchase for his own use, either directly or indirectly, any claim against the estate he represents; and, should he do so, any person interested in the estate may upon written complaint, cause him to be cited to appear before the court; and upon proof of such complaint, the court shall enter an order upon the minutes canceling the claim so purchased; and such executor or administrator shall not be allowed to receive from the estate any portion of such claim. [Id.]

CHAPTER TWENTY.

HIRING AND RENTING.

| | | | |
|---------------------------------------|---------|----------------------------------|---------|
| | Article | | Article |
| Executor may hire or rent prop- | 3545 | Security shall be taken..... | 3548 |
| erty..... | 3545 | Report of hiring or renting..... | 3549 |
| May obtain order to hire or rent..... | 3546 | Action of court on report..... | 3550 |
| Without order of court..... | 3547 | Who may file complaint..... | 3551 |

Art. 3545. [3472] [2105] [2051] Executor may hire or rent property.—When an executor or administrator thinks it would be to the interest of the estate to hire out any of the personal property of the estate, or to rent any of the real estate, he shall do so either at public auction or privately, for cash or credit, as he may deem most advantageous to the estate. [Acts 1876, p. 104; G. L. Vol. 8, p. 940.]

Art. 3546. [3473] [2106] [2052] May obtain order to hire or rent.—An executor or administrator if he prefers, may file a written application with the county clerk setting forth the property which he thinks should be hired or rented; and if the county judge be of the opinion that it would be to the interest of the estate to grant the application, he shall do so by an order entered upon the minutes, either in term time or in vacation, which order shall name the property to be hired or rented, and state whether such hiring or renting shall be at public auction or privately, and whether for cash or credit, and if on credit, the length of such credit, and shall also state the period of time for which such property shall be hired or rented.

Art. 3547. [3474] [2107] [2053] Without order of court.—When an executor or administrator hires or rents property belonging to an estate without an order of the court authorizing him to do so, he shall be held responsible to the estate for the reasonable value of the hire or rent of such property, to be ascertained by the court by satisfactory evidence.

Art. 3548. [3475] [2108] [2054] Security shall be taken.—When property is hired or rented on credit, possession thereof shall not be delivered to the person hiring or renting the same until such person has executed and delivered to the executor or administrator a note with good personal security for the amount of such hire or rent; and any executor or administrator who shall deliver possession of any property so hired or rented on credit without first receiving such note with good personal security shall be responsible upon his bond as such executor or administrator for the full amount of such hire or rent.

Art. 3549. [3476] [2109] [2055] **Report of hiring or renting.**—When any property of the estate has been hired or rented, the executor or administrator shall, within thirty days thereafter, return to the court a written report, signed by him and duly sworn to, stating:

1. The property hired or rented.
2. When the same was so hired or rented, and whether at public auction or privately.
3. Whether for cash or on credit, and, if on credit, the length of such credit.
4. The name of the person hiring or renting the same.
5. The amount for which the same was hired or rented.

Art. 3550. [3477] [2110] [2056] **Action of court on report.**—When such report is returned to the court, it shall be filed, and, at a regular term thereafter, it shall be examined, and if found to be just and reasonable, it shall be approved and confirmed by order of the court entered upon the minutes, and shall be recorded in the minutes; but if disapproved by the court, an order to that effect shall be entered, and also adjudging against the executor or administrator the reasonable value of the hire or rent of such property where it appears that, by reason of any fault of such executor or administrator, such property has not been hired or rented for its reasonable value.

Art. 3551. [3478] [2111] [2057] **Who may file complaint.**—Any person interested in an estate may, upon written complaint filed in the county court, cause an executor to be cited to appear at a regular term of such court and show cause why he should not hire or rent any of the property belonging to the estate, and upon the hearing of such complaint the court shall make such order as may seem for the best interest of the estate.

CHAPTER TWENTY-ONE.

SALES.

| Article | Article |
|--|---------|
| Advantage considered..... | 3552 |
| Court must order sales..... | 3553 |
| Mineral lease..... | 3554 |
| Notice of application..... | 3555 |
| Report on application..... | 3556 |
| Terms of sale..... | 3557 |
| Sale at public auction..... | 3558 |
| When sold on credit..... | 3559 |
| Sale of perishable property..... | 3560 |
| Sale of crops..... | 3561 |
| Executor to sell personal property..... | 3562 |
| Sale of stock..... | 3563 |
| Sale of mortgaged property..... | 3564 |
| Sale of real estate, how made..... | 3565 |
| Requisites of application to sell..... | 3566 |
| Citation in such case..... | 3567 |
| Posting and return of citation..... | 3568 |
| Action of court on application..... | 3569 |
| Real estate sold on credit..... | 3570 |
| Sold for cash..... | 3571 |
| Private sale..... | 3572 |
| Notice of sale..... | 3573 |
| Time and place of sale..... | 3574 |
| Where sale may be ordered..... | 3575 |
| Order of court..... | 3576 |
| Who may apply for order of sale..... | 3577 |
| Who may oppose application..... | 3578 |
| Executor or administrator not to purchase..... | 3579 |
| Failure of bidder to comply, etc..... | 3580 |
| Public sale may be continued..... | 3581 |
| Notice of private sale..... | 3582 |

Art. 3552. [3479] [2112] [2058] **Advantage considered.**—All sales for the payment of the debts owing by the estate shall be ordered to be made of such property as may be deemed most advantageous to such estate to be sold. [Acts 1876, p. 112; G. L. Vol. 8, p. 948.]

Art. 3553. [3480] [2113] [2059] **Court must order sales.**—No sale of any property of an estate shall be made by an ex-

ecutor or administrator without an order of the court authorizing the same.

Art. 3554. Mineral lease.—Upon written application by the executor or administrator, or any heir, devisee or legatee of a deceased person, or by any creditor of the estate whose claim has been allowed and approved or established by suit, the county court may, by an order entered on the minutes of the court either in term time or in vacation, direct the lease of real property belonging to the estate of a deceased person, or any part thereof, for the purpose of drilling, mining, and operating for gas, oil or other minerals or metals. Such order shall state the minimum bonus, if any, to be received by the executor or administrator under such lease, the minimum royalty to be reserved to the estate under such lease in no event less than one-eighth royalty on oil, and such other terms of such lease as the court may embody in such order. [Acts 1919, p. 251.]

Art. 3555. Notice of application.—Before such application shall be heard by the court, notice of the application shall be given by the executor or administrator by publication of such notice in one issue of a newspaper published in the county where the property is situated, which notice shall appear subsequent to filing of such application and not less than ten days prior to hearing thereon, and shall describe the property with sufficient accuracy to identify it and shall state the time and place of hearing on such application. [Id.]

Art. 3556. Report on application.—The executor or administrator shall in term time or vacation report to the court the lease made by him in accordance with such order within ten days after entry of order authorizing such lease, and shall embody in such report, or attach thereto, a full copy of the proposed contract of lease, and such lease shall be approved by the court, with such amendments, if any, as the court may direct, or shall be disapproved by the court at any time within ten days after the filing of such report either in term time or vacation by an order of approval or disapproval entered on the minutes of said court. If such lease is approved, the order of approval shall direct the executor or administrator to execute and deliver the lease contract approved on compliance by the other party or parties thereto with the terms thereof; provided that no lease executed under the provisions of this chapter shall be binding upon heirs, legatees, or distributees of any estate, or on purchasers from such estate unless actual development has been commenced by the time said estate is partitioned and distributed and is being and continues to be prosecuted with reasonable diligence thereafter. [Id.]

Art. 3557. [3481] [2114] [2060] Terms of sale.—The court may order a sale of property, to be made for cash or on credit, at public auction or privately, as it may consider most to the advantage of the estate, except when herein otherwise specially provided. [Acts 1876, p. 112; G. L. Vol. 8, p. 948.]

Art. 3558. [3482] [2115] [2061] **Sale at public auction.**—All sales of personal property at public auction shall be governed by the rules governing sales of personal property under execution, unless herein otherwise provided. [Id.]

Art. 3559. [3483] [2116] [2062] **When sold on credit.**—When personal property is sold on credit, it shall not be for a longer time than six months from the date of such sale, and the purchaser shall be required to give his note for the amount of such purchase, with good and solvent personal security, before such property shall be delivered to him.

Art. 3560. [3484] [2117] [2063] **Sale of perishable property.**—Whenever there is property belonging to the estate of a deceased person that is perishable or liable to waste, upon written application of the executor or administrator, or an heir, devisee, legatee or creditor of the deceased, whose claim has been allowed and approved or established by suit, the county judge, by an order entered on the minutes, either in term time or vacation, may direct the sale of such property, or any part thereof. [Id.]

Art. 3561. [3485] [2118] [2064] **Sale of crops.**—The county judge may, either in term time or in vacation, by an order entered on the minutes, direct the crops belonging to the estate of a deceased person, or any part thereof, to be sold for their market value at private sale, upon written application of the executor or administrator, or any heir, devisee, legatee or creditor of the deceased, whose claim has been allowed and approved or established by suit. [Id.]

Art. 3562. [3486] [2119] [2065] **Executor to sell personal property.**—The executor or administrator, as soon as practicable after his qualification as such, shall sell, at public or private sale, as the court may order, all personal property belonging to the estate, except bonds, securities or other personal property, which in the opinion of the county judge may not be liable to waste or loss, and except property exempt from forced sale, specific legacies and personal property necessary to carry on a plantation, manufactory or business, which it may be thought best to carry on, giving such credit as such executor or administrator or county judge may deem most advantageous to the estate, not exceeding six months, and taking notes with one or more sufficient sureties for the purchase money. [Id.]

Art. 3563. [3487] [2120] [2066] **Sale of stock.**—If the executor or administrator shall represent to the court on oath in writing that there is stock belonging to the estate which he is unable to collect or command, the court may order that the same be sold at public auction, on such credit as the court may deem reasonable, not exceeding twelve months, taking notes with good and sufficient sureties for the purchase money; and such sale shall be advertised, made, returned and confirmed in the same manner as the sale of real property. [Id.]

Art. 3564. [3488] [2121] [2067] **Sale of mortgaged property.**—Any creditor of a deceased person holding a claim

secured by a mortgage or other lien, which has been allowed and approved or established by suit, may, at a regular term thereof, obtain from the county court where the estate is pending, an order for the sale of such property or so much thereof as may be required to satisfy his claim. The application shall be in writing and the executor or administrator shall be cited to appear and answer the same. If the lien is on real property, the same notice shall be given of the application as is required to obtain an order for the sale of real property. [Id.]

Art. 3565. [3489] [2122] [2068] **Sale of real estate, how made.**—The executor or administrator, when necessary, shall apply to the county judge, at a regular term of the court, for an order to sell so much of the real estate belonging to the estate as is sufficient to pay the local charges and claims against the estate. [Id.]

Art. 3566. [3490] [2123] [2069] **Requisites of application to sell.**—Such application shall be made in writing and shall describe the real estate sought to be sold, and shall be accompanied by an exhibit in writing, verified by the affidavit of the executor or administrator, showing fully and particularly the charges and claims against said estate that have been approved or established by suit or that have been rejected and may yet be established, and the amount of each, and the estimated expenses of administration, and the property of said estate remaining on hand liable for the payment of such charges and claims. [Id.]

Art. 3567. [3491] [2124] [2070] **Citation in such case.**—Upon the filing of such application and exhibit, the clerk shall issue a citation to all persons interested in the estate, describing the land sought to be sold, and requiring such persons to appear at the term named in such citation, and show cause why such sale should not be made should they choose to do so. [Id.]

Art. 3568. [3492] [2125] [2071] **Posting and return of citation.**—Such citation shall be posted in the manner required for other citations for at least twenty days before the first day of the term of the court at which the application is to be heard, and the citation and return shall be recorded, as other citations and returns. [Id. Acts S. S. 1909, p. 336.]

Art. 3569. [3493] [2126] [2072] **Action of court on application.**—The court shall hear such application and evidence thereon at a regular term and if satisfied that a necessity exists therefor, shall order the sale to be made; otherwise he may refuse to order the sale and may, if he deems best, order the sale of other property of the estate that it would be more to the interest of the estate to have sold. The order to that effect shall be entered into the minutes. [Acts 1876, p. 112; G. L. Vol. 8, p. 948.]

Art. 3570. [3494] [2127] [2073] **Real estate sold on credit.**—All sales of real estate for the payment of debts shall be made at public auction to the highest bidder on a credit of twelve months, except when otherwise specially provided by law. [Id.]

Art. 3571. [3495] [2128] [2074] **Sold for cash.**—Sales of real estate may be made at public auction for cash or on such credit as the county judge may direct not exceeding twelve months, in the following cases:

1. When the sale is made for the purpose of raising the amount, or any part thereof, of any allowance made to the widow and children, or either, under the provisions of this title.

2. When the sale is made for the satisfaction of a mortgage or other lien upon such real estate.

3. When such sale is made in accordance with directions contained in a will. [Id.]

Art. 3572. [3496] [2129] [2075] **Private sale.**—The county judge may order a sale of real estate to be made at a public or private sale for cash, or for part cash and part credit, and if sold for part cash and part credit, then upon the terms to be determined by him. One-fifth of the purchase price must be paid in cash, and the executor or administrator shall retain a lien upon the premises to secure the deferred payment. It must be shown, in addition to the other requirements, that said sale was made for a fair price, and the judge may require personal security should he deem it necessary. [Id. Acts 1915, p. 87.]

Art. 3573. [3497-8] **Notice of sale.**—All public sales of real estate shall be advertised at least twenty days before the day of sale, by the officer by having the notice thereof published in the English language once a week for three consecutive weeks preceding such sale in a newspaper published in the county. The first of said publications shall appear not less than twenty days immediately preceding the day of sale. Such notice shall state the time and place of sale, the terms of sale, shall describe the property to be sold, and shall be signed by the executor or administrator. [Acts 1876, p. 113; G. L. Vol. 8, p. 949.]

Art. 3574. [3499] [2132] [2078] **Time and place of sale.**—All public sales of real estate shall be made in the county where the letters testamentary or of administration were granted, at the courthouse door of such county, or at the place in such county where sales of real estate are specially authorized by law to be made; and all such sales shall be made on the first Tuesday of the month, between the hours of ten a. m. and four p. m.

Art. 3575. [3500] [2133] [2079] **Where sale may be ordered.**—If deemed advisable, the county judge may order a public sale of real estate to be made in the county where it is situated. If made in any other county than that in which the letters testamentary or of administration were granted, such sale shall be advertised in both counties. [Id.]

Art. 3576. [3501] [2134] [2080] **Order of court.**—Whenever any property of an estate is ordered to be sold by the county judge, such order shall be entered on the minutes of the court, shall describe the property to be sold, the time and place of sale, and the terms of such sale. [Id.]

Art. 3577. [3502] [2135] [2081] **Who may apply for order of sale.**—When an executor or administrator shall neglect to

apply for an order to sell sufficient property of the estate to pay the charges and claims against the estate that have been allowed and approved or established by suit, any person interested in the estate may, upon written application, cause such executor or administrator to be cited to appear at a regular term of the court and make a full exhibit of the condition of such estate, and show cause why a sale of the property should not be ordered; and, upon hearing such application, if the court is satisfied from the proof that a necessity exists for the sale, the same shall be ordered. [Id.]

Art. 3578. [3503] [2136] [2082] **Who may oppose application.**—When an application for an order of sale is made, any person interested in the estate may, before an order is made thereon, file his opposition to the sale, in writing, or may make application for the sale of other property of the estate; and, after hearing the controversy, the county judge shall make such order thereon as the circumstances of the case may require. [Id.]

Art. 3579. [3504] [2137] [2083] **Executor or administrator not to purchase.**—No executor or administrator shall buy the estate of his testator or intestate, or any part thereof, at its appraised value, or become the purchaser, either directly or indirectly of any property of the estate sold by him. If an executor or administrator should either directly or indirectly become the purchaser of any of the property of his testator or intestate, at a sale made by him or his co-executor or co-administrator, upon the written complaint of any person interested in the estate, and service of citation upon any such executor or administrator, and, upon proof of such complaint, such sale shall be declared void by the county judge, and such executor or administrator decreed to hold the property so purchased in trust as assets of the estate, and an order to that effect shall be entered upon the minutes. [Id.]

Art. 3580. [3505] [2138] [2084] **Failure of bidder to comply, etc.**—When any person shall bid off property offered for sale, rent or hire, at public auction, by an executor or administrator, and shall fail to comply with the terms of sale, renting or hiring, such property shall be re-advertised and sold, rented or hired without any further order; and the person so failing to comply shall be liable to pay such executor or administrator for the use of the estate ten per cent on the amount of his bid, and also the deficiency in price on the second sale, renting or hiring, if any, to be recovered by such executor or administrator. [Id.]

Art. 3581. [3506] [2139] [2085] **Public sale may be continued.**—Public sales may be continued from day to day, in case the day set apart for such sale shall be insufficient to complete the same, by giving public notice of such continuance at the conclusion of the sale of each day, and the continued sale shall commence and close within the same hours. [Id.]

Art. 3582. [3507] [2140] [2086] **Notice of private sale.**—When property is ordered by the court to be sold at private sale, no notice of such sale shall be required, unless the court ordering such sale shall direct otherwise.

CHAPTER TWENTY-TWO.

REPORT OF SALES, ETC.

| | | | |
|-------------------------|---------|---------------------------|---------|
| | Article | | Article |
| Report of sale..... | 3583 | Conveyance delivered..... | 3587 |
| Action on report..... | 3584 | Penalty for neglect..... | 3588 |
| Decree vests title..... | 3585 | Vendor's lien..... | 3589 |
| Conveyance..... | 3586 | | |

Art. 3583. [3508-9-10] Report of sale.—All sales of property of an estate shall be reported to the court ordering the same within thirty days after the sales are made. The report of sale shall be in writing and shall be subscribed and sworn to by the executor or administrator. Said report may be made in term time or in vacation, and when returned shall be filed by the clerk and the filing thereof noted upon the judge's docket, and shall show:

1. The time and place of the sale.
2. The property sold, describing the same.
3. The name of the purchaser of such property.
4. The amount for which each article of property sold.
5. The date of the order of the court authorizing the sale.
6. The terms of the sale, and whether at public auction or made privately. [Acts 1876, p. 113; G. L. Vol. 8, p. 949.]

Art. 3584. [3511-12] Action on report.—After the expiration of five days from the filing of a report of sale, the county judge at a regular term of his court, shall inquire into the manner in which the sale was made, and hear evidence in support of or against such report; and, if satisfied that the sale was fairly made, and in conformity with law, he shall enter upon the minutes a decree confirming such sale, and order the report of sale to be recorded by the clerk, and a conveyance of the property to be made by the executor or administrator to the purchaser upon compliance with the terms of sale. If the court is not satisfied that the sale was fairly made and in conformity with law, an order shall be entered upon the minutes setting the same aside and ordering a new sale to be made if necessary. [Id.]

Art. 3585. [3513] [2146] Decree vests title.—No conveyance of personal property shall be necessary, but the decree of the court confirming the sale shall vest the right and title of the testator or intestate in the purchaser, and shall be prima facie evidence that all the requirements of the law have been complied with in making the sale. [Id.]

Art. 3586. [3514] [2147] [2092] Conveyance.—After a sale has been confirmed by the court, upon the purchaser complying with the terms of the sale, the executor or administrator shall execute and deliver to him a proper conveyance of the property. Real estate shall be conveyed by deed, and shall recite the decree of the court confirming the sale and ordering the conveyance to be made, and such conveyance shall vest the right and title that the testator or intestate had in such real estate in the purchaser, and shall be prima facie evidence that all the requirements of the law have been complied with in making such sale. [Id.]

Art. 3587. [3515] [2148] [2093] Conveyance delivered.—No conveyance of real estate shall be executed and delivered by the executor or administrator until the terms of sale have been complied with by the purchaser; and if the sale is made on credit, the executor or administrator before delivering the conveyance shall take from such purchaser a note with good personal security, together with a mortgage containing power of sale upon the property sold to secure the payment of the purchase money, and shall file such mortgage for record in the county where such real estate is situated.

Art. 3588. [3516] [2149] [2094] Penalty for neglect.—Should the executor or administrator neglect to take such note, security and mortgage, and file such mortgage for record in the proper county before delivery of the deed, he and the sureties on his bond shall be liable at the suit of any person interested in the estate, for the use of the estate, for the full amount of such sale. [Id.]

Art. 3589. [3517] [2150] [2095] Vendor's lien.—All notes executed for the purchase money of real estate purchased under the provisions of this title shall hold the vendor's lien on the real estate for which they were given against all persons having notice, express or implied, in favor of the estate, whether the mortgage be recorded or not, and such lien shall in no case be waived. [Id.]

CHAPTER TWENTY-THREE.

HEIRSHIP, ETC.—ADJUDICATION OF.

| | | | |
|-----------------------------------|--------------|---------------------------------------|--------------|
| Actions to declare heirship..... | Article 3590 | Judgment | Article 3594 |
| Who may maintain action, etc..... | 3591 | Effect | 3595 |
| Notice, citation, etc..... | 3592 | Certified copy of judgment filed..... | 3596 |
| Hearing and procedure..... | 3593 | Chapter cumulative..... | 3597 |

Art. 3590. [3521] Actions to declare heirship.—When a person dies, intestate, owning or entitled to real or personal property in Texas, and there shall have been no administration in this State upon his estate, and when there has been a will probated in this State or elsewhere, or an administration in this State upon the estate of such decedent, and any real or personal property in this State has been omitted from such will or from such administration, or no final disposition thereof has been made in such administration, the county court of the county in which such proceedings were last pending, or in the event, no will of such decedent has been admitted to probate in this State, and no administration has been granted in this State upon the estate of such decedent, then the county court of the county in which any of the real property belonging to such estate is situated, or, if there be no such real property, then of the county in which any personal property belonging to such estate may be found, may determine and declare in the manner hereinafter provided in this chapter, who are the heirs and only heirs of such decedent, and their respective shares and interests, under the laws of this State, in the estate of such decedent, and actions

therefor shall be known as actions to declare heirship. [Acts 1907, p. 230.]

Art. 3591. [3522] Who may maintain action, etc.—Such action may be instituted and maintained in any of the instances enumerated in the preceding article by any person or persons claiming to be the owner of the whole or a part of the estates of such decedent. In such case a petition shall be filed in a proper court stating the name, time and place of the death and the names and residences of the heirs of the decedent, if known to the petitioners, and, if the time and place of the death or the names and residence of all the heirs of such decedent be not definitely known to such petitioners or any of them, then the petition shall set forth all of the material facts and circumstances within the knowledge or information of such petitioners, or any of them, as may reasonably tend to show the time and place of the death of the decedent and the names and places of residence of the heirs, and the true share and interest of each petitioner, and of each heir, in the estate of such decedent. Such petition shall, so far as is known to any of the petitioners, contain a general description of all the real property of the decedent and a general description of all the personal property belonging to the estate of the decedent. Such petition shall be supported by the affidavit of each petitioner to the effect that, in so far as is known to such petitioner, all the allegations of such petition are true in substance and in fact and that no such material fact or circumstance has, within affiant's knowledge, been omitted from such petition. The unknown heirs of such decedent, all persons who may be named in the petition as heirs of such decedent, and all persons who may, at the date of the filing of the petition, be shown by the deed records of the county in which any of the real property described in such petition may be situated, to own any share or interest in any such real property shall be made parties defendant in such action. [Id.]

Art. 3592. [3523] Notice, citation, etc.—Due notice of the filing of such petition shall be given in the manner and for the length of time and in accordance with the provisions of law now in force concerning the issuance and service of citations upon resident defendants, and notice to non-resident defendants, and citation by publication for unknown heirs respectively; and, in so far as they are applicable thereto, all provisions of laws now in force in this State, relative to or concerning suits wherein citation by publication is provided for, shall apply to and govern in suits provided for in this chapter. If an administration upon the estate of any such decedent shall be granted in this State, or if the will of such decedent shall be admitted to probate in this State, after the institution of such action, the court in which such action, may be pending, shall, by an order entered of record therein, transfer the cause to the county court of the county in which such administration shall have been granted, or such will shall have been probated, and, thereupon, the clerk of the court in which such action was originally filed shall send to

the clerk of the court named in such order, a certified transcript of all docket entries and orders of the court in such cause. The clerk to which such cause shall be transferred shall file the transcript and record the same in the minutes of the court, and shall docket such cause, and same shall thereafter proceed as though originally filed in that court. [Id.]

Art. 3593. [3524] Hearing and procedure.—Upon the hearing of such cause, the trial court may require the issues involved to be duly framed and submitted, and shall confine the proof to such issues; and all the evidence shall be reduced to writing, and shall be subscribed and sworn to by the witnesses, respectively, and filed in the cause, and recorded in the minutes of the court. [Id.]

Art. 3594. [3524] Judgment.—The judgment of the court in such cause shall declare the names and places of residence of the heirs of the decedent, and their respective shares and interests in the real and personal property of such decedent, and shall state in what respects, if any, the evidence presented upon such hearing failed to develop such issues, or any of them; and all issues in the cause which may be framed by the court, or under its direction shall be embodied in the judgment. [Id.]

Art. 3595. [3524] Effect.—As between the parties to such cause who may have been personally served with citation or notice, and as to non-resident defendants and all bona fide purchasers of the property described in the judgment for value from them, or any of them, such judgment shall be conclusive, and as to any and all other persons such judgment shall be prima facie evidence that the heirs of such decedent and that their respective interest in the property described in such judgment are as therein stated; but such judgment shall not preclude any suit against the persons therein named as heirs of such decedent, or any one or more of them, based upon the allegation that such heir or heirs have received more than his or their proper and just share of the property of such decedent. Such judgment shall have the force and effect of a final judgment of such court; and any party or parties to such cause may appeal from such judgment in like manner and under the same conditions as is or may be provided by law in other cases arising under the probate laws of this State. [Id.]

Art. 3596. [3525] Certified copy of judgment filed.—A certified copy of such judgment may be filed for record in the office of the county clerk of the county in which any of the real property described in such judgment may be situated, and recorded in the deed records of such county, and indexed in the name of such decedent as grantor and of the heirs named in such judgment as grantees; and, from and after such filing, such judgment shall constitute constructive notice of the facts set forth in such judgment. [Id.]

Art. 3597. [3526] Chapter cumulative.—The provisions of this chapter are cumulative of and do not repeal existing laws. [Id.]

CHAPTER TWENTY-FOUR.

PARTITION AND DISTRIBUTION.

| | Article | | Article |
|-------------------------------------|---------|--------------------------------------|---------|
| Application | 3598 | May take it on credit..... | 3616 |
| Citation | 3599 | Decree of court..... | 3617 |
| Service of citation..... | 3600 | New appraisal..... | 3618 |
| Executor | 3601 | Property sold..... | 3619 |
| Application made..... | 3602 | Distributee purchasing..... | 3620 |
| Court shall proceed, etc..... | 3603 | Court may order sale..... | 3621 |
| Shall ascertain facts..... | 3604 | Commissioners in each county..... | 3622 |
| Guardians for minors, etc..... | 3605 | Majority may act..... | 3623 |
| Decree of partition..... | 3606 | Delivery of property..... | 3624 |
| If estate consists of money or | | To whom delivered..... | 3625 |
| debts only..... | 3607 | Damages for neglect to deliver..... | 3626 |
| To appoint commissioners..... | 3608 | Of common property..... | 3627 |
| Writ of partition..... | 3609 | Action and bond in such case..... | 3628 |
| Service of writ..... | 3610 | Lien upon property delivered..... | 3629 |
| Partition by commissioners..... | 3611 | Property held by executor..... | 3630 |
| Report of commissioners..... | 3612 | Joint owners may have partition..... | 3631 |
| Action of court..... | 3613 | Expense of partition..... | 3632 |
| Special finding..... | 3614 | May appoint another guardian..... | 3633 |
| Property incapable of division..... | 3615 | | |

Art. 3598. [3527] [2154] [2099] **Application.**—Anyone interested in an estate may make application for the partition and distribution of the estate; it shall be in writing and filed with the clerk of the court in which the administration of the estate is pending, and shall state:

1. The name of the person whose estate is sought to be partitioned and distributed.

2. The names and residences of all persons entitled to a share of such estate, and whether adults or minors, and if these facts be unknown to the applicant, it shall be so stated in the application. [Acts 1876, p. 120; G. L. Vol. 8, p. 956.]

Art. 3599. [3528] [2155] [2100] **Citation.**—Upon the filing of such application, the clerk shall issue a citation returnable to a regular term of the court; the citation shall state the name of the person whose estate is sought to be partitioned and distributed, the term of the court to which such citation is returnable, and shall require all persons interested in the estate to appear and show cause why such partition and distribution should not be made. [Id.]

Art. 3600. [3529] [2156] [2101] **Service of citation.**—Such citation shall be personally served by leaving a copy thereof with each person residing in the State entitled to a share of the estate, who is known; and, if there be any who are not known, or who are not residents of this State, such citation shall be published for at least four successive weeks in some newspaper printed in the county, if there be one, if not, then in like manner in one of the nearest newspapers published in the State. A copy of such publication, and the affidavit of the publisher or printer attached thereto, shall accompany the report of the officer serving such citation. [Id.]

Art. 3601. [3530] [2157] [2102] **Executor.**—When the application is made by any other person than the executor or administrator of the estate, such executor or administrator shall be cited to appear and answer such application, and to file in court a verified exhibit and account of the condition of the estate, as in case of final settlement of an estate.

Art. 3602. [3531] [2158] [2103] Application made.—After the first term of the court after the expiration of twelve months from the original grant of letters testamentary or of administration, the heirs, devisees or legatees of the estate, or any of them, may, by written application filed in the county court, cause the executor or administrator, and the heirs, devisees and legatees of the estate, to be cited to appear at a regular term of the court and show cause why a partition and distribution of the residue of such estate should not be made. [Id.]

Art. 3603. [3532] [2159] [2104] Court shall proceed, etc.—After service of citation, the court shall ascertain whether the whole, or any part, of such property is susceptible of partition, also the value of the property, and that there is a residue of the estate on hand subject to partition and distribution, and shall proceed to have such residue partitioned and distributed among the persons entitled thereto in the manner hereinafter provided. [Id.]

Art. 3604. [3533] [2160] [2105] Shall ascertain facts.—In proceeding to partition an estate, the court shall ascertain:

1. The residue of the estate subject to partition and distribution, which shall be ascertained by deducting from the entire assets of such estate remaining on hand the amount of all debts and expenses of every kind which have been approved or established by judgment or which may yet be established by judgment, and also the probable future expenses of administration.

2. The persons who are by law entitled to partition and distribution, and their respective shares.

3. Whether advancements have been made to any of the persons so entitled, their nature and value, and shall require the same to be placed in hotchpotch as required by the law governing descents and distributions. [Id.]

Art. 3605. [3534] [2161] [2106] Guardians for minors, etc.—Where there are minors having no guardian in this State who are entitled to a portion of an estate, or whose guardians also have an interest in the estate, the court shall appoint a guardian ad litem to represent such minors and shall appoint an attorney to represent non-resident and unknown parties having an interest, if there be any. [Id.]

Art. 3606. [3535] [2162] [2107] Decree of partition.—The court shall then proceed to enter a decree, which shall state:

1. The name and residence, if known, of each person entitled to a share of the estate, specifying those who are known to be minors, and the name of their guardian, or guardian ad litem, and the name of the attorney appointed to represent those who are unknown or are not residents of the State.

2. The proportional part of the estate to which each is entitled.

3. It shall contain full description of all the estate to be distributed.

4. It shall direct the executor or administrator to retain in his hands for the payment of all debts and expenses of administration a sufficient amount of money or property for that purpose, specifying the amount of money or the property to be so retained. [Id.]

Art. 3607. [3536] [2163] [2108] **If estate consists of money or debts only.**—If the estate to be distributed shall consist only of money or debts due the estate, or both, the court shall fix the amount to which each distributee is entitled, and order the payment and delivery thereof by the executor or administrator. [Id.]

Art. 3608. [3537] [2164] [2109] **To appoint commissioners.**—If the estate does not consist entirely of money or debts due the estate, or both, the court shall appoint three or more discreet and disinterested persons as commissioners, to make a partition and distribution of the estate, unless the court has already determined that the estate is incapable of partition. [Id. Acts 1905, p. 108.]

Art. 3609. [3538] [2165] [2110] **Writ of partition.**—When commissioners are appointed, the clerk shall issue a writ of partition directed to the commissioners appointed, commanding them to proceed forthwith to make such partition and distribution in accordance with the decree of the court, a copy of which decree shall accompany the writ, and also commanding them to make due return of said writ, with their proceedings under it at some term of the court to be named in the writ. [Acts 1876, p. 120; G. L. Vol. 8, p. 956.]

Art. 3610. [3539] [2166] [2111] **Service of writ.**—Such writ shall be served by delivering the same and the accompanying copy of the decree of partition to any one of the commissioners appointed, and by notifying the other commissioners, verbally or otherwise, of their appointment, and such service may be made by any person.

Art. 3611. [3540] [2167] [2112] **Partition by commissioners.**—The commissioners shall make a fair, just and impartial partition and distribution of the estate in the following order:

1. Of the land or other property by allotment to each distributee of a part in each parcel or of parts in one or more parcels, or of one or more parcels either with or without the addition of a part or parts of other parcels as shall be most for the interest of the distributees; provided, the real estate is capable of being divided without manifest injury to all or any of the distributees.

2. If the real estate is not capable of a fair, just and equal division in kind, but may be made so by allotting to one or more of the distributees a proportion of the money or other personal property to supply the deficiency or deficiencies, the commissioners shall have power to make, as near as may be,

an equal division of the real estate and supply the deficiency of any share or shares from the money or other property.

3. The commissioners shall proceed to make a like division in kind, as near as may be, of the money and other personal property, and shall determine by lot, among equal shares to whom each particular share shall belong. [Id.]

Art. 3612. [3541] [2168] [2113] **Report of commissioners.**—Said commissioners having divided the whole, or any part of the estate, shall make to the court a written sworn report containing a statement of the property divided by them, and also a particular description of the property allotted to each distributee and its value. And, if it be real estate that has been divided, the report shall contain a general plat of said land with the division lines plainly set down and a number of acres in each share. [Id.]

Art. 3613. [3542] [2169] [2114] **Action of court.**—Upon the return of such report, the court, at some regular term, shall examine the same carefully and hear all exceptions and objections thereto, and evidence in favor of or against the same, and, if it be informal, shall cause said informality to be corrected. If such division shall appear to have been fairly made according to law, and no valid exceptions are taken to it, the court shall approve it and order it to be recorded, and shall enter a decree vesting title in the distributees of their respective shares or portions of the property as set apart to them by the commissioners, otherwise the court may set aside said report and division and order a new partition to be made. [Id.]

Art. 3614. [3543] [2170] [2115] **Special finding.**—When the whole or any portion of the estate is in the opinion of the court not capable of fair and equal division among the distributees, the court shall make a special finding in writing, specifying therein the property that is incapable of division, and the value of the same as found. [Id. Acts 1905, p. 109.]

Art. 3615. [3544] [2171] [2116] **Property incapable of division.**—Upon such special finding of the court, and not less than twenty days after such finding, and before any exception thereto is filed, or after such exception is acted upon by the court, any one or more of the distributees at a regular term of the court by the payment to the executor or administrator of the value of the property found by the court, that is incapable of division, shall have the right to take such property. [Id.]

Art. 3616. [3545] [2172] [2117] **May take it on credit.**—With the approval of the court, any one or more of such distributees shall have the right to take said property by executing his or their obligation in favor of each of the other distributees for their share of the appraised value of such property, payable at such time, not exceeding twelve months from the date thereof, as the court may designate; and, when such obligations are executed, a lien shall exist upon such property by operation of law to secure the payment of the same. [Acts 1876, p. 120; G. L. Vol. 8, p. 956.]

Art. 3617. [3546] [2173] [2118] **Decree of court.**—Should any one or more of the distributees take the property, the court shall enter upon the minutes a decree stating the facts; and, upon the entry of such decree all the right and title of the deceased in the property shall vest fully and absolutely in the person or persons taking the same, subject to the purchase money lien. [Id.]

Art. 3618. [3547] [2174] [2119] **New appraisalment.**—Any distributee shall have the right to file his exception to said finding within twenty days thereafter, and the court shall hear proof of same; and, if satisfied that its finding is erroneous, it may make such additional or amendatory finding so as to conform to the proof. [Id. Acts 1905, p. 109.]

Art. 3619. [3548] [2175] [2120] **Property sold.**—If no distributee take the property, the court shall order the sale of same, either for cash or on a credit, and the proceeds of sale when collected shall be distributed by the court among those entitled thereto. [Acts 1876, p. 120; G. L. Vol. 8, p. 956.]

Art. 3620. [3549] [2176] [2121] **Distributee purchasing.**—At such sale, if any distributee shall buy any of the property, he shall be required to pay or secure only such amount of his bid as may exceed the amount of his share of such property. [Id.]

Art. 3621. [3550] [2177] [2122] **Court may order sale.**—When any portion of the estate to be partitioned lies in another county and cannot be fairly partitioned without prejudice to the interests of the distributees, the commissioners may report such facts to the county judge in writing; whereupon at some regular term of the court, if satisfied that the said property cannot be fairly divided, or that its sale would be more advantageous to the distributees, he may order a sale thereof for cash, or on a credit of not more than twelve months. [Id.]

Art. 3622. [3551] [2178] [2123] **Commissioners in each county.**—If the court is not satisfied that such property can be fairly and advantageously divided, or that its sale would be more advantageous to the distributees, three or more commissioners may be appointed in each county where any portion of the estate so reported is situated, and the same proceedings shall be had thereon as is provided in this chapter for commissioners to make partition. [Id.]

Art. 3623. [3552] [2179] [2124] **Majority may act.**—Where commissioners to make partition are appointed under this chapter, the report of a majority of them shall be sufficient. [Id.]

Art. 3624. [3553] [2180] [2125] **Delivery of property.**—When the report of commissioners to make partition has been approved and ordered to be recorded, the court shall order the executor or administrator to deliver to the distributees their respective shares of the estate on demand, including all the title deeds and papers belonging to the same. [Id.]

Art. 3625. [3554] [2181] [2126] To whom delivered.—If any distributee be a minor, his share shall be delivered to his guardian; if he has no guardian and is a resident of this State, the executor or administrator shall retain it until a guardian is appointed; if a distributee be a minor and resides out of this State, and has a guardian in the State where he resides, the executor or administrator in this State shall settle with and pay or deliver the estate of the minor to such guardian. Said guardian, before he receives such estate, shall make a bond as guardian in the matter of the guardianship so pending, conditioned and for the amount prescribed by the court having jurisdiction of such guardianship; and he shall produce to the court wherein administration has been, or may be granted in this State a certified copy of the bond and of the record of his appointment as guardian, with certificates from the clerk and judge of the court in which said guardianship is pending that said appointment and bond are in due and legal form under the laws of said State; also a copy of his bond as guardian; and if the court shall be satisfied that said guardian has been legally appointed and otherwise complied with the requirements herein, such court shall order same to be recorded in the office of the county clerk, whereupon the guardian shall settle for the amount due his ward. [Id. Acts 1895, p. 150.]

Art. 3626. [3555] [2182] [2127] Damages for neglect to deliver.—If any executor or administrator shall neglect to deliver to the person entitled thereto, when demanded, any portion of an estate ordered to be delivered, such executor or administrator shall be liable to pay out of his own estate to the person so entitled damages on the amount or value of the share so withheld, at the rate of ten per cent per month for each and every month he shall so neglect to deliver such share after such demand. [Id.]

Art. 3627. [3556] [2183] [2128] Of common property.—When a husband or wife shall die leaving any common property, the survivor may, at any time after letters testamentary or of administration have been granted, and an inventory, appraisal and list of the claims of the estate have been returned, make application in writing to the court which granted such letters for a partition of such common property, which application shall be acted upon at some regular term of the court. [Id.]

Art. 3628. [3557] [2184] [2129] Action and bond in such case.—The surviving husband or wife shall execute and deliver to the county judge an obligation with two or more good and sufficient sureties, payable to and approved by said county judge, for an amount equal to the value of his or her interest in such common property, conditioned for the payment of one-half of all debts existing against such common property, and the county judge shall proceed to make a partition of said common property into two equal moieties, one to be delivered to the survivor and the other to the executor or administrator of the de-

ceased. The provisions of this chapter respecting the partition and distribution of estates shall apply to such partition so far as the same may be applicable. [Id.]

Art. 3629. [3558] [2185] [2130] **Lien upon property delivered.**—Whenever such partition is made, a lien shall exist upon the property delivered to the survivor to secure the payment of the aforesaid obligation; and such obligation shall be filed with the clerk and recorded in the minutes of the court; and any creditor of said common property may sue in his own name on such obligation, and shall have judgment thereon for one-half of such debt as he may establish, and for the other half he shall be entitled to be paid by the executor or administrator of the deceased. [Id.]

Art. 3630. [3559] [2186] [2131] **Property held by executor.**—Until such partition is applied for and made, the executor or administrator of the deceased shall recover possession of all such common property and hold the same in trust for the benefit of the creditors and others entitled thereto. [Id.]

Art. 3631. [3560] [2187] [2132] **Joint owners may have partition.**—Any person having a joint interest with the estate of a decedent, in any property, real or personal, may make application to have the county court from which letters testamentary or of administration have been granted thereon to have a partition thereof; whereupon the court shall make a partition of said property between the applicant and the estate of the deceased; and all the rules and regulations contained herein in relation to the partition and distribution of estates shall govern partitions under this article so far as the same are applicable. [Id.]

Art. 3632. [3561] [2188] [2133] **Expense of partition.**—Expense of partition of estates shall be paid by the parties interested pro rata. The portion of the estate allotted to each distributee shall be liable for his portion of such expenses, and if not paid the court may order execution therefor in the names of the persons entitled thereto. [Id.]

Art. 3633. [3562] [2189] [2134] **May appoint another guardian.**—Where the county judge shall appoint a guardian ad litem for minors, or an attorney to represent a distributee who is absent from the State or unknown, under the provisions of this title, if such guardian ad litem, or attorney, shall neglect to attend to the duties of such appointment, the county judge shall appoint others in their places by an order entered on the minutes of the court; and such guardian ad litem and attorney shall be allowed by the county judge a reasonable compensation for their services, to be paid out of the estate of the person they represent, and an order to that effect shall be entered upon the minutes, and if such an allowance is not paid an execution may issue therefor in the name of the person entitled thereto. [Id.]

CHAPTER TWENTY-FIVE.

FINAL SETTLEMENT, ETC.

| | Article | | Article |
|---------------------------|---------|-----------------------------|---------|
| Final account..... | 3634 | May order other notice..... | 3639 |
| Description..... | 3635 | Action upon account..... | 3640 |
| Executor cited..... | 3636 | Partition..... | 3641 |
| Citation shall issue..... | 3637 | Executor discharged..... | 3642 |
| Service of citation..... | 3638 | Order for discharge..... | 3643 |

Art. 3634. [3563-3564] Final account.—When all the debts known to exist against the estate of a deceased person have been paid, or when they have been paid so far as the assets of the estate in the hands of the executor or administrator of such estate will permit, he shall present to the court his account for final settlement of the estate verified by affidavit. Such accounts shall show:

1. The property which has come into the hands of such executor or administrator belonging to the estate.
2. The disposition that has been made of any such property.
3. The debts that have been paid.
4. The debts and expenses, if any, still owing by the estate.
5. The property of the estate, if any, still remaining on hand.
6. The persons entitled to receive any portion of such estate, and their residence, if known, and whether adults or minors, and if minors, the names of their guardians.
7. Any advancements or payments that may have been made by the executor or administrator from such estate to any such person.
8. Said account shall be accompanied by proper vouchers in support of each item thereof, and such account and vouchers shall be filed with the clerk either in term time or vacation. [Acts 1876, p. 117, G. L. Vol. 8, p. 953.]

Art. 3635. [3565] [2192] [2137] Description.—It shall be sufficient under the preceding article to refer to the inventory without giving each item in detail; also to refer to and adopt report of sales, exhibits and accounts of the executor or administrator, including vouchers which have been approved and filed, without re-stating the items thereof.

Art. 3636. [3566] [2193] [2138] Executor cited.—Should the executor or administrator neglect to present such account, the county judge, either of his own motion or upon the complaint of any person interested in the estate, shall cause such executor or administrator to be cited to present such account within the time specified in such citation. [Id.]

Art. 3637. [3567] [2194] [2139] Citation shall issue.—Upon the presentation of an account for final settlement, the clerk shall issue a citation, which shall state the presentation of said account, the term of the court when it will be acted on, and shall require all persons interested to appear and contest the same if they see proper. [Id.]

Art. 3638. [3568] [2195] [2140] Service of citation.—Such

citation shall be published for at least twenty days in a newspaper printed in the county, if there be one, if not, then by posting such notice at the courthouse and at two public places in the county, not in the same town or city, for at least twenty days. When the citation has been published, the affidavit of the publisher or printer attached to a copy thereof that the same has been published for at least twenty days, shall accompany the return of the officer who executes such citation. When the citation has been posted, the original citation, with the return of the officer posting the same indorsed thereon or attached thereto, shall be filed.

Art. 3639. [3569] [2196] [2141] May order other notice.—In addition to the citation required in the two preceding articles, the county judge may order such notice to be given as he shall deem expedient, by an order entered upon the minutes. [Id.]

Art. 3640. [3570] [2197] [2142] Action upon account.—Upon return being made that the citation has been served in the manner required, the court shall examine said account and the vouchers accompanying the same, and after hearing all exceptions thereto and the evidence, shall re-state said account if necessary, and audit and settle the same. [Id.]

Art. 3641. [3571] [2198] [2143] Partition.—Upon a settlement of an estate, if there be any of the estate remaining in the hands of the executor and administrator, and the heirs, devisees or legatees of the estate, or their assignee, or either of them, are present or represented in court, the county judge shall order a partition and distribution of the estate to be made among them. [Id.]

Art. 3642. [3572] [2199] [2144] Executor discharged.—If upon such settlement, there be none of the estate remaining in the hands of the executor or administrator, he shall be discharged from his trust by an order of the court, and such order shall declare said estate closed. [Id.]

Art. 3643. [3573] [2200] [2145] Order for discharge.—Whenever the executor or administrator has fully administered the estate in accordance with the provisions of this title, and in accordance with the order of the court, and has filed proper vouchers, it shall be the duty of the court to enter upon the minutes an order discharging said executor or administrator from his trust and declaring said estate to be closed.

CHAPTER TWENTY-SIX.

PAYMENT OF ESTATES INTO THE TREASURY.

| Article | Article |
|-------------------------------------|-------------------------------|
| Paid to State Treasurer..... | Distributees may recover..... |
| 3644 | 3652 |
| Property uncalled for sold..... | Mode of recovery..... |
| 3645 | 3653 |
| Executor shall make report..... | Citation to attorney..... |
| 3646 | 3654 |
| While property under control of | Proceedings..... |
| executor..... | 3655 |
| 3647 | Costs..... |
| Order for payment to treasurer..... | 3656 |
| 3648 | Penalty in certain cases..... |
| Certificate of postmaster..... | 3657 |
| 3649 | Treasurer may apply..... |
| Penalty for neglect..... | 3658 |
| 3650 | Treasurer may sue..... |
| Receipt of Treasurer..... | 3659 |
| 3651 | To represent State..... |
| | 3660 |

Art. 3644. [3574-5] Paid to State Treasurer.—If any per-

son entitled to a portion of an estate, except a resident minor without a guardian, shall not demand his portion from the executor or administrator within six months after an order approving the report of commissioners of partition, the county judge by an order entered upon the minutes shall require the executor or administrator to pay so much of said portion as may be in money to the State Treasurer; and such portion as may be in other property he shall order the executor or administrator to sell on such terms as the court may think best, and, when the proceeds of such sale are collected, he shall order the same to be paid to the State Treasurer, in all such cases allowing the executor or administrator reasonable compensation for his services. Upon the settlement of the final account of any executor or administrator, if the heirs, devisees or legatees of the estate, or assignees, or any of them, do not appear or are not represented in the court, and there are any funds of such estate remaining in the hands of the executor or administrator, the county judge shall enter an order upon the minutes requiring such executor or administrator to pay such funds to the State Treasurer. [Acts 1876, p. 124; G. L. Vol. 8, p. 960.]

Art. 3645. [3576] [2203] [2148] Property uncalled for sold.—If in such case there shall be any property of the estate that has not been sold, or any debts due the estate that may be collected, the county judge shall by an order entered upon the minutes, require the executor or administrator to sell such property under the direction of the county judge, and to collect such debts and to pay the proceeds of such sale and amount collected of such debts to the State Treasurer in all such cases allowing to the executor or administrator reasonable compensation for his services. [Id.]

Art. 3646. [3577] [2204] [2149] Executor shall make report.—The executor or administrator, while he has any of such estate under his control, shall from time to time, as he receives money, report the same to the court in writing under oath, and, should he neglect to report to the court the condition of the estate at reasonable periods of time, the court shall cause him to be cited to appear and make such report either in term time or in vacation, and the court shall thereupon make proper orders.

Art. 3647. [3578] [2205] [2150] While property under control of executor.—While such estate, or any portion thereof, remains under the control of the executor or administrator, the heirs, devisees, legatees or their assigns, or any of them, may obtain from the county judge, at a regular term of the court an order to have the same partitioned and distributed among them, according to their respective interests, upon causing the executor or administrator to be cited. [Id.]

Art. 3648. [3579] [2206] [2151] Order for payment to treasurer.—Whenever an order shall be made by the county judge for an executor or administrator to pay any funds to the State Treasurer, under the provisions of this chapter, the clerk

of the court, in which such order may be made, shall mail to said Treasurer a certified copy of such order within thirty days after said order has been made. [Id.]

Art. 3649. [3580] [2207] [2152] **Certificate of postmaster.**—Whenever the clerk mails such copy, he shall take from the postmaster with whom it is mailed a certificate stating that such certified copy was mailed in his office, directed to the State Treasurer, at the seat of government, and the date when it was mailed, which certificate shall be recorded in the minutes of the court. [Id.]

Art. 3650. [3581] [2208] [2153] **Penalty for neglect.**—Any clerk who shall neglect to transmit a certified copy of such order within the time prescribed, and to take such certificate and have it so recorded, as required in the preceding article, shall be liable in a penalty of one hundred dollars, to be recovered in an action in the name of the State, on the information of any citizen of the county, one-half of which penalty shall be paid to the informer and the other half to the State. [Id.]

Art. 3651. [3582] [2209] [2154] **Receipt of Treasurer.**—Whenever an executor or administrator pays the State Treasurer any funds of the estate he represents, under the provisions of this chapter, he shall take from such Treasurer a receipt for such payment, with his official seal attached, and file the same with the clerk of the court ordering such payment; and such receipt shall be recorded in the minutes of the court. [Id.]

Art. 3652. [3583] [2210] [2155] **Distributees may recover.**—When funds of an estate have been paid to the State Treasurer, any heir, devisee or legatee of such estate, or their assignees, or any of them, may recover the portion of such funds to which he or they would have been entitled. [Id.]

Art. 3653. [3584] [2211] [2156] **Mode of recovery.**—The person claiming such funds shall institute his suit therefor, by petition filed in the county court of the county in which the estate was administered, against the State Treasurer, setting forth the petitioner's right to such funds, and the amount claimed by him. [Id.]

Art. 3654. [3585] [2212] [2157] **Citation to attorney.**—Upon the filing of such petition, the clerk shall issue a citation for the county attorney of the county, or the district attorney of the district, to appear and represent the interest of the estate in such suit, and such county or district attorney shall do so.

Art. 3655. [3586] [2213] [2158] **Proceedings.**—The proceedings in such suit shall be governed by the rules for other civil suits; and should the plaintiff establish his right to the funds claimed, he shall have a judgment therefor, which shall specify the amount to which he is entitled; and a certified copy of such judgment shall be sufficient authority for the Treasurer to pay the same.

Art. 3656. [3587] [2214] [2159] **Costs.**—The costs of any such suit shall in all cases be adjudged against the plaintiff, and he may be required to secure the costs. [Id.]

Art. 3657. [3588] [2215] [2160] Penalty in certain cases.—When an executor or administrator fails to pay to the Treasurer any funds of an estate which he has been ordered by the county judge so to pay, within three months after such order has been made, such executor or administrator shall be liable to pay out of his own estate to the State Treasurer damages thereon at the rate of five per cent per month for each month he may neglect to make such payment after the three months from such order. [Id.]

Art. 3658. [3589] [2216] [2161] Treasurer may apply.—The State Treasurer shall have the right in the name of the State to apply to the court in which the order for payment was made, by application in writing, to enforce the payment of such funds, together with the payment of any damages that may have accrued under the provisions of the preceding article; and the court shall enforce such payment in like manner as other orders of payment are required to be enforced. [Id.]

Art. 3659. [3590] [2217] [2162] Treasurer may sue.—The Treasurer shall also have the right to institute suit in the name of the State against such executor or administrator and the sureties on his bond for the recovery of the funds so ordered to be paid and damages, if any have accrued. [Id.]

Art. 3660. [3591] [2218] [2163] To represent State.—The county or district attorney, as the case may be, shall attend to and represent the interests of the State in all matters arising under any provision of this chapter.

CHAPTER TWENTY-SEVEN.

ADMINISTRATION OF COMMUNITY PROPERTY.

| Article | Article | | |
|--|---------|-----------------------------------|------|
| Community property..... | 3661 | New appraisement and bond..... | 3671 |
| Where there is no child..... | 3662 | Survivor to pay debts..... | 3672 |
| When husband shall have manage- ment..... | 3663 | Creditor may require exhibit..... | 3673 |
| Application for community admin- istration..... | 3664 | Action of court upon exhibit..... | 3674 |
| Court appoints appraisers..... | 3665 | Sureties on bond cited, when..... | 3675 |
| Inventory, appraisement, etc..... | 3666 | Creditor may sue..... | 3676 |
| Bond of survivor..... | 3667 | Action of court..... | 3677 |
| New appraisement and bond..... | 3671 | Surviving wife..... | 3678 |
| Action of the court..... | 3668 | "Survivor"..... | 3679 |
| Survivor has control..... | 3669 | Rights of wife cease when..... | 3680 |
| Survivor shall keep account..... | 3670 | May have partition..... | 3681 |
| | | Recovery of insane spouse..... | 3682 |
| | | Duty of guardians..... | 3683 |

Art. 3661. [3592] [2219] [2164] Community property.—The community property of the husband and wife except such as is exempt from forced sale, shall be liable for all the debts contracted during marriage. And, in the settlement of such community estates, the survivor, executor or administrator shall keep a separate and distinct account of all the community debts allowed or paid in the settlement of such estates. [Acts 1876, p. 124; G. L. Vol. 8, p. 960.]

Art. 3662. [3593] [2220] [2165] Where there is no child.—Where the husband or wife dies intestate, or becomes insane, having no child or children, and no separate property, the common property passes to the survivor, charged with the debts of

the community; and no administration thereon or guardianship of the estate shall be necessary. [Id. Acts 1893, p. 89; P. D. 5498, G. L. Vol. 10, p. 519.]

Art. 3663. [3594] [2221] [2166] **When husband shall have management.**—Where the wife dies or becomes insane, leaving a surviving husband and child, or children, the husband shall have exclusive management, control and disposition of the community property in the same manner as during her lifetime, or sanity; and it shall not be necessary that the insane wife shall join in conveyances of such property, or her privy examination and acknowledgment to be taken to such conveyances, subject, however, to the provisions of this chapter. [Id.]

Art. 3664. [3595] [2222] [2167] **Application for community administration.**—The husband shall, within four years after the death of the wife, or her being declared insane, when there is a child or children, file a written application in the county court of the proper county stating:

1. The death of his wife, or that she has been declared insane by a court of competent jurisdiction, and the time and place of her death or of such declaration.

2. That she left a child or children, giving the name, sex, residence and age of each child.

3. That there is a community estate between the deceased or insane wife and himself.

4. Such facts as show the jurisdiction of the court over the estate.

5. Asking for the appointment of appraisers, to appraise such estate. [Id.]

Art. 3665. [3596] [2223] [2168] **Court appoints appraisers.**—Upon the filing of such application, the county judge shall, without citation, and either in term time or in vacation, by an order entered upon the minutes of the court appoint appraisers to appraise such estate as in other administrations. [Acts 1876, p. 124; G. L. Vol. 8, p. 960.]

Art. 3666. [3597] [2224] [2169] **Inventory, appraisement, etc.**—The surviving husband or wife (of community estates) with the assistance of any two of the appraisers, shall make out a full, fair and complete inventory and appraisement of the community estate; and the survivor shall attach thereto a list of all community debts due the estate, and shall also attach thereto a list of all indebtedness due by said community estate to other parties, giving the amount of each debt and the name of the party or parties to whom it is due, and his or their post-office address; and such inventory, list of claims, and list of indebtedness of such community estate shall be sworn to by said survivor; and the inventory, appraisement and list of claims due said community estate shall be sworn to by said appraisers; and said inventory, appraisement, list of claims due said estate and list of indebtedness due by said estate shall be returned to the court within twenty days from the date of the order appointing ap-

praisers in like manner as other administrations. [Id. Acts 1905, p. 336.]

Art. 3667. [3598] [2225] [2170] **Bond of survivor.**—The surviving husband shall, at the time he returns the inventory, appraisement, and list of claims, present to the court his bond with two or more good and sufficient sureties, payable to and to be approved by the county judge, in a sum equal to the whole of the value of such community estate as shown by the appraisement, conditioned that he will faithfully administer such community estate, and pay over one-half the surplus thereof after the payment of the debts with which the whole of such property is properly chargeable to such person or persons as shall be entitled to receive the same. [Acts 1876, p. 124, G. L. Vol. 8, p. 960.]

Art. 3668. [3599] [2226] [2171] **Action of the court.**—When such inventory, appraisement, list of claims and bond are returned to the county judge, he shall, either in term time or vacation, examine the same and approve or disapprove them by an order to that effect entered upon the minutes of the court, and, when approved, they shall be recorded upon the minutes of the court, and the order approving them shall also authorize such survivor to control, manage and dispose of such community property in accordance with the provisions of this chapter.

Art. 3669. [3600] [2227] [2172] **Survivor has control.**—When the order mentioned in the preceding article has been entered, such survivor, without any further action in the county court, shall have the right to control, manage and dispose of such community property as may seem for the best interest of the estate and of suing and being sued with regard to the same, in the same manner as during the lifetime of the deceased; and a certified copy of the order of the court mentioned in the preceding article shall be evidence of the qualification and right of such survivor. [P. D. 4648.]

Art. 3670. [3601] [2228] [2173] **Survivor shall keep account.**—The survivor shall keep a fair and full account and statement of all community debts and expenses paid by him, and of the disposition made of such community property; and, upon final partition of said estate, shall account to the legal heirs of the deceased for their interest in such estate, and the increase and profits of the same, after deducting therefrom all community debts, unavoidable losses, necessary and reasonable expenses, and a reasonable commission for the management of the same. [P. D. 4648.]

Art. 3671. [3602] [2229] [2174] **New appraisement and bond.**—Any person interested in such community estate may cause a new appraisement to be made of the same, or a new bond may be required of the survivor for the same causes and in like manner as provided in other administrations.

Art. 3672. [3603] [2230] [2175] **Survivor to pay debts.**—The survivor shall pay all just and legal community debts as soon as practicable, and according to the classification and in the

order prescribed for the payment of debts in other administrations.

Art. 3673. [3604] [2231] [2176] **Creditor may require exhibit.**—Any creditor of the estate whose claim has not been paid in full, after the lapse of one year from the filing of the inventory, appraisal, list of claims and bond by the survivor, may cause such survivor to be cited to appear at a regular term of the court in which such bond has been filed, and make an exhibit to the court in writing and under oath, showing fully and specifically:

1. The debts that have been presented to him against such community estate and their class.

2. The debts that have been paid by him and those that remain unpaid and the class of each.

3. The property that has been disposed of by him and the amount received therefor.

4. The property remaining on hand.

5. An account of losses, expenses and commissions.

Art. 3674. [3605] [2232] [2177] **Action of court upon exhibit.**—When such exhibit has been returned to the court and filed, the court shall, at a regular term, examine the same and hear exceptions and objections thereto, and evidence in support of or against the same; and, if satisfied that the estate has been fairly administered and in conformity to law, and that there remains no further property of such estate for the payment of debts, the court shall enter an order upon the minutes, approving such exhibit and directing the same to be recorded in the minutes, and shall also in such order declare such administration closed.

Art. 3675. [3606] [2233] [2178] **Sureties on bond cited, when.**—Should it appear to the court from such exhibit or from other evidence that such estate has been improperly administered, or that there are still assets of said estate that are liable for the payment of the applicant's debt, or any part thereof, and if said debt be for the amount of one thousand dollars or less, exclusive of interest, the court shall order citation to issue for the sureties upon the bond of such survivor, citing them to appear before such court at a regular term thereof, and show cause why judgment should not be rendered against them for such debt and costs, which citation shall be returnable as in other civil suits; and the proceedings in such case shall be the same as in other civil suits in said court.

Art. 3676. [3607] [2234] [2179] **Creditor may sue.**—Should the amount due and payable to such creditor exceed one thousand dollars, exclusive of interest, the court shall enter an order upon the minutes requiring the survivor to pay such debt, or a part thereof, as the evidence may show to be proper; and, should he neglect to pay the same for thirty days after the date of such order, the creditor may have his action in the district court of the county where the survivor's bond is filed against such survivor, and the sureties upon his bond.

Art. 3677. [3608] [2235] [2180] **Action of court.**—Should the survivor, after being duly cited, fail to file an exhibit as required, the court shall proceed, in accordance with the provisions of the two preceding articles, as if the creditor's right to the payment of his claim had been fully established.

Art. 3678. [3609] [2236] [2181] **Surviving wife.**—The wife may retain the exclusive management, control and disposition of the community property of herself and deceased or insane husband in the same manner, and subject to the same rights, rules and regulations as provided in the case of the husband and until she shall, in the event of the death of the husband, marry again, and in such event her right to manage, control and dispose of the community property shall cease; provided, however, that when no administration is had upon the estate of the deceased husband, as is provided under Article 3680, she may renew, and extend the maturity date, of valid existing debts of the community estate, and any lien securing same. [Acts 1925, p. 253.]

Art. 3679. [3610] [2236a] **"Survivor".**—The use of the words, "survivor" or "surviving" in the foregoing articles of this chapter, where no other designation is given, shall be held to apply as well to a sane person representing an insane person. [Acts 1893, p. 89; G. L. Vol. 10, p. 519.]

Art. 3680. [3611] [2237] [2182] **Rights of wife cease when.**—Upon the marriage of the surviving wife, she shall cease to have control and management of said estate or the right to dispose of the same; and said estate shall be subject to administration as in other cases of deceased persons' estates.

Art. 3681. [3612] [2238] [2183] **May have partition.**—After the lapse of twelve months from the filing of the bond by the survivor, the persons entitled to the deceased's share of such community estate, or any portion thereof, shall be entitled to have a partition and distribution thereof in the same manner as in other administrations.

Art. 3682. [3613] [2238] **Recovery of insane spouse.**—Whenever such insane husband or wife shall have recovered sanity, then all action hereunder shall cease, and a report shall be made under oath of all transactions had and done under said proceedings; and said report shall be filed and recorded in the court where such proceedings were had, and with the other papers of the case. [Id.]

Art. 3683. [3614] [2238] **Duty of guardians.**—Persons now acting as guardians of the estate of persons of unsound mind shall turn over the estates of their wards, where the wards shall be married persons, upon the qualification of the same spouse, as provided in this chapter. [Id.]

CHAPTER TWENTY-EIGHT.

TRANSFER OF ADMINISTRATION.

Art. 3684. [3615] [2239] [2184] **Administration transferred.**—The county judge of any county from which any county,

or part thereof, has been taken, upon the written application of the executor, administrator, or the majority of the heirs of an estate, shall transmit all original papers relating to the settlement of a deceased person's estate who was at the time of his decease a resident of that part of the territory of the county which has been, or may hereafter be, taken to form any new county, or that may be added to any other county, to the county court of such new county, or county to which such territory has been added; and he shall also transmit with such original papers a transcript, certified by the clerk under the seal of the court, of the records of all orders, judgments and decrees of the court had in relation to such estate. [Acts 1876, p. 125; G. L. Vol. 8, p. 961.]

Art. 3685. [3616] [2240] [2185] **Fees.**—At the time of filing such application, the applicant shall pay all fees due on account of such estate; and the order for the transfer of such estate shall not be made until such fees have been paid. [Id.]

Art. 3686. [3617] [2241] [2186] **Order for transfer.**—When the fees due have been paid, the county judge shall, either in term time or in vacation, hear such application; and, if satisfied that the facts exist which authorize the transfer of such estate, he shall enter an order upon the minutes directing such transfer, and ordering all original papers of the estate that have not been recorded to be recorded previous to such transfer.

Art. 3687. [3618] [2242] [2187] **Clerk to record papers.**—Upon the entry of such order, the clerk shall record all original papers belonging to the estate that have not been previously recorded, for which the same fee shall be allowed him as is allowed for other recording; which fees shall be paid by the applicant before any such transfer shall be made. [Id.]

Art. 3688. [3619] [2243] [2188] **Administration when transferred.**—Where papers and proceedings relating to the settlement of an estate shall be transmitted to any court in the manner provided for in this chapter such papers and proceedings shall be filed in such court; and the estate shall be proceeded with and settled in such court in like manner as if the settlement of such estate had been originally commenced in such county. [Id.]

CHAPTER TWENTY-NINE.

COSTS.

| | | | |
|--------------------------|--------------|--------------------------------------|--------------|
| Commission | Article 3689 | Costs of commissioners..... | Article 3694 |
| No commissions..... | 3690 | Costs adjudged against executor..... | 3695 |
| Expenses allowed..... | 3691 | Costs on contests..... | 3696 |
| Expense account..... | 3692 | Security for costs..... | 3697 |
| Costs of appraisers..... | 3693 | | |

Art. 3689. [3621] [2245] [2190] **Commission.**—Executors and administrators shall be entitled to receive and may retain in their hands five per cent on all sums they may actually receive in cash, and the same per cent on all sums they may pay

out in cash in the course of their administration. [Acts 1876, p. 126; G. L. Vol. 8, p. 961.]

Art. 3690. [3622] [2246] [2191] **No commissions.**—The commissions shall not be allowed or received for receiving any cash which was on hand at the time of the death of the testator or intestate, nor for paying out money to the heirs or legatees as such. [Id.]

Art. 3691. [2623] [2247] [2192] **Expenses allowed.**—Executors and administrators shall also be allowed all reasonable expenses necessarily incurred by them in the preservation, safe-keeping and management of the estate, and all reasonable attorney's fees, that may be necessarily incurred by them in the course of the administration. [Id.]

Art. 3692. [3624] [2248] [2193] **Expense account.**—All expense charges shall be made in writing, showing specifically each item of expense and the date thereof and shall be verified by the affidavit of the executor or administrator, and filed with the clerk and entered upon the claim docket, and shall be acted upon by the court in like manner as other claims against the estate.

Art. 3693. [3625] [2249] [2194] **Costs of appraisers.**—Appraisers appointed under the provisions of this title shall be entitled to receive two dollars per day each for every day that they may be necessarily engaged in the performance of their duties as such appraisers.

Art. 3694. [3626] [2250] [2195] **Costs of commissioners.**—Commissioners appointed to partition and distribute an estate, shall be entitled to receive two dollars each for every day that they are necessarily engaged in the performance of their duties as such commissioners, to be taxed and paid as other costs in cases of partition.

Art. 3695. [3627-8] [2251-2] [2196-7] **Costs adjudged against executor.**—When an executor or administrator neglects the performance of any duty required by this title, and any costs are incurred thereby, he and the sureties on his bond shall be liable for such costs. When an executor or administrator is removed for cause, the costs of such proceeding shall be adjudged against him and the sureties upon his bond. [Id.]

Art. 3696. [3629] [2253] [2198] **Costs on contests.**—When a party files an application, complaint or opposition in court, and shall fail to sustain the object thereof, all costs occasioned by the filing of the same shall be adjudged against him. [Id.]

Art. 3697. [3630] [2254] [2199] **Security for costs.**—When any person other than the executor or administrator files an application, complaint or opposition in relation to the estate, the clerk may require him to give security for the probable costs of such proceedings before filing the same; or any one interested in the estate, or any officer of the court may, at any time before the trial of such application, complaint or opposition, obtain from the court, upon written motion, an order

requiring such party to give security for the costs of such proceedings, and the rules governing the proceedings in civil suits in the county court respecting this subject shall govern in such case.

CHAPTER THIRTY.

APPEALS TO THE DISTRICT COURT.

| | | | |
|---|---------|------------------------------------|---------|
| | Article | | Article |
| Right of appeal..... | 3698 | Appeal on affidavit..... | 3701 |
| Appeal bond; requisites of..... | 3699 | Papers sent to district court..... | 3702 |
| Bond not required of executor, etc..... | 3700 | Certified copy of judgment..... | 3703 |

Art. 3698. [3631] [2255] [2200] **Right of appeal.**—Any person who may consider himself aggrieved by any decision, order, decree or judgment of the county court, shall have the right to appeal therefrom to the district court of the county upon complying with the provisions of this chapter; provided that in appeals from orders or judgments, appointing administrators or temporary administrators, the administrators shall continue the prosecution of suits then pending in favor of the estate, and if on appeal from probate court a different administrator shall be appointed, he shall be substituted in such case. [Acts 1876, p. 128; G. L. Vol. 8, p. 964; Acts 1921, p. 222.]

Art. 3699. [3632] [2256] [2201] **Appeal bond: requisites of.**—He shall, within fifteen days after such decision, order, judgment or decree shall have been rendered, file with the county clerk a bond with two or more good and sufficient sureties, payable to the county judge in any amount to be fixed by the county judge, conditioned that the appellant shall prosecute said appeal to effect and perform the decision, order, decree or judgment which the district court shall make thereon, in case the cause shall be decided against him. [Acts 1876, p. 128; G. L. Vol. 8, p. 964; Acts 1909, S. S. p. 282.]

Art. 3700. [3633] [2257] [2202] **Bond not required of executor, etc.**—When an appeal is taken by an executor or administrator, no bond shall be required, unless such appeal personally concerns him, in which case he must give the bond.

Art. 3701. [3634] [2258] [2203] **Appeal on affidavit.**—Where the party who desires to appeal is unable to give the appeal bond, it shall be sufficient if he file with the county clerk, within the time prescribed for giving such bond, an affidavit that he has made diligent efforts to give such bond and is unable to do so by reason of his poverty, and such affidavit shall operate a perfection of the appeal in respect to the matter of costs. [P. D. 6180.]

Art. 3702. [3635-6-7-8] **Papers sent to district court.**—Upon such appeal bond or affidavit being filed with the county clerk, he shall immediately transmit all the original papers in said proceedings to the clerk of the district court together with the appeal bond or affidavit and a certified copy of the order or decree appealed from on or before the first day of the next term of such district court, if possible, otherwise to the next succeeding term thereof, and the district clerk shall immediately file

and docket the cause in the district court. Such cases shall be tried de novo in the district court, and shall be governed by the same rules of procedure as other civil cases in said court.

Art. 3703. [3639] [2263] [2208] **Certified copy of judgment.**—A certified copy of the judgment of the district court when rendered shall forthwith be transmitted by the clerk of the district court to the clerk of the county court from which the case was appealed for the observance of such court, and the original papers shall be returned to the clerk of the county court who shall file such certified copy of the judgment and record it upon the minutes of the court and note it upon the docket; and the county judge shall make such order as may be necessary for the enforcement of such judgment. [Id. Acts 1923, p. 168.]

TITLE 55.
EVIDENCE.

1. WITNESSES AND EVIDENCE.

| Article | Article |
|--|---|
| Witnesses subpoenaed..... | Notarial acts and copies thereof..... |
| Form of subpoena..... | Transcript from Comptroller's office..... |
| Service of..... | Copies of certain ancient instruments..... |
| Witness shall attend..... | Recorded instruments admitted without proof..... |
| Fees of witnesses..... | Old record books declared valid..... |
| Refusal to testify..... | Copies of transcribed records..... |
| Privileged from arrest..... | Certain abstracts..... |
| Party as a witness..... | Certified copy of instrument sued on..... |
| Interpreters..... | Certified copies from heads of departments..... |
| Common law rules..... | Assessment or payment of taxes..... |
| Color or interest does not disqualify..... | Rate of interest presumed..... |
| Husband or wife not disqualified..... | Execution of written instruments presumed..... |
| In actions by or against executors, etc..... | Appointment and qualification of executor, etc..... |
| Witness not disqualified..... | Suit on sworn account..... |
| Printed statutes..... | Records of corporation..... |
| Certified copies of acts, etc..... | |
| Copies of records of officers and courts..... | |
| Record of surveys..... | |
| Copies and certificates from certain officers..... | |

Art. 3704. [3640] [2264] [2209] Witnesses subpoenaed.—The clerk of the district or county court, or justice of the peace, as the case may be, at the request of any party to a suit pending in his court, or of any agent or attorney, shall issue a subpoena for any witness or witnesses who may be represented to reside within the county or be found therein at the time of the trial. [Acts 1846, p. 353; P. D. 3719; G. L. Vol. 2, p. 1671.]

Art. 3705. [3641] [2265] [2210] Form of subpoena.—The style of the subpoena shall be "The State of Texas." It shall state the names of the parties to the suit, the court in which the same is pending, the title and place at which the witness is required to appear, and the party at whose instance he is summoned. It shall be dated and tested by the clerk or justice, but need not be under the seal of the court, and the date of its issuance shall be noted thereon. It may be made returnable forthwith, or on any day for which trial of the cause may be set. [Id.]

Art. 3706. [3642] [2266] [2211] Service of.—Subpoenas may be executed and returned at any time before the trial of the cause, and shall be served by being read to the witness; and service thereof may be accepted by any witness by a written memorandum, signed by him, attached to the subpoena. [Id. Sec. 16; P. D. 1434.]

Art. 3707. [3643] [2267] [2212] Witness shall attend.—Every witness summoned in any suit shall attend the court from day to day, and from term to term, until discharged by the court or party summoning him. If any witness, after being duly summoned, shall fail to attend, he may be fined by the court as for a contempt of court, and an attachment may issue against the body of such witness to compel his attendance; but no such fine shall be imposed, nor shall such attachment issue in a civil suit until it shall be shown to the court, by affidavit of the party, his

agent or attorney, that his lawful fees have been paid or tendered to such witness. [Id. P. D. 3720.]

Art. 3708. [3644] [2268] [2213] **Fees of witnesses.**—Witnesses shall be allowed a fee of one dollar for each day they may be in attendance on the court, and six cents for every mile they may have to travel in going to and returning therefrom, which shall be paid on the certificate of the clerk, by the party summoning them; which certificate shall be given on the affidavit of the witness before the clerk. Such compensation and mileage of witnesses shall be taxed in the bill of costs as other costs. [Id.]

Art. 3709. [3645] [2269] [2214] **Refusal to testify.**—Any witness refusing to give evidence may be committed to jail, there to remain without bail until he shall consent to give evidence. [Id. P. D. 3725.]

Art. 3710. [3646] [2270] [2215] **Privileged from arrest.**—Witnesses shall be privileged from arrest, except in cases of treason, felony and breach of the peace, during their attendance at court, and in going to and returning therefrom, allowing one day for each twenty-five miles from their place of abode. [Id.]

Art. 3711. [3647] [2271] [2216] **Party as a witness.**—Either party to a suit may examine the opposing party as a witness, and shall have the same process to compel his attendance as in the case of any other witness. His examination shall be conducted and his testimony shall be received under the same rules applicable to other witnesses. [Acts 1858, p. 110, Sec. 3; P. D. 3754; G. L. Vol. 4, p. 982.]

Art. 3712. [3648] [2272] [2217] **Interpreters.**—The court may, when necessary, appoint interpreters, who may be summoned in the same manner as witnesses, and shall be subject to the same penalties for disobedience. [Acts 1846, p. 363; P. D. 3761.]

Art. 3713. [3687] [2299] [2245] **Common law rules.**—The common law of England as practiced and understood shall, in its application to evidence, be followed and practiced by the courts of this State, so far as the same may not be inconsistent with this title or any other law. [Acts 1836, Dec. 20; P. D. 3706.]

Art. 3714. [3688] [2300] [2246] **Color or interest does not disqualify.**—No person shall be incompetent to testify on account of color, nor because he is a party to a suit or proceeding or interested in the issue tried. [Acts 1871, p. 108; P. D. 6826.]

Art. 3715. [3689] [2301] [2247] **Husband or wife not disqualified.**—The husband or wife of a party to a suit or proceeding, or who is interested in the issue to be tried, shall not be incompetent to testify therein, except as to confidential communications between such husband and wife.

Art. 3716. [3690] [2302] [2248] **In actions by or against executors, etc.**—In actions by or against executors, administrators, or guardians, in which judgment may be rendered for or against them as such, neither party shall be allowed to testify against the others as to any transaction with, or statement by, the testator, intestate or ward, unless called to testify thereto

by the opposite party; and the provisions of this article shall extend to and include all actions by or against the heirs or legal representatives of a decedent arising out of any transaction with such decedent. [Id. P. D. 6827.]

Art. 3717. Witness not disqualified.—No person shall be incompetent to testify in civil cases on account of his religious opinion, or for the want of any religious belief, or by reason of having been convicted of a felony. [Acts 1925, p. 146.]

Art. 3718. [3692] [2304] [2250] Printed statutes.—The printed statute books of this State, of the United States, of the District of Columbia, or of any State or territory of the United States or of any foreign government, purporting to have been printed under the authority thereof, shall be received as evidence of the acts and resolutions therein contained. [Acts 1846, p. 388; P. D. 3712; G. L. Vol. 2, p. 1694.]

Art. 3719. [3693] [2305] [2251] Certified copies of acts, etc.—A certified copy under the hand and seal of the Secretary of State of this State, of any act or resolution contained in any of such printed statute books deposited in his office, or of any law or bill, public or private, deposited in his office in accordance with law, shall be received as evidence thereof. [Id.]

Art. 3720. [3694] [2306] [2252] Copies of records of officers and courts.—Copies of the records and filed papers of all public officers and custodians of records of minutes of boards, etc., and courts of this State, certified to under the hand, and the seal if there be one, of the lawful possessor of such records, shall be admitted as evidence in all cases where the records themselves would be admissible. Translated copies of all records in the land office certified to under the hand of the translator, and the Commissioner of the General Land Office, attested with the seal of said office, shall be prima facie evidence in all cases where the original records would be evidence. [Id. P. D. 3715.]

Art. 3721. [3695] [2307] [2252a] Record of surveys.—Each county surveyor shall record in a well-bound book each survey in the county for which he was elected, with the plat thereof that he may make, whether private or official, and certified copies of such record, under the official signature of the surveyor, may be used in evidence in any court of this State. [Acts 1881, p. 71; G. L. Vol. 9, p. 163.]

Art. 3722. [3696] [2308] [2253] Copies and certificates from certain officers.—The Secretary of State, Attorney General, Land Commissioner, Comptroller, Treasurer, Adjutant General, Commissioner of Agriculture, Commissioner of Insurance, Banking Commissioner, and State Librarian shall furnish any person applying for the same with a copy of any paper, document or record in their offices, and with certificates under seal certifying to any fact contained in the papers, documents or records of their offices; and the same shall be received in evidence in all cases in which the originals would be evidence. [Acts March 20, 1848; P. D. 3806; G. L. Vol. 3, p. 184.]

Art. 3723. [3697] [2309] [2254] Notarial acts and copies

thereof.—All declarations and protests made and acknowledgments taken by notaries public, and certified copies of their records and official papers, shall be received as evidence of the facts therein stated in any court of this State. [Acts 1876, p. 30; P. D. 4697; G. L. Vol. 8, p. 865.]

Art. 3724. [3698] [2310] [2255] **Transcript from Comptroller's office.**—In suits by the State against any officer or agent thereof, on account of any delinquency or failure to pay to the State any money, a transcript from the papers, books, records and proceedings of the office of the Comptroller purporting to contain a true statement of accounts between the State and such party, authenticated under the seal of said office, shall be admitted as prima facie evidence; and the court trying the cause may thereupon render judgment accordingly. All copies of bonds, contracts or other papers relating to, or connected with, any account between the State and an individual, sued as aforesaid, when certified by the Comptroller to be true copies of the originals on file in said office, and authenticated under the seal of said office, may be annexed to such transcript and shall be entitled to the same degree of credit that would be due to the original papers if produced and proved in court; but, when such suit is brought upon a bond or other written instrument, and the defendant shall by plea under oath deny the execution of such instrument, the court shall require the production and proof thereof. [Acts 1861, p. 14; P. D. 3704; G. L. Vol. 5, p. 351.]

Art. 3725. [3699] [2311] [2256] **Copies of certain ancient instruments.**—Copies of all conveyances and other instruments of writing between private individuals, which were filed in the office of any alcalde or judge in Texas previous to the first Monday in February, 1837, shall be admissible in evidence, and shall have the same force and effect as the originals thereof; provided, such copies are certified under the hand and official seal of the officer with whom the originals are now deposited. [Acts May 13, 1846, p. 365; P. D. 3717; G. L. Vol. 2, p. 1671.]

Art. 3726. [3700] [2312] [2257] **Recorded instruments admitted without proof.**—Every instrument of writing which is permitted or required by law to be recorded in the office of the clerk of the county court, and which has been, or hereafter may be, actually recorded for a period of ten years in the book used by said clerk for the recording of such instruments, whether proved or acknowledged in such manner or not, shall be admitted as evidence in any suit in this State without the necessity of proving its execution, provided, no claim adverse or inconsistent to the one evidenced by such instrument shall have been asserted during that ten years; provided, that the party to give such instrument in evidence shall file the same among the papers of the suit in which he proposes to use it at least three days before the commencement of the trial of such suit, and give notice of such filing to the opposite party, or his attorney of record; and unless such op-

posite party, or some other person for him, shall, within three days before the trial of the cause, file an affidavit stating that he believes such instrument of writing to be forged. Whenever any party to a suit shall file among the papers of the cause an affidavit stating that any instrument of writing, recorded as aforesaid, has been lost, or that he cannot procure the original, a certified copy of the record of any such instrument shall be admitted in evidence in like manner as the original could be. After such instrument shall have been actually recorded as herein provided for a period of ten years, it shall be no objection to the admission of same, or a certified copy thereof, as evidence, that the certificate of the officer who took such proof or acknowledgment, is not in form or substance such as required by the laws of this State; and said instrument shall be given the same effect as if it were not so defective. [Acts 1846, p. 387; Acts 1907, p. 308; P. D. 3716; G. L. Vol. 2, p. 1693.]

Art. 3727. [3701] **Old record books declared valid.**—All volumes constituting a portion of the records of any county organized prior to January 1, 1882, wherein are recorded deeds, mortgages or trust deeds, or other muniments of title to real estate situated in such county, which volumes and records are now and have been constantly among the archives of such county, as records thereof, shall be in all respects lawful and valid records of such counties respectively, for all purposes whatsoever relating to titles to real estate, as effectively as if such books and records were originally records of such counties, respectively, and as fully and completely as if such counties had been duly organized at the dates of the filing for record of the instruments recorded therein, as shown therein. Certified copies of the instruments recorded in said volumes, made in accordance with law, shall have the force and effect that certified copies of original records have in organized counties, and same may be used for all purposes lawful for certified copies of original records in ordinary cases in organized counties. [Acts 1905, p. 36.]

Art. 3728. [3703] [2319] [2263] **Copies of transcribed records.**—Where a county has been or may be created out of the territory of any organized county, and the records of deeds and other instruments required or permitted by law to be recorded, relating to lands or other property in such new county, have been transcribed and placed on record in such new county, in accordance with law, certified copies of such transcribed records in the new county may be admitted in evidence with like effect as certified copies of the original records. [Acts 1879, p. 106; G. L. Vol. 8, p. 1406.]

Art. 3729. [3705] [2313] **Certain abstracts.**—All abstracts of land titles, or land abstract books to lands in this State, compiled from the records of any county in this State, prior to the year 1890, which said records were partially or wholly destroyed or lost from any cause during the month of May, 1874,

March, 1876, and January, 1889, shall be competent prima facie evidence of the truth of the data or memoranda therein contained and compiled prior to the year 1890, and shall be admissible in evidence in the courts of this State; provided, that the compiler or compilers of such abstracts of land titles or land title abstract books, shall have made heretofore, or before offered in evidence, affidavit to the effect that said abstracts of land titles, or land title abstract books, were compiled by him from the records of the county prior to their destruction or loss, and that they contain a true and correct statement of the matters and things to which they relate. Any testimony is admissible which tends to discredit or substantiate the reliability of such abstract of land titles or land title abstract books, or tends to show the compiler thereof to have been incompetent or unreliable, or competent and reliable. A copy of such abstract shall be filed in the papers of the cause in which it is sought to be used, and notice given to the opposite party at least five days before the trial, and the same defense may be made as if copies of the original record had been filed; provided, that the party offering such abstracts of land titles, or land title abstract books, in evidence, shall himself, or by his agent or attorney, have made affidavit that the original instrument to which the said data or memorandum relates is not then on record; and that he has made diligent search and inquiry for the same in places and from persons where and in whose possession it would most probably be found, and has been unable to find the same; that, to his best knowledge and belief, the same is lost or destroyed; and provided, further, that the owner of said abstracts of land titles, or of land title abstract books, shall have filed with the county commissioners court his application in writing (which may be granted or refused, in the discretion of said court, and if refused, this article shall not become of force as to said application so refused) for an order of said court admitting to record in said court the contract of the said owner in writing, wherein the said owner shall bind himself, his heirs and assigns, as follows: That said owner, his heirs or assigns, will, whenever requested in writing, setting forth the data required by any party to any suit interested in introducing said abstracts of land titles, or land title abstract books, produce the same without charge on the day demanded for introducing in evidence, and upon the trial of any cause in this State; provided, that if said owner, his heirs or assigns, are required to produce said abstracts of land titles, or land title abstract books, in courts of any other county than that to the lands of which said abstract of land titles, or land title abstract books pertain, they shall be, by the party at whose instance such production is required, reasonably compensated in advance for the time and expense of the said owner, his heirs or assigns. And the said owner in said contract shall bind himself, his heirs and assigns, to answer in full damages to any party damaged by the failure or default of the said owner, his heirs or assigns, without good

cause, to produce said abstracts of land titles, or land title abstract books, as herein provided. Said contract shall further stipulate that no charge shall ever be made by said owner, his heirs or assigns, in excess of one dollar for each instrument or remove in any title, in the compilation of a complete abstract or title to the lands in the county to which said abstracts of land titles, or land title abstract books, pertain, and that said owner, his heirs and assigns, will, upon request and payment of the fees therefor by any person, either make, compile and certify, or cause to be made, compiled or certified, within a reasonable time, a complete abstract of title to any land to which said abstracts of land titles, or land title abstract books, pertain. The provisions of this article shall not apply if it can be shown by competent evidence that any such deeds were improperly recorded. Whenever any person, company or corporation has heretofore complied with the law which is amended hereby, in order to make an abstract evidence, the said person, company or corporation shall not be required to do anything more or further under this article in order to have the benefits thereof. [Acts 1891, p. 136; Acts 1897, p. 146; Acts 1901, p. 44.]

Art. 3730. [3706] [2314] [2258] Certified copy of instrument sued on.—If suit be brought on any instrument or note in writing filed in any suit brought thereupon in any other court of this State, a certified copy of such instrument or note in writing, under the hand and seal of the clerk of the court in which the original may be filed, shall be admitted as evidence in like manner as such original might be; but if the defendant shall plead, and file an affidavit that such original instrument or note in writing has not been executed by him, or by his authority, the clerk of the court having the custody of such original shall, on being summoned as a witness, attend with the same on trial of the cause. [Acts 1891, p. 136; Acts 1846, p. 365; P. D. 3718; G. L. Vol. 2, p. 1692.]

Art. 3731. [3707] [2315] [2259] Certified copies from heads of departments.—Certified copies, under the hands and official seals of the heads of departments, of all notes, bonds, mortgages, bills, accounts, or other documents, properly on file in any department of this State, shall be received in evidence on an equal footing with the originals, in all suits now pending, or which may be hereafter instituted, in this State, where the originals of such notes, bonds, mortgages, bills, accounts or other documents would be evidence. [Acts 1870, p. 62; P. D. 6825; G. L. Vol. 6, p. 236.]

Art. 3732. [3708] [2316] [2260] Assessment or payment of taxes.—Whenever in any cause it may be material to prove the assessment of any property for taxes, or the payment of any taxes, the certificate of the Comptroller of such assessment from the rolls deposited in his office, or that the payment of such taxes is shown by the records of his office, shall be admissible in evidence to prove the same. [P. D. 3708.]

Art. 3733. [3709] [2317] [2261] **Rate of interest presumed.**—The rate of interest in any other State, territory or country is presumed to be the same as that established by law in this State, and may be recovered accordingly without allegation or proof thereof, unless the rate of interest in such other country be alleged and proved. [Acts 1858, p. 112; G. L. Vol. 4, p. 984.]

Art. 3734. [3710] [2318] [2262] **Execution of written instruments presumed.**—When any petition, answer, or other pleading shall be founded, in whole or in part, on any instrument or note in writing charged to have been executed by the other party or by his authority, and not alleged therein to be lost or destroyed, such instrument or note in writing shall be received as evidence without the necessity of proving its execution, unless the party by whom or by whose authority such instrument or note in writing is charged to have been executed, shall file his affidavit denying the execution thereof; and the like rule shall prevail in all suits against indorsers and sureties upon any note or instrument in writing. When any such instrument or note in writing is charged to have been executed by any testator or intestate, it shall be received in evidence in like manner, unless some suspicion is cast upon it by an affidavit of the executor or administrator of such testator or intestate. [Acts 1846, p. 386; P. D. 1443; G. L. Vol. 2, p. 1692.]

Art. 3735. [3711] [2321] [2264] **Appointment and qualification of executor, etc.**—Whenever it may be necessary to make proof of the appointment and qualification of an executor, administrator or guardian, the letters issued to them in the manner provided by law, or a certificate of the proper clerk under his official seal that such letters have been issued, shall be sufficient evidence of the appointment and qualification of such executor, administrator or guardian. [Acts 1863, p. 5; G. L. Vol. 5, p. 593.]

Art. 3736. [3712] [2323] [2266] **Suit on sworn account.**—When any action or defense is founded upon an open account, supported by the affidavit of the party, his agent or attorney, taken before some officer authorized to administer oaths, to the effect that such account is, within the knowledge of affiant, just and true, that it is due, and that all just and lawful offsets, payments and credits have been allowed, the same shall be taken as prima facie evidence thereof, unless the party resisting such claim shall, before an announcement of ready for trial in said cause, file a written denial, under oath, stating that such account is not just or true, in whole or in part, and if in part only, stating the items and particulars which are unjust; provided, that when such counter affidavit shall be filed on the day of the trial, the party claiming under such verified account shall have the right to continue such cause until the next term of court; when he fails to file such affidavit, he shall not be permitted to deny the account, or any item therein as the case may be. [Acts 1883, p. 110; G. L. Vol. 9, p. 416.]

Art. 3737. [3713] [677] [601] Records of corporation.—The records of any company incorporated under the provisions of any statute of this State, or copies thereof duly authenticated by the signature of the president and secretary of such company, under the corporate seal thereof, shall be competent evidence in any action or proceedings to which such corporation may be a party. [Id. P. D. 5967.]

2. DEPOSITIONS.

| Article | Article |
|--|---------|
| Depositions of witnesses..... | 3738 |
| Notice and service..... | 3739 |
| Notice by publication..... | 3740 |
| When served by publication..... | 3741 |
| To perpetuate testimony..... | 3742 |
| Cross-interrogatories..... | 3743 |
| Commission..... | 3744 |
| Requisites of..... | 3745 |
| Officers authorized to execute..... | 3746 |
| Subpoena for witness..... | 3747 |
| May be attached..... | 3748 |
| Execution of commission..... | 3749 |
| Interpreter..... | 3750 |
| Return of depositions..... | 3751 |
| Oral deposition..... | 3752 |
| Notice..... | 3753 |
| Compelling appearance..... | 3754 |
| Request for issuance..... | 3755 |
| Commission, requisites of..... | 3756 |
| Power of officer taking depositions..... | 3757 |
| Written cross-interrogatories filed..... | 3758 |
| Witness sworn..... | 3759 |
| Examination..... | 3760 |
| Objections to testimony..... | 3761 |
| Depositions certified and returned, how; rules as to use, etc..... | 3762 |
| Depositions opened..... | 3763 |
| Either party may use depositions..... | 3764 |
| Objections to deposition..... | 3765 |
| Depositions as evidence..... | 3766 |
| Matter not responsive..... | 3767 |
| One's own deposition..... | 3768 |
| Of adverse party..... | 3769 |

Art. 3738. [3649] [2273] [2218] Depositions of witnesses.—Depositions of witnesses may be taken when the party desires to perpetuate the testimony of a witness, and, in all civil suits heretofore or hereafter brought in this State, whether the witness resides in the county where the suit is brought or out of it; provided, the failure to secure the deposition of a male witness residing in the county in which the suit is pending shall not be regarded as want of diligence where diligence has been used to secure his personal attendance by the service of subpoena or attachment, under the rules of law, unless by reason of age, infirmity or sickness, or official duty, the witness will be unable to attend the court, or unless he is about to leave, or has left the State or county in which the suit is pending and will not probably be present at the trial. [Acts 1846, p. 363; P. D. 3726; Acts 1879, p. 126; G. L. Vol. 2, p. 1671; G. L. Vol. 8, p. 1426.]

Art. 3739. [3650] [2274] [2219] Notice and service.—The party wishing to take the deposition of a witness in a suit pending in court shall file with the clerk or justice of the peace, as the case may be, a notice of his intention to apply for a commission to take the answers of the witness to interrogatories attached to such notice. The notice shall state the name and residence of the witness, or the place where he is to be found, and the suit in which the deposition is to be used; and a copy thereof and of the attached interrogatories shall be served upon the adverse party, or his attorney of record, five days before the issuance of a commission. Whenever the adverse party is a corporation or joint stock association, service may be made upon the president, secretary or treasurer of such corporation or association, or upon the local agent representing such corporation or association in the county in which the suit is pending, or by leaving a copy

of the notice and attached interrogatories at the principal office of such corporation or association during office hours. [Acts 1879, p. 126; Acts 1887, p. 27; G. L. Vol. 8, p. 1426; G. L. Vol. 9, p. 825.]

Art. 3740. [3651] [2275] [2220] Notice by publication.—
In all civil suits where it shall be shown to the court, by affidavit filed therein, that either party is beyond the jurisdiction of the court, or that he cannot be found, or has died since the commencement of the suit and such death has been suggested at a prior term of the court, so that the notice and copy of interrogatories cannot be served upon him for the purpose of taking depositions, and such party has no attorney of record upon whom they can be served, or if he be deceased and all the persons entitled to claim by or through such deceased defendant have not made themselves parties to the suit, and are unknown, the party wishing to take depositions may file his interrogatories in the court where said suit is pending, and the clerk of such court or justice of the peace shall thereupon cause a notice to be published in some newspaper for thirty days, stating the number of the suit, the names of the original parties, in what court the suit is pending, name and residence of the witness to whom the interrogatories are propounded, and that a commission will issue on or after the thirtieth day after such publication to take the deposition of such witness; at the expiration of which time such clerk or justice shall, on the application of the party filing such interrogatories, his agent or attorney, issue a commission as in other cases. [Id. P. D. 3737.]

Art. 3741. [3652] [2276] [2221] When served by publication.—In suits where service of citation has been made by publication, and the defendant has not answered within the time prescribed by law, service of notice of filing interrogatories may be made at any time after the day when the defendant is required to answer, by filing such notice among the papers of the suit at least twenty days before the issuance of a commission; service of notice may also be made in the manner prescribed in the preceding article. [Acts 1861, p. 26; P. D. 3738.]

Art. 3742. [3653] [2277] [2222] To perpetuate testimony.—When any person may anticipate the institution of a suit in which he may be interested, and may desire to perpetuate the testimony of a witness to be used in such suit, he, his agent or attorney, may file a written statement in the proper court of the county where such suit could be instituted, representing the fact and the names and residences, if known, of the persons supposed to be interested adversely to said person; a copy of which statement and writ shall be served on the persons interested adversely; or, where such person, his agent or attorney, shall at the time of filing such statement make affidavit that the names and residences of the heirs, successors or legal representative of any deceased person are unknown to the affiant,

or reside beyond the jurisdiction of the State, the clerk of the court or justice shall issue a like writ, which shall be served on such unknown or non-resident persons by publication in some newspaper in the mode and manner provided by law for the service of original citation upon non-residents or unknown parties; after which the depositions of such witnesses may be taken and returned by the parties making the said statement in the form and under the rules prescribed for taking testimony by deposition; and such testimony may be used in any suit which may be thereafter instituted by or between any of the parties to the statement, or those claiming under them, in like manner as if such depositions had been taken after the institution of such suit. When such suit has been instituted, all such depositions so taken and returned shall be subject to the like exceptions as other depositions. [Acts 1874, p. 103; P. D. 6829b; G. L. Vol. 8, p. 105.]

Art. 3743. [3654] [2278] [2223] **Cross-interrogatories.**—Whenever one party may file interrogatories for the purpose of taking the deposition of a witness, the opposite party may file cross-interrogatories at any time before the commission issues, and a copy of the same shall accompany the direct interrogatories, and shall be answered and returned therewith. [Id. Sec. 72; P. D. 3731.]

Art. 3744. [3655] [2279] [2224] **Commission.**—After the service of the notice of filing the interrogatories has been completed, the clerk or justice shall issue a commission to take the deposition of the witness named in the notice. [Id. P. D. 3736.]

Art. 3745. [3656] [2280] [2225] **Requisites of.**—The style of the commission shall be “The State of Texas.” It shall be dated and tested as other process; be addressed to the several officers named in the succeeding article, and shall authorize and require them, or either of them, to summon the witness before him forthwith, and to take his answers under oath to the direct and cross-interrogatories, if any, a copy of which shall be attached to such commission, and to return without delay the commission and interrogatories, and the answers of the witness thereto, to the clerk or justice of the proper court, giving his official and post-office address. [Id.]

Art. 3746. [3657] [2281] [2226] **Officers authorized to execute.**—The commission shall be addressed to the following officers, either of whom may execute and return the same:

1. If the witness be alleged to reside or be within the State, to any clerk of the district court, any judge or clerk of the county court, or any notary public of the proper county.

2. If the witness be alleged to reside or be without the State, and within the United States, to any clerk of a court of record having a seal, any notary public, or any commissioner of deeds duly appointed under the laws of this State within some other State or territory.

3. If the witness is alleged to reside or be without the United

States, to any notary public or any minister, commissioner or charge d'affairs of the United States resident in, and accredited to, the country where the deposition may be taken, or any consul-general, consul, vice-consul, commercial agent, vice-commercial agent, deputy consul or consular agent of the United States resident in such country. [P. D. 3726, 3736.]

Art. 3747. [3658] [2282] [2227] **Subpoena for witness.**—Upon the receipt of such commission by any officer to whom it is addressed, residing in this State, if the witness does not voluntarily appear, he shall issue a subpoena, directed to the sheriff or any constable of the county, requiring him to summon the witness to appear and answer interrogatories at a time and place named in the subpoena. [Acts 1905, p. 107; Acts 1874, p. 103; Acts 1907, p. 186; P. D. 3727; G. L. Vol. 8, p. 105.]

Art. 3748. [3659] [2283] [2228] **May be attached.**—If the witness, after being duly summoned, shall fail to appear, or, having appeared, shall refuse to answer the interrogatories, such officer shall have power to issue an attachment against such witness and to fine and imprison him in like manner as the district and county courts are empowered to do in like cases. [Acts 1874, p. 103.]

Art. 3749. [3660] [2284] [2229] **Execution of commission.**—Upon the appearance of the witness, the officer to whom the commission is directed shall proceed to take his answers to the interrogatories, reduce to writing, and shall cause the same to be signed and sworn to by the witness. The officer shall certify that the answers were signed and sworn to by the witness before him, and shall seal them up in an envelope, together with the commission and interrogatories and cross-interrogatories, if any, write his name across the seal, and indorse on the envelope the names of the parties to the suit and of the witnesses, and shall direct the package to the clerk of the court or justice from which the commission issued. If the depositions be sent by mail, the officer taking the same shall certify on the envelope enclosing the depositions that he in person deposited same in the mail for transmission, stating the date when and the post office in which the same are so deposited. [Acts 1905, p. 107; Acts 1874, p. 103; Acts 1907, p. 187; G. L. Vol. 8, p. 105.]

Art. 3750. [3661] [2285] [2230] **Interpreter.**—The officer executing such commission shall have authority, when he deems it expedient, to summon and swear an interpreter to facilitate the taking of the deposition.

Art. 3751. [3662] [2286] [2231] **Return of depositions.**—Depositions may be returned to the court either by mail, or by a party interested in taking the same, or by any other person; and the clerk or justice taking them from the postoffice shall indorse on them that he received them from the postoffice, and sign his name thereto. If not sent by mail, the person delivering them into court shall make affidavit before the clerk or justice that he received them from the hands of the officer before whom they were taken; that they have not been out of his possession

since, and that they have undergone no alteration. [Acts 1848, p. 106; P. D. 3729; G. L. Vol. 3, p. 106.]

Art. 3752. [3663] **Oral deposition.**—The testimony of any witness and of any party to a suit by oral deposition and answer may be taken in any civil case in any district or county court of this State, in any instance where depositions are now authorized by law to be taken. [Acts 1907, p. 187; Acts 1919, p. 5.]

Art. 3753. [3664] **Notice.**—Ten days' notice must be given in writing by the party, or his attorney, proposing to take such deposition, to the opposite party or his attorney of record, which notice shall state the name of the witness and the time and place of the taking of his deposition. In all cases in rem, the person having the agency or possession of the property at the time of the seizure shall be deemed the adverse party until a claim shall have been put in. [Acts 1907, p. 187.]

Art. 3754. [3665] **Compelling appearance.**— Any person may be compelled to appear and depose, as provided by this law, in the same manner as witnesses may be compelled to appear and testify in court; provided, that when such depositions are to be taken at a point more than one hundred miles distant from the court where the suit is pending, the party to whom such notice is given may, by notice to the adverse party or his attorney, require the deposition to be taken upon commission and written interrogatories, unless the judge or court before whom said suit is pending shall, upon proper application, after notice, made either in term time or vacation, otherwise direct. [Id.]

Art. 3755. [3666] **Request for issuance.**—After said notice of taking depositions by oral examination and answer shall have been served, the party serving the same shall note on a true copy thereof the date and hour of such service, upon whom served, the manner of service, and sign the same. The party desiring such deposition shall file such true copy with the clerk of the court in which such cause is pending, with request for the issuance of a commission to take such deposition, whereupon said clerk shall, after the expiration of ten days from the date of the service of such notice, as noted on said true copy, issue a commission to take such deposition. [Id.]

Art. 3756. [3667] **Commission, requisites of.**— Such commission shall be styled, addressed, dated and tested as provided for in case of written interrogatories, and shall authorize and require the officer or officers to whom the same is addressed, or either of them, to examine said witness before him on the date named in the notice and commission and to take his answers under oath to such questions as may be propounded to him by the respective parties or their attorneys to the suit or proceeding. Such commission shall require such witness to remain in attendance from day to day until such deposition is begun and completed. [Id.]

Art. 3757. [3668] **Power of officer taking depositions.**— Said officer shall have the same power and authority to enforce

the attendance of the witness, and to compel him to testify, as in cases of written interrogatories. [Id.]

Art. 3758. [3669] **Written cross-interrogatories filed.**—The party upon whom the notice is served may file with the clerk of the court written interrogatories to the witness, a certified copy of which interrogatories shall be attached to the commission and answers thereto taken at the time of taking the oral testimony. [Id.]

Art. 3759. [3670] **Witness sworn.**—Every person so deposing shall be first cautioned and sworn to testify the truth, the whole truth and nothing but the truth. [Id.]

Art. 3760. [3671] **Examination.**—The witness shall be carefully examined, his testimony shall be reduced to writing or typewriting by the officer taking the deposition, or by some person under his personal supervision, or by the deponent himself in the officer's presence, and by no other person, and shall, after it has been reduced to writing or typewriting, be subscribed by the deponent. [Id.]

Art. 3761. [3672] **Objections to testimony.**—The officer taking such oral deposition shall not sustain objections or exceptions to any of the testimony taken, nor exclude same; but any of the parties or attorneys engaged in taking the testimony may have any objections they may make recorded with the testimony and reserved for the action of the court in which the cause is pending, but any such court shall not be confined to the objections made at the taking of the testimony. [Id.]

Art. 3762. [3673] **Depositions certified and returned, how, rules as to use, etc.**—Such depositions shall be certified and returned by the officer taking the same, and opened and used as is provided in case of depositions on written interrogatories. [Acts 1907, p. 188.]

Art. 3763. [3674] [2287] [2232] **Depositions opened.**—Depositions, after being filed, may be opened by the clerk or justice at the request of either party or his counsel; and the clerk or justice shall indorse on such depositions upon what day and at whose request they were opened, signing his name thereto, and they shall remain on file for the inspection of either party. [Acts 1846, p. 363; P. D. 3741; G. L. Vol. 2, p. 1671.]

Art. 3764. [3675] [2288] [2233] **Either party may use depositions.**—When cross-interrogatories have been filed and answered, either party has the right to use the depositions on the trial. [Id. Sec. 76; P. D. 3740.]

Art. 3765. [3676] [2289] [2235] **Objections to deposition.**—When a deposition shall have been filed in the court at least one entire day before the day on which the case is called for trial, no objection to the form thereof, or to the manner of taking the same, shall be heard, unless such objections are in writing and notice thereof is given to the opposite counsel before the trial commences. Such objection shall be made and determined at the first term of the court after the deposition has been filed, and not thereafter. [Id. Acts 1893, p. 5; P. D. 3742.]

Art. 3766. [3677] [2290] [2236] **Depositions as evidence.**—Depositions may be read in evidence upon the trial of any suit in which they are taken, subject to all legal exceptions which might have been made to the interrogatories and answers, were the witness personally present before the court giving evidence. [Acts 1848, p. 106; P. D. 3733; G. L. Vol. 3, p. 106.]

Art. 3767. [3678] [2291] [2237] **Matter not responsive.**—If any deposition shall contain any testimony not pertinent to the direct and cross-interrogatories propounded, such matter shall be deemed surplusage, and may be stricken out by the court upon objection thereto. [Acts 1846, p. 365; G. L. Vol. 2, p. 1671.]

Art. 3768. [3679] [2292] [2238] **One's own deposition.**—The deposition of either party to a suit who is competent to testify therein may be taken in his own behalf in the same manner and with like effect with the depositions of other witnesses.

Art. 3769. [3680 to 3686] **Of adverse party.**—These rules shall govern the taking of the deposition of the adverse party:

1. Either party to a suit may examine the opposing party as a witness, upon interrogatories filed in the cause, and shall have the same process to obtain his testimony as in the case of any other witness.

2. No notice of the filing of the interrogatories is necessary.

3. A commission to take the answers of the party to the interrogatories shall be issued by the clerk or justice, and be executed and returned by any authorized officer as in other cases.

4. A copy of the interrogatories need not be served on the adverse party before a commission shall issue to take the answers thereto.

5. The examination of the adverse party shall be conducted and testimony received in the same manner and according to the same rules which apply in the case of any other witness, subject to the provisions of this article.

6. The party interrogated may, in answer to questions propounded, state any matter connected with the cause and pertinent to the issue to be tried; and the adverse party may contradict the answers by any other competent testimony in the same manner as he might contradict the testimony of any other witness.

7. If the party interrogated refuses to answer, the officer executing the commission shall certify such refusal; and any interrogatory which the party refuses to answer, or which he answers evasively, shall be taken as confessed.

8. The party interrogated may, upon the trial of the case, take exception to the interrogatories on the ground that they are not pertinent, and to the answers that they are not competent evidence.

9. It shall be no objection to the interrogatories that they are leading in their character.

10. Where any party to a suit is a corporation, such cor-

poration shall not be permitted to take ex-parte depositions, nor shall any ex-parte deposition be taken of the agents of such corporation, but if there are more than two parties to the suit ex-parte depositions may be taken by or of any such parties to the suit, except the corporation or its agents. It is hereby expressly provided that any party to a suit wherein a corporation is a party shall have the right to take written and oral depositions of any party to such suit or of any witness, after giving notice and complying with the other requirements of that statutes of the State of Texas, as to the taking of written and oral depositions of witnesses. It is further hereby expressly provided that when any ex-parte deposition is taken in any suit whatever, either the party taking the same or the party giving the same shall have the right to introduce the deposition in evidence, subject to the general rules of evidence without regard to whether the person offering the same has crossed the interrogatories or not, and without regard to whether or not the witness who gave the deposition is present in court or has testified in the case. [Acts 1925, p. 448.]

TITLE 56.

EXECUTION.

| | Article | | Article |
|--------------------------------------|---------|--------------------------------------|---------|
| Execution on judgment..... | 3770 | Property may be sold by defend- | |
| Execution before adjournment..... | 3771 | ant..... | 3802 |
| Execution superseded..... | 3772 | Forfeited delivery bond..... | 3803 |
| Dormant judgment..... | 3773 | Sale of real property..... | 3804 |
| On removal of property, etc..... | 3774 | Sale made elsewhere..... | 3805 |
| On death of plaintiff..... | 3775 | Sale of city lots..... | 3806 |
| On death of executor, etc..... | 3776 | Sale of rural property..... | 3807 |
| On death of nominal plaintiff..... | 3777 | Notice of sale of real estate..... | 3808 |
| On money of deceased..... | 3778 | "Courthouse door"..... | 3809 |
| On property of deceased..... | 3779 | Sales under deed of trust..... | 3810 |
| Issuance of execution for money..... | 3780 | Sale of personal property..... | 3811 |
| Issuance of execution for prop- | | Notice of sale of personal prop- | |
| erty..... | 3781 | erty..... | 3812 |
| To different counties..... | 3782 | Shall exhibit personal property..... | 3813 |
| Requisites of execution..... | 3783 | Sale of stock running in range..... | 3814 |
| Returnable, when..... | 3784 | When execution not satisfied..... | 3815 |
| Indorsements by officer..... | 3785 | Conveyance to purchaser..... | 3816 |
| Execution on property of surety..... | 3786 | Conveyance after death of pur- | |
| On death, etc., of officers..... | 3787 | chaser..... | 3817 |
| Enforced without delay..... | 3788 | Purchaser deemed innocent..... | 3818 |
| Levy of execution..... | 3789 | Penalty for unlawful sale..... | 3819 |
| Failure to designate property..... | 3790 | Officer shall not purchase..... | 3820 |
| Property not to be designated..... | 3791 | Purchaser failing to comply..... | 3821 |
| Property exempt..... | 3792 | Re-sale of property..... | 3822 |
| Levy..... | 3793 | Return of execution by mail..... | 3823 |
| On stock running at large..... | 3794 | Money to be paid over..... | 3824 |
| Levy on shares of stock..... | 3795 | Failure to levy or sell..... | 3825 |
| Interest of partner..... | 3796 | Failure to return execution..... | 3826 |
| Goods pledged or mortgaged..... | 3797 | Surplus to be paid to defendant..... | 3827 |
| Shares of stock sold..... | 3798 | Return of execution..... | 3828 |
| Duty of officer..... | 3799 | Death of defendant..... | 3829 |
| Expense of keeping property..... | 3800 | Death of the plaintiff..... | 3830 |
| May give delivery bond..... | 3801 | Execution docket..... | 3831 |

Art. 3770. [3714] [2324] [2267] Execution on judgment.—After the adjournment of a district or county court, the clerk thereof shall tax the costs in every case in which a final judgment has been rendered, and issue execution to enforce such judgment and collect such costs. [Act June 4, 1873, p. 209; P. D. 3772; G. L. Vol. 7, p. 661.]

Art. 3771. [3715] [2325] [2268] Execution before adjournment.—After the expiration of twenty days from and after the rendition of a final judgment in the district or county court, and after the overruling of any motion therein for a new trial or in arrest of judgment, if no supersedeas bond on appeal or writ of error has been filed and approved, the clerk shall issue execution upon such judgment upon application of the successful party. [Id.]

Art. 3772. [3716] [2326] [2269] Execution superseded.—When such execution has been issued and a supersedeas bond is afterward filed and approved within the time prescribed by law, the clerk shall immediately issue a writ of supersedeas suspending all further proceedings under such execution.

Art. 3773. [3717] [2326a] Dormant judgment.—If no execution is issued within twelve months after the rendition of a judgment in any court of record, the judgment shall become dormant and no execution shall issue thereon unless such judgment be revived. If the first execution has issued within the twelve months, the judgment shall not become dormant, unless ten years shall have elapsed between the issuance of executions thereon, and execution may issue at any time within ten years

after the issuance of the preceding execution. [Acts 1895, p. 2; G. L. Vol. 10, p. 732.]

Art. 3774. [3719] [2328] [2271] **On removal of property, etc.**—Upon the filing of an affidavit that the party against whom a judgment for money has been rendered, is about to remove his property out of the county, or is about to transfer or secrete his property for the purpose of defrauding his creditors, the clerk may issue execution immediately. [Act Jan. 27, 1842, p. 66; P. D. 3774; G. L. Vol. 2, p. 738.]

Art. 3775. [3720] **On death of plaintiff.**—Where a sole plaintiff, or one of several plaintiffs, shall die after judgment, execution shall issue on such judgment in the name of the legal representative of such deceased sole plaintiff, or in the name of the surviving plaintiffs, and the legal representative of the deceased plaintiff, as the case may require, upon an affidavit of such death being filed with the clerk, together with the certificate of the appointment of such representative under the hand and seal of the clerk of the court wherein such appointment was made; provided that if there be no administration upon the estate of such deceased sole plaintiff or plaintiffs, and none necessary as shown by an affidavit filed with the clerk of the court in which judgment was obtained, execution shall issue in the name of all the plaintiffs, both living and deceased, as shown in the judgment, and all money or moneys collected thereunder by the officer levying such execution, and paid unto the registry of the court, out of which such execution issued shall be partitioned among and paid to parties entitled to the same, and in the proportions to which they are entitled to the same under proper order of the presiding judge of said court. [Acts 1925, p. 450.]

Art. 3776. [3721] [2330] [2273] **On death of executor, etc.**—When an executor, administrator, guardian or trustee of an express trust dies or ceases to be such executor, administrator, guardian or trustee after judgment, execution shall issue on such judgment in the name of his successor, upon an affidavit of such death being filed with the clerk, together with the certificate of the appointment of such successor, under the hand and seal of the clerk of the court wherein such appointment was made. [Id.]

Art. 3777. [3722] [2331] [2274] **On death of nominal plaintiff.**—When a person in whose favor a judgment is rendered for the use of another dies after judgment, execution shall issue in the name of the party for whose use the suit was brought, upon an affidavit of such death being filed with the clerk.

Art. 3778. [3723] [2332] [2275] **On money of deceased.**—If a sole defendant dies after judgment for money against him, execution shall not issue thereon, but the judgment may be proved up and paid in due course of administration. [Act Feb. 5, 1853, p. 20; G. L. Vol. 3, p. 1304; P. D. 14.]

Art. 3779. [3724] [2333] [2276] **On property of deceased.**—In any case of judgment other than a money judgment, where the sole defendant, or one or more of several joint defendants,

shall die after judgment, upon an affidavit of such death being filed with the clerk, together with the certificate of the appointment of a representative of such decedent under the hand and seal of the clerk of the court wherein such appointment was made, the proper process on such judgment shall issue against such representative. [Id.]

Art. 3780. [3726] [2335] [2278] **Issuance of execution for money.**—Where the execution requires that the judgment shall be made out of the property of the debtor, it shall be issued in the first instance to the county in which the judgment is rendered, and upon the return thereof that no property can be found, or not sufficient to satisfy the same, execution may be issued to any other county in the State. [Act. Jan. 27, 1842, p. 66; P. D. 3874; G. L. Vol. 2, p. 738.]

Art. 3781. [3727] [2336] [2279] **Issuance of execution for property.**—Where the execution, or any writ in the nature thereof, requires the sale or delivery of specific real or personal property, it may be issued to the county where the property, or some part thereof, is situated.

Art. 3782. [3728] [2337] [2280] **To different counties.**—Process in the nature of an execution which requires only the delivery of real or personal property may be issued at the same time to different counties.

Art. 3783. [3729] [2338] [2281] **Requisites of execution.**—The style of the execution shall be "The State of Texas." It shall be directed to the sheriff or any constable of the proper county, and shall be signed by the clerk or justice officially, and bear the seal of the court, if issued out of the district or county court. It shall correctly describe the judgment, stating the court wherein and the time when rendered, the names of the parties, the amount, if it be for money, and the amount actually due thereon, if less than the original amount, the rate of interest, if other than six per cent, and shall have the following requisites:

1. The several items of the bill of costs to be collected under the execution shall be endorsed thereon in intelligible words and figures.

2. If the judgment be for money simply, it shall require the officer to satisfy the judgment out of the property of the debtor, subject to execution.

3. If the judgment commands the sale of particular property for the satisfaction thereof, the writ shall be framed accordingly.

4. If the judgment be for the delivery of the possession of real or personal property, the writ shall require the officer to deliver the possession of the same, particularly describing it, to the party entitled thereto, and may, at the same time, require the officer to satisfy any costs, damages or rents and profits recovered by the same judgment, out of any property subject to execution of the party against whom it is rendered.

5. If the judgment be for the recovery of personal property or its value, the writ shall command the officer, in case a

delivery thereof cannot be had, to levy and collect the value thereof for which the judgment was recovered, to be specified therein out of any property of the party against whom the judgment was rendered, liable to execution.

6. It shall require the officer to satisfy the costs adjudged against the party, and the further costs of executing the writ, out of any property liable to execution of the party against whom the judgment was rendered.

7. When an alias or pluries execution is issued, it shall show upon its face the number of previous executions which have been issued on the judgment. [Const. Art. 5, Sec. 12; Act June 4, 1873, p. 209; P. D. 3772; G. L. Vol. 7, p. 661.]

Art. 3784. [3730] [2339] [2282] **Returnable, when.**—The execution shall be returnable to the first day of the next term of the court, or in thirty, sixty or ninety days, if so directed by the plaintiff, his agent or attorney. [Act 1873, p. 209; G. L. Vol. 7, p. 661; P. D. 3775.]

Art. 3785. [3731] [2340] [2283] **Indorsements by officer.**—The officer receiving the execution shall indorse thereon the exact hour and day when he received it. If he receives more than one on the same day against the same person, he shall number them as received; and, on failure to do so, or in case of false indorsement, he and his sureties shall be liable on motion in the court from whence the execution is issued, three days' notice being given, to a judgment in favor of the plaintiff in execution for twenty per cent on the amount of the execution, together with such damages as the plaintiff in execution may have sustained by such failure or such false indorsement. [Act Jan. 27, 1842, p. 66; P. D. 3780; G. L. Vol. 2, p. 738.]

Art. 3786. [3732] [2341] [2284] **Execution on property of surety.**—If it appear upon the face of an execution, or by the indorsement of the clerk, that of those against whom it is issued any one is surety for another, the levy of the execution shall first be made upon the property of the principal subject to execution and situate in the county in which the judgment is rendered. If property of the principal cannot be found which will, in the opinion of the officer, be sufficient to make the amount of the execution, the levy shall be made on so much property of the principal as may be found, and upon so much of the property of the surety as may be necessary to make the amount of the execution. [Act Feb. 5, 1858, p. 110; P. D. 4786; G. L. Vol. 4, p. 982.]

Art. 3787. [3733] [2342] [2285] **On death, etc., of officers.**—If the officer receiving an execution die or go out of office before the return of any execution, his successor, or other officer authorized to discharge the duties of the office in such case, shall proceed therein in the same manner that such officer should have done.

Art. 3788. [3734] [2343] [2286] **Enforced without delay.**—When an execution against the property of any person is is-

sued to an officer, he shall proceed without delay to levy the same upon the property of the defendant not exempt from execution, unless otherwise directed by the plaintiff, his agent, or attorney. [R. S. 1879, 2286.]

Art. 3789. [3735] [2344] [2287] **Levy of execution.**—The officer shall first call upon the defendant, if he can be found, or, if absent, upon his agent within the county, if known, to point out property to be levied upon; and a levy shall first be made upon the property designated by the defendant or his agent; provided that if it be personal property, the defendant or his agent shall deliver the same into the officer's possession; or, if it be real estate situated in whole or in part within the county, he shall deliver to the officer a description thereof by metes and bounds. If, in the opinion of the officer, the property so designated will not sell for enough to satisfy the execution and costs of sale, he shall notify the defendant or his agent thereof; whereupon an additional designation may be made. [Act June 4, 1873, p. 209; P. D. 3775; G. L. Vol. 7, p. 661.]

Art. 3790. [3736] [2345] [2288] **Failure to designate property.**—If no property be thus designated, or if an insufficient amount of property be designated, it shall be the duty of the officer to levy the execution upon the property of the debtor, subject to execution in the following order:

1. On personal or movable property.
2. On uncultivated lands; and,
3. Upon cultivated lands. [Id.]

Art. 3791. [3737] [2346] [2289] **Property not to be designated.**—A defendant in execution shall not point out property which he has sold, mortgaged or conveyed in trust, or property exempt from forced sale.

Art. 3792. [3738] [2347] [2290] **Property exempt.**—Property which the judgment debtor has sold, mortgaged or conveyed in trust shall not be seized in execution, if the purchaser, mortgagee or trustee shall point out other property of the debtor in the county sufficient to satisfy the execution.

Art. 3793. [3739-40] **Levy.**—In order to make a levy on real estate, it shall not be necessary for the officer to go upon the ground, but it shall be sufficient for him to indorse such levy on the writ. Levy upon personal property is made by taking possession thereof, when the defendant in execution is entitled to the possession; where the defendant in execution has an interest in personal property, but is not entitled to the possession thereof, a levy is made thereon by giving notice thereof to the person who is entitled to the possession, or one of them when there are several.

Art. 3794. [3741] [2250] [2293] **On stock running at large.**—A levy upon livestock running at large in a range, and which cannot be herded and penned without great inconvenience and expense, may be made by designating by reasonable estimate the number of animals and describing them by their

marks and brands, or either; such levy shall be made in the presence of two or more credible persons, and notice thereof shall be given in writing to the owner or his herder or agent, if residing within the county and known to the officer.

Art. 3795. [3742] [2351] [2294] **Levy on shares of stock.**—A levy on the stock of any corporation or joint stock company is made by leaving a notice thereof with any officer of such company. [Act March 13, 1875, p. 102; G. L. Vol. 8, p. 474.]

Art. 3796. [3743] [2352] [2295] **Interest of partner.**—A levy upon the interest of a partner in partnership property is made by leaving a notice with one or more of the partners or with a clerk of the partnership.

Art. 3797. [3744] [2353] [2296] **Goods pledged or mortgaged.**—Goods and chattels pledged, assigned or mortgaged as security for any debt or contract, may be levied upon and sold on execution against the person making the pledge, assignment or mortgage subject thereto; and the purchaser shall be entitled to the possession when it is held by the pledgee, assignee or mortgagee, on complying with the conditions of the pledge, assignment or mortgage.

Art. 3798. [3745] [2354] [2297] **Shares of stock sold.**—Shares of stock in any joint stock or incorporated company may be sold on execution against the person owning such stock. [Act March 13, 1875, p. 102, G. L. Vol. 8, p. 474.]

Art. 3799. [3746] [2355] [2298] **Duty of officer.**—The officer shall keep securely all personal property levied on by him for which no delivery bond has been given. If any injury or loss should result by his negligence to any party interested, he and his sureties shall be liable to pay the value of the property so lost or the amount of the injury sustained, and ten per cent thereon, to be recovered by the party injured on motion, three days notice being given in the court from which the execution issued. [Act Jan. 27, 1842; P. D. 3782; G. L. Vol. 2, p. 738.]

Art. 3800. [3747] [2356] [2299] **Expense of keeping property.**—The officer shall be authorized to retain out of the proceeds of personal property sold upon execution all reasonable expenses incurred by him in making the levy and keeping the property. [Id.]

Art. 3801. [3748] [2357] [2300] **May give delivery bond.**—Any personal property taken in execution may be returned to the defendant by the officer upon the delivery by the defendant to him of a bond, payable to the plaintiff, with two or more good and sufficient sureties, to be approved by the officer, conditioned that the property shall be delivered to the officer at the time and place named in the bond, to be sold according to law, or for the payment to the officer of a fair value thereof, which shall be stated in the bond. [Act Jan. 27, 1842; P. D. 3778, G. L. Vol. 2, p. 738.]

Art. 3802. [3749] [2358] [2301] **Property may be sold by**

defendant.—Where property has been replevied, as provided in the preceding article, the defendant may sell or dispose of the same, paying the officer the stipulated value thereof.

Art. 3803. [3750] [2359] [2302] **Forfeited delivery bond.**—In case of the non-delivery of the property according to the terms of the bond, and non-payment of the value thereof, the officer shall forthwith return the bond indorsed, “forfeited” to the clerk of the court from which execution issued; whereupon, if the judgment remain unsatisfied in whole or in part, the clerk shall issue execution against the principal debtor and the sureties on the bond for the amount due, not exceeding the stipulated value of the property, upon which execution no delivery bond shall be taken, which fact shall be indorsed by the clerk on the execution. [Id. P. D. 3779.]

Art. 3804. [3751] [2360] [2303] **Sale of real property.**—Real property taken by virtue of any execution shall be sold at public auction, at the courthouse door of the county, on the first Tuesday of the month, between the hours of ten o'clock, a. m. and four o'clock, p. m. [Id. P. D. 3776.]

Art. 3805. [3752] [2361] [2304] **Sales made elsewhere.**—Where by law the public sales of lands in any county are directed to be made at any other place than the courthouse door, the sales herein provided to be made at the courthouse door shall be made at the place designated by such law.

Art. 3806. [3753] [2362] [2305] **Sale of city lots.**—If real property situated in any town or city, taken in execution, consist of several lots, tracts or parcels, each shall be offered separately, unless the same be not susceptible of a separate sale by reason of the character of the improvements thereon.

Art. 3807. [3754 to 3756] **Sale of rural property.**—When lands not situated in any town or city are taken in execution, the defendant in such writ in whom the legal or equitable title to such land may be vested, shall have the right to present to the officer holding such execution, at any time before the sale so as not to delay the same being made as advertised, a plat of said land as actually surveyed, in lots of not less than fifty acres, by the county surveyor of the county wherein said premises are situated. The plat shall be accompanied by the field notes of each lot as numbered, with the certificate of the county surveyor that the same are correct, and the defendant shall have the right to designate the order in which the lots shall be sold. When a sufficient number of such lots are sold to satisfy the amount due on the execution, the sale shall cease. All of the expenses attending the survey and sale of said land in lots shall be paid by the defendant, and shall in no case constitute any additional cost in the case. [Acts 1875, p. 50, G. L. Vol. 8, p. 422.]

Art. 3808. [3757] [2366] [2309] **Notice of sale of real estate.**—The time and place of sale of real estate under execution, order of sale, or venditioni exponas, shall be advertised by the

officer by having the notice thereof published in the English language once a week for three consecutive weeks preceding such sale, in some newspaper published in said county. The first of said publications shall appear not less than twenty days immediately preceding the day of sale. Said notice shall contain a statement of the authority by virtue of which the sale is to be made, the time of levy, and the time and place of sale; it shall also contain a brief description of the property to be sold, and shall give the number of acres, original survey, locality in the county, and the name by which the land is most generally known, but it shall not be necessary for it to contain field notes. Publishers of newspapers shall receive for publishing said sales fifty cents per square for the first insertion and thirty cents per square for subsequent insertions, to be taxed and paid as other costs; for such publication, ten lines shall constitute a square, and the body of no such advertisement shall be printed in larger type than brier. No fee for advertising any property in a newspaper under the provisions of this article shall exceed the sum of five dollars. If there be no newspaper published in the county, or none which will publish the notice of sale for the compensation herein fixed, the officer shall then post such notice in writing in three public places in the county, one of which shall be at the courthouse door of such county, for at least twenty days successively next before the day of sale. The officer making the levy shall give the defendant or his attorney written notice of such sale, either in person or by mail, which notice shall substantially conform to the foregoing requirements. [Acts 1895 p. 168; G. L. Vol. 10, p. 898; Acts 1842, p. 66; G. L. Vol. 2, p. 738; Acts 1903, p. 104.]

Art. 3809. [3758] [2368] [2310] **“Courthouse door.”**—By the term “courthouse door” of a county is meant either of the principal entrances to the house provided by the proper authority for the holding of the district court. If from any cause there is no such house, the door of the house where the district court was last held in that county shall be deemed to be the courthouse door. Where the courthouse, or house used by the court, has been destroyed by fire or other cause, and another has not been designated by the proper authority, the place where such house stood shall be deemed to be the courthouse door.

Art. 3810. [3759] [2369] [2310a] **Sales under deed of trust.**—All sales of real estate made under powers conferred by any deed of trust or other contract lien shall be made in the county in which such real estate is situated. Where such real estate is situated in more than one county then notices as herein provided shall be given in both or all of such counties, and the real estate may be sold in either county, and such notice shall designate the county where the real estate will be sold. Notice of such proposed sale shall be given by posting written notice thereof for three consecutive weeks prior to the day of sale in three public places in said county or counties, one of which shall be made at the courthouse door of the county in which such sale

is to be made, and if such real estate be in more than one county, one at the courthouse door of each county in which said real estate may be situated, or the owner of such real estate may, upon written application, cause the same to be sold as provided in said deed of trust or contract lien. Such sale shall be made at public vendue between the hours of 10 o'clock a. m. and 4 o'clock p. m. of the first Tuesday in any month. When any such real estate is situated in an unorganized county, such sale shall be made in the county to which such unorganized county is attached for judicial purposes. [Acts 1889, p. 143; G. L. Vol. 9, p. 1171; Acts 1st C. S. 1915, p. 32; Acts 1915, p. 84.]

Art. 3811. [3760] [2370] [2311] **Sale of personal property.**—Personal property taken in execution shall be sold on the premises where it is taken in execution, or at the courthouse door of the county, or at some other place, if owing to the nature of the property, it is more convenient to exhibit it to purchasers at such place. [Act Jan. 27, 1842 p. 66; G. L. Vol. 2, p. 738; P. D. 3776.]

Art. 3812. [3761] [2371] [2312] **Notice of sale of personal property.**—Previous notice of the time and place of the sale of any personal property on execution shall be given for ten days successively, by posting up written or printed notices thereof in at least three public places in the county, one of which shall be at the courthouse door of the county, and one at the place where the sale is to be made. Id.]

Art. 3813. [3762] [2372] [2313] **Shall exhibit personal property.**—Personal property shall not be sold, unless the same be present and subject to the view of those attending the sale, when it is susceptible of being thus exhibited, except shares of stock in joint stock or incorporated companies, and in cases where the defendant in execution has merely an interest without right to the exclusive possession in which case the interest of the defendant may be sold and conveyed without the presence or delivery of the property.

Art. 3814. [3763] [2373] [2314] **Sale of stock running in range.**—When a levy is made upon livestock running at large in the range, it is not necessary that such stock, or any part thereof, should be present at the place of sale, and the purchaser at such sale is authorized to gather and pen such stock and select therefrom the number purchased by him.

Art. 3815. [3764] [2374] [2315] **When execution not satisfied.**—When the property levied upon does not sell for enough to satisfy the execution, the officer shall proceed anew, as in the first instance, to make the residue.

Art. 3816. [3765] [2375] [2316] **Conveyance to purchaser.**—When a sale has been made and the terms thereof complied with, the officer shall execute and deliver to the purchaser a conveyance of all the right, title, interest and claim which the defendant in execution had in and to the property sold. [Id. P. D. 3795.]

Art. 3817. [3767] [2377] [2317] **Conveyance after death**

of purchaser.—If the purchaser, having complied with the terms of the sale, shall die before a conveyance was executed to him, the officer shall nevertheless convey the property to the purchaser, and the conveyance shall have the same effect as if it had been executed in the lifetime of the purchaser.

Art. 3818. [3768] [2378] [2318] **Purchaser deemed innocent.**—A purchaser at a sale under execution shall be deemed to be an innocent purchaser without notice in all cases where he would be deemed to be such had the sale been made voluntarily by the defendant in person.

Art. 3819. [3769] [2379] [2319] **Penalty for unlawful sale.**—Any officer who shall sell any property without giving the previous notice herein directed, or who shall sell the same otherwise than in the manner prescribed herein, shall forfeit and pay to the party injured not less than ten nor more than two hundred dollars in addition to such other damages as the party may have sustained, to be recovered on motion, five days notice thereof being given such officer and his sureties.

Art. 3820. [3770] [2380] [2320] **Officer shall not purchase.**—If any officer or his deputy making sale of property on execution, shall, directly or indirectly, purchase the same, the sale shall be void.

Art. 3821. [3771] [2381] [2321] **Purchaser failing to comply.**—If any person shall bid off property at any sale made by virtue of an execution, and shall fail to comply with the terms of the sale, he shall be liable to pay the plaintiff in execution twenty per cent on the value of the property thus bid off, besides costs, to be recovered on motion, five days notice of such motion being given to such purchaser; and should the property on a second sale bring less than on the former, he shall be liable to pay to the defendant in execution all loss which he sustains thereby, to be recovered on motion as above provided. [Acts 1842, p. 66; G. L. Vol. 2, p. 741; P. D. 3786.]

Art. 3822. [3772] [2382] [2322] **Re-sale of property.**—When the terms of the sale shall not be complied with by the bidder, the sheriff shall proceed to sell the property again on the same day, if there be sufficient time; but if not, he shall readvertise and sell the same as in the first instance. [Id. P. D. 3787.]

Art. 3823. [3773] [2383] [2323] **Return of execution by mail.**—When an execution is issued to any county other than the one in which the judgment is rendered, return may be made by mail; but money cannot be thus sent except by direction of the party entitled to receive the same or his attorney of record.

Art. 3824. [3774-75] **Money to be paid over.**—When an officer has collected money on execution, he shall pay the same to the party entitled thereto at the earliest opportunity. If an officer fails or refuses to pay money collected under an execution when demanded by the person entitled to receive the same, he shall be liable to pay to such person the amount so collected, with damages at the rate of five per cent per month thereon, besides interest and costs, which may be recovered of him and his sureties by the party entitled to receive the same on motion

before the court from which said execution issued, five days previous notice thereof being given to said officer and his sureties.

Art. 3825. [3776] [2386] [2326] **Failure to levy or sell.**—Should an officer fail or refuse to levy upon or sell any property subject to execution, when the same might have been done, he and his sureties shall be liable to the party entitled to receive the money collected on such execution for the full amount of the debt, interest and costs, to be recovered on motion before the court from which said execution issued, five days previous notice thereof being given to said officer and his sureties.

Art. 3826. [3777] [2387] [2327] **Failure to return execution.**—Should an officer neglect or refuse to return any execution as required by law, or should he make a false return thereon, he and his sureties shall be liable to the party entitled to receive the money collected on such execution for the full amount of the debt, interest and costs to be recovered as provided in the preceding article. [Id. P. D. 3769.]

Art. 3827. [3778] [2388] [2328] **Surplus to be paid to defendant.**—If, on the sale of property, more money is received than is sufficient to pay the amount of the execution or executions in the hands of the officer, the surplus shall be immediately paid over to the defendant, his agent or attorney.

Art. 3828. [3779] [2389] [2329] **Return of execution.**—Every execution shall be returned forthwith if satisfied by the collection of the money, or upon order of the plaintiff or his attorney indorsed thereon.

Art. 3829. [3780] [2390] [2330] **Death of defendant.**—The death of the defendant after the execution is issued shall operate as a supersedeas thereof; but the lien, when one has been acquired by a levy, shall be recognized and enforced by the county court in the payment of the debts of the deceased.

Art. 3830. [3781] [2391] [2331] **Death of the plaintiff.**—An execution shall not be abated by the death of the plaintiff therein after the execution has been issued, but shall be executed and returned in the same manner as if the plaintiff was still living.

Art. 3831. [3782 to 3784] **Execution docket.**—The clerk of each court shall keep an execution docket in which he shall enter a statement of all executions as they are issued by him, specifying the names of the parties, the amount of the judgment, the amount due thereon, the rate of interest when it exceeds eight per cent, the costs, the date of issuing the execution, to whom delivered, and the return of the officer thereon, with the date of such return. Such docket entries shall be taken and deemed to be a record. The clerk shall keep an index and cross-index to the execution docket. When execution is in favor or against several persons, it shall be indexed in the name of each person. Any clerk who shall fail to keep said execution docket and index thereto, or shall neglect to make the entries therein, shall be liable upon his official bond to any person injured for the amount of damages sustained by such neglect. [Id.]

TITLE 57.

EXEMPTIONS.

1. PROPERTY EXEMPT FROM FORCED SALE.

| | Article | | Article |
|-----------------------------------|---------|-------------------------------|---------|
| Property exempt to family..... | 3832 | Public property..... | 3837 |
| "Homestead"..... | 3833 | Public libraries..... | 3838 |
| Proceeds exempt..... | 3834 | Exemption does not apply..... | 3839 |
| Exempt to others than family..... | 3835 | Claim for rent, etc..... | 3840 |
| Ferryman..... | 3836 | | |

Art. 3832. [3785] [2395] [2335] **Property exempt to family.**—The following property shall be reserved to every family, exempt from attachment or execution and every other species of forced sale for the payment of debts, except as hereinafter provided:

1. The homestead of the family.
2. All household and kitchen furniture.
3. Any lot or lots in a cemetery held for the purpose of sepulture.
4. All implements of husbandry.
5. All tools, apparatus and books belonging to any trade or profession.
6. The family library and all family portraits and pictures.
7. Five milk cows and their calves.
8. Two yoke of work oxen, with necessary yokes and chains.
9. Two horses and one wagon.
10. One carriage or buggy.
11. One gun.
12. Twenty hogs.
13. Twenty head of sheep.
14. All saddles, bridles, and necessary harness for the use of the family.

15. All provisions and forage on hand for home consumption.
 16. All current wages for personal services. [Const., Art. 16, Secs. 28, 50; Acts 1870, p. 127; Acts 1874, p. 137; P. D. 6834, 6003; G. L. Vol. 6, p. 301; G. L. Vol. 8, p. 138.]

Art. 3833. [3786] [2396] [2336] **"Homestead."** — The homestead of a family, not in a town or city, shall consist of not more than two hundred acres, which may be in one or more parcels, with the improvements thereon; the homestead in a city, town or village shall consist of a lot or lots, not to exceed in value five thousand dollars at the time of their designation as a homestead, without reference to the value of any improvements thereon; provided, that the same shall be used for the purposes of a home, or as a place to exercise the calling or business of the head of a family. Any temporary renting of the homestead shall not change the character of the same when no other homestead has been acquired. [Acts 1897, p. 131; G. L. Vol. 10, p. 1185.]

Art. 3834. [3787] [2396] [2336] **Proceeds exempt.**—The proceeds of the voluntary sale of the homestead shall not be sub-

ject to garnishment or forced sale within six months after such sale. [Id.]

Art. 3835. [3788] [2397] [2337] **Exempt to others than family.**—The following property shall be reserved to persons who are not constitutents of a family, exempt from attachment, execution and every other species of forced sale:

1. A lot or lots in a cemetery, held for the purpose of sepulture.

2. All wearing apparel.

3. All tools, apparatus and books belonging to any trade or profession.

4. One horse, saddle and bridle.

5. Current wages for personal services. [Acts 1870, p. 127; Const., Art. 16, Sec. 28; P. D. 6834; G. L. Vol. 6, p. 301.]

Art. 3836. [3789] [2398] [2338] **Ferryman.**—There shall be reserved to every ferryman exempt from attachment, execution and every other species of forced sale, except as hereinafter provided, one ferryboat, keel, or flat-boat used as a ferryboat, with the necessary tackle for operating the same, not exceeding in value five hundred dollars. Such exemption shall not apply to any recovery for damages sustained by the negligence or other improper conduct on the part of such ferryman. [Acts 1858, p. 210; P. D. 3802; G. L. Vol. 4, p. 1082.]

Art. 3837. [3790] [2399] [2339] **Public property.**—The property of counties, cities and towns, owned and held only for public purposes, such as public buildings and the sites therefor, fire engines and the furniture thereof, and all property used and intended for extinguishing fires, public grounds and other property devoted exclusively to the use and benefit of the public, shall be exempt from forced sale. [Const., Art. 11, Sec. 9.]

Art. 3838. [3791] [2400] [2340] **Public libraries.**—All public libraries shall be exempt from attachment, execution and every other specie of forced sale.

Art. 3839. [3792] [2401] [2341] **Exemption does not apply.**—The exemption of the homestead provided for in this title shall not apply where the debt is due:

1. For the purchase money of such homestead or a part of such purchase money.

2. For taxes due thereon.

3. For work and material used in constructing improvements thereon; but in this last case such work and material must have been contracted for in writing, and the consent of the wife, if there be one, must have been given in the same manner as is by law required in making a sale and conveyance of the homestead. [Const. Art. 16, Sec. 50.]

Art. 3840. [3793] [2402] [2342] **Claim for rent, etc.**—The exemption of personal property above provided for shall not apply when the debt is due for rents or advances made by a landlord to his tenant, or to other debts which are secured by a lien on such property. [Acts 1874, p. 55; G. L. Vol. 8, p. 57.]

2. EXCESS OVER HOMESTEAD SET APART.

| | | | |
|--------------------------------|--------------|-----------------------------------|--------------|
| Voluntary designation..... | Article 3841 | Commissioners to designate..... | Article 3851 |
| Mode of setting it apart..... | 3842 | Requisites of designation..... | 3852 |
| Recorded, etc..... | 3843 | Returned and recorded..... | 3853 |
| Subject to execution..... | 3844 | Sheriff's return..... | 3854 |
| Notice to set apart..... | 3845 | Fees and expenses..... | 3855 |
| Service and return..... | 3846 | Excess to be sold..... | 3856 |
| Defendant may designate..... | 3847 | Defendant may change, etc..... | 3857 |
| Designation recorded..... | 3848 | Law cumulative..... | 3858 |
| Effect of..... | 3849 | Personal property designated..... | 3859 |
| May appoint commissioners..... | 3850 | | |

Art. 3841. [3794] [2403] [2343] Voluntary designation.—When the homestead of a family, not being in a town or city, is a part of a larger tract or tracts of land than is exempt from forced sale as such homestead, it shall be lawful for the head of the family to designate and set apart the homestead, not exceeding two hundred acres, to which the family is entitled under the constitution and laws of this State. [Acts 1873, p. 64; P. D. 6994a; G. L. Vol. 7, p. 516.]

Art. 3842. [3795] [2404] [2344] Mode of setting it apart.—The party desiring so to designate and set apart the homestead shall file for record with the county clerk of the county in which the land, or a part thereof, may be, an instrument of writing containing a description by metes and bounds, or other sufficient description to identify it, of the homestead so claimed by him, stating the name of the original grantee and the number of acres, and if more than one survey, the number of acres in each.

Art. 3843. [3796] [2405] [2345] Recorded, etc.—Such instrument shall be signed by the party and acknowledged or proved as other instruments for record, and shall state that the party has designated and set apart as his homestead the tract or tracts of land so claimed by him; and such instrument shall be recorded in the record of deeds of said county.

Art. 3844. [3797] [2406] [2346] Subject to execution.—Where the owner of a homestead, a part of a larger tract, has failed to so designate and set apart his homestead, the excess of such tract or tracts of land over and above the homestead exemption may be partitioned and separated from such homestead and subjected to levy and sale under execution, if otherwise subject, as hereinafter directed. [Id.]

Art. 3845. [3798-3799] Notice to set apart.—The sheriff or constable holding an execution against the owner of such excess of land, over and above his exempted homestead, and not separated and partitioned therefrom, may on his own motion, and shall, if required by the plaintiff in execution, his agent or attorney, notify the defendant in execution to designate and set apart his homestead from the remainder of the land so owned and occupied by him, and that on failure to do so within ten days the sheriff or constable will proceed to have such partition made as provided by law. Such notice shall be written or printed, and shall be signed by the sheriff or constable. [Id.]

Art. 3846. [3800-1-2] Service and return.—Such notice

may be served on the defendant by such officer by reading it to him, or by leaving a copy of it at his place of residence with some person over fourteen years of age. The officer shall return said notice to the court from which the execution issued, with his return indorsed thereon, showing how he executed the same. Such notice and return shall be filed by the proper officer of the court, and shall be prima facie evidence of the facts stated. [Id.]

Art. 3847. [3803] [2412] [2352] **Defendant may designate.**—On the service of such notice, the defendant in execution shall have the right within ten days thereafter, to designate and set apart his homestead, and deliver such designation to the sheriff or constable. [Id.]

Art. 3848. [3805] [2414] [2354] **Designation recorded.**—The sheriff or constable shall deliver the designation or setting apart of the homestead so made to the county clerk of the county in which such homestead, or a part thereof, is, and such clerk shall forthwith record the same in the record of deeds of his said county. [Id.]

Art. 3849. [3806] [2415] [2355] **Effect of.**—Such designation and setting apart of the homestead made by the defendant under any preceding article shall operate as a relinquishment of all right of homestead in the excess of land so partitioned from the homestead, and shall be binding on the defendant, and all others in privity with him, and the same, or a certified copy of the record thereof, shall be admitted in evidence of the facts stated therein. [Id.]

Art. 3850. [3807] [2416] [2356] **May appoint commissioners.**—If the defendant in execution shall fail or refuse, within ten days after such notice, to so designate and set apart his homestead, the officer holding such execution shall forthwith summon either verbally or in writing three disinterested freeholders of the county as commissioners to designate a homestead for the defendant. [Id.]

Art. 3851. [3808] [2417] [2357] **Commissioners to designate.**—The commissioners shall forthwith proceed to partition the homestead of the defendant from the remainder of the tract or tracts, and may, if they deem it necessary, call in a surveyor to assist them. The action of such commissioners shall be reduced to writing and signed by them, or a majority of them and shall be duly sworn to, which shall be sufficient to admit the same of record. [Id.]

Art. 3852. [3809] [2418] [2358] **Requisites of designation.**—The designation of the homestead by such commissioners shall contain each requisite prescribed for a designation and setting apart by the defendant, and, shall also state that the commissioners making the same were summoned by the sheriff or constable holding said execution to perform such duty and that the designation of the homestead made by them is fair and just to the best of their judgment and belief. [Id.]

Art. 3853. [3810] [2419] [2359] Returned and recorded.—The commissioners shall return such designation to the sheriff or constable, who shall deliver the same to the county clerk to be recorded; and such designation, or a certified copy thereof, shall have the same effect as if the defendant had made the same under the provisions of this title. [Id.]

Art. 3854. [3811] [2420] [2360] Sheriff's return.—Whenever a homestead is designated under the provisions of this title, the sheriff or constable holding said execution shall make due return thereon, showing:

1. That notice to designate his homestead was given to the defendant in execution, referring to said notice and return thereon, which shall be returned with said execution.

2. That the designation of his homestead was delivered to him by the defendant, and has been filed with the county clerk, stating the dates of such delivery and filing.

3. If the defendant has failed or refused to deliver to him the designation of his homestead within the time prescribed by law, the return shall show that fact, and also that the commissioners were duly appointed by him, and that the designation made by such commissioners was filed by him with the county clerk, stating the times when said acts were done. Such return shall be prima facie evidence of the facts therein stated. [Id.]

Art. 3855. [3812-13-14] Fees and expenses.—The commissioners shall be entitled to receive two dollars a day for their services, and the surveyor five dollars per day, to include pay for chain carriers. The sheriff or constable and clerk shall be entitled to such fees as are allowed by law. Such fees and expenses shall be taxed as part of the costs of the execution against the defendant and collected as other costs. [Id.]

Art. 3856. [3815] [2424] [2364] Excess to be sold.—Whenever the homestead of the defendant in execution has been designated in either of the modes prescribed in this title, the officer holding said execution may proceed to sell the excess over and above the homestead, in accordance with the law governing sales under execution. [Id.]

Art. 3857. [3816] [2425] [2365] Defendant may change, etc.—The defendant may, at any time after his homestead has been designated and set apart in either of the modes pointed out in this title, change the boundaries of his said homestead by an instrument executed and recorded as in cases of setting apart the homestead, but such change shall not impair the rights of parties acquired prior to such change.

Art. 3858. [3817] [2426] [2366] Law cumulative.—The provisions of this title in regard to the designation of the homestead are cumulative, and shall not be construed so as to interfere with, or abrogate any other mode or remedy now known to the law for subjecting the excess of the homestead tract of land over and above the exemption to forced sale, or any mode known

to the law for producing partition by the purchaser at such execution sale, between himself and the owner of the homestead.
[Id.]

Art. 3859. [3818] [2427] [2367] **Personal property designated.**—Where there is more personal property of the same kind than is exempt from execution, the head of the family, or other person entitled to such exemption, may point out the portions to be levied on. If he fails to do so within a reasonable time after being requested by the officer holding the execution, such officer may make the selection for himself; but such notice shall only be necessary when the defendant is at the time to be found within the county.

TITLE 58.

EXPRESS COMPANIES.

| | | | |
|-------------------------------|---------|--------------------------|---------|
| | Article | | Article |
| Declared common carriers..... | 3860 | General office..... | 3864 |
| Regulation | 3861 | To give notice, etc..... | 3865 |
| Penalty for overcharge..... | 3862 | Penalty | 3866 |
| Powers of commission..... | 3863 | | |

Art. 3860. [3819] [2428] Declared common carriers.— Each person, firm or corporation which shall do the business of an express company, upon railroads or otherwise, in this State, by the carrying of any kind of property, money, papers, packages or other things, are hereby declared to be common carriers, and shall receive, safely carry and promptly deliver at the express office nearest destination every such article as may be tendered to them, and in the carriage of which they are engaged. No such company shall be compelled to carry any gunpowder, dynamite, kerosene, naphtha, gasoline, matches or other dangerous or inflammable oils, acids or materials, except under such regulations as may be prescribed by the Railroad Commission. No person, firm or corporation so engaged shall demand or receive for such services other than reasonable compensation. [Acts 1891, p. 48; G. L. Vol. 10, p. 50.]

Art. 3861. [3820] [2429] Regulation.—The Railroad Commission of Texas shall have power, and it shall be its duty, to fix and establish reasonable and just rates of charges for each class or kind of property, money, papers, packages and other things, to be received and charged for by each express company, and, which, by the contract of carriage, are to be transported by such express company between points wholly within this State. Such rates shall be made to apply to all such companies, and may be changed or modified by said Commission from time to time in such manner as may become necessary. Said Commission shall have the same power to make and prescribe such rules and regulations for the government and control of such express companies as is, or may be, conferred upon said Commission for the regulation of railroads.

Art. 3862. [3821] [2430] Penalty for overcharge.—Every express company doing business in this State which shall demand or receive a greater compensation than that which may be prescribed and fixed by said Commission for the transportation within this State of any class or kind of property, money, papers, packages or things, shall be deemed guilty of extortion, and shall forfeit and pay to the State of Texas a sum not to exceed five hundred dollars for each offense. If it shall appear that such violation was not wilful, said company shall have ten days to refund such overcharges or damages, in which case the penalty shall not be incurred. The said Commission shall have authority and it shall be its duty to sue for the same in such manner as may be prescribed by law for like suits against railroad companies.

Art. 3863. [3822] [2431] Powers of Commission.— The

said Commission shall have authority, and it shall be its duty to call upon such express companies for reports, and investigate their books in the same manner as may be prescribed by law for the regulation of railroad companies, and the said Commission shall have power and authority to institute suits, sue out such writs and process as may be applicable and authorized for the regulation of railroad companies. All laws, rules and regulations made and prescribed for the government and control of railroads, when applicable, shall be of equal force and effect as to express companies.

Art. 3864. [3823-3824] **General office.**—Every incorporated express company doing business in this State shall keep a general office in this State at some place on the line of its transportation, in which it shall keep its charter, books, papers, accounts and contracts, or copies thereof, showing the value of its property of all kinds, its receipts and disbursements on account of business done in this State, and its indebtedness. It shall make a full annual statement of all such matters as shown by its books to the Railroad Commission of Texas, and such additional statements as may be required by such Commission, which statements shall be certified to be correct and sworn to by the president and secretary, or general manager in Texas of such company. Such company shall permit any member of the Railroad Commission of Texas or its authorized agent to examine at any time, any and all books, papers and contracts in its said office. [Acts 1897, p. 14; G. L. Vol. 10, p. 1068.]

Art. 3865. [3825] **To give notice, etc.**—Every express company doing business in this State shall give notice in writing to the Railroad Commission of the name, and official designation, of the person or persons, officer or officers charged with the management of its general office in this State, the location of its general office in this State, and shall from time to time give like notice in writing of any change in location of such general office, and of the person or persons, officer or officers in charge thereof. [Id.]

Art. 3866. [3823-3824-3825] **Penalty.**—Failure to comply with any provision of this title shall subject the offending company and any officer, agent, or employe thereof, so offending, to a penalty of not less than one hundred nor more than five hundred dollars, to be recovered by suit therefor. The Railroad Commission shall notify the Attorney General of any violation of any provision of this title which shall come to its knowledge. In addition to said penalty, a failure to comply with any provision of this title shall be sufficient cause to cancel the permit of any express company so offending. [Id.]

TITLE 59.

FEEBLE MINDED PERSONS—PROCEEDINGS IN CASE OF.

Art. 3867. Jurisdiction.—The county courts shall have original jurisdiction in all cases coming within the terms of this title, and shall at all times be deemed in session for the disposition of the same. In all trials under this title any person interested therein may demand a jury, or the judge of the court, of his own motion, may order a jury. Any person interested in any such case shall have the right to appear therein and be represented by counsel. [Acts 1923, p. 172.]

Art. 3868. Petition and affidavit.—Any resident citizen having knowledge of a person in his county who appears to be feeble minded may file with the county clerk a sworn complaint, which may be made upon information and belief, setting forth that such person is feeble minded. If such alleged feeble minded person be a minor, such complaint shall set forth the names of the parents, if known, and their residence, or if such person has no parent living, then the name and residence of his guardian, if any. Upon the filing of such complaint, the county judge shall fix the day and time for the hearing. [Id.]

Art. 3869. Citation.—If the alleged feeble minded person be a minor and it shall appear that one or both of such parents, or guardian if there be no parents, reside in said county, the clerk of said court shall immediately issue citation. Such citation shall include a brief statement of the complaint which shall be served on such parent, parents or guardian, if either can be found in said county, not less than two days before the time fixed for such hearing, requiring them to appear before the court on said day and time to show cause, if any, why such person should not be declared to be feeble minded. Such citation shall be served by the sheriff or any constable of the county. If it appears that neither of said parents is living or that they do not reside in said county, and that said person has no guardian residing in said county, or in case one or both of such parents or the guardian, in case there be no parent, shall endorse on said complaint a request that such person be declared feeble minded, then such citation need not be issued, and the court may thereupon proceed to hear the case. If such alleged feeble minded person is above the age of twenty-one years, citation shall be served upon him in the manner provided above. [Id.]

Art. 3870. Hearing.—Upon the hearing of such case, the alleged feeble minded person shall be brought before the court. The court shall appoint an attorney to represent such person, unless he be otherwise suitably represented by parent, guardian or attorney. The procedure, duties and powers of the court and officers in such case shall be the same as provided by law in other civil cases. It shall be the duty of the county

attorney when requested by the court or petitioner to appear in any such hearing in behalf of the petitioner. [Id.]

Art. 3871. Commitment.— If such person be found to be feeble minded, the court shall enter its order so adjudging him, and that he be committed to the custody of the Austin State School. Upon the entry of such order, the judge shall cause to be prepared a transcript of the proceedings and evidence, which shall show the age, sex, race, status and mental condition of the patient, all of which he shall certify to be correct, and transmit the same to the superintendent of such school. If the patient is entitled to be received into the school, and there is sufficient room therein, the superintendent shall notify said judge thereof, whereupon the judge shall arrange to send such person to said school in like manner in all respects as is provided for the sending of insane patients to an asylum. [Id. Acts 1925, p. 407.]

TITLE 60.

FEEDING STUFF.

| | | | |
|--|--------------|-------------------------------------|--------------|
| Tag and certificate..... | Article 3872 | Analysis..... | Article 3877 |
| "Feeding stuff"..... | 3873 | "Importer"..... | 3878 |
| To file statement and deposit samples..... | 3874 | Adulterated feeding stuff..... | 3879 |
| Inspection tax tag..... | 3875 | Director of experiment station..... | 3880 |
| To furnish list of names or trade marks..... | 3876 | Weights..... | 3881 |

Art. 3872. [5894] **Tag and certificate.**—Every lot or parcel of feeding stuff, used for feeding farm live stock, sold, offered or exposed for sale in this State, for use within the State, shall have attached a tag, described in Article 3875, carrying a plainly printed statement clearly and truly certifying the number of net pounds of feeding stuff in the package, stating the name or names of materials of which such weight is composed where the contents are of mixed nature, the name, brand or trade mark under which the article is sold, the name and address of the manufacturer or importer, the place of manufacture, such information as is required by Article 3879, if any, and a chemical analysis stating the minimum percentage it contains of crude protein, allowing one per cent of nitrogen to equal six and one-quarter per cent of protein, or crude fat, of nitrogen-free extract, and the minimum percentage it contains of crude fiber; these constituents to be determined by the methods adopted at the time by the Association of Official Agricultural Chemists of North America. [Acts 1905, p. 207.]

Art. 3873. [5895]—[5896] **"Feeding stuff".**—The term "feeding stuff," as used in this title, is defined to mean and include wheat bran, wheat shorts, linseed meal, cotton seed meals, pea meals, cocoanut meals; gluten meals, gluten feeds, maize feeds, starch feeds, sugar feeds, dried brewer's grains, malt sprouts, hominy feeds, cerealine feeds, rice meals, rice bran, rice polish, oat feeds, corn and oat chops, corn chops, ground beef or mixed fish feeds, and all other materials of similar nature, but shall not include hay or straw, the whole seed or grains of wheat, rye, barley, oats, Indian corn, rice, buckwheat or broomcorn, or any other whole or unground grains or seed. [Acts 1905, p. 208.]

Art. 3874. [5897] **To file statement and deposit samples.**—Before any feeding stuff is so offered or exposed for sale, the importer, manufacturer or party who causes it to be sold, or offered for sale within this State for use within the State, shall, for each feeding stuff bearing a distinguishing name or trade mark, file with the director of the Texas Agricultural Experiment Station a certified copy of the statement named in Article 3872, and shall also deposit with said director a sealed glass jar or bottle containing not less than one pound of the feeding stuff to be sold or offered for sale, accompanied by an affidavit that it is a fair average sample thereof, and corresponds within reasonable limits to the feeding stuff which it represents in the percentage of protein, fat and crude fiber, and nitrogen-free extract which it contains. This does not

apply to farmers who grind their own feeding stuff and who do not adulterate same. [Acts 1907, p. 243, Sec. 4.]

Art. 3875. [5898] Inspection tax tag.—The manufacturer, importer, agent or seller of each feeding stuff shall, before the article is offered for sale, pay to the director of the Texas Agricultural Experiment Station an inspection tax of ten cents for each ton of such feeding stuff sold, or offered for sale, in this State for use within the State, and shall affix to each lot shipped in bulk, and to each bag, barrel or other package of such feeding stuff, a tag to be furnished by said director, stating that all charges specified in this article have been paid. The director of said experiment station is hereby empowered to prescribe the form of such tags, and adopt such regulations as may be necessary for the enforcement of this law. Whenever the manufacturer or importer or shipper of a feeding stuff shall have filed a statement made as provided for in Article 3872, and paid the inspection tax, no agent or seller of said manufacturer, importer or shipper shall be required to file such statement or pay such tax. The amount of the inspection tax and penalties received by said director shall be paid into the State Treasury. So much of the inspection tax and penalties collected under this title shall be paid by the State Treasurer to the treasurer of the Texas Agricultural and Mechanical College as the director of the Texas Agricultural Experiment Station may show by his bills has been expended in performing the duties required by this title, but in no case to exceed the amount of the inspection tax and penalties received by the State Treasurer under this title. [Id. Sec. 5.]

Art. 3876. [5899] To furnish list of names or trade marks.—All manufacturers and importers of feeding stuff, or dealers in same, shall, on request, furnish the director of the Texas Experiment Station with a complete list of names or trade-marks of such feeding stuff. [Acts 1905, p. 207, Sec. 8.]

Art. 3877. [5900] Analysis.—The director of the Texas Agricultural Experiment Station shall cause one analysis or more to be made annually of each feeding stuff sold or offered for sale under any provision of this title. Said director is hereby authorized in person or by deputy to take a sample not exceeding two pounds in weight for analysis from any lot or package of feeding stuff which may be in the possession of any manufacturer, importer, agent, dealer or buyer in this State; but said sample shall be drawn or taken in the presence of said party or parties in interest, or their representatives, and shall be taken from a parcel, lot or number of parcels which shall not be less than five per cent of the whole lot inspected, and shall be thoroughly mixed and, if requested, divided into two samples, and placed in glass or metal vessels carefully sealed, and a label placed on each, stating the name or brand of the feeding stuff, or material sampled, the name of the party from whose stock the sample was drawn, and the date and place of taking such sample. Said label shall be signed by the director or his deputy and the party or parties at in-

terest, or their representative present at the taking and sealing of said sample. Where the party or parties at interest refuse to be present and take part in the sampling of the said feeding stuff, the director or his deputy may take said samples in the presence of two disinterested witnesses, one of said duplicate samples shall be retained by the director, and the other shall be left with the party whose stock was sampled. The sample or samples retained by the director shall be for comparison with the certified statements made as provided for in this title. The result of the analysis of the sample or samples so prescribed, together with such additional information as circumstances advise shall be published in reports or bulletins by the Texas Agricultural and Mechanical College from time to time. [Acts 1905, p. 207, Sec. 9.]

Art. 3878. [5901] **"Importer"** — The term "importer" means all persons who shall bring into or offer for sale within this State feeding stuff manufactured without this State. [Acts 1905, p. 207.]

Art. 3879. [5902] **Adulterated feeding stuff.**—A feeding stuff shall be deemed to be adulterated if it contains any sawdust, dirt, damaged feed, or any foreign matter whatever, or if it is in any respect not what it is represented to be, or if any rice hulls or chaff, peanut shells, corncobs, oat hulls, or other similar substances of little or no feeding value are admixed therewith. No wholesome mixture of feeding stuff shall be deemed to be adulterated if the true percentage of constituents thereof is plainly and clearly stated on the package and made known to the buyer at the time of the sale. It shall be the duty of the director of the experiment station to examine, or have examined for adulteration all suspicious samples of feeding stuff, and such other samples as may be desirable. [Acts 1905, p. 207; Acts 1907, p. 243, Sec. 11.]

Art. 3880. [5903] **Director of experiment station.**—The director of said experiment station is empowered to adopt standards or definitions for feeding stuff, and such other regulations as may be necessary for the enforcement of any provision of this title. Said director shall have the power to refuse the registration of any feeding stuff, under a name which would be misleading as to materials of which it is made up, or which does not conform to the standards or definitions aforesaid. Should any said feeding stuffs be registered and it is afterwards discovered that they are in violation of the above provisions, said director shall have the power to cancel the registration ten days after notice. [Acts 1907, p. 243.]

Art. 3881. **Weights.**—Feeding stuff shall have the following standard net weights per sack or container: one hundred pounds, or the following fractions thereof, three-fourths, one-half, one-fourth, one-sixth, one-eighth, one-tenth, one-twelfth, one-sixteenth, and one-twentieth; and rice bran may also be sold in sacks of one hundred and forty-three pounds. No tax tags shall be issued for any feeding stuff which does not conform to the weights herein prescribed.

TITLE 61.

FEEES OF OFFICE.

| | | | |
|---------------------------|------|---------------------|------|
| Chapter | Page | Chapter | Page |
| 1 General provisions..... | 1039 | 2 Enumeration | 1050 |

CHAPTER ONE.

GENERAL PROVISIONS.

| | | | |
|---|--------------|------------------------------------|--------------|
| To take out commission..... | Article 3882 | To keep accounts..... | Article 3896 |
| Maximum fees..... | 3883 | Sworn statement..... | 3897 |
| Fees in certain counties..... | 3883a | Fiscal year..... | 3898 |
| Maximum for deputies..... | 3884 | Expense account..... | 3899 |
| District attorneys of two or more counties..... | 3885 | Not to report..... | 3900 |
| District attorneys of large counties..... | 3886 | Collector and assessor..... | 3901 |
| County attorney..... | 3887 | Deputies—appointment of..... | 3902 |
| County judge..... | 3888 | Special deputy district clerk..... | 3903 |
| Census to govern..... | 3889 | No fee allowed..... | 3904 |
| State or county not liable..... | 3890 | Fee for acknowledgment..... | 3905 |
| Disposition of fees..... | 3891 | No fee for copy..... | 3906 |
| Failure to collect maximum..... | 3892 | Fee book..... | 3907 |
| District clerks..... | 3893 | To itemize costs..... | 3908 |
| Delinquent fees..... | 3894 | Extortion..... | 3909 |
| Ex-officio services..... | 3895 | Fees posted..... | 3910 |
| | | Officer to execute process..... | 3911 |
| | | Other fees of office..... | 3912 |

Art. 3882. [3880] **To take out commission.**—No official who fails or refuses to take out a commission shall be entitled to collect or receive either from the State or from individuals any money as fees of office or compensation for official services. Neither the Comptroller, commissioners court, county auditor nor any other person shall approve or pay any claim or account in favor of any such officer who has so failed or refused. The Secretary of State shall from time to time, as such commissions are issued by him, furnish a list thereof to each commissioners court, each county auditor and to the Comptroller, with the name of the county in which such officers reside. Each State, district, county and precinct officer is required to apply for and receive his commission. [Acts 1907, p. 501; Acts 1919, p. 80.]

Art. 3883. [3881 to 3883] **Maximum fees.**—Except as otherwise herein provided, the maximum annual fees that may be retained by county officers mentioned in this article shall be as follows:

1. In counties containing less than twenty-five thousand inhabitants

| | |
|---------------------------|--------|
| County judge..... | \$2250 |
| Sheriff..... | 2750 |
| County clerk..... | 2250 |
| County attorney..... | 2250 |
| District clerk..... | 2250 |
| Tax collector..... | 2250 |
| Tax assessor..... | 2250 |
| Justice of the peace..... | 2000 |
| Constable..... | 2000 |

[Acts 1st C. S. 1897, pp. 9-43; Acts 1913, p. 246.]

2. In counties containing as many as twenty-five thousand

and less than thirty-seven thousand five hundred inhabitants in which there is no city containing over twenty-five thousand inhabitants:

| | |
|------------------------|--------|
| County judge..... | \$2500 |
| Sheriff..... | 3000 |
| County clerk..... | 2400 |
| County attorney..... | 2400 |
| District attorney..... | 2500 |
| District clerk..... | 2400 |
| Tax assessor..... | 2400 |
| Tax collector..... | 2400 |

[Id.]

3. In counties containing as many as thirty-seven thousand five hundred inhabitants or containing a city of over twenty-five thousand inhabitants:

| | |
|------------------------|--------|
| County judge..... | \$3500 |
| Sheriff..... | 3500 |
| County clerk..... | 2750 |
| County attorney..... | 3500 |
| District attorney..... | 2500 |
| District clerk..... | 2750 |
| Tax collector..... | 2750 |
| Tax assessor..... | 2750 |

Compensation herein fixed for sheriffs of any county shall be exclusive of any reward received for the apprehension of criminals or fugitives from justice. The maximum fixed for the compensation of each district attorney shall be inclusive of the salary allowed him by the Constitution. [Id. Acts 1917, p. 333; Acts 3rd C. S. 1920, p. 68.]

Art. 3883a. [3883] Fees in certain counties.—Maximum fees in counties of 37,000 inhabitants or containing cities of 25,000; in counties containing a city of over twenty-five thousand inhabitants, or in such counties as shown by the United States census of 1910, shall contain as many as thirty-seven thousand inhabitants, the following amount of fees shall be allowed, viz: County judge, an amount not exceeding thirty-five hundred dollars per annum; sheriff an amount not exceeding thirty-five hundred dollars per annum; clerk of the county court, an amount not exceeding twenty-seven hundred and fifty dollars per annum; county attorney, an amount not exceeding thirty-five hundred dollars per annum; district attorney an amount not exceeding twenty-five hundred, inclusive of the five hundred dollars allowed by the Constitution and paid by the State; clerk of the district court an amount not exceeding twenty-seven hundred and fifty dollars per annum; collector of taxes an amount not exceeding the sum of twenty-seven hundred and fifty dollars per annum; assessor of taxes an amount not exceeding the sum of twenty-seven hundred and fifty dollars per annum; justice of the peace an amount not exceeding twenty-seven hundred and fifty dollars per annum, exclusive of the amount allowed for holding inquests, which shall be paid as ex-officio fees; constables an amount not exceed-

ing the sum of twenty-seven hundred and fifty dollars per annum; provided, the compensation fixed herein for sheriffs, constables and their deputies, shall be exclusive of any rewards received for the apprehension of criminals or fugitives from justice. [Acts 1925, p. 152.]

Art. 3884. [3903] Maximum for deputies.—The maximum annual compensation allowed each deputy or assistant to any officer named in the preceding article shall be as follows:

1. In counties having a population less than thirty-seven thousand five hundred, and not containing a city of over twenty-five thousand:

| | |
|--------------------------------------|--------|
| First assistant or chief deputy..... | \$1800 |
| Other assistants or deputies..... | 1500 |

2. In counties having a population of over thirty-seven thousand five hundred to one hundred thousand:

| | |
|--------------------------------------|--------|
| First assistant or chief deputy..... | \$2100 |
| Heads of departments..... | 1800 |
| Other deputies or assistants..... | 1500 |

3. In counties containing a population of over thirty-seven thousand five hundred to one hundred thousand and containing a city of over twenty-five thousand inhabitants, or containing a population of more than one hundred thousand:

| | |
|--------------------------------------|--------|
| First assistant or chief deputy..... | \$2400 |
| Heads of departments..... | 2100 |
| Other deputies or assistants..... | 1800 |

[Acts 1921, p. 186.]

Art. 3885. District attorneys of districts of two or more counties.—(See Code of Criminal Procedure.) Art. 2010.

Art. 3886. District attorneys of large counties.—In any county having a population in excess of one hundred and fifty thousand inhabitants, the district attorney or criminal district attorney thereof shall receive all fees, commissions and perquisites earned by such office; provided that the amount of said salary, fees, commissions and perquisites to be so received and retained by him including the five hundred dollars provided by the Constitution shall not exceed the sum of six thousand dollars in any one year. All salaries, fees, commissions and perquisites so earned and received by such office in excess of six thousand dollars during each and every fiscal year shall be paid into the county treasury of said county in accordance with the terms and provisions of the Maximum Fee Bill, except as to such portion of such excess as shall be used and expended in the payment of salaries to deputies, stenographers, investigators or other employes as herein provided. Each such district attorney may appoint seven assistant district attorneys, one of whom shall receive a salary not to exceed thirty-six hundred dollars per annum; two of whom shall receive a salary of not to exceed three thousand dollars per annum each; two of whom shall receive a salary not to exceed twenty-four hundred dollars per annum, each; two of whom shall receive a salary not to exceed twenty-one hundred dollars per

annum each. He may employ one stenographer who shall receive a salary not to exceed two thousand four hundred dollars per annum, and one stenographer who shall receive a salary not to exceed one thousand eight hundred dollars per annum. He may employ two investigators, one of whom shall receive a salary not to exceed two thousand four hundred dollars per annum; and the other shall receive a salary of not to exceed one thousand eight hundred dollars per annum. The salaries of assistants, deputies, stenographers and investigators and other employes above provided for shall be paid monthly by said county, by warrants drawn from the general funds thereof. Should such district attorney be of the opinion that the number of deputies, assistants, stenographers, investigators or other employes above provided for are inadequate for the proper investigation of crime and the efficient performance of the duties of said office, he may appoint such additional assistants and employes and fix their salaries, provided such salaries shall in no event exceed the maximum provided herein to be paid to such assistants or other employes, but such additional assistants and employes so appointed, before qualifying and entering upon the duties of such office and employment, shall be confirmed by the commissioners court of the county in which such appointments are made. The salaries for such additional assistants and employes shall be paid monthly out of the excess fees collected by such district attorney and his office which would otherwise go to said county, a detailed sworn itemized statement of which he shall include in his annual report, as provided to be made in the Maximum Fee Bill. In no event shall said county be liable for the salaries of such additional assistants or employes. Any such assistant, deputy, stenographer, investigator or employe, whether regular or additional shall be subject to removal at the will of said district or criminal district attorney. [Acts 1911, p. 116; Acts 1917, pp. 69, 94, 123; Acts 1919, p. 83; Acts 1923,, p. 373.]

Art. 3887. County attorney.—In any county having a population in excess of one hundred thousand inhabitants, where there is no district attorney, the county attorney of such county shall be allowed to retain out of the fees earned and collected by him four thousand dollars per annum, and in addition thereto one-fourth of the excess of such fees collected by him, provided that such additional amount retained by him out of the excess fees shall not exceed two thousand dollars per year, the remainder to be paid into the county treasury. In arriving at the amount collected by him he shall include the fees arising from all classes of criminal cases whether felony or misdemeanor arising in any court in such county including habeas corpus hearing and fines and forfeitures; provided that said county attorney shall not receive any moneys from any source whatsoever in excess of the six thousand dollars above provided for. Such fees, however, to be included in the reports provided for by law, and to be taken into consideration in ar-

ring at the total maximum compensation provided in this article, and except as herein specifically provided otherwise, all provisions of this chapter shall apply. [Acts 1st C. S. 1917, p. 55.]

Art. 3888. [2765-3886] County judge.—In a county where the county judge acts as superintendent of public instruction, he shall receive for such services such salary not to exceed nine hundred dollars a year as the commissioners court may provide. [Acts 1st C. S. 1897, p. 44; Acts 3rd C. S. 1920, p. 101.]

Art. 3889. Census to govern.—The preceding Federal census shall govern as to population in all cases under any provision of this chapter.

Art. 3890. [3888] State or county not liable.—The amounts allowed to each officer mentioned in Article 3883 may be retained out of the fees collected by him under existing laws; but in no case shall the State or county be responsible for the payment of any sum when the fees collected by any officer are less than the maximum compensation allowed by this chapter, nor be responsible for the pay of any deputy or assistant. [Acts 1907, p. 50.]

Art. 3891. [3889] Disposition of fees.—Each officer named in this chapter shall first, out of the fees of his office, pay or be paid, the amount allowed him, under the provisions of this chapter, together with the salaries of his assistants or deputies. If the fees of such office collected in any year be more than the amount needed to pay the amount allowed such officer and his assistants and deputies, same shall be deemed excess fees, and of such excess fees such officer shall retain one-fourth in counties having between twenty-five thousand and thirty-eight thousand inhabitants until such one-fourth amounts to the sum of twelve hundred and fifty dollars; and counties in which the population exceeds thirty-eight thousand until such one-fourth amounts to the sum of fifteen hundred dollars. All fees collected by officers named in Article 3883 during any fiscal year in excess of the maximum amount allowed by law, and of the one-fourth of the excess of the maximum amount allowed for their services, and for the services of their deputies or their assistants as herein provided for shall be paid into the county treasury of the county where the excess accrued, provided that in counties of less than twenty-five thousand inhabitants and which counties constitute a separate judicial district, the chief deputy or first assistant of the officers named in this chapter shall receive a sum not to exceed a rate of eighteen hundred dollars per annum, and the other deputies or assistants a sum not to exceed a rate of fifteen hundred dollars per annum, and the limitations as to the pay of deputies and assistants elsewhere provided in this chapter shall not apply in such counties. [Acts 1923, p. 398.]

Art. 3892. [3890] Failure to collect maximum.—Any officer mentioned in Article 3883 who does not collect the maximum amount of his fees for any fiscal year and who reports

delinquent fees for that year, shall be entitled to retain, when collected, such part of such delinquent fees as is sufficient to complete the maximum compensation for the year in which delinquent fees were charged, and also retain one-fourth of the excess belonging to him, and the remainder of the delinquent fees for that fiscal year shall be paid as herein provided for when collected. [Acts 1907, p. 50.]

Art. 3893. [3891] **District clerks.**—In counties having more than one judicial district, the district clerks thereof shall in no case be allowed fees in excess of the maximum fees allowed clerks in counties having only one district court. [Id.]

Art. 3894. [3892] **Delinquent fees.**—All fees due and not collected as shown in the report required by Article 3897 shall be collected by the officer to whose office the fees accrued; and, out of such part of delinquent fees as may be due the county, the officer making such collection shall be entitled to ten per cent of the amount collected by him, and the remainder shall be paid into the county treasury as provided in Article 3891. [Acts 1st C. S. 1897, p. 10.]

Art. 3895. [3893] **Ex-officio services.**—The commissioners court is hereby debarred from allowing compensation for ex-officio services to county officials when the compensation and excess fees which they are allowed to retain shall reach the maximum provided for in this chapter. In cases where the compensation and excess fees which the officers are allowed to retain shall not reach the maximum provided for in this chapter, the commissioners court shall allow compensation for ex-officio services when, in their judgment, such compensation is necessary, provided, such compensation for ex-officio services allowed shall not increase the compensation of the official beyond the maximum of compensation and excess fees allowed to be retained by him under this chapter. [Acts 1st C. S. 1897, p. 10; Acts 1913, p. 248.]

Art. 3896. [3894] **To keep accounts.**—Those officials named in the first six articles of this chapter shall keep a correct statement of the sums coming into their hands as fees and commissions, in a book to be provided for them for that purpose, in which the officer at any time when any fees or moneys shall come into his hands shall enter the same; and it shall be the duty of the grand jury (and the district judge shall so charge the grand jury) to examine these accounts at the session of the district court next succeeding the last day of December of each year, and make a report on same to the district court at the conclusion of the session of the grand jury. [Acts 1st C. S. 1897, p. 10.]

Art. 3897. [3895] **Sworn statement.**—Each officer mentioned in Article 3883 shall, at the close of each fiscal year, make to the district court of the county in which he resides a sworn statement showing the amount of fees collected by him during the fiscal year, and the amount of fees charged and not collected, and by whom due, and the number of deputies and as-

sistants employed by him during the year, and the amount paid, or to be paid each. [Id. Acts 1907, p. 50.]

Art. 3898. [3896] **Fiscal year.**—A fiscal year, within the meaning of this chapter, shall begin on January first of each year; and each officer named in Article 3883 shall file the reports and make the settlement required in this chapter on January first of each year. Whenever such officer serves for a fractional part of a fiscal year, he shall nevertheless file his report and make settlement for such part of a year as he serves, and shall be entitled to such proportional part of the maximum allowed as the time of his services bears to the entire year. However, an incoming officer elected at the general election, who qualifies prior to January first next following, shall not be required to file any report or make any settlement before January first of the following year; but his report and settlement shall embrace the entire period dated from his qualification. [Acts 1923, p. 223.]

Art. 3899. [3897] **Expense account.**—At the close of each month of his tenure of such office each officer whose fees are affected by the provisions of this law shall make as a part of the report now required by law, an itemized and sworn statement of all the actual and necessary expenses incurred by him in the conduct of his office, such as stationery, stamps, telephone, traveling expenses and other necessary expense. If such expense be incurred in connection with any particular case, such statement shall name such case. Such expense account shall be subject to the audit of the county auditor, if any, and if it appear that any item of such expense was not incurred by such officer, or that such item was not necessary thereto, such item may be by such auditor or court rejected. In which case the correctness of such item may be adjudicated in any court of competent jurisdiction. The amount of such expense referred to in this paragraph, shall not be taken to include the salaries of assistants or deputies which are elsewhere herein provided for. The amount of such expense shall be deducted by the officer in making each such report, from the amount, if any, due by him to the county under the provisions of this law. The commissioners court of the county of the sheriff's residence may upon the written sworn application of the sheriff stating the necessity therefor, allow one or more automobiles to be used by the sheriff in the discharge of his official duties, which if purchased shall be bought by the county in the manner prescribed by law for the purchase of supplies, and paid for out of the general fund, and they shall be and remain the property of the county. The expense of the maintenance and operation of such automobile or automobiles as may be allowed shall be paid for by the sheriff, and the amount thereof shall be reported by the sheriff on the report above provided for, and shall be deducted by him from the amount, if any, due by him to the county in the same manner as the

other expenses are deducted which are provided for in this law. [Acts 1923, p. 405.]

Art. 3900. **Not to report.**—The officers named in Article 3883 in those counties having a population of twenty-five thousand or less inhabitants shall not be required to make a report of fees as provided in Article 3879, or to keep the statement provided for in Article 3896; provided that all district attorneys shall be required to make the reports and keep the statements required in this chapter. [Acts 1923, p. 399.]

Art. 3901. [3899] **Collector and assessor.**—Each tax collector and tax assessor at the time of his settlement with the Comptroller, shall file with him a copy of the sworn statement required under Article 3897. [Acts 1st C. S. 1897, p. 11.]

Art. 3902. [3903] **Deputies—appointment of.**—Whenever any officer named in Article 3883 shall require the services of deputies or assistants in the performance of his duties, he may apply to the county commissioners' court of his county for authority to appoint such deputies or assistants, setting out by sworn application the number needed, the positions sought to be filled, and the amount to be paid. Said application shall be accompanied by a statement showing the probable receipts and disbursements of the office; and said court may make its order authorizing the appointment of such deputies and fix the compensation to be paid them and determine the number to be appointed, provided that in no case shall said commissioners' court or any member thereof attempt to influence the appointment of any person as deputy or assistant in any office. Upon the entry of such order, the officers applying for such deputies shall be authorized to appoint them as now provided by law, provided that said compensation shall not exceed the maximum amounts hereinafter set out. In counties having a population in excess of one hundred thousand inhabitants, the district attorney in the county of his residence or the county attorney, where there is not a district attorney, shall be allowed by order of the commissioners' court of the county where such official resides such amount as said court may deem necessary to pay for the proper administration of the duties of such office, not to exceed seventy-five dollars per month; such amount to be allowed upon affidavit of said district or county attorney showing a necessity for such expenses and for all the amounts so incurred. Said commissioners' court may also require any other evidence as it may deem necessary to show the necessity of such expenditure, and its judgment in allowing same shall be final.

The maximum compensation which may be allowed for deputies or assistants to the officers named in said Article 3883 for their services, shall be as follows, to-wit:

First assistant or chief deputy not to exceed eighteen hundred dollars per annum; other assistants or deputies not to exceed fifteen hundred dollars per annum each.

Provided, that in counties having a population of from thirty-seven thousand five hundred to one hundred thousand inhabitants, the maximum compensation which may be allowed such

deputies or assistants for their services shall be as follows, to-wit:

First assistant or chief deputy not to exceed twenty-one hundred dollars per annum; heads of such department not to exceed eighteen hundred dollars per annum each; other deputies or assistants not to exceed fifteen hundred dollars per annum each.

Provided, that in counties having a population of from thirty-seven thousand five hundred to one hundred thousand, and containing a city of over twenty-five thousand, the maximum compensation that may be allowed such deputies or assistants for their services shall be as follows, to-wit:

First assistant or chief deputy not to exceed twenty-four hundred dollars per annum; heads of each department not to exceed twenty-one hundred dollars per annum each, other deputies or assistants not to exceed eighteen hundred dollars per annum each.

Provided, that in counties having a population in excess of one hundred thousand inhabitants the maximum compensation that may be allowed such deputies or assistants for their services shall be as follows, to-wit:

First assistant or chief deputy not to exceed twenty-four hundred dollars per annum, provided the commissioners' court may increase said amount to not exceed a rate of three thousand dollars per annum, where a necessity therefor is shown, and where the person to be appointed has been previously the head of a department for not less than one year, or has been in the continuous service of the county for a period of not less than two years.

Heads of departments may be allowed by the court, when in their judgment such are necessary, not to exceed a rate of twenty-four hundred dollars per annum, when such heads of departments sought to be appointed shall have previously served the county for not less than two continuous years. Other heads of departments shall receive not to exceed twenty-one hundred dollars per annum; provided, that no head of a department shall be created except where the person sought to be appointed is to be in actual charge thereof, with deputies or assistants under his supervision, or a department approved by the court and only in offices capable of a bona fide subdivision into departments.

Deputies or assistants other than those above provided for may be allowed, the number to be determined by the commissioners' court, and their salaries based as far as possible on a graduated scale according to service, ability and qualifications. Fifty per cent of the number so appointed may be authorized at a rate not to exceed twenty-one hundred dollars per annum, provided such rate shall be allowed only to deputies in service for two years or more, and all others so appointed at a rate not to exceed eighteen hundred dollars per annum.

Provided further, that in determining the number of inhabitants in each of the instances heretofore mentioned, the number

of inhabitants as shown by the last United States census shall control.

The county commissioners court in each order granting authority to appoint deputies or assistants shall state the number of deputies or assistants authorized and the amount of compensation to be allowed each deputy or assistant, which compensation shall be paid out of the fees of the office to which such deputies or assistants may be appointed and assigned, and shall not be included in estimating the maximum fees of the officers prescribed in said Article 3883. The salaries referred to shall not be paid by the county, but are to be paid out of the fees of the office in the following manner:

First, out of any current fees collected, and second, if such fees are not sufficient, then out of any delinquent fees collected which are due the county after all legal deductions are made and if there be any balance remaining after payment of the maximum fee, compensation and excess fees due such officer or officers and the compensation of such deputy or deputies, such balance shall be paid to the county treasurer.

Provided, however, that nothing in this Act shall be construed to repeal H. B. No. 196, passed by the Regular Session of the Thirty-sixth Legislature, same being known as Chapter 47, of the Acts of the Regular Session of the Thirty-sixth Legislature, page 83, and any Acts amendatory thereof, relating to fixing salaries of district attorneys, their deputies, assistants and stenographers in counties having a population of more than one hundred thousand.

Provided, that in counties of two hundred thousand inhabitants and over and containing a city with a population of over one hundred and sixty thousand inhabitants according to the last United States census, and in which counties there are more than one district court, including criminal district courts, the clerk of the district court shall appoint a special deputy for each such court when directed so to do by the judge of any such court, except in instances where there is one now provided for by law; provided further that any such special deputy shall be paid out of the general fund of the county, a salary not in excess of the maximum salary per annum provided for deputies now by law, payable monthly, and such compensation shall not be paid out of the fees of compensation of the district clerk, and shall not be taken into consideration in arriving at the maximum compensation and excess fees allowed the clerk of the district courts. [Acts 1925, p. 189.]

Art. 3903. [3903] **Special deputy district clerk.**—In counties of two hundred thousand inhabitants and over containing a city of over one hundred and sixty thousand inhabitants, and in which counties there are more than one district court, including criminal district courts, the clerk of the district courts shall appoint a special deputy for each court when directed so to do by the judge of any such court. Any such special deputy shall be paid out of the general fund of the county, a salary not

in excess of the maximum salary per annum provided herein for deputies, payable monthly and such compensation shall not be paid out of the fees or compensation of the district clerk, and shall not be taken into consideration in arriving at the maximum compensation and excess fees allowed the clerk of the district courts. [Id.]

Art. 3904. [3906-7-12-23] **No fee allowed.**—No clerk or justice of the peace shall be entitled to any fee for the examination of any paper or record in his office, nor for filing any process or paper issued by him and returned into court, nor for motions or judgments upon motions for security for costs, nor for taking and approving a bond for costs. A judgment containing several orders shall be considered as one judgment, and only one fee shall be charged by said clerk or justice for entering or rendering the same. [Acts 1876, p. 285; G. L. Vol. 8, p. 1120.]

Art. 3905. [3908] [2478] [2414] **Fee for acknowledgment.**—Officers authorized by law to take acknowledgment or proof of deeds or other instruments of writing shall receive the same fees for taking such acknowledgment or proof as are allowed notaries public for the same services. [Id.]

Art. 3906. [3911] [2481] [2417] **No fee for copy.**—No copy of a paper not required by law to be copied shall be taxed in the bill of costs. [Id.]

Art. 3907. [3913] [2483] [2419] **Fee book.**—Every officer entitled by law to charge fees for services shall keep a fee book, and shall enter therein all fees charged for services rendered, which fee book shall, at all times be subject to the inspection of any person wishing to see the amount of fees therein charged. [Id.]

Art. 3908. [3914] [2484] [2420] **To itemize costs.**—None of the fees mentioned in this title shall be payable to any person whomsoever until there be produced, or ready to be produced, unto the person owing or chargeable with the same, a bill or account in writing containing the particulars of such fees, signed by the clerk or officer to whom such fees are due, or by whom the same are charged, or by the successor in office, or legal representative of such clerk or officer. [Id.]

Art. 3909. [3915] [2485] [2421] **Extortion.**—If any officer named in this title shall demand and receive any higher fees than are prescribed to them in this title, or any fees that are not allowed by this title, such officer shall be liable to the party aggrieved for fourfold the fees so unlawfully demanded and received by him. [Id.]

Art. 3910. [3916] [2486] [2422] **Fees posted.**—County judges, clerks of the district and county courts, sheriffs, justices of the peace, constables and notaries public of the several counties shall keep posted up, at all times, in a conspicuous place in the respective offices a complete list of fees allowed by law to be charged by them respectively. [Id.]

Art. 3911. [3917] [2487] [2423] Officer to execute process.—Officers receiving any process to be executed shall not be entitled in any case to demand their fees for executing the same in advance of such execution, but their fees shall be taxed and collected as other costs in the case. [Id.]

Art. 3912. Other fees of office.—Any other fees of office which any article or statute expressly provides are not to be accounted for as fees of office shall not be affected by the provisions of this title.

CHAPTER TWO.

ENUMERATION.

| Article | Article | | |
|-----------------------------------|---------|--|------|
| Certain State officers..... | 3913 | County clerk..... | 3930 |
| Secretary of State..... | 3914 | County clerk: preserving records..... | 3931 |
| Certain foreign corporations..... | 3915 | County clerk: ex officio services..... | 3932 |
| Disposition of fees..... | 3916 | Sheriff..... | 3933 |
| Attorney General..... | 3917 | Sheriff: other compensation..... | 3934 |
| Land Commissioner..... | 3918 | Justice of the peace..... | 3935 |
| Comptroller..... | 3919 | Constable..... | 3936 |
| Commissioner of Insurance..... | 3920 | Tax assessor..... | 3937 |
| Banking Commissioner..... | 3921 | Payment of assessor..... | 3938 |
| Railroad Commission..... | 3922 | Tax collector..... | 3939 |
| Clerk of Supreme Court..... | 3923 | Charge for one levy only..... | 3940 |
| Clerk of Civil Appeals..... | 3924 | County treasurer..... | 3941 |
| County judge..... | 3925 | Treasurer: other commissions..... | 3942 |
| Other fees of county judge..... | 3926 | Treasurer: commissions limited..... | 3943 |
| District clerk..... | 3927 | County surveyor..... | 3944 |
| Other fees of district clerk..... | 3928 | Notary public..... | 3945 |
| Clerks assessing damages..... | 3929 | Public weighers..... | 3946 |

Art. 3913. [3833 to 36] Certain State officers.—The Secretary of State, Land Commissioner, Comptroller, State Treasurer, Commissioner of Agriculture, Commissioner of Insurance, Banking Commissioner, State Librarian, Adjutant General, and the Attorney General, shall furnish to any person who may apply for the same with a copy of any paper, document or record in their respective offices, or with a certificate under seal, certifying to any fact or facts contained in the papers, documents or records of their offices; provided neither of said officers shall demand nor collect any fee from any officer of the State for copies of any papers, documents or records in their offices, or for any certificate in relation to any matter in their offices, when such copies are required in the performance of any of the official duties of such office. Each of said officers shall keep a fee book in his office in which he shall enter all the fees received for any service named in this title, and shall quarterly file with the Comptroller a verified account of all fees so received by them, respectively, and such officers shall also at the end of each quarter pay over to the State Treasurer all money received by them, respectively, under the provisions of this title. Each said officer shall be entitled to demand and receive the following fees for the services mentioned, except as otherwise provided by this title:

| | |
|---|--------|
| For copies of any paper, document, or record in their offices, in the English language, including certificate and seal, for each hundred words..... | \$.15 |
| For copies of any paper, document or record in their offices, in any other language than the English, including certificate and seal, for each hundred words..... | .25 |

- For each translated copy of any paper, document, or record in their offices, including certificate and seal, for each hundred words30
- For the copy of any plat or map in their offices, such fee as may be established by the officer in whose office the same is made, to be determined with reference to the amount of labor required.
- For each certificate not otherwise provided for..... .50

[Acts 1848, p. 184; G. L. Vol. 3, p. 184; Acts 1907, p. 283.]

Art. 3914. [3837] [2439] **Secretary of State.**—The Secretary of State is authorized and required to charge for the use of the State the following other fees:

For each charter, amendment or supplement thereto of a private corporation created for the purpose of operating or constructing a railroad, magnetic telegraph line or street railway or express company, authorized or required by law to be recorded in said department, a fee of two hundred dollars to be paid when said charter is filed, provided, that if the authorized capital stock of said corporation shall exceed one hundred thousand dollars, it shall be required to pay an additional fee of fifty cents for each one thousand dollars authorized capital stock, or fractional part thereof, after the first one hundred thousand; and provided further that such fee shall not exceed twenty-five hundred dollars.

For each charter, amendment or supplement thereto, of a private corporation intended for the support of public worship, any benevolent, charitable, educational, missionary, literary or scientific undertaking, the maintenance of a library, the promotion of painting, music or other fine arts, the encouragement of agriculture or horticulture, the maintenance of public parks, the maintenance of a public cemetery not for profit, a fee of ten dollars to be paid when the charter is filed.

For filing the charter of a corporation organized to aid its member stockholders in producing and marketing agricultural products, or for acquiring, raising, breeding, fattening or marketing livestock, ten dollars; and for filing the semi-annual financial statement of such corporation, ten dollars which shall include the annual license fee.

For each charter, amendment or supplement thereto of a channel and dock corporation, a fee of two hundred dollars shall be paid to the Secretary of State when the charter, amendment or supplement thereto is filed for record; provided, that if the authorized capital stock of said corporation shall exceed one hundred thousand dollars it shall be required to pay an additional fee of fifty cents for each one thousand dollars of its authorized capital stock or fractional part thereof in excess of one hundred thousand dollars; and provided further that such fee shall not exceed twenty-five hundred dollars.

Each building and loan association shall pay to the Secretary of State the following fees: for filing articles of association, by-laws, amendments or any other paper, one dollar; for making

and certifying to articles of association, by-laws or any other paper required to be filed with the Secretary of State, twenty cents per one hundred words; for making the annual examination required by law, one seventy-fifth part of one per cent of the gross amount of assets of such association, which fee shall not be less than twenty nor more than one hundred dollars in any one year, to be paid at the time of filing its annual statement; and shall at the same time pay said officer an annual franchise tax of ten dollars.

For each charter, amendment or supplement thereto, of a private corporation created for any other purpose intended for mutual profit or benefit, a fee of fifty dollars shall be paid when said charter is filed, provided that if the authorized capital stock of said corporation shall exceed ten thousand dollars it shall be required to pay an additional fee of ten dollars for each additional ten thousand dollars of its authorized capital stock or fractional part thereof after the first, provided that such fee shall not exceed twenty-five hundred dollars.

Each foreign corporation that files with the Secretary of State a certified copy of its articles of incorporation and any amendments thereto and obtains a permit to do business in this State, or which shall hereafter obtain a permit to do business in this State, that shall subsequently file with the Secretary of State a certified copy of any amendment or supplement to its articles of incorporation, shall pay to the Secretary of State as filing fees the following: fifty dollars for the first ten thousand dollars of its capital stock actually subscribed, and ten dollars for each additional ten thousand dollars or fractional part thereof; provided that in no event shall such fee exceed twenty-five hundred dollars; provided, that the fee required to be paid by any foreign corporation for a permit to engage in the manufacture, sale, rental, lease or operation of all kinds of cars, or to engage in conducting, operating or managing any telegraph line in this State, shall in no event exceed twenty-five hundred dollars.

For each commission to every officer elected or appointed in this State, one dollar.

For each official certificate, one dollar.

For each warrant of requisition, two dollars.

For every remission of fine or forfeiture, one dollar.

For copies of any paper, document or record in his office, for each one hundred words, fifteen cents.

For recording each contract for the conditional sale, lease or hire of railroad equipment and rolling stock, and for recording each declaration of performance of such contract, five dollars; and for entering such declaration on the margin of the record of such contract, one dollar.

For recording each certificate of consolidation of cities, and for recording each certificate of adoption of a city charter or amendment under the "Home Rule Act," fifteen cents per one

hundred words, provided such fee shall not be less than two dollars. [Acts 1919, p. 79.]

Art. 3915. [3838] **Certain foreign corporations.**—All foreign building and loan associations shall pay to the Secretary of State the following fees: for filing each application for admission to do business in this State, fifty dollars; for each certificate of authority and annual renewal of the same, twenty-five dollars; and an annual franchise tax of two hundred and fifty dollars. The fee required to be paid by any foreign corporation for a permit to do the business of loaning money in this State shall in no event exceed one thousand dollars. [Acts S. S. 1909, p. 267; Acts 1st C. S. 1913, p. 72.]

Art. 3916. [3840] **Disposition of fees.**—All fees mentioned in the two preceding articles shall be paid in advance into the office of the Secretary of State, and shall be by him paid into the State Treasury monthly. [Id.]

Art. 3917. [3841] [2440] [2375] **Attorney General.**—The Attorney General shall be entitled to the following fees:

For each affirmance of judgment in cases to which the State may be a party involving pecuniary liabilities to the State, ten per cent on the amount collected if under one thousand dollars, and five per cent for all above that sum, to be paid out of the money when collected.

For all cases involving the forfeiture of charters, heard on appeal before the Supreme Court or Courts of Civil Appeals, twenty-five dollars.

But the whole amount of fees allowed the Attorney General shall not exceed the sum of two thousand dollars per annum, and the excess of such fees over two thousand dollars per annum shall be paid into the State Treasury. [Acts 1876, p. 284; G. L. Vol. 8, p. 1120.]

Art. 3918. [3842] [2441] [2376] **Land Commissioner.**—The Land Commissioner is authorized and required to charge for the use of the State the following fees:

FILING FEES.

| | |
|---|--------|
| Deed transferring one tract of land or a decree of Court relating to one tract of land..... | \$.50 |
| Each additional tract in a deed or decree..... | .25 |
| Affidavit of ownership..... | .50 |
| Original field notes..... | 1.00 |
| Transfer of mineral claims, permits, relinquishments, leases contracts, etc..... | 1.00 |
| Certificates of facts covering one tract of land..... | 1.00 |
| Each additional tract..... | .50 |
| Certificate of occupancy on the home section..... | 1.00 |
| Each additional tract shown in a certificate on the home tract..... | .50 |
| Each other certificate not otherwise provided for..... | .50 |

CERTIFIED COPIES.

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|---|--------|
| Certificate of the class of Toby Scrip..... | \$2.50 |
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|---|------|
| All other land certificates..... | 1.00 |
| Application for survey..... | 1.00 |
| Field notes..... | 1.00 |
| Mineral application..... | 1.00 |
| Mineral permit or mineral lease..... | 2.00 |
| Purchase application and obligation..... | 1.25 |
| Purchase application..... | 1.00 |
| Obligation for deferred payment on land..... | .50 |
| File wrapper..... | 1.00 |
| Proof of occupancy..... | 1.50 |
| Deed, Bond for title, power of attorney, decree of court or other similar instrument..... | 1.50 |
| Patent..... | 1.25 |
| Affidavit of settlement, non-settlement and rebuttal affi- davits, each..... | 1.00 |
| Other affidavits..... | 1.00 |
| Lease application or contract not exceeding five tracts..... | .75 |
| Each additional tract add..... | .25 |
| Letters and impressions of letters, one page..... | .50 |
| Letters and impressions of letters, more than one page..... | 1.00 |
| Extract of muster roll, traveling land board reports, clerk's returns relating to land certificates, patent delivery books, school land sales, records and books and other similar records, each..... | 2.00 |
| For copy of any record, document or papers in the English language not otherwise provided for herein, 20 cents for each 100 words; provided that no charge shall be less than..... | 1.00 |
| Plain or certified copy of any other paper, document or re- cord in any other language than the English, 40 cents for each 100 words; provided no charge shall be less than..... | 1.00 |
| Blue print, white print, or other cloth map of any county except lithograph..... | 3.00 |
| Lithograph map..... | .50 |
| Plain or certified copy of a portion of a map or sketch or plat made by print or hand, and for a working sketch, the charge shall be determined by the amount of material used and time consumed at the rate of, per hour..... | 1.00 |
| For examination of any filed papers, for each survey..... | .50 |
| When an examination of the records of the General Land Office, other than maps or filed papers, is desired by one person or where search is necessary to compile informa- tion, minimum fee to be charged of 50 cents, and if the examination is extended beyond thirty minutes an addi- tional sum shall be charged at the rate of, per hour..... | 1.00 |

PATENT FEES.

| | |
|---|--------|
| Eighty acres or less..... | \$3.00 |
| Each additional 80 acres or fractional part thereof contain- ed in a patent..... | 1.00 |

[Acts 1919, p. 86.]

Art. 3919. [3843] [2442] [2377] **Comptroller.**—The Comptroller shall charge the following fees:

| | |
|--|--------|
| For examinations in which the State, or any county, has no interest, for each hour or fraction of an hour spent in such examination..... | \$.50 |
| For each sealed certificate issued..... | .50 |

[Acts 1875, p. 182; G. L. Vol. 8, p. 554.]
 Art. 3920. [3844] [2443] [2378] **Commissioner of Insurance.**—The Commissioner of Insurance shall charge and receive for the use of the State the following fees:

| | |
|---|----------|
| For filing each declaration or certified copy of charter of insurance company..... | \$ 25.00 |
| For filing the annual statement of an insurance company, or certificate in lieu thereof..... | 20.00 |
| For certificate of authority and certified copy thereof..... | 1.00 |
| For every copy of any paper filed in his department, for each 100 words..... | .20 |
| For affixing his official seal and certifying to the same ... | 1.00 |
| For valuing policies of life insurance companies, for each one million of insurance or fraction thereof | 10.00 |
| For official examination of companies under the law, the actual expenses incurred, and ten dollars a day, not to exceed | 250.00 |

[Acts 1907, p. 127; Acts 1876, p. 223; G. L. Vol. 8, p. 1059.]

Art. 3921 **Banking Commissioner.**—The Banking Commissioner shall charge and receive for the use of the State the following fees:

For making an investigation of an application for the organization of a State Bank, not to exceed..... \$50.00

For each charter, amendment or supplement thereto, of a bank or bank and trust company, a fee of fifty dollars shall be paid when said charter is filed, and if the authorized capital stock of such corporation exceeds ten thousand dollars, it shall be required to pay an additional fee of ten dollars for each additional ten thousand dollars of its authorized capital stock or fractional part thereof after the first, provided such fee shall not exceed twenty-five hundred dollars. [Acts 1913, p. 212; Acts 1917, p. 469; Acts 1919, p. 169; Acts 3rd C. S. 1920, p. 89.]

Art. 3922. [3845] **Railroad Commission.**—The Railroad Commission of Texas shall be authorized to charge fees for copies of all papers furnished by it, except such as may be furnished to some department of the State government, as follows:

For copies of any paper, document or record in its office, including certificate and seal, to be applied by the secretary, for each one hundred words, fifteen cents; provided, that this article shall not be construed to authorize the charging of such fees for railroad companies or other persons for tariff sheets for their own use, which such tariff sheets are in force.

The fees so charged and collected shall be accounted for by

the secretary of the Railroad Commission and paid into the Treasury as provided in Article 3913. [Acts 1899, p. 297.]

Art. 3923. [3846] [2445] [2380] **Clerk of Supreme Court.**—The clerk of the Supreme Court shall receive the following fees:

| | |
|--|--------|
| Entering appearance of either party, in person or by attorney, to be charged but once..... | \$.50 |
| Docketing each cause, to be charged but once..... | .50 |
| Filing the record in each cause..... | .50 |
| Entering each rule or motion..... | .25 |
| Entering the order of the court upon any rule or motion, or entering any interlocutory judgment..... | .50 |
| Administering an oath or affirmation without a certificate..... | .15 |
| Administering an oath or affirmation and giving certificate thereof, with seal..... | .25 |
| Entering each continuance..... | .20 |
| Entering each final judgment or decree..... | 1.00 |
| Each writ issued..... | 1.00 |
| Making out and transmitting the mandate and judgment of the Supreme Court to any inferior court..... | 1.50 |
| Making copies of any papers or records in their offices, including certificate and seal, for each 100 words..... | .15 |
| Recording the opinions of the judges, for each 100 words.... | .20 |
| Taxing the bill of costs in each case with copy thereof..... | .50 |
| Issuing attorney's license..... | 1.00 |

[Acts 1876, p. 285; G. L. Vol. 8, p. 1121; Acts 1919, p. 64.]

Art. 3924. [3847] [1011] **Clerk of Civil Appeals.**—The clerks of the Courts of Civil Appeals shall receive the following fees:

| | |
|--|--------|
| Entering appearances of either party, in person or by attorney, to be charged but once..... | \$.50 |
| Docketing each cause, to be charged but once..... | .50 |
| Filing the record in each cause..... | .50 |
| Entering each rule or motion..... | .25 |
| Entering the order of court upon any rule or motion, or entering any interlocutory judgment..... | .50 |
| Administering an oath or affirmation, without a certificate..... | .15 |
| Administering an oath or affirmation and giving a certificate thereof with seal..... | .25 |
| Entering each continuance..... | .20 |
| Entering each final judgment or decree..... | 1.00 |
| Each writ issued..... | 1.00 |
| Making out and transmitting the mandate and judgment of the court to any inferior court..... | 1.50 |
| Making copies of any papers or records in their offices, including certificate and seal, for each 100 words..... | .10 |
| Recording the opinions of the judges, for each 100 words.... | .15 |
| Taxing the bill of costs in each case..... | .50 |
| Filing each brief, or other paper necessary to be filed..... | .10 |
| For certificate and seal, where same is necessary..... | .50 |

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|---|--------|
| Recording sheriff's return on execution..... | .50 |
| For issuing copies of each notice ordered by court..... | .50 |
| [Acts 1893, p. 165; G. L. Vol. 10, p. 595.] | |
| Art. 3925. [3849] [2447] [2383] County judge. —The county judge shall receive the following fees in probate matters: | |
| Probating a will..... | \$2.00 |
| Granting letters testamentary, of administration or of guardianship..... | .50 |
| Each order of sale..... | .50 |
| Each approval and confirmation of sale..... | .50 |
| Each decree refusing order of sale, or refusing confirmation of sale..... | .50 |
| Each decree of partition and distribution..... | 2.00 |
| Each decree approving or setting aside the report of commissioner of partition and distribution..... | 2.00 |
| Each decree removing an executor, administrator or guardian to be paid by such executor, administrator or guardian..... | 1.00 |
| Each fiat or certificate..... | .50 |
| Each continuance..... | .10 |
| Each order, not otherwise provided for..... | .50 |
| Administering oath or affirmation with certificate and seal..... | .50 |
| Administering oath or affirmation without certificate and seal..... | .25 |

[Acts 1876, p. 284; G. L. Vol. 8, p. 1120.]

Art. 3926. [3850 to 3853] **Other fees of county judge.**—The county judge shall also receive the following fees:

1. A commission of one-half of one per cent upon the actual cash receipts of each executor, administrator or guardian, upon the approval of the exhibits and the final settlement of the account of such executor, administrator or guardian, but no more than one such commission shall be charged on any amount received by any such executor, administrator or guardian.

2. For each case of lunacy disposed of by him, three dollars, to be paid out of the county treasury. For each civil cause finally disposed of by him by trial or otherwise, three dollars, to be taxed against the party cast in the suit; provided, that if said party has filed his oath of inability to pay costs during the progress of the cause, or be unable to pay costs, then the county judge shall be allowed by the commissioners court such compensation as it may deem proper, not to exceed three dollars for each State case.

3. For presiding over the commissioners court, ordering elections and making returns thereof, hearing and determining civil causes, and transacting all other official business not otherwise provided for, he shall receive such salary from the county treasury as the commissioners court may allow him by order.

4. For testing any steelyard, balance or beam, fifty cents, and for every weight or measure, ten cents.

5. For examining and approving the bond of a live stock commission merchant, one dollar. [Id. Acts 1921, p. 176.]

Art. 3927. [3855] [2453] [2389] **District clerk.**—The clerks of the district courts shall receive the following fees in civil cases for their services:

| | |
|--|--------|
| For copy of petition including certificate and seal, for each 100 words..... | \$.20 |
| Each writ of citation..... | .75 |
| Each copy of citation..... | .50 |
| Docketing each cause, to be charged but once..... | .20 |
| Every other order, judgment or decree, not otherwise provided for..... | .75 |
| Docketing each rule or motion, including rule for cost..... | .15 |
| Filing each paper..... | .15 |
| Entering appearance of each party to a suit, to be charged but once..... | .15 |
| Each continuance..... | .12 |
| Swearing each witness..... | .10 |
| Administering an oath, affirmation, or taking affidavit, certificate and seal; provided, that he shall only be allowed pay for one certificate to each witness claim for attendance in behalf of plaintiff, and one each in behalf of defendant, at any one term of court..... | .50 |
| Each subpoena issued..... | .25 |
| Each additional name inserted in subpoena..... | .15 |
| Approving bond (except for cost)..... | 1.50 |
| Swearing and impaneling a jury..... | .35 |
| Receiving and recording a verdict of a jury..... | .35 |
| Each commission to take depositions..... | .75 |
| Taking depositions, each 100 words..... | .15 |
| Issuing copies of interrogatories with certificate and seal, per 100 words..... | .15 |
| Each final judgment..... | 1.00 |
| Where judgment exceeds 300 words, an additional fee for each 100 words in excess of 300 words..... | .15 |
| For each order of sale..... | 1.00 |
| For each execution..... | .75 |
| For each writ of possession or restitution..... | .75 |
| For each injunction writ..... | .75 |
| Each copy of injunction writ..... | .75 |
| For every other writ not otherwise provided for..... | .75 |
| For each copy of writ not otherwise provided for..... | .50 |
| Recording returns of any writ, where such return is required by law to be recorded, including the return on all writs, except subpoenas..... | .50 |
| Each certificate to any facts contained in his office..... | .75 |
| Making out and transmitting the records and proceedings in a cause to any inferior court, for each 100 words..... | .10 |
| Making out and transmitting mandate or judgment of the district court upon appeal from the county court..... | 1.00 |
| Filing a record in a cause appealed to the district court..... | .50 |

| | |
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| Transcribing, comparing and verifying record books of his office, payable out of the county treasury, upon warrants issued upon the order of commissioners court, for each 100 words | .15 |
| Making transcript of records and papers in any cause upon appeal, or writ of error, with certificate and seal, for each 100 words..... | .15 |
| Making copy of all records of judgments or papers on file in his office, for any party applying for same, with certificate and seal, for each 100 words..... | .15 |
| Taxing the bill of costs in any case with copy of same..... | .25 |
| Filing and recording the declaration of intention to be a citizen of the United States..... | 2.00 |
| Issuing certificate of naturalization..... | 2.50 |

[Acts 1901, p. 24.]

Art. 3928. [3856-7-8] **Other fees of district clerk.**—The district clerk shall also receive the following fees:

1. Whenever in any suit a certified copy of any petition or any other instrument is necessary in the district court, it shall be lawful for the plaintiff or defendant to prepare such true and correct copy thereof and submit the same to the district clerk who shall compare the same, and if found correct he shall attach his certificate of true copy. For such services he shall receive fifty cents for each certificate and seal, and ten cents per 300 words to the page.

2. In matters relating to estates of deceased persons and minors, when the same are transacted in the district court, he shall receive the same fees that are allowed therefor to county clerks.

3. For the care and preservation of the records of his office, keeping the necessary indexes, and other labor of the like kind, to be paid out of the county treasury on the order of the commissioners court, such sum as said court shall determine. [Id. Acts 1879, p. 92; G. L. Vol. 8, p. 1392.]

Art. 3929. [3859-63] **Clerks assessing damages.**—No district or county clerk shall receive any compensation for assessing damages in any case. [Acts 1st C. S. 1897, p. 13.]

Art. 3930. [3860] [2457] [2393] **County clerk.**—Clerks of the county court shall receive the following fees:

| | |
|---|--------|
| Filing each paper..... | \$.05 |
| Issuing notices, including copies for posting or publication..... | .75 |
| Docketing each application, complaint, petition or proceeding, to be charged but once..... | .10 |
| Each writ or citation, including copy thereof..... | .50 |
| Each copy of any paper that is required to accompany any writ or citation, with certificate and seal, for each 100 words..... | .10 |
| Issuing letters testamentary, of administration or guardianship..... | .50 |
| Each final judgment or decree..... | .50 |

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| Every other order or decree, not exceeding 100 words..... | .15 |
| Where such other order or decree contains 100 words and not more than 200 words..... | .25 |
| When any final judgment or decree or any other order or decree exceeds 200 words, an additional fee for each 100 words in excess of 200 words..... | .10 |
| Recording all papers required to be recorded by them in relation to estates of decedents or wards, for each 100 words..... | .10 |
| Administering oath to executor, administrator or guardian..... | .10 |
| Administering oath in other cases without certificate and seal..... | .15 |
| Administering oath with certificate and seal..... | .25 |
| Entering each order of the court approving or disapproving a claim against an estate..... | .25 |
| Filing each paper, except subpoenas..... | .05 |
| Each appearance, to be charged but once..... | .05 |
| Entering each continuance, except in estates..... | .10 |
| Each subpoena..... | .25 |
| Each additional name inserted in a subpoena..... | .05 |
| Approving bond, except bond for costs and notarial bond..... | 1.00 |
| Approving notarial bond..... | .50 |
| Swearing each witness..... | .10 |
| Swearing and empaneling a jury..... | .25 |
| Receiving and recording a verdict..... | .25 |
| Each commission to take depositions..... | .50 |
| Taking depositions, each 100 words..... | .15 |
| Each execution, order of sale, writ of possession, restitution or other writ not otherwise provided for..... | .50 |
| For recording return of any writ, when any such return is required by law to be recorded..... | .50 |
| Where the return exceeds 300 words, for each 100 words in excess of 300 words..... | .10 |
| Copies of interrogatories, cross-interrogatories and all other papers or records required to be copied by him, including certificate and seal, where the copy does not exceed 200 words, for each 100 words..... | .15 |
| Where the copy exceeds 200 words, for each additional 100 words in excess of 200 words..... | .10 |
| Transcript in any case where appeal or writ of error is taken, with certificate and seal, for each 100 words..... | .10 |
| Each certificate to any fact or facts contained in the records of his office, with certificate and seal, when not otherwise provided for..... | .50 |
| For filing, recording and certifying to each tax receipt..... | .25 |
| Taxing the bill of costs in each cause, with a copy thereof..... | .25 |
| For recording attachments and returns, the same fees allowed for recording deeds. | |
| For filing and recording each rental lien or chattel mortgage deposited..... | .25 |
| For entering satisfaction of chattel mortgages..... | .25 |

| | |
|--|------|
| Recording all papers required or permitted by law to be recorded, not otherwise provided for, including certificate and seal, for each 100 words..... | .10 |
| Transcribing records for new counties and added territory, for each 100 words..... | .15 |
| Transcribing, comparing and verifying record books of his office, payable out of the county treasury upon warrant issued under the order of the commissioners court, for each 100 words..... | .10 |
| Issuing and recording marriage license..... | 1.00 |
| Recording each mark and brand or either..... | .25 |
| Issuing each license, other than marriage license, where the law provides for him to issue same..... | 1.00 |
| Recording and certifying bills of sale under the stock laws, for each 100 words..... | .15 |
| Recording each mark and brand and giving certificate thereof..... | .75 |
| Revising the list of marks and brands, such compensation as the commissioners court may allow..... | .50 |
| Qualifying a notary public..... | .50 |

For filing and recording the bond and sworn statement of a live stock commission merchant..... 1.00

For making a certified copy of such bond and statement... 1.00

[Acts 1st C. S. 1897, p. 13; Acts 1919, p. 170; Acts 1921, p. 177.]
 Art. 3931. [3861] [2458] [2394] **County clerk: preserving records.**—At each term of his court the county judge shall inquire into and examine the amount of labor actually and necessarily performed by the clerk of his court in the care and preservation of the records of his office, in making and keeping necessary indexes thereto, and other labor of a like class, and allow said clerk a reasonable compensation therefor, not to exceed the fees allowed him by law for like services, and not to exceed one hundred dollars annually, to be paid out of the county treasury upon the sworn account of such clerk, approved in writing thereon by the county judge. [Acts 1876, p. 287; G. L. Vol. 8, p. 1123.]

Art. 3932. [3862] [2459] [2395] **County clerk: ex-officio services.**—For all ex-officio services in relation to roads, bridges and ferries, issuing jury scrip, county warrants, and taking receipts therefor, services in habeas corpus cases, making out bar dockets, keeping record of trust funds, filing and docketing all papers for commissioners court, keeping road overseer's book and list of hands, recording all collection returns of delinquent insolvents, and list of lands sold to individuals for taxes, recording county treasurers' reports, recording reports of justices of the peace, recording reports of animals slaughtered, and services in connection with all elections, and all other public services not otherwise provided for, to be paid upon the order of the commissioners court out of the treasury, the county clerk shall receive not less than ten dollars nor more than twenty-five dollars per annum for each one thousand in-

habitants of his county; provided, that the total amount paid the clerk in any one year shall not be less than fifty nor more than five hundred dollars, said amount to be paid quarterly. No county clerk shall be compelled to file or record any instrument of writing permitted or required by law to be recorded until after payment or tender of payment of all legal fees for such filing or recording has been made. Nothing herein shall be held to include papers or instruments filed or recorded in suits pending in the county court. [Acts 1881, p. 99; G. L. Vol. 9, p. 191.]

Art. 3933. [3864] [2460] [2396] Sheriff.—Sheriffs shall receive the following fees:

| | |
|--|--------|
| Serving each original citation in a civil suit..... | \$1.00 |
| Summoning each witness..... | .50 |
| Levying and returning each writ of attachment or sequestration..... | 2.00 |
| Copy of attachment writ and return for recording..... | 1.00 |
| Levying each execution..... | 1.00 |
| Return of execution..... | 1.00 |
| Serving each writ of garnishment or other process not otherwise provided for..... | 1.00 |
| Serving each writ of injunction..... | 1.50 |
| Taking and approving each bond, and returning same to the proper court when necessary..... | 1.00 |
| Indorsing the forfeiture of any bond required to be indorsed by him..... | .50 |
| Executing and returning each writ of possession or restitution..... | 3.00 |
| Posting the advertisements for sale under the execution or any order of sale..... | 1.00 |
| Posting any other notices required by law and not otherwise provided for..... | 1.00 |
| Executing a deed to each purchaser of real estate under execution or order of sale..... | 2.00 |
| Executing a bill of sale to each purchaser of personal property under an execution or order of sale, when demanded by purchaser..... | 2.00 |
| For each case tried in the district or county court, a jury fee shall be taxed for the sheriff of..... | .50 |
| For services in designating a homestead..... | 2.00 |

For traveling in the service of any civil process, sheriffs and constables shall receive seven and one-half cents for each mile going and coming; if two or more persons are mentioned in the writ, he shall charge for the distance actually and necessarily traveled in the service of same.

Collecting money on an execution or an order of sale, when the same is made by a sale, for the first one hundred dollars or less, four per cent; for the second one hundred dollars, three per cent; for all sums over two hundred dollars and not exceeding one thousand dollars, two per cent; for all sums over

one thousand dollars and not exceeding five thousand dollars, one per cent; for all sums over five thousand dollars, one-half of one per cent.

When the money is collected by the sheriff without a sale, one-half of the above rates shall be allowed him.

For every day the sheriff or his deputy shall attend the district or county court, he shall receive four dollars a day to be paid by the county for each day that the sheriff by himself or a deputy shall attend said court. [Acts 1923, p. 397.]

Art. 3934. [3865-6] **Sheriff: other compensation.**—Sheriffs shall also receive the following compensation:

1. For all process issued from the Supreme Court or Courts of Civil Appeals, and served by them, the same fees as are allowed them for similar service upon process issued from the district court.

2. For summoning jurors in district and county courts, serving all election notices, notices to overseers of roads and doing all other public business not otherwise provided for, not exceeding one thousand dollars per annum to be fixed by the commissioners court at the same time other ex officio salaries are fixed, and to be paid out of the general funds of the county; provided, that no such ex officio salary shall be allowed any sheriff who had received the maximum salary allowed by law. [Acts 1875, p. 70; G. L. Vol. 8, p. 442; Acts 3rd C. S. 1920, p. 82.]

Art. 3935. [3867] [2463] [2399] **Justice of the peace.**—Justices of the peace shall receive the following fees:

| | |
|---|--------|
| Each citation..... | \$.50 |
| Each subpoena for one witness..... | .25 |
| Each additional name inserted in a subpoena..... | .05 |
| Docketing each cause..... | .10 |
| Filing each paper..... | .05 |
| Each continuance..... | .10 |
| Each bond not otherwise provided for..... | .50 |
| Swearing each witness in court..... | .10 |
| Administering an oath without a certificate..... | .10 |
| Administering an oath with certificate..... | .25 |
| Administering the oath, approving bond and issuing a writ of attachment or sequestration..... | 1.50 |
| Issuing any other writ or process not otherwise provided for..... | .50 |
| Causing a jury to be summoned and swearing them..... | .25 |
| Receiving and recording verdict of jury..... | .25 |
| Each order in a cause not otherwise provided for..... | .25 |
| Each final judgment..... | .50 |
| Each application to set aside a judgment or for a new trial, with the final judgment thereon..... | .50 |
| Each appeal bond..... | .25 |
| Each commission to take depositions..... | .50 |

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|---|------|
| Copy of interrogatories or cross-interrogatories, for each 100 words, including certificate..... | .10 |
| Making and certifying a transcript of the entries on his docket, and filing the same, together with the original papers in the case, in the proper court, in each case of appeal or certiorari..... | 1.50 |
| Each execution or order of sale..... | .60 |
| Each writ of possession or restitution..... | .75 |
| Receiving and recording the return on each execution, order of sale, writ of possession or restitution, if a levy is returned or the writ executed..... | .30 |
| If no levy is returned or the writ not executed..... | 1.10 |
| Making copies of any papers or records in his office for any person applying for the same, for each 100 words including certificate..... | .10 |
| Taxing costs, including copy thereof, in each case..... | .10 |
| Each certificate not otherwise provided for..... | .25 |
| Taking acknowledgment for stay of judgment..... | .50 |

[Acts 1st C. S. 1897, p. 13.]

Art. 3936. [3868-9] **Constable.**—Constables shall receive the following fees for services rendered in business connected with courts of justices of the peace:

| | |
|--|--------|
| Serving each citation in civil suit..... | \$.70 |
| Serving each garnishment..... | .70 |
| Serving each notice for the taking of depositions and copy of interrogatories..... | .70 |
| Serving each subpoena..... | .50 |
| Levying and returning each writ of attachment or sequestration..... | 1.50 |
| Copy of attachment writ and return for recording..... | 1.00 |
| Levying each execution..... | .70 |
| Executing each order of sale, writ of possession or restitution..... | 1.00 |
| Returning each execution, order of sale, writ of possession or restitution..... | .40 |
| Taking and approving each bond..... | 1.00 |
| Summoning a jury in justice's court..... | 1.00 |
| Advertising sale under execution or order of sale..... | .70 |
| Making title to purchaser of real estate under execution or order of sale..... | 2.00 |
| Making title to purchaser of personal property under execution or order of sale, when demanded by purchaser..... | .50 |

Taking care of property levied upon by virtue of any legal process, all reasonable and necessary expenses, to be taxed and allowed by the court to which such process is returnable. Collecting money under an execution or order of sale, when a sale is made, four per cent on the amount actually collected by him. When the money is collected by him without a sale, two per cent on the amount actually collected by him.

For all services performed by constables in business con-

nected with the district and county courts, the same fees allowed sheriffs for the same services. [Acts 1889, p. 80; Acts 1876, p. 291; G. L. Vol. 8, p. 1127.]

Art. 3937. [3871] **Tax assessor.**—Each assessors of taxes shall receive the following compensation for his services, which shall be estimated upon the total value of the property assessed as follows: For assessing the State and county taxes; on all sums for the first two million (\$2,000,000.00) dollars, or less, five cents (5c) for each one hundred (\$100.00) dollars of property assessed; on all sums in excess of two million (\$2,000,000.00) dollars, and less than five million (\$5,000,000.00) dollars, two and one-half cents (2½c) on each one hundred dollars (\$100.00) and on all sums in excess of five (\$5,000,000.00) dollars, two and one-fourth cents (2¼c) on each one hundred (\$100.00) dollars; one-half of the above fee shall be paid by the State, and one-half by the county; for assessing the taxes in all drainage districts, road districts, or other political subdivisions of the county, the assessor shall be paid three-fifths (3/5) of one cent for each one hundred (\$100.00) dollars of the assessed values of such districts of subdivisions; provided such compensation as is paid to the assessor shall be prorated among the various drainage districts, road districts and other political subdivisions of the county according to the value of the property assessed in each district, or other political subdivision; and for assessing the poll tax, five cents (5c) for each poll which shall be paid by the State.

The commissioners' court shall allow the assessor of taxes such sums of money to be paid monthly from the county treasury, as may be necessary to pay for clerical work, taking assessments and making out the tax rolls of the county, (such sums so allowed to be deducted from the amount allowed to the assessor as compensation upon the completion of said tax rolls); provided, the amount allowed the assessor by the commissioners' court shall not exceed the compensation that may be due by county to him for assessing. [Acts 1925, p. 358.]

Art. 3938. [7584-5] **Payment of assessor.**—The Comptroller, on receipt of the rolls, shall give the assessor an order on the collector of his county for the amount due him by the State for assessing the State taxes, to be paid out of the first money collected for that year. The commissioners court shall issue an order on the county treasurer of their county, to the assessor, for the amount due him for assessing the county tax of their county, to be paid out of the first money received from the collector on the rolls of that year. [Acts 1876, p. 272; G. L. Vol. 8, p. 1108.]

Art. 3939. [3872-7654-5] **Tax collector.**—There shall be paid for the collection of taxes as compensation for the services of the collector, beginning with the first day of September of each year, five per cent on the first ten thousand dollars collected for the State, and four per cent on the next ten thousand dollars so collected for the State, and one per cent on all collected over that sum; for collecting the county taxes, five per cent on

the first five thousand dollars of such taxes collected, and four per cent on the next five thousand dollars collected, and one and one-fourth per cent on all such taxes collected over that sum. For collecting the taxes in all drainage districts, road districts, or other political subdivisions of the county, the tax collector shall be paid one-half of one per cent on all such tax collected; provided that the amount to be paid the tax collector shall be paid by the various drainage districts, road districts, or other political subdivisions of the county on a pro rata basis in accordance with the amount collected for such districts; and in counties owing subsidies to railroads the collector shall receive only one per cent for collecting such railroad taxes, and in cases where property is levied upon and sold for taxes he shall receive the same compensation as allowed by law to sheriffs or constables on making the levy and sale in similar cases, but in no case to include commission on such sales; and on all occupation and license taxes collected, five per cent. [Acts 1919, p. 300.]

Art. 3940. [7656] [5208] [4768] **Charge for one levy only.**—In making levies upon different tracts of land belonging to the same individual, corporation or company, the collector shall be entitled to charge for only one levy; and in all cases of advertisement of lands for tax sales he shall be entitled to charge for any one tract the exact proportion of the amount paid for the whole advertisement which said tract bears to all other tracts advertised, and no more.

Art. 3941. [3873] [2467] [2403] **County treasurer.**—The county treasurer shall receive commissions on the moneys received and paid out by him, said commissions to be fixed by order of the commissioners court as follows: For receiving all moneys, other than school funds, for the county, not exceeding two and one-half per cent, and not exceeding two and one-half per cent for paying out the same; provided, that he shall receive no commissions for receiving money from his predecessor nor for paying over money to his successor in office. [Acts 1st C. S. 1897, p. 8.]

Art. 3942. [3874] [2468] **Treasurer: other commissions.**—The treasurers of the several counties shall be treasurers of the available public free school fund and also of the permanent county school fund for their respective counties. The treasurers of the several counties shall be allowed for receiving and disbursing the school funds one-half of one per cent for receiving, and one-half of one per cent for disbursing, said commissions to be paid out of the available school fund of the county; provided, no commissions shall be paid for receiving the balance transmitted to him by his predecessor, or for turning over the balance in his hands to his successor; and provided, that he shall receive no commissions on money transferred. [Acts 1891, p. 147; G. L. Vol. 10, p. 149.]

Art. 3943. [3875] [2469] [2405] **Treasurer: commissions**

limited.—The commissions allowed to any county treasurer shall not exceed two thousand dollars annually; provided, that in all counties in which the assessed value of the property of such counties shall be one hundred million dollars or more as shown by the preceding assessment roll, the treasurers thereof shall receive as their commissions a sum not exceeding two thousand seven hundred dollars annually. [Acts 3rd C. S. 1920, p. 60.]

Art. 3944. [3876] [2470] [2406] **County surveyor.**—County surveyors shall receive the following fees:

| | |
|--|--------|
| Inspecting and recording the field-notes and plat of a survey for any tract of land over one-third of a league..... | \$3.00 |
| One-third of a league..... | 2.00 |
| Less than one-third of a league..... | 1.00 |
| For recording surveys and plats required by law to be placed upon the map of a new county, for each 100 words..... | .20 |
| Examination of papers and records in his office at the request of any person..... | .25 |
| Copies of all field-notes and plats, or any other papers or records in his office, for each 100 words, including certificate..... | .20 |
| Surveying any tract of land, including all expenses in making the survey, and returning the plat and field notes of the survey, for each English lineal mile actually run..... | 3.00 |
| Surveying any tract of land, including all expenses of making the survey, and returning the plat and field notes, when the distance actually run is less than one English lineal mile..... | 2.50 |

For services in designating a homestead, to include pay for chain carriers, for each day's service..... 5.00
 [Acts 1881, p. 71; G. L. Vol. 9, 163; Acts 1st C. S. 1897, p. 8.]

Art. 3945. [3878] [2472] [2408] **Notary public.**—Notaries public shall receive the following fees:

| | |
|--|------|
| Protesting a bill or note for non-acceptance or non-payment, register and seal..... | 1.00 |
| Each notice of protest..... | .25 |
| Protesting in all other cases, for each 100 words..... | .25 |
| Certificate and seal to such protest..... | .50 |
| Taking the acknowledgment or proof of any deed or other instrument in writing, for registration, including certificate and seal..... | .50 |
| Taking an acknowledgment of a married woman to any deed or other instrument of writing authorized to be executed by her, including certificate and seal..... | .50 |
| Administering an oath or affirmation with certificate and seal..... | .50 |
| All certificates under seal not otherwise provided for..... | .50 |
| Copies of all records and papers in their office, including certificate and seal, if less than 200 words..... | .50 |
| If more than 200 words, for each 100 words in excess of 200 words, in addition to the fee of fifty cents..... | .25 |

| | |
|--|--------|
| All notarial acts not provided for..... | .50 |
| Taking the depositions of witnesses, for each 100 words..... | .15 |
| Swearing a witness to depositions, making certificate there- for with seal, and all other business connected with tak- ing such deposition..... | .50 |
| [Acts 1915, p. 36.] | |
| Art. 3946. [3879] [2473] [2409] Public weighers. —Public weighers shall receive the following fees: | |
| For each bale of cotton weighed, not exceeding..... | \$.10 |
| When he shall run a cotton yard in connection with his weighing, his compensation shall not exceed, as yardage for the first month after same is received for storage, per bale | .15 |
| Thereafter per bale per month, not exceeding..... | .10 |
| For each bale or sack of wool, or hogshead of sugar or wagon load of hay, pecans or grain..... | .10 |
| For each part of a wagon load of hay, grain or pecans, not exceeding | .05 |
| For each barrel weighed..... | .10 |
| For each bale of hides weighed..... | .10 |
| For each loose hide weighed..... | .02 |

And he shall not be obligated to deliver any such articles so weighed until his fee therefor shall have been paid. [Acts 1903, p. 217.]

TITLE 62.

FENCES.

| | | | |
|----------------------------|---------|-------------------------------------|---------|
| | Article | | Article |
| "Sufficient fence"..... | 3947 | Persons injuring stock..... | 3951 |
| Complaint of trespass..... | 3948 | Removing adjoining fence..... | 3952 |
| Stock impounded..... | 3949 | How to separate fence..... | 3953 |
| Owner not liable..... | 3950 | Adjacent owner to remove fence..... | 3954 |

Art. 3947. [3927] [2496] [2431] **"Sufficient fence."**—Every gardener or farmer, except as otherwise provided by law, shall make a sufficient fence about his cleared land in cultivation, at least five feet high, and make such fence sufficiently close to prevent hogs passing through the same; but it shall be unlawful for any person whomsoever, by joining fences or otherwise, to build or maintain more than three miles lineal measure of fence running in the same general direction without a gateway in the same, which gateway must be at least ten feet wide, and shall not be locked. [Act Feb. 5, 1840, p. 179; Acts 1884, p. 18; Acts 1887, p. 90; G. L. Vol. 2, p. 353; G. L. Vol. 9, p. 550 and 888.]

Art. 3948. [3928] [2497] [2432] **Complaint of trespass.**—When any trespass shall have been done by any cattle, horses, hogs or other stock, on the cleared and cultivated ground of any person, such person may complain thereof to any justice of the peace of the county where such trespass shall have been done, and such justice upon such complaint being filed shall cause two disinterested and impartial freeholders to be summoned, who, with such justice, shall view and examine on oath whether complainant's fence be sufficient or not, and what damages he has sustained by such trespass, and certify the same in writing; and if it shall so appear that said fence be sufficient, then the owner of such cattle, horses, hogs or other stock shall make full satisfaction for the trespass to the party injured to be recovered by suit therefor.

Art. 3949. [3929] [2498] [2433] **Stock impounded.**—In case of a second trespass by the same cattle, horses, hogs or other stock, the owner, lessee or proprietor of the premises upon which the trespass is committed may, if he deem it necessary for the protection and preservation of his premises, or the crops growing thereon, cause such stock to be penned and turned over to the sheriff or constable and held responsible to the person damaged for all damages caused by said stock and all costs thereon.

Art. 3950. [3930] [2499] [2434] **Owner not liable.**—If it appears that the said fence is insufficient, then the owner of such cattle, horses, hogs or other stock, shall not be liable to make satisfaction for such damages.

Art. 3951 [3931] [2500] [2435] **Persons injuring stock.**—If any person whose fence shall be adjudged insufficient shall, with guns, dogs or otherwise maim, wound or kill any horses, cattle, hogs or other stock, or cause or procure the same to be

done, such person so offending shall be liable to the person injured for all damages by such person sustained.

Art. 3952. [3932] [2501] **Removing adjoining fence.**—It shall be unlawful for any person who is a joint owner of any separating or dividing fence, or who is in any manner interested in any fence attached to, or connected with any fence owned or controlled by any other person to remove the same, except by mutual consent or as hereinafter provided. [Act March 17, 1887; Act April 6, 1889, p. 45; G. L. Vol. 9, p. 30 and 1073.]

Art. 3953. [3933] [2502] **How to separate fence.**—Any person who is the owner or part owner of any fence connected with or adjoined to any fence owned in part or in whole by any other person, shall have the right to withdraw or separate his fence or part of fence from the fence of any other person, upon giving notice in writing to such person, his agent, attorney, or lessee, of his intention to separate or withdraw his fence, or part thereof, for at least six months prior to the time of such intended withdrawal or separation. [Id.]

Art. 3954. [3934] [2503] **Adjacent owner to remove fence.**—Whoever is the owner of any fence wholly upon his land to which the fence of another is adjoined or connected in any manner, may require the owner of such fence to disconnect and withdraw the same back on his own land by giving notice in writing, for at least six months, to such person, his agent, attorney, or lessee, to disconnect and withdraw his fence back on his own land. [Id.]

TITLE 63.

FIRE ESCAPES.

| Article | Article |
|---------------------------------------|----------------------------------|
| Owner to provide..... | Location..... |
| Hotels, theaters, etc..... | Guide signs and exit lights..... |
| Offices and plants..... | Minimum specifications..... |
| Warehouses and mills..... | Painting..... |
| State, county and city buildings..... | Tests..... |
| Officials to provide..... | Affidavit..... |
| "Owner" defined..... | Completion before occupancy..... |
| "Story" defined..... | Inspection..... |
| "Adequate fire escape"..... | Injunction..... |
| | 3964 |
| | 3965 |
| | 3966 |
| | 3967 |
| | 3968 |
| | 3969 |
| | 3970 |
| | 3971 |
| | 3972 |

Art. 3955. **Owner to provide.**—The owner of each building, which is or may be constructed within this State, three or more stories in height, constructed, used or intended to be used in whole or in part as any of the following buildings, shall provide and equip such building with at least one adequate fire escape, and such additional fire escapes, as provided in the three succeeding articles. [Acts 1923, p. 361.]

Art. 3956. **Hotels, theaters, etc.**—For each hospital, seminary, college, academy, school house, dormitory, hotel, lodging house, apartment house, rooming house, boarding house, house for the accommodation of transient guests, lodge hall, theater, public place of amusement, or hall or place used for public gatherings, having a lot area in excess of five thousand square feet, there shall be provided one additional adequate fire escape for each five thousand square feet of such excess or fraction thereof if such fraction exceeds two thousand square feet. [Id.]

Art. 3957. **Offices and plants.**—For each office building, wholesale or retail mercantile establishment or store, work shop, or manufacturing establishment or industrial plant, having a lot area in excess of six thousand square feet, there shall be provided one additional adequate fire escape for each six thousand square feet of such excess or fraction thereof if such fraction exceeds twenty-five hundred square feet. [Id.]

Art. 3958. **Warehouses and mills.**—For each warehouse, storage house or mill building, having a lot area in excess of eight thousand square feet, there shall be provided one additional adequate fire escape for each eight thousand square feet of such excess, or fraction thereof if such fraction exceeds thirty-five hundred square feet. The provisions of this title requiring the construction of standard fire escapes, shall not apply to grain elevators of steel, or steel and concrete construction, nor to wooden elevators where less than five persons are employed. [Id.]

Art. 3959. **State, county and city buildings.**—Each building which is or may be constructed within this State three or more stories in height, which is owned by this State, or by any city, county or school district, and in which building public assemblies are permitted or intended to be permitted, or in which schools of any kind are conducted, or in which sleeping apartments are permitted or intended to be permitted on any floor

above the first, shall be provided and equipped with at least one adequate fire escape if the lot area of such building shall not exceed five thousand square feet, and one additional adequate fire escape for each five thousand square feet, or fraction thereof if such fraction exceeds two thousand square feet in excess of the first five thousand square feet of lot area. [Id.]

Art. 3960. **Officials to provide.**—Each board, commission, official or person having charge or supervision of any building included in the preceding article, or having charge or supervision of the letting of contracts for the construction of such buildings, shall fully comply with the provisions of this title relating to providing and equipping such buildings with adequate fire escapes. [Id.]

Art. 3961. **“Owner” defined.**—The term “owner” within the meaning of this title, shall include persons, firms, associations, and private corporations. [Id.]

Art. 3962. **“Story” defined.**—The word “story” as used in this title, shall be construed to have its usual and ordinary meaning as applied to architecture, and in addition thereto shall be construed to include a basement of any building that extends five feet or more above grade line on one or more sides of such building, a balcony or mezzanine floor of any building, a roof of any building used as a roof garden, and an attic of any building used for any purpose. [Id.]

Art. 3963. **“Adequate fire escape.”**—An “adequate fire escape” within the meaning of this title, is defined to be an exterior iron, steel or concrete stairway type fire escape, or an exterior iron or steel straight chute type fire escape, or an exterior iron or steel spiral chute type fire escape, or a combination of said three types, or an interior type fire escape enclosed with non combustible material and having self-closing fireproof shutters on all door and window openings thereof. Each type of such fire escapes shall be so constructed and arranged as to permit exit upon such fire escape from each floor of the building above the first floor and shall provide a continual egress upon it from such building to grade, and the material, construction, erection and test of such fire escapes shall comply at least with the minimum specifications for each respective type thereof, as hereinafter set forth. [Id.]

Art. 3964. **Location.**—All such fire escapes shall, consistent with accessibility, be located as far as possible from stairways, elevator hatchways and other openings in the floors, and where possible, they shall be located at the ends of hallways or corridors or unobstructed passageways, and as far as is consistent with the construction and location of the building. [Id.]

Art. 3965. **Guide signs and exit lights.**—In all such buildings there shall be installed and maintained therein in good condition at all times, at least one red light at each exit to each fire escape, and one guide sign at each hall or corridor intersection, and one additional guide sign for every twenty-five lineal feet of

hallway or corridor leading to such fire escape. All exit lights shall have painted thereon the words "Fire Escape Exit," and all guide signs shall have painted thereon the words "Fire Escape," and an arrow or hand pointing to the nearest fire escape exit. It shall be unlawful for any person to obstruct any fire escape in any manner that would prevent free access thereto or free use thereof, or to obstruct any hallway, corridor or entrance leading to such fire escape by means of any door provided with locks requiring a key to operate, or by partitions or by any objects of any kind whatsoever. [Id.]

Art. 3966. **Minimum specifications.**—The minimum specifications for the several types of adequate fire escapes required by this law are as follows:

Exterior Stairway Type:

(1) Shall consist of balconies and stairways on the exterior of the building and be constructed of iron, steel or reinforced concrete, and shall be in superimposed form, or straight run form, or superimposed form with intermediate balconies, or a combination of any such form and type.

(2) **Balconies:** Balconies for stairs in superimposed form attached to the building at two or more floors, shall equal in length the horizontal length of the stair runs, plus an amount at each end equal to the width of the stairs, and shall be as long as the width of the opening for exit in the building wall and shall be at least fifty inches wide inside of railings. Balconies for stairs in superimposed form with intermediate balconies attached to the building at two or more floors shall be not less in width than the combined width of the stairways connected therewith leading both up and down, and the landings at the head and the foot of the stairs shall be as deep as the width of the stairs, and shall be as long as the width of the opening for exit in the building wall. Balconies for stairs in straight run form shall be not less in width than the width of the stairs and as long as the width of the opening for exit in the building wall. The minimum unobstructed width of any exterior passageway in the entire fire escape, whether parallel to the building or at right angles to it, shall be twenty-four inches. The floors of iron or steel balconies shall be solid or of slats and if solid, shall have scoriated surface to prevent slipping and pitched not less than one-half inch in ten feet to secure drainage, or if of slats, shall be placed not more than three-quarters of an inch apart and secured in place with rivets or bolts. Material in floors shall be not less than three-sixteenths of an inch thick. Railing enclosures of all balconies shall be not less than two feet nine inches high, and if of vertical and horizontal slat or grill construction, no space shall have the horizontal width of more than eight inches, and if of truss construction the span of each panel shall not exceed three feet. No opening in railing enclosures on any construction shall exceed two square feet in area. All railing enclosures throughout their lengths shall be free from

obstructions tending to break handholds and the passage space shall be smooth and free from obstructions or projections. All railing enclosures shall be designed to withstand a horizontal pressure of two hundred pounds per running foot of railing without serious deflection. Balconies shall be anchored to building with bolts not less than one inch in diameter, extending through the wall and provided with wall bearing plate on the inside not less than five inches square and three-eighths inch thick or anchored by such bolts set in concrete or masonry or made integral in new buildings. Balconies shall never be placed above and not more than one foot below the top of the sill of the opening for exit in building wall, preferably level with sill. Concrete balconies shall comply with all requirements herein set forth and be made of reinforced concrete, the concrete to be one part cement, two parts sand and four parts stone or gravel. Railing enclosures of concrete balconies shall be as herein specified, or of reinforced concrete, with balusters spaced not over one foot apart.

(3) Stairs: The pitch of stairways shall not exceed forty-five degrees. Treads shall be not less than eight inches wide, exclusive of nosings, and not less than twenty-four inches long and placed so that the rise, either open or closed, shall not exceed eight inches and if solid shall have scoriated surface, and if made of slats they shall be placed not more than three-quarters of an inch apart and be well secured in place by bolts or rivets. Material in treads shall be not less than three-sixteenths of an inch thick. Railings shall be provided on both sides of stair, not less than two feet nine inches high as measured vertically from the center of the stair treads, and supported by balusters spaced not exceeding five feet apart. Intermediate rail shall be provided midway between top rail and stair stringers, or if intermediate rail is omitted, balusters shall be placed not over one foot apart. Railings on stairs shall permit not less than twenty-four inches unobstructed passageway, and shall be designed to withstand a horizontal pressure of two hundred pounds per running foot of railing without serious deflection. Concrete stairs shall comply with all requirements herein set forth and be made of reinforced concrete, concrete mixture to be as herein specified for concrete balconies. Railing enclosures of concrete stairs shall be as herein specified, or of reinforced concrete balustrade with balusters spaced not over one foot apart. Stairways shall be built stationary to grade where possible, and this shall be required in such buildings as schools and hospitals. Where fire escapes terminate over streets, alleys or private driveways, or like condition, and shall terminate in a hinged and counter-balanced section of stairway, the construction of such section of stair shall conform with the stationary parts of stairways and shall be so balanced that the weight of one person on third or fourth tread will lower same to landing. Bearings for such counter-balanced stairs shall be either bronze

bushings or have sufficient clearance provided to prevent sticking on account of corrosion. No latch or lock shall be attached to the counter-balanced stair in up position but latch shall be provided to hold stair in down position when same has once been swung to ground. The connection between stair railings on the stationary part and the counter-balanced part of stairways shall be designed to prevent probability of injury to persons using said fire escape. Where necessary a suitable opening shall be provided in any awning, roof or other intervening obstruction, to admit counter-balanced stair and permit passage of persons thereon.

(4) **Roof Connection:** Exterior stairway type fire escapes shall be connected with the roof of building to which attached. If the roof of the building is such that escape by way of the roof might be necessary the fire escape shall extend to the roof. If the connection is only for fire department use, it shall be made with a ladder of the goose neck type, the stringers of which shall be of material at least three-eighths of an inch thick and the rungs shall be at least three quarters of an inch in diameter sixteen inches long and not exceeding fourteen inches apart. Said ladder shall be anchored to the wall.

(5) **Clearance:** The minimum clearance at all points on balconies and stairs as measured vertically shall be six feet six inches.

Exterior Chute Type:

(1) Shall consist of balconies and straight gravity chutes on the exterior of the building and constructed of iron or steel and placed at an angle not to exceed forty-five degrees and shall be in superimposed form, parallel to or at right angles to the building, or straight run form, parallel to or at right angles to the building, or a combination of these two forms.

(2) **Balconies:** Shall be the same as herein specified in subdivision two of specifications for exterior iron, steel or concrete stairway type fire escape.

(3) **Chute:** Shall be made of material of not less than number fourteen gauge iron or steel, blue annealed or equal, and shall be such as will take a smooth or polished surface. The chute shall be twenty inches wide and eighteen inches deep, inside dimensions, and free of obstructions or sharp edges throughout its length, and in cross section shall have concave bottom and straight sides. The top edges of the chute shall be stiffened and protected throughout its length with iron or steel angles, free from any sharp edges, and the angles of size necessary to carry the maximum loading possible and the chute shall be reinforced crosswise underneath with iron or steel angles. A landing of same material as the chute shall be provided at the lower end of the chute, and shall be of sufficient length, in proportion to the length of the chute and the concavity of its surface, to check the momentum attained through gravity and afford a safe stop. Such landing shall be six inches

wider on each side than the chute, where wall construction will not interfere, and there shall be no sharp edges or ragged projections exposed, and said landing shall rest upon and be anchored to concrete base not less than six inches thick. All rivets exposed inside of chute and on top side of landing to be countersunk and ground down smooth. Intervening balconies, and the chute also, shall be so constructed that a continuous gravity slide will be afforded from the top floor to the grade, and the chute shall be accessible at all floors.

Exterior Spiral Chute Type:

(1) Shall consist of balconies in superimposed form and spiral gravity chute on the exterior of the building and constructed of iron or steel.

(2) Balconies: To be the same as herein specified in subdivision two of specifications for exterior iron, steel or concrete stairway type fire escape.

(3) Chute: Slideway shall be made of material of not less than number sixteen guage iron or steel, blue annealed or equal, and shall be such as will take a smooth or polished surface. The chute shall be not less than thirty inches wide inside, with the slideway banked at the outer edge to prevent a passenger being thrown against guard rail or enclosure, and enclosed by either a continuous wall or a guard rail, the material of which shall not be less than number eighteen guage iron or steel and said guard rail shall be not less than thirty inches high. The entire slideway shall be free from obstructions or sharp edges and all rivets exposed inside to be countersunk and ground down smooth. The chute shall be constructed in helical or spiral form around a central column, resting on and anchored to concrete base not less than eighteen inches thick. The chute shall terminate not more than two feet above the grade and be so constructed and arranged that normal landing will be in a standing position. Intervening balconies, and the chute also, shall be so constructed that a continuous gravity slide will be afforded from the top floor to the grade, and the chute shall be accessible at all floors.

Interior Type:

(1) Shall be a stairway type constructed of iron, steel or concrete or straight chute type constructed of iron or steel or spiral chute type constructed of iron or steel, either of which types erected on the interior of the building to be enclosed with non-combustible material and all door and window openings in such enclosure protected with self-closing fireproof shutters.

(2) Balconies or Landings: Balconies or landings to be the same construction as specified for balconies in subdivision two of specifications for exterior iron, steel or concrete stairway type fire escapes, except that such balconies shall permit not less than forty inches unobstructed passageway, and such balconies or landings shall be provided and erected on the interior of the enclosing walls on a level with the floors of the building to be served.

(3) Stairway Type: Stairs to be same construction as specified for stairs in subdivision three of specifications for exterior iron, steel or concrete stairway type fire escapes, except that such stairs shall permit not less than forty inches unobstructed passageway in all its parts. Stairs known as "spirals" or "winders" shall not be permitted.

(4) Straight chute type: The chute to be same as herein specified in subdivision three of specifications for exterior iron or steel straight chute type fire escape.

(5) Spiral chutes: The chute to be same as herein specified in subdivision three of specifications for exterior iron or steel spiral chute type fire escape.

(6) Access: They shall be accessible from all parts of the building which they are designed to serve, and all lobbies, halls and passageways on each floor leading to fire escapes and in connection therewith, shall be not less than thirty-six inches wide and not less than six feet six inches high, and shall be level with the floor upon which it opens and serves. They shall be so constructed at lower end as to permit direct egress to the outside of the building at grade. All interior stairway type fire escapes shall be continuous starting at ground floor and shall never descend to any basement, and shall extend through roof of the building and terminate in a pent house constructed of non-combustible material with self-closing fire door as herein specified.

(7) Enclosing walls: The following materials may be used for enclosing walls of interior escapes:

(a) Brick or plain solid concrete not less than eight inches in thickness for the uppermost thirty feet, increasing four inches in thickness for each lower section of thirty feet or part thereof, or eight inches in thickness for the entire height when wholly supported at intervals not exceeding thirty feet.

(b) Reinforced stone or gravel concrete not less than five inches in thickness for the uppermost thirty feet, increasing two inches in thickness for each lower section of thirty feet or part thereof, or three inches in thickness for entire height when supported at vertical intervals not exceeding twenty feet, and braced where necessary with lateral supports or suitable steel uprights.

(c) Reinforced cinder concrete not less than five inches in thickness for the entire height when supported at vertical intervals not exceeding fifteen feet, and braced where necessary with lateral supports or suitable steel uprights.

(d) Hollow terra cotta blocks laid in cement mortar not less than five inches thick over all, or hollow concrete blocks of either stone or cinder concrete mortar, not less than five inches thick over all, or solid or hollow blocks consisting of gypsum containing not more than twenty-five per cent by weight of cinders, asbestos fibre, wood chips or vegetable fibre, laid in gypsum plaster or cement mortar tempered with lime, not less

than five inches thick over all, or metal lath on steel studding covered with Portland cement mortar or gypsum plaster of a finished thickness of not less than two inches in the case of solid partitions, nor less than three inches in the case of hollow partitions. All openings in such walls or partitions shall have substantial steel framing, the vertical members of which shall be securely attached to the floor construction above and below.

(8) Door and window openings: All door openings shall be protected by the use of an automatic or self-closing fire doors of standard manufacture, bearing Underwriters label, and where automatic fire doors are used the same shall be enclosed in recess partitions. All doors shall be so arranged and equipped to remain in closed positions at all times and under all conditions except during actual use. All window openings shall have metal sash, bearing Underwriters label, and wire glass.

(9) Lighting: All interior fire escapes shall be provided with not less than one light at each landing equal to a ten watt electric globe, in a separate circuit from that of the building, arranged to operate should the regular lighting system of the building be disabled. [Id.]

Art. 3967. **Painting.**—All fire escapes of any type constructed of iron or steel shall have at least two coats of good metallic paint when erected and shall be painted as frequently thereafter as may be necessary to preserve from rust or climatic influences and at least once every two years. The sliding surface of either the straight chute or spiral chute type fire escape shall be thoroughly cleaned and painted at least once each year.

Art. 3968. **Tests.**—Upon completion and before final approval of any fire escape of any of the types specified herein, both exterior and interior, such fire escape shall be tested by the erector by the application of a live load of one hundred and sixty pounds per square foot of area of balcony floor and stair treads, or a dead load of two hundred and forty pounds per square foot of area of balcony floor and stair treads, in either case simultaneously imposed upon each balcony and the stairways connected therewith leading both up and down. Sand, gravel, concrete blocks or any other suitable commodity may be used in applying these tests, but the load must be accurately weighed and applied as specified herein. By the dead load is meant a load placed in position in whole or in part by any mechanical means and without any person being on the fire escape at the time the test is made, and by live load is meant a load placed in position by mechanical means or by persons and with persons on the fire escape as part of the load at the time the test is made. [Id.]

Art. 3969. **Affidavit.**—Such tests shall be conducted in the presence of the State Fire Marshal or a representative duly appointed by him, or the chief of any fire department, or the city fire marshal of an city or town. If the State Fire Marshal

or his representative or a chief of a fire department, or a city fire marshal cannot be present to witness such test, such officials may permit the erector to furnish an affidavit setting forth that the minimum test herein specified has been made and that the fire escape has fully withstood said test and may accept such affidavit in lieu of the personal presence of such officials. [Id.]

Art. 3970. Completion before occupancy.—All buildings constructed hereafter and within the provisions of this title providing for the equipment of buildings with fire escapes, shall be so provided and equipped, and otherwise meet all requirements of this law, before such buildings are occupied or used in whole or in part. [Id.]

Art. 3971. Inspection.—All fire escapes, extensions and additions to fire escapes constructed and erected under the provisions of this law, shall be inspected by the State Fire Marshal, or any inspector of the State Insurance Commission, or the chief of the fire department of any city or town, or any city fire marshal, before being approved, and no fire escape, extension or addition shall be approved, unless the same conforms to and meets all the provisions of this law. [Id.]

Art. 3972. Injunction.—The Attorney General, or the county attorney of any county in which any building is maintained in violation of any provision of this title, or the district attorney of any district in which such building is located, may proceed by suit or injunction against the owner, or person, board, commission or official having charge of such buildings, to enforce the provisions of this title. Such suit or injunction shall be brought in the name of this State in the district court of the county in which such building is located. Such suit or injunction may be prosecuted by the Attorney General, county or district attorney upon their own motion or upon the relation of any individual, or of any person mentioned in the preceding article. District courts and the judges thereof may issue mandatory injunctions and other writs against any such owner, person, board, commission or official, to enforce the provisions of this title. A disobedience of such injunction shall constitute a contempt of court and be punishable as now provided by law for contempts. Injunctions in such cases may be heard and granted either in term time or vacation, after the defendant has been given ten days notice of the time and place set for the hearing of same. [Id.]

TITLE 64.

FORCIBLE ENTRY AND DETAINER.

| | Article | | Article |
|--------------------------------------|---------|--------------------------|---------|
| When action lies..... | 3973 | Only issue..... | 3984 |
| "Forcible entry"..... | 3974 | Trial..... | 3985 |
| Other cases..... | 3975 | Judgment and writ..... | 3986 |
| May sue for rent..... | 3976 | May appeal..... | 3987 |
| Citation..... | 3977 | Form of appeal bond..... | 3988 |
| Complainant may have possession..... | 3978 | Transcript..... | 3989 |
| Requisites of complaint..... | 3979 | Damages..... | 3990 |
| Service of citation..... | 3980 | Judgment by default..... | 3991 |
| Docketed..... | 3981 | Judgment on appeal..... | 3992 |
| Demanding jury..... | 3982 | Writ of restitution..... | 3993 |
| Trial postponed..... | 3983 | No bar..... | 3994 |

Art. 3973. [3940-43] **When action lies.**—If any person (1) shall make an entry into any lands, tenements or other real property, except in cases where entry is given by law, or (2) shall make any such entry by force or (3) shall wilfully and without force hold over any lands, tenements or other real property after the termination of the time for which such lands, tenements or other real property were let to him, or to the person under whom he claims, after demand made in writing for the possession thereof by the person or persons entitled to such possession, such person shall be adjudged guilty of forcible entry and detainer, or of forcible detainer, as the case may be. Any justice of the peace of the precinct where the property is situated shall have jurisdiction of any case arising under this title. [Acts 1876, p. 155; G. L. Vol. 8, p. 991.]

Art. 3974. [3941] [2520] [2441] **"Forcible entry."**—A "forcible entry," or an entry where entry is not given by law, is:

1. An entry without the consent of the person having the actual possession.

2. As to a landlord, an entry upon the possession of his tenant at will or by sufferance, whether with or without the tenant's consent. [Id.]

Art. 3975. [3942] [2521] [2442] **Other cases.**—A person shall be adjudged guilty of forcible detainer also in the following cases:

1. Where a tenant at will or by sufferance refuses, after demand made in writing as aforesaid, to give possession to the landlord after the termination of his will.

2. Where the tenant of a person who has made a forcible entry refuses to give possession, after demand as aforesaid, to the person upon whose possession the forcible entry was made.

3. Where a person who has made a forcible entry upon the possession of one who acquired it by forcible entry refuses to give possession on demand, as aforesaid, to him upon whose possession the first entry was made.

4. Where a person who has made a forcible entry upon the possession of a tenant for a term refuses to deliver possession to the landlord upon demand as aforesaid, after the term expires; and, if the term expire whilst a writ of forcible entry sued out by the tenant is pending, the landlord may, at his own cost and for his own benefit, prosecute it in the name of the

tenant. It is not material whether the tenant shall have received possession from his landlord or have become his tenant after obtaining possession. [Id.]

Art. 3976. **May sue for rent.**—A suit for rent may be joined with an action of forcible entry and detainer, wherever the suit for rent is within the jurisdiction of the justice court. In such case the court, in rendering judgment in the action of forcible entry and detainer, may at the same time render judgment for any rent due the landlord by the renter; provided the amount thereof is within the jurisdiction of the justice court. [Acts 1911, p. 28.]

Art. 3977. [3944] [2523] [2444] **Citation.**—When the party aggrieved, or his authorized agent, shall file his written sworn complaint with such justice he shall immediately issue citation to the sheriff or any constable of the county, commanding him to summon the person against whom complaint is made to appear before such justice at a time and place named in such citation, such time being not more than ten days nor less than six days from the date of service of such citation. [Acts 1876, p. 155; G. L. Vol. 8, p. 991; Acts 1917, p. 363; Acts 4th C. S. 1918, p. 176.]

Art. 3978. [3944] [2523] [2444] **Complainant may have possession.**—If the party aggrieved shall, at the time of filing his complaint, execute a bond, to be approved by the justice, in such an amount as the justice may fix as the probable amount of the costs of suit and of the damages which may result to defendant in the event the suit has been improperly instituted, and conditioned that the plaintiff will pay defendant all such costs and damages as shall be adjudged against him, the officer serving such citation shall place the aggrieved party in possession of the property sued for, unless the defendant shall, within six days from the service of the citation, execute and deliver to such officer a bond in an amount double the amount of the bond given by the plaintiff, to be approved by the officer serving such citation, and conditioned that the defendant in case judgment is rendered against him will pay all the costs of suit and the reasonable rental or value of the use of the property during the time he has withheld possession of the same from plaintiff to the time of making such bond and in addition will also pay the reasonable value or rental of such property while such suit is pending and until it is finally disposed of. [Id.]

Art. 3979. [3945] [2524] [2445] **Requisites of complaint.**—The complaint shall describe the lands, tenements or premises, the possession of which is claimed, with certainty sufficient to identify the same, and it shall also state the facts which entitle the complainant to the possession and authorize the action under the first three articles of this title. [Acts 1876, p. 155; G. L. Vol. 8, p. 991.]

Art. 3980. [3946] [2525] [2446] **Service of citation.**—The officer receiving such citation shall execute the same by reading it to the defendant, or by leaving a copy thereof with some person over the age of sixteen years, at his usual place of abode,

at least five days before the return day thereof; and, on the day assigned for trial he shall return such citation, with his action written thereon, to the justice who issued the same. [Id.]

Art. 3981. [3949-52] **Docketed.**—The cause shall be docketed and tried as other cases; and the justice shall have authority to issue subpoenas for witnesses, to enforce their attendance, and to punish for contempt. [Id. Acts 1897, p. 16; G. L. Vol. 10, p. 1070.]

Art. 3982. [3947-48] **Demanding jury.**—Either party shall have the right of trial by jury, by making demand to the justice on or before the day for which the case is set for trial, and paying the jury fee of three dollars. When a jury is demanded they shall be summoned as in other cases in justice court. [Id.]

Art. 3983. [3951] [2530] [2451] **Trial postponed.**—For good cause shown, supported by affidavit of either party, the trial may be postponed not exceeding six days. [Acts 1876, p. 155; G. L. Vol. 8, p. 991.]

Art. 3984. [3950] [2529] [2450] **Only issue.**—In cases of forcible entry or of forcible detainer under this title, the only issue shall be as to the right to actual possession; and the merits of the title shall not be inquired into. [Acts 1897, p. 16; G. L. Vol. 10, p. 1070.]

Art. 3985. [3952-53] **Trial.**—If no jury is demanded, the justice shall try the case. If a jury is demanded by either party, the jury shall be impaneled and sworn as in other cases; and, after hearing the evidence, they shall return their verdict of guilty or not guilty of the charge as stated in the complaint. [Id. Acts 1876, p. 155; G. L. Vol. 8, p. 991.]

Art. 3986. [3954-55] **Judgment and writ.**—If the defendant be found guilty, the justice shall give judgment for the plaintiff for restitution of the premises and costs; and he shall award his writ of restitution. If the defendant be found not guilty, judgment shall be given in favor of the defendant and against the plaintiff for all costs. No writ of restitution shall issue until the expiration of two days from the rendition of the judgment. Execution may issue for costs. [Id.]

Art. 3987. [3956] [2534] [2455] **May appeal.**—Either party may appeal from a final judgment in such case, to the county court of the county in which the judgment is rendered, by giving notice thereof in open court and by filing with the justice within five days after the rendition of said judgment, a bond to be approved by said justice, and payable to the adverse party, conditioned that he will prosecute his appeal with effect, or pay all costs and damages which may be adjudged against him; and no motion for a new trial shall be necessary to authorize such appeal. [Acts 1876, p. 155; G. L. Vol. 8, p. 991.]

Art. 3988. [3957] [2535] **Form of appeal bond.**—The appeal bond made in the preceding article may be substantially as follows:

“The State of Texas,

“County of.....

“Whereas, upon a writ of forcible entry (or forcible detainer)

in favor of A B, and against C D, tried before _____, a justice of the peace of _____ county, a judgment was rendered in favor of the said A B on the _____ day of _____ A. D. _____, and against the said C D, from which the said C D has appealed to the county court; now, therefore, the said C D and _____ his sureties, covenant that he will prosecute his said appeal with effect and pay all costs and damages which may be adjudged against him.

“Given under our hands this _____ day of _____ A. D. _____” [Id.]

Art. 3989. [3958-59] **Transcript.**—When such appeal bond is filed, the justice shall stay all further proceedings on the judgment, and immediately make out a transcript of all the entries made on his docket of the proceedings had in the case; and he shall file the same, together with the original papers, with the clerk of the county court of the county in which the trial was had, on or before the first day of the first term of said court, or, if there be insufficient time, on or before the first day of the next succeeding term thereof. The county clerk shall docket the cause, and the trial shall be de novo. [Id.]

Art. 3990. [3960] [2538] [2459] **Damages.**—On the trial of the cause in the county court the appellant shall be permitted to prove the damages for withholding the possession of the premises from the appellee during the pendency of the appeal and for the reasonable expenses of the appellee in prosecuting or defending the cause in the county court; and, if the possession of the premises be not adjudged to the appellant, said court shall render judgment also in favor of the appellee and against said appellant and the sureties on his bond for the damages proven and all costs. [Id.]

Art. 3991. [3961] [2539] [2460] **Judgment by default.**—If the defendant fails to enter an appearance upon the docket of the county court on appearance day, and before the case is called regularly for trial, the facts alleged in the complaint may be taken as admitted and judgment by default may be entered accordingly. [Id.]

Art. 3992. [3962] [2540] [2461] **Judgment on appeal.**—The judgment of the county court finally disposing of the cause shall be conclusive of the litigation, and no further appeal shall be allowed, except where the judgment shall be for damages in an amount exceeding one hundred dollars.

Art. 3993. [3963] [2541] [2462] **Writ of restitution.**—The writ of restitution, or execution, or both, shall be issued by the clerk of the county court according to the judgment rendered, and the same shall be executed by the sheriff or constable, as in other cases; and such writ of restitution shall not be suspended or superseded in any case by appeal from such final judgment in the county court.

Art. 3994. [3964] [2542] [2463] **No bar.**—The proceedings under a forcible entry, or forcible detainer, shall not bar an action for trespass, damages, waste, rent or mesne profits.

TITLE 65.

FRAUDS AND FRAUDULENT CONVEYANCES.

| | Article | | Article |
|----------------------------|---------|-----------------------------|---------|
| Writing required..... | 3995 | Chattel mortgage..... | 4000 |
| Conveyance to defraud..... | 3996 | Sales in bulk..... | 4001 |
| Voluntary conveyance..... | 3997 | Liability of purchaser..... | 4002 |
| Gift..... | 3998 | Exceptions..... | 4003 |
| Loan of chattels..... | 3999 | Actionable fraud..... | 4004 |

Art. 3995. [3965] [2543] [2464] **Writing required.**—No action shall be brought in any court in any of the following cases, unless the promise or agreement upon which such action shall be brought, or some memorandum thereof, shall be in writing and signed by the party to be charged therewith or by some person by him thereunto lawfully authorized:

1. To charge any executor or administrator upon any promise to answer any debt or damage due from his testator or intestate, out of his own estate; or,

2. To charge any person upon a promise to answer for the debt, default or miscarriage of another; or,

3. To charge any person upon any agreement made upon consideration of marriage; or,

4. Upon any contract for the sale of real estate or the lease thereof for a longer term than one year; or,

5. Upon any agreement which is not to be performed within the space of one year from the making thereof. [Acts 1840, p. 28; P. D. 3875; G. L. Vol. 2, p. 202.]

Art. 3996. [3966] [2544] [2465] **Conveyance to defraud.**—Every gift, conveyance, assignment, or transfer of, or charge upon, any estate real or personal, every unit commenced, or decree, judgment or execution suffered or obtained and every bond or other writing given with intent to delay, hinder or defraud creditors, purchasers, or other persons of or from what they are, or may be, lawfully entitled to, shall, as to such creditors, purchasers or other persons, their representatives or assigns, be void. This article shall not affect the title of a purchaser, for valuable consideration, unless it appear that he had notice of the fraudulent intent of his immediate grantor, or of the fraud rendering void the title of such grantor. [Id. P. D. 3876.]

Art. 3997. [3967] [2545] [2466] **Voluntary conveyance.**—Every gift, conveyance, assignment, transfer or charge made by a debtor, which is not upon consideration deemed valuable in law, shall be void as to prior creditors, unless it appears that such debtor was then possessed of property within this State subject to execution sufficient to pay his existing debts; but such gift, conveyance, assignment, transfer or charge shall not on that account merely be void as to subsequent creditors, and though it be decreed to be void as to a prior creditor, because voluntary, it shall not for that cause be void as to subsequent creditors or purchasers. [Id. P. D. 3876-77.]

Art. 3998. [3968] [2546] [2467] **Gift.**—No gift of any goods or chattels shall be valid unless by deed or will, duly ac-

knowledge or proven up and recorded, or unless actual possession shall have come to, and remained with, the donee or some one claiming under him. [Id. P. D. 3876.]

Art. 3999. [3969] [2547] [2468] **Loan of chattels.**—Where any loan of goods or chattels shall be pretended to have been made to any person with whom, or those claiming under him, possession shall have remained for the space of two years without demand made and pursued by due process of law on the part of the pretended lender; or when any reservation or limitation shall be pretended to have been made of a use of property, by way of condition, reversion, remainder or otherwise in goods and chattels, the possession whereof shall have remained in another as aforesaid, the same shall be taken as to the creditors and purchasers, of the persons aforesaid so remaining in possession, to be fraudulent within this title, and that the absolute property is with the possession, unless such loan, reservation or limitation of use of property were declared by will, or by deed or other instrument in writing, duly acknowledged or proved and recorded. [Id.]

Art. 4000. [3970] [2548] **Chattel mortgage.**—Every mortgage, deed of trust or other form of lien attempted to be given by the owner of any stock of goods, wares or merchandise daily exposed to sale, in parcels, in the regular course of business of such merchandise, and contemplating a continuance of the possession of said goods and control of said business, by sale of said goods by said owner, shall be deemed fraudulent and void. [Acts 1879, p. 60; G. L. Vol. 8, p. 1360.]

Art. 4001. [3971] **Sales in bulk.**—The sale or transfer in bulk of any part or the whole of a stock of merchandise, or merchandise and fixtures pertaining to the conducting of said business otherwise than in the ordinary course of trade, and in the regular prosecution of the business of the seller or transferor, shall be void as against the creditors of the seller or transferor, unless the purchaser or transferee demand and receive from the transferor a written list of names and addresses of the creditors of the seller or transferor with the amount of the indebtedness due or owing to each and certified by the seller or transferor under oath to be a full, accurate and complete list of his creditors, and of his indebtedness; and unless the purchaser or transferee shall at least ten days before taking possession of such merchandise or merchandise and fixtures, or paying therefor, notify personally or by registered mail each creditor whose name and address is stated in said list, or of which he has knowledge, of the proposed sale and of the price, terms and conditions thereof. Any purchaser or transferee who shall not conform to the provisions of this law shall, upon application of any of the creditors of the seller or transferor become a receiver, and be held accountable to such creditors for all goods, wares, merchandise and fixtures

that have come into his possession by virtue of such sale or transfer. [Acts 1909, p. 66; Acts 1915, p. 171.]

Art. 4002. [3972] **Liability of purchaser.**—Any purchaser or transferee who shall conform to the provisions of the preceding article, shall not in any way be held accountable to any creditor of the seller or transferor for any of the goods, wares, merchandise or fixtures that have come into possession of said purchaser or transferee by virtue of such sale or transfer. [Id.]

Art. 4003. [3973] **Exceptions.**—The two preceding articles shall not apply to sales by executors, administrators, receivers or any public officer conducting a sale in his official capacity, nor to a sale or transfer of stocks of merchandise and fixtures for the payment of bona fide debts, where all creditors share in proportion to their respective claims, and without preference in the sale or transfer or the proceeds thereof. [Id.]

Art. 4004. **Actionable fraud.**—Actionable fraud in this State with regard to transactions in real estate or in stock in corporations or joint stock companies shall consist of either a false representation of a past or existing material fact, or false promise to do some act in the future which is made as a material inducement to another party to enter into a contract and but for which promise said party would not have entered into said contract. Whenever a promise thus made has not been complied with by the party making it within a reasonable time, it shall be presumed that it was falsely and fraudulently made, and the burden shall be on the party making it to show that it was made in good faith but was prevented from complying therewith by the act of God, the public enemy or by some equitable reason. All persons guilty of such fraud shall be liable to the person defrauded for all actual damages suffered, the rule of damages being the difference between the value of the property as represented or as it would have been worth had the promise been fulfilled, and the actual value of the property in the condition it is delivered at the time of the contract. All persons making the false representations or promises and all persons deriving the benefit of said fraud, shall be jointly and severally liable in actual damages, and in addition thereto, all persons wilfully making such false representations or promises or knowingly taking the advantage of said fraud shall be liable in exemplary damages to the person defrauded in such amount as shall be assessed by the jury, not to exceed double the amount of the actual damages suffered. [Acts 1919, p. 77.]

TITLE 66.

FREE PASSES, FRANKS AND TRANSPORTATION.

| | | | |
|-----------------------------|---------|-----------------------------------|---------|
| | Article | | Article |
| Free passes prohibited..... | 4005 | Discrimination as to persons..... | 4011 |
| Exceptions | 4006 | Evidence of authority..... | 4012 |
| Definitions | 4007 | Discrimination by device..... | 4013 |
| Special rates..... | 4008 | Reports, etc..... | 4014 |
| Free transportation..... | 4009 | Penalty..... | 4015 |
| Advertising | 4010 | | |

Art. 4005. Free passes prohibited.—No steam or electric railway company, street railway company, interurban railway company or other chartered transportation company, express company, sleeping car company, telegraph company, telephone company or person or association of persons operating the same, nor any receiver or lessee thereof, nor any officer, agent or employee or receiver of any such company in this State shall knowingly haul or carry any property free of charge, or give or grant to any person, firm or association of persons a free pass, frank, privilege or substitute for pay or a subterfuge which is used or which is given to be used instead of the regular fare or rate of transportation or any authority or permit whatsoever to travel or to pass or convey or transport any person or property free, nor sell any transportation for anything except money, or for any greater or less rate than is charged all persons under the same conditions, over any railway or transportation lines or part of line in this State; or shall knowingly permit any person to transmit any message free in this State; or shall give any frank or right or privilege to transmit any message free in this State or property free of charge or for greater or less fare or rate than is charged other persons in this State for similar service, except as hereinafter provided in this title.

Art. 4006. Exceptions.—The preceding article shall not be held to prevent any steam or electric interurban railway, telegraph company or chartered transportation company or sleeping car company or the receivers or lessees thereof or persons operating same or the officers, agents or employees thereof from granting or exchanging free passes or free transportation, franks, privileges, substitutes for pay, or other thing prohibited by the provisions of the preceding article to any of the following named persons: The actual bona fide employees of any such person or corporation, company, association, or the members of their families; persons actually employed on sleeping cars and express cars; newsboys employed on trains; railway mail service employees and their families; furloughed, pensioned; and superannuated employees; persons who have been disabled or who have become infirm in the service of an such corporation, company, association or person; the remains of any person killed in the employment of a common carrier; members of the family of persons killed while in the service of any such common carrier; the family or any person who was, for a period of ten years or more, an employee of such common carrier and who died while in the service of the same; ex-employees traveling for

the purpose of entering the service of any such common carrier; post office inspectors; the chairman of bona fide members of grievance committees of employees; bona fide custom and immigration inspectors employed by the government; State Health Officer and one assistant; Federal Health Officers; county health officers; members of the Industrial Accident Board or any employee thereof; State Railroad Commissioners; Secretary of the Railroad Commission; Engineer of the Railroad Commission; Inspector of the Railroad Commission; Auditor of the Railroad Commission; State Game, Fish and Oyster Commissioner and his two chief deputies; government representatives from the Texas fish hatcheries; shipments of fish for free distribution in the waters of this State; the necessary caretakers while en route and return of any shipments of live stock, poultry, fruit, melons or other perishable produce; trip passes to indigent poor when application therefor is made by any religious or charitable organization; sisters of charity, or members of any religious society of like character; any minister of religion on intrastate trips in this State; any citizen of the State who served in the war between the States of the Union either on the Confederate side or on the Union side of said war, veterans of the Spanish-American war, and the wife or widow of any such citizen or veteran; veterans of the Texas ranger force who served the State prior to the year 1900, and their wives or widows; delegates to different farmers' institutes, farmers' congresses and farmers' unions; delegates to State and district firemen's conventions from volunteer fire companies; managers of Young Men's Christian Associations, or other eleemosynary institutions while engaged in charitable work; the officers or employees of industrial fairs during the continuance of any said fair and six months prior thereto, provided that no more than four officers or employees of any one fair or fair association shall receive free passage in any one year; persons injured in wrecks upon the road of any such company immediately after such injury, and the physicians and nurses attending such persons at the time thereof; persons and property carried in cases of general epidemic, pestilence or other calamitous visitation at the time thereof or immediately thereafter; United States Marshals and no more than two of the deputies of each such marshal; State rangers; the Adjutant General and Assistant Adjutant General of this State; members of the State militia in uniform and when called into the service of the State; sheriffs and no more than two of their deputies; constables and no more than two of their deputies; chiefs of police or city marshals, whether elected or appointed; members of the Livestock Sanitary Commission of Texas and their inspectors not to exceed twenty-five in number for any one year; and any other bona fide peace officer when his duty is to execute criminal process; bona fide policemen or firemen in the service of any city or town in Texas when such policemen or firemen are in the discharge of their public duty, but this provision shall not be construed so

as to apply to persons holding commissions as special policemen or firemen.

Art. 4007. Definitions.—The word “employee” as used in this title shall be held to include all officers, agents or employees, actually employed and engaged in the service of such corporation, company, association of persons, including its officers, bona fide ticket and freight agents, physicians, surgeons and general attorneys, and attorneys who appear in court to try cases and receive a reasonable annual salary therefor. The word “family” as used in this title shall include the wife, minor children and dependents of any such employe or person. The words “minister of religion” shall be construed to mean only those whose principal occupation is that of a minister of religion, priest or rabbi.

Art. 4008. Special rates.—Nothing in this title shall be held to prevent any corporation, association or person mentioned in the first article of this title from granting transportation at the rate of one cent per mile to veterans mentioned in the preceding article, or their wives or widows; honorably discharged soldiers, sailors, marines and Red Cross nurses of the late world war to or from the annual convention, Department of Texas American Legion; any minister of religion for intrastate trips, or from granting to ministers of religion reduced rates of one-half the regular fare, or to prohibit the making of special rates for special occasions or under special conditions, provided authority therefor shall first be obtained from the Railroad Commission of Texas; or to prohibit transportation between points wholly within this State at the reduced rate of one cent per mile while traveling on official business connected with their respective offices, the following named peace officers, to wit: Adjutant General of this State; State rangers; the sheriff of any county, his deputies to be designated by him; constables; chiefs of police and assistant chiefs and captains; city marshals, chief of the detectives of any county or city, and assistant detectives. [Acts 1907, p. 94; Acts 1911, p. 151; Acts 1921, pp. 171, 191, 214; Acts 1923, p. 175; Acts 2nd C. S. 1923, p. 100.]

Art. 4009. Free transportation.—Nothing in this title shall be construed to prohibit any express company from hauling or carrying free of charge any package or property of its actual bona fide officers, attorneys, agents and employees while in the service of such express company, nor to prevent any article being sent free to any orphan home or other charitable institution, nor to prohibit any telegraph or telephone company from transmitting free of charge any message of its bona fide officers, attorneys, agents or employees and their families while in the actual employment of such company or its receiver or lessee; provided the actual bona fide officers and employees upon annual salaries of railway telephone companies and telegraph companies are hereby permitted to exchange frank pri-

vileges and free transportation over their respective lines of railway and telegraph or telephone.

Art. 4010. **Advertising.**—Nothing in this title shall be construed to prevent any of the parties named in the first article hereof, publishers, editors or proprietors of newspapers or magazines, from making an exchange of mileage for advertising space in such newspaper or magazine, provided the contract between the railway companies and publishers, editors or proprietors of such newspapers or magazines shall be at the same rate as is charged the public generally for like service, providing that such contract shall be in writing and shall not be operative until approved by the Railroad Commission of this State, and filed in the office of such Commission, subject at all times to a reasonable public inspection.

Art. 4011. **Discrimination as to persons.**—If any corporation, company, association or person mentioned in Article 4005 shall grant to any sheriff, constable or marshal or to any minister of religion a free pass over its lines of railroad, it shall issue like free transportation to each and every sheriff, constable or marshal, and every minister of religion in this State, who may make written application therefor.

Art. 4012. **Evidence of authority.**—Any veteran of any of the wars mentioned in this title, their wives, widows or members of their families, and any minister of religion, or any fireman, sister of charity or member of any religious society of like character, who desires to receive the benefits of free or reduced transportation as mentioned in this title shall present to the president, manager, officer, or person authorized to issue such transportation satisfactory evidence that he or she is entitled thereto, as herein provided. The officers entitled to the benefits of this law shall, when presenting themselves to the agent of any such railway or interurban railway company for the purchase of a ticket or to pay his fare, exhibit to such agent in case of the Adjutant General and State Rangers a certificate of the Secretary of State under seal, in case of sheriffs and constables and their deputies a certificate under seal of the county judge of the county where they hold office and in case of officers of a city or town a certificate under seal of the mayor of such city or town stating that such person is entitled to the reduced fare herein provided for. Sheriffs and constables shall designate in writing the two deputies entitled to the reduced rates herein provided for. If the sheriff or constable has designated two deputies who are entitled to such reduced rates, then no deputy of such sheriff or constable shall be entitled to free transportation under the provisions of the pass laws of this State. [Acts 1921, p. 171.]

Art. 4013. **Discrimination by device.**—No corporation, company or person mentioned in the first article of this title shall directly or indirectly, by any special rate, rebate, draw-back, or other device, demand, exchange, collect or receive from any person, firm, association or corporation a greater or less or dif-

ferent compensation for any service rendered or to be rendered, in the transportation of passengers, properties or messages, than it or he charges, demands, collects or receives from any other corporation, person, firm or association of persons doing business in this State for a like service under substantially similar circumstances and conditions except as is provided in this title, nor shall grant any free transportation or franking privilege to any corporation or person except as provided in this title. [Acts 1907, p. 96.]

Art. 4014. **Reports, etc.**—Each corporation, company or person subject to the provisions of this title shall report annually, on such dates as may be fixed by the Railroad Commission of Texas, the name and residence of each person to whom free transportation or right thereto was given to travel or to have his property or messages transported or transmitted free over the transportation, express, sleeping car, railway or telegraph or telephone line, and the name and address of each person to whom has been granted the right to travel over any such railway lines at a reduced rate; any company violating this provision shall be deemed guilty of a misdemeanor, and for each offense on conviction shall pay to the State of Texas a penalty of one thousand dollars. (Note: See Art. 165, Penal Code.)

Art. 4015. **Penalty.**—Any corporation, company, association of persons or any person named in the first article of this title violating any provision of this title, except Article 4014, shall forfeit and pay to the State of Texas a penalty of five thousand dollars for each violation, to be recovered in suit by the State, brought by the Attorney General or by any county or district attorney under the direction of the Attorney General.

TITLE 67.

FISH, OYSTER, SHELL, ETC.

| | | | |
|------------------------------|------|------------------------|------|
| Chapter | Page | Chapter | Page |
| 1 Commissioner and deputies | 1092 | 3 Marl, sand and shell | 1104 |
| 2 Fish and other marine life | 1095 | | |

CHAPTER ONE.

COMMISSIONER AND DEPUTIES.

| | | | |
|-----------------------|---------|---------------------------|---------|
| | Article | | Article |
| Oath and bond | 4017 | Oath and bond of deputies | 4022 |
| The Commissioner | 4016 | Salaries and expenses | 4023 |
| Duties and powers | 4018 | Fees of Commissioner | 4024 |
| To report to Governor | 4019 | Disposition of money | 4025 |
| To keep record | 4020 | | |

Art. 4016. **The Commissioner.**—The Game, Fish and Oyster Commissioner shall have his office in the State Capitol in the city of Austin, Texas, during his term of office which shall be two years, the first term to begin September 1, 1925.

Art. 4017. **Oath and bond.**—The Game, Fish and Oyster Commissioner shall file with the Secretary of State a good and sufficient bond to be approved by that official in the sum of ten thousand (\$10,000.00) dollars, with a surety company, conditioned that he will faithfully perform the duties of his office, the premium on such bond to be paid from any available funds appropriated to the use of the Game, Fish and Oyster Commission. He shall take the oath prescribed for sheriffs, and when he shall file said bond and take said oath, he shall enter on the duties of his office. Said bond shall not be void on the first recovery, but may be sued on from time to time in the name of the State or any person injured, until the whole amount has been recovered. [Acts 1925, p. 438.]

Art. 4018. [3879] **Duties and powers.**—The duties of the Commissioner shall be in the execution of the laws relating to game, fish, oysters and marine life, and such further duties as are imposed upon him by legislation. In the execution of these laws he shall exercise the power and authority given to sheriffs. The Commissioner is authorized to collect and enforce the payment of all taxes, licenses, fines and forfeitures, and all money due his department, by deputies or persons employed for that purpose, and to inspect all products so taxed, and to verify the weights and measures thereof; to examine, or have examined, all streams, lakes or ponds when requested to do so, for the purpose of stocking such waters with fish best suited to such locations and he shall superintend and have control in the propagation of fish in the State fish hatchery and the distribution of such fish, and he shall have superintendence and control of the propagation and distribution of birds and game in the State reservation over which he may have control, or which may be established for such propagation. The Commissioner, or any of his deputies, may arrest without warrant anyone found violating any of the fish, game or oyster laws of Texas, and shall have the same right to execute original process as sheriffs. [Id. p. 192; Acts 1907, p. 255.]

Art. 4019. [4003] **To report to Governor.**—The Commissioner shall make on the 31st day of August of each year, or as soon as practicable, not later than October 1st, a report to the Governor, showing the condition of the fish and oyster industry, which shall show the special taxes collected, the number and class of all boats engaged in the fish and oyster trade, the number of licenses issued and license fees collected, the number, place and acreage of private oyster beds and rents received therefor, and all other amounts collected from whatever source and the disbursements therefor, with such observations as pertain to the industry. The report shall contain a statement of all stock furnished, to whom furnished, the cost of same, the streams, lakes or ponds stocked, the number and kind of fish used in each, and the condition of such plants, with any other data he may obtain on the subjects. The Governor shall order a sufficient number of copies of such report to be printed and filed in the Secretary of State's office for the purpose of free distribution to parties interested therein. For failure to make such report within the time specified, the Commissioner may, in the discretion of the Governor, be dismissed from his office. [Id. p. 212.]

Art. 4020. [4001] **To keep record.**—The Commissioner shall keep a well bound record book in which shall be recorded all special taxes collected, all licenses issued and license fees collected, all certificates issued for location of private oyster beds, showing the date of certificate and application, when and how the applications were executed and the manner in which the bottoms were examined and rents collected for such locations, showing also all stock fish furnished, to whom furnished, and the cost of same, the streams, lakes or ponds stocked and the number and kinds of fish used in each; and showing all collections and disbursements in and from his office. The Commissioner shall keep an account with each person, firm or corporation holding certificates for the location of private oyster beds in this State, showing the amounts received as rents, etc. [Id. p. 213.]

Art. 4021. **Fish and Oyster Deputies.**—The Commissioner is authorized to appoint deputies for each of the vessels owned by the State and employed in the Fish and Oyster Department, and such other shore and interior deputies as he may deem necessary for the enforcement of the law. All such deputies shall have and exercise the same powers and duties as the Commissioner, and be at all times subject to his orders, and shall hold their office at his pleasure. Each Deputy Fish and Oyster Commissioner shall be ex-officio game commissioner. No person shall hold such office of Deputy Commissioner who is not a citizen of the United States and of this State. All such Deputy Commissioners shall make a monthly report to the Commissioner of all funds collected by them, remitting along with said

report all moneys collected by them during the said month. [Acts 2nd C. S. 1919, p. 213.]

Art. 4022. **Oath and bond of deputies.**—Before entering upon the duties of his office, each deputy shall file with the Commissioner a good and sufficient bond, with two or more sureties, in the sum of one thousand dollars, and take the same oath of office as the Commissioner, and said bond and oath shall be governed by the provisions of Article 4017. [Id.]

Art. 4023. **Salaries and expenses.**—Out of any available funds, the Commissioner and all Fish and Oyster Deputies and employees of the Game, Fish and Oyster Commission shall be paid their salaries and expenses monthly, upon approval of the Commission, the Comptroller drawing his warrant in favor of each of said persons on the special funds appropriated for said purposes as follows: The Commissioner, thirty-six thousand dollars per annum, and not more than fifteen hundred dollars per annum for traveling and other expenses, to be paid on vouchers approved by the Governor, showing that such amounts have been actually expended in the performance of his duties of said office, and he shall be allowed all stationery, books, blanks, tags, State Laws and charts necessary to the execution of the duties of his office; the chief deputy game, fish and oyster commissioner and all other deputy fish and oyster commissioners and employees of the Game, Fish and Oyster Commission, except special game deputies, deputies employed at fresh water fish hatcheries and sand, shell and gravel deputies, shall be paid their salaries and expenses monthly upon approval of the Game, Fish and Oyster Commissioner out of the fish and oyster fund, the Comptroller drawing his warrant in favor of each of said persons on the fish and oyster fund, appropriated for said purposes, as follows: chief deputy game, fish and oyster commissioner, twenty-five hundred dollars per annum; deputies on boats, not to exceed one hundred twenty-five dollars per month; mates on boats, eighty dollars per month; shore deputies, not to exceed one hundred twenty-five dollars per month; lake deputies, not to exceed one hundred twenty-five dollars per month; assistant lake deputies, not to exceed seventy-five dollars per month; supervisor of coastal fisheries not to exceed one hundred fifty dollars per month. It shall be the duty of the Game, Fish and Oyster Commissioner to collect all taxes, licenses and fines as imposed by law, and enforce their payment, to inspect all products so taxed, and to verify the weights and measures thereof, to collect license fees, to collect all rents on locations for planting oysters, to examine or have examined, all streams, lakes or ponds, when requested to do so, for the purpose of stocking such waters with fish best suited to such locations, and he shall superintend and have control in the propagation of fish in the State fish hatcheries, and the distribution of such fish, and he shall have superintendence and control of the propagation and distribution of birds and game in the State reservations over which he may have control, or which may be established for such propagation. He shall also be allowed a sum not to exceed

fifteen hundred dollars per annum for traveling and other expenses to be paid on vouchers showing that such amounts have actually been expended in the performance of his duties of said office, and he shall be allowed all stationery, books, blanks, tags, State laws and charts necessary to the execution of the duties of his office. [Id. p. 446.]

Art. 4024. [4017] **Fees of Commissioner.**—In making arrests, summoning witnesses and serving process, the Commissioner or his deputies shall be allowed the same fees and mileage as sheriffs, the same to be charged and collected as are sheriff's fees. [Acts 1895, p. 70.]

Art. 4025. [4013] **Disposition of money.**—Of all fines collected for infraction of the fish and oyster laws, ten per cent shall go to the prosecuting attorney, and the residue thereof shall go to the general fund of this State. All funds collected by deputy commissioners along the coast for register certificates, licenses, and rents for locating private oyster beds, and such other charges relating to the fish and oyster laws as may be prescribed, shall be by such deputies paid over weekly to the Commissioner, who in turn shall deposit the same monthly in the State Treasury to the credit of the general revenue fund. [Acts 1913, p. 297; Acts 1923, 2nd C. S. p. 61.]

CHAPTER TWO.

FISH AND OTHER MARINE LIFE.

| | Article | | Article |
|---------------------------------|---------|--------------------------------------|---------|
| Property of State..... | 4026 | Limiting location..... | 4039 |
| Oysters beds..... | 4027 | To maintain markings..... | 4040 |
| Riparian rights prescribed..... | 4028 | Rental on location..... | 4041 |
| Private fresh waters..... | 4029 | Oyster permit..... | 4042 |
| Fish and oyster fund..... | 4030 | Shipment of oysters..... | 4043 |
| Tax deposit..... | 4031 | Permit to use seine..... | 4044 |
| License to fish..... | 4032 | Seining, etc., in closed waters..... | 4045 |
| Registering boat..... | 4033 | Seining for drum..... | 4046 |
| License for boat..... | 4034 | Permit to use shrimp seine..... | 4047 |
| Application for oyster bed..... | 4035 | Dredging reefs or beds..... | 4048 |
| Examining location..... | 4036 | Protection of reservation..... | 4049 |
| Locator's certificate..... | 4037 | May take brood fish..... | 4050 |
| Rights of locator..... | 4038 | | |

Art. 4026. **Property of State.**—All fish and other aquatic animal life contained in the fresh water rivers, creeks and streams and in lakes or sloughs subject to overflow from rivers or other streams within the borders of this State are hereby declared to be the property of the people of this State. All of the public rivers, bayous, lagoons, creeks, lakes, bays and inlets in this State, and all that part of the Gulf of Mexico within the jurisdiction of this State, together with their beds and bottoms, and all of the products thereof, shall continue and remain the property of the State of Texas, except in so far as the State shall permit the use of said waters and bottoms, or permit the taking of the products of such bottoms and waters, and in so far as this use shall relate to or affect the taking and conservation of fish, oysters, shrimp, crabs, clams, turtle, terrapin, mussels, lobsters, and all other kinds and forms of marine life, or relate to sand, gravel, marl, mud shell and all other kinds of shell, the Game, Fish and Oyster Commissioner shall have

jurisdiction over and control of, in accordance with and by the authority vested in him by the laws of this State. [Acts 1925, p. 438.]

Art. 4027. **Oyster beds.**—All oyster beds not designated private shall be public. All natural oyster beds and reefs of this State shall be public. A natural oyster bed shall be declared to exist when as many as five barrels of oysters may be found therein within twenty-five hundred square feet of any position of said reef or bed; and any lands covered by water containing less oysters than the above amount shall be subject to location at the discretion of the Commissioner, but this shall not apply to a reef or bed that has been exhausted within a period of eight years. [Acts 1919, p. 289.]

Art. 4028. **Riparian rights prescribed.**—Whenever any creek, bayou, lake or cove shall be included within the metes and bounds of any original grant or location of land in this State, the lawful occupant of such grant or location shall have the exclusive right to use said creek, lake, bayou or cove for gathering, planting or sowing oysters. The Commissioner may require the owner of oysters claimed to be produced on such lands, when such oysters are offered for sale, to make an affidavit that such oysters were produced on such lands. If said creek, bayou, lake or cove is not so included, then the exclusive right of the riparian owner shall, wherever the width of such creek, bayou, lake or cove is two hundred yards or less, extend to the middle thereof, and wherever the width of such waters is more than two hundred yards, extend one hundred yards from shore. The right of the riparian owner for planting oysters along any bay shore in this State shall extend one hundred yards into the bay from high water mark or where the land survey ceases. The riparian owner's right to any natural oyster bed located on such one hundred yard reservation shall not be exclusive. [Acts 1895, p. 70.]

Art. 4029. **Private fresh waters.**—Such of the fresh water lakes, rivers, creeks and bayous within this State as may be embraced in any survey of private land shall not be sold, but shall remain open to the public. If the Commissioner stocks them with fish, he is authorized to protect same for such time and under such rules as he may prescribe. [Acts 2nd C. S. 1919, p. 216.]

Art. 4030. **Fish and oyster fund.**—All funds collected by the Game, Fish and Oyster Commission from the sale of commercial fishermans' licenses, fish dealers licenses, taxes on fish, crabs, oysters and shrimp, and all other taxed marine life, and all fines and penalties collected for any infraction of any laws relating to commercial fishermen, shall be placed in the State Treasury to the credit of a fund to be known as "Fish and Oyster Fund" and, together with the money now to the credit of this fund, is hereby appropriated and shall be used by the Game, Fish and Oyster Commissioner in the enforcement of the fish and oyster laws of this State, and in the dissemination of useful information pertain-

ing to the economic value of fish and oyster marine life; the making of scientific investigations and surveys of the principal sea food fishes and marine life for purpose of the better protection and conservation of same, the propagation and distribution of sea food fishes, oysters, and other marine life; the purchase, repair and operation of boats and the employment of deputies to carry out and enforce the provisions of this Act. [Acts 1925, p. 446.]

Art. 4031. **Tax deposit.**—The applicant for any license under this chapter based upon fish and oysters handled shall, upon the issuance of such license, deposit with the Commissioner, if required to do so by such officer, an amount of money to be fixed by the Commissioner, in addition to the ten dollars required of him as a wholesale dealer as defined in the preceding article, sufficient to cover the estimated amount of tax that would be due by applicant upon monthly business of applicant, and against which deposit the tax due may be charged by the Commissioner, and said applicant shall make additional deposits in sufficient amounts to at all times maintain a deposit sufficient to cover the estimated tax that may be due by applicant, which additional deposit shall be made upon request of the Commissioner. [Acts 2nd C. S. 1919, p. 197.]

Art. 4032. **License to fish.**—Any person who is an American citizen, or an alien who has filed his intention papers and shows his desire to become an American citizen, desiring to fish in the public waters of this State, or fish for oysters, fish, shrimp, turtle, terrapin, clams, crabs or other marine animal life, for the purpose of selling them, shall procure from the Commissioner a license to do so, and such person shall pay the fee of one dollar for such license, which shall be for one year from the date thereof and obligate the holder to observe all the laws of the State enacted to conserve the marine life of such public waters. [Id. p. 200.]

Art. 4033. **Registering boat.**—Any person who is a citizen of the United States wishing to use a boat in catching or taking fish, green turtle, terrapin or shrimp, or gathering oysters or other marine life for market in public waters of this State, shall apply to the Commissioner for permission to do so. Such applicant shall furnish said officer under oath his name, place of residence, the name and kind of boat to be used by him, together with the number of men to be employed by him. Thereupon the officer shall register such boat which register number shall be distinctly painted, as the Commissioner may designate, on such boat, for which registration he shall pay said officer one dollar and fifty cents and said officer shall furnish the applicant with a certificate of such registration, valid for twelve months from date of issuance. [Id. p. 194.]

Art. 4034. **License for boat.**—Any captain or master of any boat wishing to engage in the business of catching or taking any fish, turtle, terrapin, shrimp or oysters or other marine life from the waters of the State for market shall, before engaging in such business, secure from the Commissioner a license for

such business by making written application to the Commissioner. Such applicant shall set forth under oath that he is a citizen of the United States and the name, class and register number of his boat. If the application be for a license to use seines and nets, the applicant shall state the number, class and length of the seines and nets to be used by him, and if the application be for a license to gather oysters, he must state the number of tongs to be used by him, and the applicant shall agree that all such products shall at all times be subject to inspection by the Commissioner and that said application shall authorize said Commissioner to enter at any time the boat or any house or place where he may have such products, and shall further agree to pay to the State a special tax provided for in Article 4030. Upon receipt of such duly executed application, accompanied by the applicant's registration certificate and one dollar, the Commissioner shall issue to the applicant a license to engage in the business set forth in his application, and the license shall be subject to such limitations and control as prescribed by the law. Said license must state the name of the licensee, name and class of his boat, and the date of issuance. Such license shall be for twelve months, if for fishing for fish, turtle, or shrimp; and from September first to April first following the date of license, if for gathering oysters; and from November first to February first inclusive, if for the purpose of catching terrapin. The license so issued shall be kept on the boat subject to the inspection of the Commissioner, and it shall not be transferable without the consent of the Commissioner having been first had, which consent or assignment shall be written across the face of said license. If such licensed captain or master shall violate any fish and oyster law of this State, or shall refuse to comply with any provision made in his application for license, the Commissioner is authorized to cancel said license and the boat registration certificate, notice of which shall be given by the Commissioner in writing and delivered to the licensee, and such license to such captain and the registration of such boat shall not be renewed for three years. Any person wishing to engage in the taking or catching of any fish, turtle, terrapin, shrimp, oysters or other marine life, for market, as employe of the owner or as a part of the crew of any registered boat, shall procure from the Commissioner a license to do so; such person, to obtain such license, must make written application to said Commissioner, setting forth under oath that he is a citizen of the United States or must offer proof that he has already filed his proper intention papers as required by the Federal Government, and shall thereafter be vigilant in the securing of his final citizenship papers. One license issued to a captain or master of a boat under this article shall authorize such licensee to engage in the taking or catching of the products named herein. [Acts 1923, p. 294.]

Art. 4035. Application for oyster bed.—Any person who is a

citizen of the United States or any domestic corporation shall have the right of obtaining a location for planting oysters and making private oyster beds within the public waters of this State, by making written application to the Commissioner describing the location desired. A fee of twenty dollars cash must accompany such application. [Acts 2nd C. S. 1919, p. 197.]

Art. 4036. **Examining location.**—When the application and fee provided for in the preceding article have been received by the Commissioner he shall examine thoroughly the location desired, as soon as practicable, with tongs, dredge or any other efficient means. If the same be not a natural oyster bed or reef, and exempt from location by any article of this chapter, he shall have the location surveyed by a competent surveyor. In making said location, said surveyor shall plant two iron stakes or pipes on the shore line nearest to the proposed location, one at each end of the proposed location, which said stakes or pipes shall be not less than two inches in diameter, and be set at least three feet in the ground. Said stakes or pipes shall be placed with reference to bearings of not less than three natural or permanent objects or land marks. And the locator shall place and maintain under the direction of the Commissioner a buoy at each corner of his oyster claim farthest from the land. No person shall locate water or ground covered with water for planting oysters along any bay shore in this State, nearer than one hundred yards from shore. [Id. p. 197.]

Art. 4037. **Locator's certificate.**—The Commissioner shall give the locator a certificate signed and sealed by the Commissioner. Such certificate shall show the date of application, date of survey, number, description of metes and bounds with reference to the points of the compass and natural and artificial objects by which said location can be found and verified. The locator shall, before such certificate is delivered to him, pay the Commissioner surveyor's fees and all other expenses connected with establishing such location. If such sums, as costs of the location and establishment of the claim, are less than the twenty dollars paid to the Commissioner, the difference in amount shall be returned to such locator by the Commissioner. If such expenses amount to more than twenty dollars, the deficit shall be paid to the Commissioner by the locator.

At any time not exceeding sixty days after the date of such certificate of location, the locator must file the same with the county clerk of the county in which the location is situated, who shall record the same in a well bound book kept for that purpose, and the original with a certificate of registration shall be returned to the owner or locator; the clerk shall receive for the recording of such certificate the same fee as for recording deeds; the original or certified copies of such certificate shall be admissible in evidence under the same rule governing the admission of deeds or certified copies thereof. [Id. p. 198.]

Art. 4038. **Rights of locator.**—Any person who shall be

granted a certificate of location as provided for in the preceding article shall be protected in his possession thereof against trespass thereon in like manner as freeholders are protected in their possessions, as long as he maintains all stakes and buoys in their original and correct position, and complies with all laws, rules and regulations governing the fish and oyster industries. [Id. p. 198.]

Art. 4039. Limiting location.—No person, firm or corporation shall ever own, lease or otherwise control more than one hundred acres of land covered by water, the same being oyster locations under this chapter, and within the public waters of this State; and any person, firm or corporation that now holds more than one hundred acres of oyster locations, shall not be permitted hereafter to acquire, lease or otherwise control more; provided that no corporation shall lease or control any such lands covered by water unless such corporation shall be duly incorporated under the laws of this State. [Id. p. 198.]

Art. 4040. To maintain markings.—Any person, firm or corporation who has secured, or may hereafter secure a location for a private oyster bed in this State, shall keep the two iron stakes or pipes and buoys as provided for by law, in place, and shall preserve the marks so long as he is the lessee of said location, and this shall apply also to any person, firm or corporation acquiring any location by purchase or transfer of any nature, and said locator or the assignee of any locator shall have the right to fence said location or any part thereof; provided that said fence does not obstruct navigation through or into a regular channel or cut leading to other public waters. [Id. p. 198.]

Art. 4041. Rental on location.—The owner or locator of private oyster beds under the foregoing provisions shall not be required to pay any rentals on such locations for a period of five years, or till such time as he shall begin to market or sell oysters from such location or bed. When such locator shall begin to sell or market oysters from such location, he shall pay the State one dollar and fifty cents per acre per annum and two cents a barrel on oyster sales. Failure to pay such rental by the first day of March of each year shall annul and be a forfeiture of his lease. And if oysters are not marketed or sold from such location within five years from the date of location, such location shall become void. [Id. p. 199.]

Art. 4042. Oyster permit.—Any person who is a citizen of the State of Texas, or any corporation chartered by the State to engage in the culture of oysters or transact business in the purchase and sale of oysters and fish, and composed of American citizens, wishing to plant oysters on their own oyster locations or to take oysters from oyster reefs and public waters of the State for the purpose of preparing them for market, shall make application to the Commissioner for permission to do the same. In such application the applicant shall set out distinctly the purpose for which he desires such oysters and also the number

or amount that he desires to take from the beds and waters mentioned. The Commissioner may grant such permit or he may refuse to do so. If he should grant such permit, he shall require the applicant to take the oysters he is authorized to take from beds or reefs designated by such Commissioner and name them in the permit, and it shall be unlawful for any person to take oysters of less size than three and one-half inches from hinge to mouth from any such designated beds or reefs unless authorized to do so by the Commissioner; he shall mark off the exact area of such beds or reefs from which such oysters shall be taken; he shall designate the bottoms on which such oysters shall be deposited, if they are taken to be prepared for market; he shall require the applicant to cull the oysters on the grounds where they are to be located; he shall state what implements such as tongs and dredges shall be used in taking such oysters, and he shall make and enforce all other regulations he may think necessary to protect and conserve the oysters on such public reefs or beds. All oysters taken from or deposited in the public waters of this State as herein provided shall become the personal property of the person or corporation so taking or depositing them. Such person or corporation shall, by buoys or stakes or by fences, clearly and distinctly mark the boundaries of the private bed planted, or the boundaries of the deposit of oysters made for preparation for market; and no prosecution of any one shall be permitted for taking such oysters unless the boundaries of such beds and deposits are established and maintained. [Id. p. 199.]

Art. 4043. **Shipment of oysters.**—It shall be unlawful for any transportation company operating within this State, its officers, agent or employees, to receive for shipment, or to ship, within the boundaries of this State from the first day of May to the first day of September of any year, any oysters from any public bed or reef for depositing or for marketing. Nothing in this chapter shall be construed as to prohibit any such transportation company, its officers, agents or employes, from shipping or receiving for shipment, any oysters taken from a private bed located under the laws of this State, offered for shipment by the owner or owners, locator or locators, of such bed; such fact to be established by the affidavit of the person or persons offering such oysters for shipment. [Id. p. 203.]

Art. 4044. **Permit to use seine.**—All seines and nets used in the salt waters of this State shall be examined by the Commissioner to see that they conform to the requirements of Title 13, Chap. 6, of the Penal Code as to length and size of mesh. If they are found to conform to such requirements, the Commissioner shall tag such seines or nets with a metal tag on which shall be indented the number of such seine and net, and it shall be the duty of the owner of such seine or net to keep the tag attached thereto; the cost of such tag, twenty-five cents, to be paid by the owner of such seine or net. The Commissioner shall then issue

to the owner a permit to use such seine or net for one year from the date of such permit. And such permit shall state the name of the owner of such net, the date on which it was issued, the size of the mesh and the length and kind of such net. The Commissioner shall keep a record book in which the date of issuance of such permit, the name of the owner, the number of the tag, the size of the mesh and the length of such seine or net shall be kept. The Commissioner shall have power to seize and keep in his possession all seines which do not conform to the requirements of such article as evidence until trial of defendant, and no suit shall be maintained against him therefor. [Acts 1923, p. 296.]

Art. 4045. **Seining, etc., in closed waters.**—It shall be unlawful for any person at any time to place, to set or drag any seine or net, or to carry on, over or into the waters hereinafter referred to, or to have in his possession or to carry such seine or net by vehicle or in any other way to any point or place within one mile of such waters, or to use any other device or method for taking fish, other than the ordinary pole and line or cast-net or minnow-seine of not more than twenty feet in length for catching bait, within the waters described in Article 941 of the Penal Code. Nothing in this article shall prevent the use of spear or gig and light for the purpose of securing flounders from such passes as are therein enumerated at any time of the year except during the months of November and December, which months shall constitute a closed season on flounders in all coastal waters of the State. The Commissioner, when he has reason to believe it is best for the protection and increase of fish life, or to prevent their destruction in the bays or parts thereof, or such tidal water, is hereby authorized to close such waters against fishing with any seine, net, spear, gig, light or other devices, except with a hook and line or cast-net or minnow-seine of not more than twenty feet in length. Before so closing any such waters, the Commissioner shall give notice of his intention to do so at least two weeks prior to such closing, giving the reason why action is deemed necessary, and which notice shall contain a designation of the area which it is proposed to close, a statement that after the date indicated in such notice it shall be unlawful to drag a seine or set a net or use a gig or spear and light in taking fish from such waters for the period which the Commissioner in said notice shall declare same to be closed. The Commissioner shall have the authority, when proper hearing has been had and investigation been made, and he has determined that any such closed area in the tidal waters of this State does not promote conservation of fish, to open such area to seining, netting, gigging and fishing of all sorts. The Commissioner shall have power to seize and keep such seines as are used in violation of any provision of this article, in his possession as evidence until trial of defendant, and no suit shall be maintained against him therefor. [Acts 1923, p. 297.]

Art. 4046. **Seining for Drum.**—Any person leasing an oyster claim or oyster reef in waters where seining is prohibited may apply to the Commissioner for permission to seine for drum fish in such waters. In his application for permission to seine for drum he shall make oath that such fish are seriously damaging his oysters, and that if he is permitted to seine for such fish in such waters, he will not take or destroy any other food fish, but will throw them back into the water. If the Commissioner is satisfied that such damage is being done, he may grant such permission, specifying in such permit the length of time in which it is to be used, and the claim or reef on which it is to be used. Such Commissioner shall assign a deputy fish and oyster commissioner to superintend such seining, and no seine shall be dragged except in his presence, and for which a person obtaining the permission to seine as set forth above, shall pay to the Commissioner two dollars and fifty cents per day. [Id. p. 202.]

Art. 4047. **Permit to use shrimp seine.**—The Commissioner may permit the use of any shrimp seine or other device for catching shrimp in the tidal waters of this State. Any person desiring to use such seine shall apply to the Commissioner for a permit to use such seine, net or other device for catching shrimp, and the Commissioner shall fix and establish the mesh, construction, depth and length of such seine or net or other device so that it shall not be used for other purposes than in taking shrimp, and he shall tag such seine or other device officially and issue such permit, and shall designate in what waters and localities such seines or nets shall be used. Any such nets or seines or devices used in violation of this article shall be declared a nuisance and the Commissioner shall abate and destroy the same, and no suit shall be maintained in the courts for such abatement and destruction. [Id. p. 205.]

Art. 4048. **Dredging reefs or beds.**—Any person who is an American citizen or any firm or corporation composed of American citizens desiring to use scrapers or dredges in removing oysters from the natural oyster reefs of this State shall procure from the Commissioner a license to do so, and such applicant shall pay to the Commissioner a license fee of five dollars when using scrapers or hand dredges, and fifteen dollars when using power-dredges, which license shall be for one year from the date of issuance thereof, and shall obligate the holder to observe all the laws of the State enacted to conserve the marine life of such public waters. Whenever the Commissioner believes that a natural oyster reef or bed is too open and exposed to be fished with hand-tongs, and that such reef or bed can be improved by the use of dredges, he may grant the use of dredges on such reef or bed regardless of the depth of the body of water or exposure thereof, but only under the supervision and direction of a deputy fish and oyster commissioner; and the Commissioner is authorized to purchase boats and implements and employ labor to work such public oyster reefs and beds as he may

think can be improved thereby, the expense of which shall be paid on warrants issued by the Comptroller on the sworn statement as to the correctness of such expense by the Commissioner. [Acts 1923, p. 298.]

Art. 4049. **Protection of reservation.**—It shall be unlawful to bring into or keep on any fish hatchery or reservation for the propagation or exhibition of any birds, fowls or animals, any cat, dog or other predacious animal, and any such animal found on the grounds of such hatcheries or reservation is held to be a nuisance, and the deputy in charge shall abate and destroy it as a nuisance, and no suit for damages shall be maintained therefor. [Acts 2nd C. S. 1919, p. 209.]

Art. 4050. **May take brood fish.**—It shall be lawful for the Commissioner or the United States Commissioner of Fisheries and his duly authorized agents to take at any time and in any manner from the public fresh waters of this State all brood fish required by them in operation of the State and Federal Hatcheries. [Id. p. 214.]

CHAPTER THREE.

MARL, SAND AND SHELL.

| | | | |
|------------------------------|--------------|---------------------------------|--------------|
| Property of the State..... | Article 4051 | Use in municipal road work..... | Article 4054 |
| Powers of Commissioners..... | 4052 | Condemnation of land..... | 4055 |
| Permit to use marl, etc..... | 4053 | License for mussels, etc..... | 4056 |

Art. 4051. **Property of the State.**—All the islands, reefs, bars, lakes, and bays within the tidewater limits from the most interior point seaward co-extensive with the jurisdiction of this State, and such of the fresh water islands, lakes, rivers, creeks and bayous within the interior of this State as may not be embraced in any survey of private land, together with all the marl and sand of commercial value, and all the shells, mudshell or gravel of whatsoever kind that may be in or upon any island, reef or bar, and in or upon the bottoms of any lake, bay, shallow water, rivers, creeks and bayous and fish hatcheries and oyster beds within the jurisdiction and territory herein defined, are included within the provisions of this chapter, and are hereby placed under the management, control and protection of the Commissioner. None of the marl, gravel, shells, mudshells or sand included herein shall be purchased, taken away or disturbed, except as provided herein, nor shall any oyster beds or fish hatcheries within the territory included herein be disturbed except as herein provided. [Acts 2nd C. S. 1919, p. 216.]

Art. 4052. **Powers of Commissioner.**—The Commissioner is hereby invested with all the power and authority necessary to carry into effect the provisions of this chapter, and shall have full charge and discretion over all matters pertaining to the sale, the taking, carrying away or disturbing of all marl, sand or gravel of commercial value, and all gravel and shells or mudshell and oyster beds and their protection from free use and unlawful disturbing or appropriation of same, with such exceptions as may be provided herein. [Acts 2nd C. S. 1919, p. 216.]

Art. 4053. **Permit to use marl, etc.**—Anyone desiring to purchase any of the marl and sand of commercial value and any of the gravel, shells or mudshell included within the provisions of this chapter, or otherwise operate in any of the waters or upon any island, reef, bar, lake, bay, river, creek or bayou included in this chapter, shall first make written application therefor to the Commissioner designating the limits of the territory in which such person desires to operate. If the Commissioner is satisfied that the taking, carrying away or disturbing of the marl, gravel, sand, shells or mudshell in the designated territory would not damage or injuriously affect any oysters, oyster beds, fish inhabiting waters thereof or adjacent thereto and that such operation would not damage or injuriously affect any island, reef, bar, channel, river, creek or bayou used for frequent or occasional navigation, nor change or otherwise injuriously affect any current that would affect navigation, he may issue a permit to such person after such applicant shall have complied with all requirements prescribed by said Commissioner. The permit shall authorize the applicant to take, carry away or otherwise operate within the limits of such territory as may be designated therein, and for such substance or purpose only as may be named in the permit and upon the terms and conditions of the permit. No permit shall be assignable, and a failure or refusal of the holder to comply with the terms and conditions of such permit shall operate as an immediate termination and revocation of all rights conferred therein or claimed thereunder. No special privilege or exclusive right shall be granted to any person, association of persons, corporate or otherwise, to take or carry away any of such products from any territory or to otherwise operate in or upon any island, reef, bay, lake, river, creek or bayou included in this chapter. [Acts 2nd C. S. 1919, p. 216.]

Art. 4054. **Use in municipal road work.**—If any county, or subdivision of a county, city or town should desire any marl, gravel, sand, shell or mudshell included in this chapter for use in the building of any road or street, which work is done by said county, or any subdivision of a county, city or town, such municipality may be granted a permit without charge and shall have the right to take, carry away or operate in any waters or upon any islands, reefs or bars included herein; such municipality to do the work under its own supervision, but shall first obtain from the Commissioner a permit to do so, and the granting of same for the operation in the territory designated by such municipality shall be subject to the same rules, regulations and limitations and discretion of the Commissioner as are other applicants and permits. When such building of roads or taking of such products is to be done by contract, then the said municipality may obtain a refund from the Commissioner of the tax levied and collected on said products as fixed by the Commissioner at the time of the taking thereof, by warrant drawn by the

Comptroller upon itemized account sworn to by the proper officer representing such municipality and approved by the Commissioner, and under such other rules and regulations as may be prescribed by the Commissioner. [Acts 1923, p. 342.]

Art. 4055. Condemnation of land.—Where the State, through the Commissioner, has issued a permit to excavate and take from any island, reef, bar, lake, river, creek, bayou or bay of this State, marl, mudshell, oyster shell, sand and gravel, the State, at the request of the permit holder, shall have the power to enter upon and condemn and appropriate the lands, right of way, easements and property of any person or corporation, for the purpose of erecting dredges and necessary equipment, and for the purpose of laying and maintaining railway spurs to the nearest railroad, and for the purpose of opening and maintaining necessary roads and passageways, to said place of operations; provided, that such right of way shall not invade improvements such as buildings or orchards.

Such condemnation suits shall be brought in the name of the State by the Attorney General in the county where the area included in said permit, or some part of such area, is situated. All costs in such proceedings shall be paid either by the permit holder at whose instance such proceedings are had or by the person against whom such proceedings are had, to be determined as in the case of condemnation proceedings, and all damages and pay for property awarded in such proceedings shall be paid by the permit holder. In no event shall the State be liable for any costs, damages or any sum whatsoever with respect to such proceedings. [Acts 2nd C. S. 1923, p. 11.]

Art. 4056. License for mussels, etc.—It shall be unlawful for any person, firm or corporation to take from the public waters of the State for sale any mussels, clams, or naiad or shells thereof without first obtaining a license from the Commissioner to do so. Said license shall expire one year from the date of issuance, and shall be in such form as prescribed by the Commissioner, but shall state the water in which the licensee may operate. The applicant shall pay to the Commissioner, as a license fee, the sum of ten dollars and in addition thereto the sum of twenty-five dollars for permission to use a dredge. [Acts 2nd C. S. 1919, p. 214.]

[NOTE.—Articles 4057 to 4075, inclusive, have been omitted in the Acts of 1925. For additional legislation on subject "Game, Fish and Oysters," see Penal Code, pp. 195 to 234, inclusive.]

TITLE 68.

GARNISHMENT.

| | Article | | Article |
|---|---------|--|---------|
| Who may issue and when..... | 4076 | Judgment for effects..... | 4089 |
| Bond..... | 4077 | Refusal to deliver effects..... | 4090 |
| Application for the writ..... | 4078 | Judgment against company..... | 4091 |
| Case docketed, etc..... | 4079 | Sales of shares of stock..... | 4092 |
| When writ is to subject shares, etc..... | 4080 | Effect of such sale..... | 4093 |
| Form of writ..... | 4081 | May traverse answer..... | 4094 |
| Delivery of writ..... | 4082 | Trial of issue..... | 4095 |
| Execution and return of writ..... | 4083 | Trial when garnishee is non-rest- dent..... | 4096 |
| Effect of service of writ..... | 4084 | Docketed and notice..... | 4097 |
| Answer to the writ..... | 4085 | Issue tried as other cases..... | 4098 |
| Garnishee discharged..... | 4086 | Current wages..... | 4099 |
| Judgment by default..... | 4087 | Costs..... | 4100 |
| Judgment when garnishee is in- debted..... | 4088 | Garnishee discharged on proof..... | 4101 |

Art. 4076. [271] [217] [183] **Who may issue and when.**—The clerks of the district and county courts and justices of the peace may issue writs of garnishment, returnable to their respective courts, in the following cases:

1. Where an original attachment has been issued.
2. Where the plaintiff sues for a debt and makes affidavit that such debt is just, due and unpaid, and that the defendant has not within his knowledge property in his possession within this state, subject to execution, sufficient to satisfy such debt; and that the garnishment applied for is not sued out to injure either the defendant or the garnishee.
3. Where the plaintiff has a valid, subsisting judgment and makes affidavit that the defendant has not, within his knowledge, property in his possession within this State, subject to execution, sufficient to satisfy such judgment. [Acts 1874, p. 113; P. D. 157-3785; G. L. Vol. 8, p. 115.]

Art. 4077. [272] [218] [184] **Bond.**—In the case mentioned in subdivision two of the preceding article, the plaintiff shall execute a bond, with two or more good and sufficient sureties, to be approved by the officer issuing the writ, payable to the defendant in the suit, in double the amount of the debt claimed therein, conditioned that he will prosecute his suit to effect and pay all damages and costs that may be adjudged against him for wrongfully suing out such garnishment. [Id.]

Art. 4078. [273] [219] [185] **Application for the writ.**—Before the issuance of the writ of garnishment, the plaintiff shall make application therefor, signed by him, stating the facts authorizing the issuance of the writ, and that the plaintiff has reason to believe, and does believe, that the garnishee, stating his name and residence, is indebted to the defendant, or that he has in his hands effects belonging to the defendant, or that the garnishee is an incorporated or joint stock company, and that the defendant is the owner of shares in such company or has an interest therein. [Id.]

Art. 4079. [274] [220] [186] **Case docketed, etc.**—When the foregoing requisites have been complied with, the judge, or clerk, or justice of the peace, as the case may be, shall docket

the case in the name of the plaintiff as plaintiff, and of the garnishee as defendant; and shall immediately issue a writ of garnishment, directed to the sheriff or any constable of the county where the garnishee is alleged to reside or be, commanding him forthwith to summon the garnishee to appear before the court out of which the same is issued, on the first day of the ensuing term thereof, to answer upon oath what, if anything, he is indebted to the defendant, and was when such writ was served, and what effects, if any, of the defendant he has in his possession, and had when such writ was served, and what other persons, if any, within his knowledge, are indebted to the defendant or have effects belonging to him in their possession. [Acts 1875, p. 102; P. D. 157; G. L. Vol. 8, p. 474.]

Art. 4080. [275] [221] [187] **When writ is to subject shares, etc.**—Where it appears from the plaintiff's affidavit that the garnishee is an incorporated or joint stock company, in which the defendant is the owner of shares, or is interested therein, the writ of garnishment shall further require the garnishee to answer upon oath what number of shares, if any, the defendant owns in such company, or owned when such writ was served, and what interest, if any, he has in such company, or had when such writ was served. [Id.]

Art. 4081. [276] [222] [188] **Form of writ.**—The following form of writ may be used:

“The State of Texas:

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

Art. 4082. [277] [223] [189] **Delivery of writ.**—The writ of garnishment shall be dated and tested as other writs, and

may be delivered to the sheriff or constable by the officer who issued it, or he may deliver it to the plaintiff, his agent or attorney, for that purpose.

Art. 4083. [278] [224] [190] **Execution and return of writ.**—The sheriff or constable receiving the writ of garnishment shall immediately proceed to execute the same by delivering a copy thereof to the garnishee, and shall make return thereof as of other citations.

Art. 4084. [279] [225] [191] **Effect of service of writ.**—From and after the service of such writ of garnishment, it shall not be lawful for the garnishee to pay to the defendant any debt or to deliver to him any effects; nor shall the garnishee, if an incorporated or joint stock company in which the defendant is alleged to be the owner of shares or to have an interest, permit or recognize any sale or transfer of such shares or interest; and any such payment or delivery, sale or transfer, shall be void and of no effect as to so much of said debt, effect, shares, or interest as may be necessary to satisfy the plaintiff's demand. The defendant may, at any time before judgment, replevy any effects, debts, shares, or claims of any kind seized or garnisheed, by giving bond, with two or more good and sufficient sureties to be approved by the officer who issued the writ of garnishment, payable to the plaintiff, in double the amount of the plaintiff's debt, and conditioned for the payment of any judgment that may be rendered against the said garnishee in such suit, which when properly approved shall be filed among the papers in the cause in the court in which the suit is pending. In all proceedings in garnishment where the defendant gives bond as herein provided for, such defendant may make any defense which the defendant in garnishment could make in such suit. [Acts 1889, p. 1; G. L. Vol. 9, p. 1029.]

Art. 4085. [280] [226] [192] **Answer to the writ.**—The answer of the garnishee shall be under oath, in writing, and signed by him, and shall make true answers to the several matters inquired of in the writ of garnishment.

Art. 4086. [281] [227] [193] **Garnishee discharged.**—If it appears from the answer of the garnishee that he is not indebted to the defendant, and was not so indebted when the writ of garnishment was served on him, and that he has not in his possession any effects of the defendant and had not when the writ was served, and when the garnishee is an incorporated or joint stock company in which the defendant is alleged to be the owner of any shares of stock or interested therein, if it further appears from such answer that the defendant is not and was not, when the writ was served, the owner of any such shares, or interested in such company, should the answer of the garnishee not be controverted as hereinafter provided, the court shall enter judgment discharging the garnishee.

Art. 4087. [282] [228] [194] **Judgment by default.**—The garnishee shall in all cases after lawful service file an answer to the writ of garnishment on or before appearance day of the term of the court to which such writ is returnable, and should the garnishee fail to file such answer to said writ as herein required, it shall be lawful for the court, at any time after judgment shall have been rendered against defendant, and on or after appearance day, to render judgment by default, as in other civil cases against such garnishee for the full amount of such judgment against the defendant, together with all interest and costs that may have accrued in the main case and also in the garnishment proceedings. The answer of such garnishee may be filed as in any other civil case at any time before such default judgment is rendered. [Acts 1921, p. 207.]

Art. 4088. [293] [239] [205] **Judgment when garnishee is indebted.**—Should it appear from the answer of the garnishee or should it be otherwise made to appear and be found by the court that the garnishee is indebted to the defendant in any amount, or was so indebted when the writ of garnishment was served, the court shall render judgment for the plaintiff against the garnishee for the amount so admitted or found to be due to the defendant from the garnishee, unless such amount is in excess of the amount of the plaintiff's judgment against the defendant with interest and costs, in which case, judgment shall be rendered against the garnishee for the full amount of the judgment already rendered against the defendant, together with interest and costs of the suit in the original case and also in the garnishment proceedings. If the garnishee fail or refuse to pay such judgment rendered against him, execution shall issue thereon in the same manner and under the same conditions as is or may be provided by law for the issuance of execution in other cases. [Id.]

Art. 4089. [294] [240] [206] **Judgment for effects.**—Should it appear from the garnishee's answer, or otherwise, that the garnishee has in his possession, or had when the writ was served, any effects of the defendant liable to execution, the court shall render a decree requiring the garnishee to deliver up to the sheriff or any constable presenting an execution in favor of the plaintiff against the defendant, such effects or so much of them as may be necessary to satisfy such execution.

Art. 4090. [295] [241] [207] **Refusal to deliver effects.**—Should the garnishee adjudged to have effects of the defendant in his possession, as provided in the preceding article, fail or refuse to deliver them to the sheriff or constable on such demand, the officer shall immediately make return of such failure or refusal, whereupon on motion of the plaintiff, the garnishee shall be cited to show cause at the next term of the court why he should not be attached for contempt of court for such failure or refusal. If the garnishee fails to show some good and sufficient excuse for such failure or refusal, he shall be fined for

such contempt and imprisoned until he shall deliver such effects.

Art. 4091. [296] [242] [208] **Judgment against company.**—Where the garnishee is an incorporated or joint stock company, and it appears from the answer, or otherwise, that the defendant is, or was when the writ of garnishment was served, the owner of any shares of stock in such company, or any interest therein, the court shall render a decree, ordering the sale under execution, in favor of the plaintiff against the defendant, of such shares or interest of the defendant in such company, or so much thereof as may be necessary to satisfy such execution. [Acts 1875, p. 103; G. L., vol. 8, p. 475.]

Art. 4092. [297] [243] [209] **Sales of shares of stock.**—The sale so ordered shall be conducted in all respects as other sales of personal property under execution; and the officer making such sale shall execute a transfer of such shares or interest to the purchaser, with a brief recital of the judgment of the court under which the same was sold. [Id.]

Art. 4093. [298] [244] [210] **Effect of such sale.**—Such sale shall be valid and effectual to pass to the purchaser all right, title and interest which the defendant had in such shares of stock, or in such company; and the proper officers of such company shall enter such sale and transfer on the books of the company in the same manner as if the same had been made by the defendant himself. [Id. p. 104.]

Art. 4094. [299-300] [245-246] [211-212] **May traverse answer.**—If the plaintiff should not be satisfied with the answer of any garnishee, he may controvert the same by his affidavit stating that he has good reason to believe, and does believe, that the answer of the garnishee is incorrect, stating in what particular he believes the same is incorrect. The defendant may also, in like manner, controvert the answer of the garnishee.

Art. 4095. [301] [247] [213] **Trial of issue.**—If the garnishee whose answer is controverted, is a resident of the county in which the proceeding is pending, an issue shall be formed under the direction of the court and tried as other cases.

Art. 4096. [302] [248] [214] **Trial when garnishee is non-resident.**—Should the garnishee be a foreign corporation, not incorporated under the laws of this State, and should its answer be controverted, the issues thus formed shall be tried in the court where the main suit is pending, or was tried; but if the garnishee whose answer is controverted, resided in some county other than the one in which the main case is pending or was tried, and is not a foreign corporation, then upon the filing of a controverting affidavit by any party to the suit, the plaintiff may file in any court in the county of residence of the garnishee having jurisdiction of the amount of the judgment in the original suit, a duly certified copy of the judgment in such original suit and of the proceedings in garnishment, including a certified copy of the plaintiff's application for the writ, the answer of

the garnishee, and the affidavit controverting such answer. The court wherein such certified copies are filed shall try the issues made as provided by law. [Acts 1921, p. 207.]

Art. 4097. [303-4] **Docketed and notice.**—The clerk of such court or the justice of the peace, on receiving such certified copies, shall docket the case in the name of the plaintiff as plaintiff, and of the garnishee as defendant, and issue a notice to the garnishee, stating that his answer has been so controverted, and that such issue will stand for trial at the next term of court. Such notice shall be directed to the sheriff or any constable of the county, be dated and tested as other process from such court, and served by delivering a copy thereof to the defendant.

Art. 4098. [305] [251] [217] **Issue tried as other cases.**—Upon the return of such notice served, an issue shall be formed under the direction of the court and tried as other cases.

Art. 4099. [306] [252] [218] **Current wages.**—No current wages for personal service shall be subject to garnishment; and where it appears upon the trial that the garnishee is indebted to the defendant for such current wages, the garnishee shall nevertheless be discharged as to such indebtedness. [Const., Art. 16, Sec. 28.]

Art. 4100. [307] [253] [219] **Costs.**—Where the garnishee is discharged upon his answer, the costs of the proceeding, including a reasonable compensation to the garnishee, shall be taxed against the plaintiff; where the answer of the garnishee has not been controverted and the garnishee is held thereon, such costs shall be taxed against the defendant and included in the execution provided for in this chapter; where the answer is contested, the costs shall abide the issue of such contest.

Art. 4101. [308] [254] [220] **Garnishee discharged on proof.**—It shall be a sufficient answer to any claim of the defendant against the garnishee founded on any indebtedness of such garnishee, or on the possession by him of any effects, or where the garnishee is an incorporated or joint stock company in which the defendant was the owner of shares of stock or other interest therein, for the garnishee to show that such indebtedness was paid, or such effects were delivered, or such shares of stock or other interest in such company were sold under the judgment of the court in accordance with the provisions of this title.

TITLE 69.

GUARDIAN AND WARD.

| Chapter | Page | Chapter | Page | | |
|---------|---------------------------------------|---------|------|--|------|
| 1 | General provisions | 1113 | 10 | Death, resignation and removal | 1138 |
| 2 | Commencement of proceedings | 1115 | 11 | Claims against estate | 1140 |
| 3 | Appointment of guardians | 1116 | 12 | Of lunatics and drunkards | 1143 |
| 4 | Oath and bond of guardians | 1120 | 13 | Non-resident guardians and wards | 1146 |
| 5 | Inventory, appraisal and claims | 1122 | 14 | Removal of guardianship | 1147 |
| 6 | Powers and duties | 1124 | 15 | Final settlement | 1148 |
| 7 | Fiscal management | 1126 | 16 | Costs of guardianship | 1150 |
| 8 | Sales | 1130 | 17 | Appeal | 1151 |
| 9 | Annual accounts | 1136 | | | |

CHAPTER ONE.

GENERAL PROVISIONS.

| | Article | | Article |
|--------------------------------------|---------|--|---------|
| Jurisdiction of county court | 4102 | Laws applicable | 4108 |
| Jurisdiction of district court | 4103 | May contest proceedings | 4109 |
| Definitions | 4104 | Call of docket | 4110 |
| Record books | 4105 | Venue | 4111 |
| Registration | 4106 | Unnecessary publications avoided | 4112 |
| Orders of court | 4107 | | |

Art. 4102. [4043] [2550] [2469] Jurisdiction of county court.—The county court shall appoint guardians of minors, persons of unsound mind and habitual drunkards, settle accounts of guardians, and transact all business appertaining to the estates of minors, persons of unsound mind and habitual drunkards. [Const. Art. 5, Sec. 16; Acts 1876, p. 19; G. L. Vol. 8, p. 855.]

Art 4103. [4044] [2551] [2470] Jurisdiction of district court.—The district court shall have appellate jurisdiction over the county court in all matters of guardianship, and original control and jurisdiction over guardians and wards, under such regulations as may be prescribed by law. [Const. Art. 5, Sec. 8.]

Art. 4104. [4045-6-7-54] Definitions.—As used in this title:

1. A term of the county court means a term of such court held for the transaction of probate business.
2. Females under twenty-one years of age who have never been married and males under said age are minors.
3. Idiots, lunatics or insane persons are persons of unsound mind.
4. An habitual drunkard is one whose mind has become so impaired by the use of intoxicating liquors or drugs that he is incapable of taking care of himself.

Art. 4105. [4048] [2555] [2474] Record books.—The record books used for the business of estates of decedents shall also be used for the business of guardianships.

Art. 4106. [4049] [2556] [2475] Registration.—The following papers shall be copied at length into the minutes of the court:

1. All applications, citations and returns upon citations.

2. All notices, whether published or posted, with the returns thereon.

3. All bonds and official oaths.

4. All inventories, appraisements and lists of claims, after the same have been approved by the court.

5. All reports of sales approved by the court, renting or leasing of property, and of loaning or investing money.

6. All accounts and exhibits of the guardian, after approved by the court. [Id. p. 191.]

Art. 4107. [4050] [2557] [2476] **Orders of court.**—Each decision, order, and judgment of the court in matters of guardianship, shall be rendered in open court at a regular term thereof except in cases where it is otherwise specially provided.

Art. 4108. [4051] [2558] [2477] **Laws applicable.**—The provisions, rules and regulations which govern estates of decedents shall apply to and govern such guardianships, whenever the same are applicable and not inconsistent with any provision of this title.

Art. 4109. [4052] [2559] [2479] **May contest proceedings.**—Any person has the right to appear and contest the appointment of a particular person as guardian, or to contest any proceeding which he deems to be injurious to the ward, or to commence any proceeding which he considers beneficial to the ward, such person being liable for the costs occasioned by him in the case of his failure. [Id. p. 170.]

Art. 4110. [4053] [2560] [2479] **Call of docket.**—The county judge, at each regular term of his court, shall call each case of guardianship upon his docket, and make such orders therein as may be necessary, and see that such orders, together with all papers required to be recorded, are entered upon the minutes, and hold guardians and the officers of his court to a strict accountability for the performance of their duties with reference to guardianships.

Art. 4111. [4056-60] **Venue.**—A proceeding for the appointment of a guardian shall be begun:

1. For the estate of a minor in the county where the parents of such minor reside, or in the county where the parent having custody of the minor resides when the parents do not reside in the same county.

2. For the person and estate of an orphan, or of either, in the county where the last surviving parent of such orphan resided at the time of the death of such parent, or where such orphan is found, or where the principal estate of such orphan may be.

3. For the person and estate, or of either, of a person of unsound mind or an habitual drunkard, in the county where such person resides.

4. Where a guardian has been appointed by will, proceedings for letters of guardianship shall be begun in the county where the will has been admitted to probate. [Acts 1876, p. 176; G. L. Vol. 8, p. 1012.]

Art. 4112. **Unnecessary publications avoided.**—The provisions of this title relating to citations and notice shall be held as special provisions complete within themselves, and no other or further publication of citation or notice in a newspaper than those provided for herein shall be required, the provisions of any other law to the contrary notwithstanding.

CHAPTER TWO.

COMMENCEMENT OF PROCEEDINGS.

Art. 4113. [4061-62] **Application.**—A proceeding for the appointment of a guardian is begun by written application, filed in the county court of the county having jurisdiction thereof. Any person may make such application. It shall state:

1. The name, sex, age and residence of the minor.
2. The estate of such minor, if any, and the probable value thereof.
3. Such facts as show the jurisdiction of the court. [Acts 1876, p. 177; G. L. Vol. 8, p. 1013.]

Art. 4114. [4063] [2570] [2489] **Notice.**—Upon the filing of such application, the clerk shall issue a notice which shall state that an application has been filed for the guardianship of the person, or estate, or both, as the case may be, of the minor, naming such minor, and by whom filed, which notice shall cite all persons interested in the welfare of such minor to appear at the named term of the court and contest such application if they see proper.

Art. 4115. [4064-5] [2571-2] [2490-1] **Service and return.**—Such notice shall be served by posting copies thereof for not less than ten days before the first day of the term of the court at which the application is to be acted upon, one of which copies shall be posted at the courthouse door and two other copies at two other public places in the county, not in the same city or town. The sheriff or other officer posting such notices shall return the original signed officially, stating thereon, in writing, the time and places, when and where, he posted such copies.

Art. 4116. [4066] [2573] [2492] **Personal citation.**—A minor fourteen years of age or over shall be personally served with citation to appear and answer such application, or such minor by writing filed with the clerk may waive the issuance of such citation and make choice of a guardian. [Id.]

Art. 4117. [4067] [2574] [2493] **By judge.**—Whenever it comes to the knowledge of the county judge that there is within his county a minor without a guardian of his person or estate, he shall cause a notice to be posted citing all persons interested in the welfare of such minor to show cause at a regular term of the court why a guardian of such minor should not be appointed. A minor fourteen years or over shall be personally cited. [Id.]

CHAPTER THREE.

APPOINTMENT OF GUARDIANS.

1. REGULAR APPOINTMENTS.

| | Article | | Article |
|-----------------------------|---------|---------------------------------|---------|
| Natural guardian..... | 4118 | Minor may select..... | 4126 |
| By will..... | 4119 | Failure to qualify..... | 4127 |
| Orphans..... | 4120 | Term of appointment..... | 4128 |
| Person of unsound mind..... | 4121 | Receiver..... | 4129 |
| Persons disqualified..... | 4122 | Receivership; expenditures..... | 4130 |
| What facts must appear..... | 4123 | Receivership; loans..... | 4131 |
| Single appointment..... | 4124 | Non-resident minor..... | 4132 |
| Order of appointment..... | 4125 | Letters of guardianship..... | 4133 |

Art. 4118. [4068-69-70] **Natural guardian.**—If the parents live together, the father is the natural guardian of the person of the minor children by the marriage. If one parent is dead, the survivor is the natural guardian of the person of the minor children. The natural guardian is entitled to be appointed guardian of their estates. The rights of parents who do not live together are equal; the guardianship of their minor children shall be assigned to one or the other, taking into consideration the interest of the child alone. [Acts 1876, p. 175; G. L. Vol. 8, p. 1011.]

Art. 4119. [4071] [2578] [2497] **By will.**—The surviving parent of a minor may, by will or written declaration, appoint any person qualified to be guardian of the persons of his or her children after the death of such parent; and such person shall also be entitled to be appointed guardian of their estates, after the death of such parent. [Id.]

Art. 4120. [4072-75] **Orphans.**—These rules shall govern as to orphans:

1. If the parent has appointed no guardian, the nearest ascendant in the direct line of such minor is entitled to the guardianship of both the person and estate of such minor.

2. If there be more than one ascendant in the same degree in the direct line, they are equally entitled. The guardianship shall be given to one or the other, according to circumstances, taking into consideration the interest of the orphan alone.

3. If the orphan has no ascendant in the direct line, the guardianship shall be given to the nearest of kin in the collateral line who comes immediately after the presumptive heir or heirs of the orphan. If there be two or more in the same degree, the guardianship shall be given to the one or the other, according to circumstances, taking into consideration the interest of the orphan alone.

4. If there be no relative of the minor qualified to take the guardianship, or if no person entitled to such guardianship applies therefor, the court shall appoint some proper person to be such guardian. [Id.]

Art. 4121. [4076] [2583] [2502] **Person of unsound mind.**—In the case of a person of unsound mind, or an habitual drunkard, the nearest of kin to such person, who is not disqualified, shall be entitled to the guardianship. Where two or more are

equally entitled, the guardianship shall be given to one or the other, according to circumstances, taking into consideration the interest of the ward alone. If such ward have a husband or wife who is not disqualified, such husband or wife shall be entitled to the guardianship in preference to any other person.

Art. 4122. [4078] [2585] [2504] **Persons disqualified.**—The following persons shall not be appointed guardians:

1. Minors, except the father or mother.
2. Persons whose conduct is notoriously bad.
3. Persons of unsound mind.
4. Habitual drunkards.
5. Those who are themselves or whose father or mother are parties to a lawsuit, on the result of which the condition of the minor or part of his fortune may depend.

6. Those who are debtors to the minor, unless they discharge the debt prior to such appointment; but this subdivision does not apply to the father or mother of such minor. [Id.]

Art. 4123. [4080-81] **What facts must appear.**—At a regular term of the court, after notice as required by law, the court may proceed to the appointment of a guardian. Before appointing a guardian, the court must be satisfied:

1. That the person for whom a guardian is sought to be appointed is either a minor, a person of unsound mind or an habitual drunkard.
2. That the court has jurisdiction of the case.
3. That the person to be appointed guardian is not disqualified to act as such and is entitled thereto; or, in case no person who is entitled thereto applies therefor, that the person appointed is a proper person to act as such guardian.

4. That the rights of persons or property are to be protected. All issues herein shall be determined by the court on hearing, unless a jury is demanded, but it shall not be a prerequisite to such appointment that there has been a jury trial, verdict and judgment that the person is of unsound mind, or is an habitual drunkard, nor is such person required to be present at the trial.

The remedy herein provided is cumulative of that provided in Chapter 12 hereof, for the guardianship of persons of unsound mind and habitual drunkards, and may be resorted to without invoking the latter remedy. [Acts 1921, p. 15.]

Art. 4124. [4082] [2589] [2508] **Single appointment.**—Only one guardian can be appointed of the person or estate; but one person may be appointed guardian of the person, and another of the estate, whenever the court shall be satisfied that it will be for the advantage of the ward to do so. Nothing in this article shall be held to prohibit the joint appointment of husband and wife. [Acts 1870, p. 141; G. L. Vol. 6, p. 315.]

Art. 4125. [4083] [2590] [2509] **Order of appointment.**—The order of the court appointing a guardian shall be entered upon the minutes of the court and shall specify:

1. The name of the person appointed.
2. The name of the ward.

3. Whether the guardian of the person, of the estate, or of both the person and estate of such ward.

4. The amount of the bond required of such guardian.

5. If it be the guardianship of the estate, the order shall also appoint three or more disinterested persons to appraise such estate, and return such appraisement to the court.

6. It shall direct the clerk to issue letters of guardianship to the person appointed when such person has qualified according to law.

Art. 4126. [4084] [4079] **Minor may select.**—A minor upon attaining the age of fourteen years, may select another guardian either of his person or estate, or both, if such minor has a guardian appointed by the court, or if, having a guardian appointed by will or written declaration of the parent of such minor, such last named guardian dies, resigns or is removed from guardianship; and the court shall, if satisfied that the person selected is suitable and competent, make such appointment and revoke the letters of guardianship to the former guardian. Such selection may be made in open court, in person, or by attorney, by making application therefor as provided by law.

Art. 4127. [4085] [2592] [2511] **Failure to qualify.**—If a person appointed guardian fails to qualify as such according to law, or dies, resigns, or is removed, the court shall appoint another guardian in his stead.

Art. 4128. [4086-87] **Term of appointment.**—The guardian of a minor continues in office, unless sooner discharged according to law, until the minor dies or becomes twenty-one years of age, or being a female, marries. The guardian of a person of unsound mind or of an habitual drunkard shall continue as such, unless sooner discharged according to law, until the ward shall die or be restored to sound mind or to sober habits. [Acts 1876, p. 178; G. L. Vol. 8, p. 1014.]

Art. 4129. [4088] [2595] **Receiver.**—When from any cause, the estate of a minor, person of unsound mind or of an habitual drunkard is without a guardian, and such estate is likely to injure or waste, the county judge shall, with or without application, in term time or in vacation, appoint some suitable person to take charge of such estate, as receiver, until a guardian can be regularly appointed, and shall make such other orders as may be necessary for the preservation of such estate. Such appointment and orders shall be recorded in the minutes of the court, and shall specify the duties and powers of such receiver. The provisions of the law governing in the case of a temporary administration upon the estate of a decedent shall govern in the case of a receiver appointed under this article, so far as the same are applicable. [Acts 1885, p. 81; G. L. Vol. 9, p. 702.]

Art. 4130. [4088] [2595] **Receivership; expenditures.**—If, during the pendency of such receivership, the wants of such minor, person of unsound mind or habitual drunkard should require the use of the means of such estate for their subsistence,

clothing or education, the county judge, with or without application, in term time or in vacation, shall appropriate, by an order entered upon the minutes, out of the effects of such estate, an amount sufficient for such purpose; said amount to be paid by such receiver upon such claims for such subsistence, clothing or education as may have been presented to such county judge and approved, and by him ordered to be paid. [Id.]

Art. 4131. [4088] [2595] **Receivership; loans.**—If, at any time, the receiver shall have on hand any money belonging to such estate beyond what may be necessary for the present necessities and the current expenses of the beneficiary of said estate, he may, under the direction of the county judge, loan said money for such length of time as such judge may direct, for the highest legal rate of interest that can be obtained therefor, in the manner and upon the security and terms provided in Chapter 7 of this title. [Id.]

Art. 4132. [4089] [2596] [2515] **Non-resident minor.**—When a non-resident minor or person of unsound mind owns property in this State, guardianship of such estate may be granted when it is made to appear that a necessity exists therefor, in like manner as if such minor or person of unsound mind resided in this State. The court making such grant of guardianship shall take all such action and make all such orders in reference to the estate of the ward, for the maintenance and support or education and care of such ward, out of the proceeds of such ward's estate, in like manner as if the ward had resided in this State and guardianship of the person of said ward had been granted by said court, and the ward had been sent abroad by order of court for education or treatment. [Acts 1876, p. 176; G. L. Vol. 8, p. 1012.]

Art. 4133. [4090] [2597] [2516] **Letters of guardianship.**—When a person appointed guardian has qualified as such, by taking the oath and giving the bond required by law, the clerk shall issue to him a certificate under seal, stating the fact of such appointment and qualification and date thereof; which certificate shall constitute letters of guardianship, and be evidence of the authority of such person to act as guardian.

2. TEMPORARY APPOINTMENTS.

| | | | |
|-------------------------|---------|----------------------------|---------|
| | Article | | Article |
| Temporary guardian..... | 4134 | Notice | 4137 |
| Order | 4135 | Provisions applicable..... | 4138 |
| Contest | 4136 | | |

Art. 4134. [4091-94] **Temporary guardian.**—Whenever it appears to the county judge that the interest of any minor and his or her estate, or either, requires immediate appointment of a guardian, he shall, either in term time or in vacation, without citation and with or without written application therefor, appoint some suitable person temporary guardian of the person of such minor and his or her estate or either. Such appointment shall not take effect until such appointee has taken the oath and given

the bond required by law. The appointment so made may be made permanent. [Acts 1905, p. 18.]

Art. 4135. [4092] **Order.**—The order of the court in making such appointment shall state that unless the same is contested at the next regular term of the court, after notice, the same shall be made permanent. [Id.]

Art. 4136. [4093] **Contest.**—If such appointment is contested, the court shall hear and determine the same as the law and the facts require. During the pendency of such contest, the person so appointed as temporary guardian shall continue to act as such. If such appointment is set aside, the court shall require the person so appointed to make out and file in court a complete sworn exhibit of the condition of such minor's estate, and what disposition he has made of the same. [Id.]

Art. 4137. [4095] **Notice.**—Immediately after the appointment of a temporary guardian, the clerk of the court shall issue notice which shall state the name of the person appointed and when so appointed, and the name of the minor, or minor's estate, or both, which notice shall cite all persons interested in the welfare of such minor to appear at the term of court named in such notice, and contest such appointment if they so desire; and, that, if such appointment is not contested at the term of court so named in the citation, then the same shall become permanent. [Id.]

Art. 4138. [4096] **Provisions applicable.**—All the provisions of this title relating to the guardianship of the persons and estates of minors shall apply to temporary guardianship of the persons and estates of minors, in so far as the same are applicable. [Id.]

CHAPTER FOUR.

OATH AND BOND OF GUARDIANS.

| Article | Article | | |
|-------------------------------|---------|---------------------------------|------|
| Oath of guardian..... | 4139 | Married woman, bond..... | 4146 |
| Guardian of person: bond..... | 4140 | Parents under age..... | 4147 |
| Guardian of estate: bond..... | 4141 | New bond..... | 4148 |
| Sureties..... | 4142 | Temporary disqualification..... | 4149 |
| Premium..... | 4143 | Release of surety..... | 4150 |
| Of person and estate..... | 4144 | Oath and bond..... | 4151 |
| Appointee under will..... | 4145 | Sureties on old bond..... | 4152 |

Art. 4139. [4097] [2598] [2517] **Oath of guardian.**—The guardian shall take an oath to discharge faithfully the duties of guardian of the person (or of the estate, or of the person and estate, as the case may be) of the ward, according to law; which oath shall be indorsed on the bond of such guardian. [Acts 1876, p. 177; G. L., Vol. 8, p. 1013.]

Art. 4140. [4098] [2599] [2518] **Guardian of person: bond.**—The bond of a guardian of the person of a ward shall be in an amount to be fixed by the court granting such guardianship, not to exceed one thousand dollars, and shall be made payable to and to be approved by the county judge of the county where such guardianship is pending, conditioned that such guardian will faithfully discharge the duties of guardian of the person of such ward. [Id.]

Art. 4141. [4099] [2600] [2519] **Guardian of estate, bond.**—The bond of the guardian of the estate of a ward shall be in amount equal to double the estimated value of the personal property belonging to such estate, plus a reasonable amount to be fixed at the discretion of the county judge, to cover rents, revenues and income derived from the renting or use of real estate belonging to such estate. Such bond shall be payable to and approved by the county judge of the county where such guardianship is pending, and conditioned that such guardian will faithfully discharge the duties of guardian of the estate of such ward according to law. It shall be the duty of such county judge to annually examine into the condition of the estate of the ward and the solvency of such guardian's bond, and to require such guardian at any time it may appear that such bond is not ample security to protect such estate and the interests of his ward, to execute another bond in accordance with law. In such case, he shall notify the guardian as in other cases; and should damage or loss result to the estate of any ward through the negligence of such county judge to perform such duties, such county judge shall be liable on his official bond, payable to such ward, in an amount equal to the loss due to such negligence. [Acts 1895, p. 223; Acts 1913, p. 321; G. L. Vol. 10, p. 953.]

Art. 4142. [4100] [2601] [2520] **Sureties.**—Any bond required by the provisions of this chapter to be given by a guardian shall be subscribed by such guardian, and at least two good and sufficient sureties, to be approved by the county judge of the county in which the guardianship is pending; or such bond shall be subscribed by such guardian and by one or more corporations authorized to execute surety bonds. [Acts 1897, p. 52; Acts 1899, p. 229.]

Art. 4143. [4101] [2601] [2520] **Premium.**—If such bond is made by a corporation authorized to issue and execute guaranty or indemnity bonds, the premium on such bond shall be paid by the guardian, and shall not be paid out of the estate of his ward. [Acts 1897, p. 52; G. L. Vol. 10, p. 1106.]

Art. 4144. [4103] [2602] [2521] **Of person and estate.**—Where one person is appointed guardian of both the person and estate of a ward, only one bond shall be given by such guardian. [Acts 1876, p. 177; G. L. Vol. 8, p. 1013.]

Art. 4145. [4104] [2603] [2522] **Appointee under will.**—When the surviving parent of a minor has provided by will, regularly probated, that a guardian appointed by such will shall not be required to give bond for the management of the estate devised by such will, the direction shall be observed, unless it be made to appear at any time that such guardian is mismanaging the property, or is about to betray his trust; in which case, upon proper proceedings had for that purpose, such guardian may be required by the court to give bond as in other cases. [Id.]

Art. 4146. [4105] [2604] [2523] **Married woman, bond.**—Where a married woman is appointed guardian, she may, either jointly with her husband or without him, if he is absent from

the State or refuses to join in the bond with her, execute a bond as guardian, and acknowledge the same before a proper officer. Such bond, when signed by her, alone, shall bind her estate in the same manner as if she were unmarried. [Id.]

Art. 4147. [4106] [2605] [2524] **Parents under age.**—A bond executed by the father or mother of a minor, as guardian of such minor, when such father or mother is under twenty-one years of age, shall be as valid as if he or she were of full age. [Id.]

Art. 4148. [4107] [2606] [2525] **New bond.**—The county judge shall have power to require new bonds of guardians in any case where he has the power to require new bonds of executors or administrators, and under the same rules and regulations, and with like effect.

Art. 4149. [4108] [2607] [2526] **Temporary disqualification.**—When a guardian has been required to give a new bond, he shall thereafter refrain from acting as such guardian except to preserve the property in his charge, until he gives such new bond and the same has been approved, as such guardian. [Id.]

Art. 4150. [4109] [2608] [2527] **Release of surety.**—A surety upon the bond of a guardian may be relieved from his bond in the same manner and with like effect, as is provided in the case of a surety upon the bond of an executor or administrator. [Id.]

Art. 4151. [4110-11] **Oath and bond.**—The oath and bond of a guardian shall be presented to the county judge within twenty days after the order appointing such guardian, either in term time or vacation, for the action of such judge. If approved, the same shall be immediately filed with the county clerk and recorded in the minutes of said court and safely preserved.

Art. 4152. [4112] [2611] [2530] **Sureties on old bond.**—When a new bond has been given and approved, the sureties upon the former bond of such guardian shall not be liable for the acts of such guardian occurring after the approval of such new bond. [Id.]

CHAPTER FIVE.

INVENTORY, APPRAISEMENT AND LIST OF CLAIMS.

| | Article | | Article |
|------------------------------|---------|---------------------------|---------|
| Inventory | 4153 | Appraisers appointed..... | 4158 |
| List of claims..... | 4154 | May order supplement..... | 4159 |
| Affidavit | 4155 | Corrections | 4160 |
| Property held in common..... | 4156 | Inventories | 4161 |
| Additional inventory..... | 4157 | | |

Art. 4153. [4113] [2612] [2531] **Inventory.**—It shall be the duty of every guardian of an estate, as soon as he shall have collected the estate, and within thirty days after he has taken the oath and given bond, with the assistance of any two of the appraisers appointed by the court, to make and return to the court a correct inventory of all the property, real and personal belonging to said estate, which has come to his knowledge. Each article of such property shall be appraised by such appraisers, and the appraised value thereof stated opposite the same in the inventory; and the same shall be subscribed and

duly sworn to by such appraisers. [Acts 1876, p. 179. G. L. Vol. 8, p. 1015.]

Art. 4154. [4114] [2613] [2532] **List of claims.**—The guardian shall also make out and attach to such inventory and appraisement a list of all claims belonging to the estate. Such list shall state:

1. The name of each person indebted to the estate.
2. The nature of such indebtedness, whether by note, bill, bond or other written obligation, or by account or verbal contract.
3. The date of such indebtedness, and the date when the same was due or will be due.
4. The amount of each claim and the rate of interest thereon, and the time for which the same bears interest. [Id.]

Art. 4155. [4115] [2614] [2533] **Affidavit.**—The guardian shall annex to the inventory, appraisement, and list of claims, an affidavit in substance as follows: "I, A. B., guardian of the estate of C. D., do solemnly swear that the inventory and list of claims annexed hereto are a true and perfect inventory and list of all the property, real and personal, belonging to said estate that has come to my knowledge;" which affidavit shall be subscribed and sworn to by such guardian.

Art. 4156. [4116] [2615] [2534] **Property held in common.**—If any property be held or owned by the ward in common with another, it shall be distinctly stated in the inventory or list of claims, the items thereof that are so held or owned, the names and the relationship, if any, of the other part owner or owners, and the interest or share of such ward in such property. [Id.]

Art. 4157. [4117] [2616] [2535] **Additional inventory.**—Whenever any guardian of an estate shall discover any property belonging to such estate which has not been inventoried and appraised, or any claim that has not been embraced in the list of claims, he shall forthwith make out and return to the court an additional inventory or list of claims, embracing such property or claims. [Acts 1848, p. 285; P. D. 3899; G. L. Vol. 3, p. 285.]

Art. 4158. [4118] [2617] [2536] **Appraisers appointed.**—Where an additional inventory of property has been returned by the guardian, the court shall appoint appraisers to appraise such property as in the case of original inventories, or such appraisers may be appointed before the return of such additional inventory either in term time or in vacation, by an order of the court. [Id.]

Art. 4159. [4119] [2618] [2537] **May order supplement.**—Whenever it shall be shown to the county judge that any guardian has not returned to the court an inventory and appraisement and list of claims of all the property belonging to his ward, such judge shall cause such guardian to be cited, either in term time or in vacation, and require him to return to the court an additional inventory and appraisement, or an additional list of claims, as the case may be, in the same manner as in the case of original inventories and appraisements and lists of claims are required

to be returned, and within the same time; but such inventory and appraisement and list of claims shall only embrace such property as has been omitted in previous inventories and appraisements and lists of claims. [Id.]

Art. 4160. [4120] [2619] [2538] **Corrections.**—Erroneous inventories, appraisements and lists of claims may be corrected, and new appraisements may be ordered, under the same rules and regulations as are provided in the case of estates of decedents.

Art. 4161. [4121] [2620] [2539] **Inventories.**—All inventories, appraisements, or lists of claims, when approved by the court, or the record thereof, or copies of the same or the record thereof, duly certified under the seal of the county clerk, may be given in evidence in any suit by or against such guardian, but shall not be conclusive against the ward, if it be shown that there is other property or claims of such ward not included therein, or that the estate or claims were actually worth more than the value at which they are set down in such inventories, appraisements or lists. [Id. P. D. 3900.]

CHAPTER SIX.

POWERS AND DUTIES.

| | Article | | Article |
|----------------------------|---------|------------------------------|---------|
| Of the person, powers..... | 4162 | To collect claims, etc..... | 4168 |
| Of the person, duties..... | 4163 | Discharge of debt..... | 4169 |
| Of the estate, powers..... | 4164 | Expenses of ward..... | 4170 |
| Of the estate, duties..... | 4165 | Education of ward, etc..... | 4171 |
| Of person and estate..... | 4166 | Property held in common..... | 4172 |
| Records..... | 4167 | Ward's title..... | 4173 |

Art. 4162. [4122] [2621] [2540] **Of the person, powers.**—The guardian of the person is entitled to the charge and control of the person of the ward, and the care of his support and education, and his duties shall correspond with his rights. [Acts 1876, p. 181; G. L. Vol. 8, p. 1017.]

Art. 4163. [4123] [2622] [2541] **Of the person, duties.**—It is the duty of the guardian of the person of a minor to take care of the person of such minor, to treat him humanely, and to see that he is properly educated, and, if necessary for his support, that he learn a trade or adopt some useful profession. [Id.]

Art. 4164. [4124] [2623] [2542] **Of the estate, powers.**—The guardian of the estate is entitled to the possession and management of all property belonging to the ward, to collect all debts, rents or claims due such ward, to enforce all obligations in his favor, to bring and defend suits by or against him; but in the management of the estate, the guardian shall be governed by the provisions of this title. [Id.]

Art. 4165. [4126] [2625] [2544] **Of the estate, duties.**—It is the duty of the guardian of the estate to take care of and manage such estate as a prudent man would manage his own property. He shall account for all rents, profits and revenues as the estate would have produced by such prudent management. [Id.]

Art. 4166. [4125] [2624] [2543] **Of person and estate.**—The guardian of both person and estate has all the rights and

powers and shall perform all the duties of the guardian of the person and of the guardian of the estate. [Id.]

Art. 4167. [4127] [2626] [2545] **Records.**—The guardian of the estate, immediately after receiving letters, shall collect, and take into possession, the personal property, books, title papers, and other papers belonging to the estate. [Id.]

Art. 4168. [4128] [2627] [2546] **To collect claims, etc.**—The guardian of the estate shall use due diligence to collect all claims or debts owing to the ward, and to recover possession of all property to which the ward has a title or claim; provided, there is a reasonable prospect of collecting such claims or debts, or of receiving such property; and if he neglects to use diligence, he and his sureties shall be liable for all damages occasioned by such neglect. [Id.]

Art. 4169. [4129] [2628] [2547] **Discharge of debt.**—The guardian of the estate may receive property in payment of debts due to the ward, if he believes the interests of his ward will be advanced thereby, being responsible for the prudent exercise of the discretion hereby conferred. [Id.]

Art. 4170. [4130] [2629] [2548] **Expenses of ward.**—When different persons have the guardianship of the person and estate of a ward, the guardian of the estate shall pay to the guardian of the person, semi-annually, a sum fixed by the court, for the education and maintenance of the ward, and, on failure, shall be compelled to do so by order of the court, after being duly cited. [Id.]

Art. 4171. [4131] [2630] [2549] **Education of ward, etc.**—The court may direct the guardian of the person to expend, for the education and maintenance of his ward, a sum in excess of the income of the ward's estate; otherwise the guardian shall not be allowed, for the education and maintenance of the ward, more than the clear income of the estate. [Id.]

Art. 4172. [4132] [2631] [2550] **Property held in common.**—If the wards hold or own any property in common, or as part owner with another, the guardian shall be entitled to possession thereof in common with the other part owner or owners in the same manner as other owners in common or joint owners would be entitled. [Id.]

Art. 4173. [4133] [2632] [2551] **Ward's title.**—The guardian, or his heirs, executors, administrators or assigns shall not dispute the right of the ward to any property that came into the possession of such guardian, as guardian, except such property as shall have been recovered from the guardian, or there be a personal action pending on account of it. [Id.]

CHAPTER SEVEN.

FISCAL MANAGEMENT.

| | | | |
|-------------------------------|-----------------|----------------------------|-----------------|
| Continuation of business..... | Article 4174 | Order of court..... | Article 4184 |
| Rentals..... | 4175 | Approval of contract..... | 4185 |
| Without order..... | 4176 | Title..... | 4186 |
| Under order..... | 4177 | Surplus..... | 4187 |
| Unimproved land..... | 4178 | Duty of county judge..... | 4188 |
| Guardian may be cited..... | 4179 | Liability for surplus..... | 4189 |
| Investments..... | 4180 | Liability for loans..... | 4190 |
| Security for loan..... | 4181 | Report..... | 4191 |
| Investing in real estate..... | 4182 | Mineral lease..... | 4192 |
| Action of court..... | 4183 | | |

Art. 4174. [4134] [2633] [2552] **Continuation of business.**—If there be a farm, plantation, manufactory or business belonging to the estate, and if the same be not required to be at once sold for the payment of debts, the guardian of such estate, upon order of the court, shall carry on such farm, plantation, manufactory or business, or rent the same, as shall appear for the best interest of the estate. In deciding, the court shall take into consideration the condition of the estate, and the necessity that may exist for the future sale of such property for the payment of debts, or the education and maintenance of the ward, and shall not extend the time of renting such property beyond what may be consistent with the interests of the estate and of the ward. [Acts 1876, p. 182, G. L. Vol. 8, p. 1018.]

Art. 4175. [4135] [2634] [2553] **Rentals.**—When an order of the court is made directing property to be rented, it shall be the duty of the guardian to obey such order and rent the property for the best price that can be obtained therefor, taking good security for the payment of the rent, and that the tenant will not commit nor permit any other person to commit waste on the rented premises. [Id.]

Art. 4176. [4136] [2635] [2554] **Without order.**—The guardian may rent the improved property of the ward other than such property named in the second preceding article without an order of the court therefor, and either at public or private renting. When he rents without an order of the court, he shall be required to account to the estate of the ward for the reasonable value of the rent of such property for the time the same was so rented.

Art. 4177. [4137] [2636] [2555] **Under order.**—The court may order the farm, plantation, manufactory, business, or any improved property of the estate to be rented, either at public or private renting, for any length of time, not exceeding one year, and upon such terms and conditions as the court may deem for the best interests of the ward.

Art. 4178. [4138] [2637] [2556] **Unimproved land.**—If the ward own wild or unimproved real property, the guardian may let out the same on improvement leases, under order of the court, for such length of time, and upon such terms and conditions as the court may direct in its order. [Id.]

Art. 4179. [4139] [2638] [2557] **Guardian may be cited.**—Any person upon complaint in writing filed with the county clerk

may cause the guardian of the estate of a ward to be cited to appear at a regular term of the court and show cause why he should not be required to rent out the farm, plantation or other improved property of the ward, or why he should not be required to lease for improvement the wild or unimproved lands of the ward. Upon the hearing of such complaint, the court shall make such order as he may deem to be for the best interest of the estate.

Art. 4180. [4140] [2639] [2558] **Investments.**—If, at any time, the guardian of the estate shall have on hand money belonging to the ward beyond what may be necessary for the education and maintenance of such ward, he shall invest such money in bonds of the United States, of the State of Texas, of any county or of any district or subdivision in Texas, or of any incorporated city or town in Texas, or loan the same for the highest rate of interest that can be obtained therefor. [Acts 1913, p. 321.]

Art. 4181. [4141-42] [2640]. [2559] **Security for loan.**—The guardian shall take the note of the borrower for money loaned, secured by mortgage with power of sale on unincumbered real estate situated in this State, worth at least twice the amount of such note, or on collateral notes secured by vendor's lien notes, as collateral, or may purchase vendor's lien notes; provided that at least one-half has been paid in cash or its equivalent, on the land for which said notes were given. When the guardian loans or invests the money of his ward he shall not pay over or transfer any money in consummation of such investment, loan or purchase until he shall have submitted all bonds, notes, mortgages, documents, abstracts and other papers pertaining to such investment, loan or purchase to some reputable attorney for examination, and shall have received a written opinion from such attorney, to the effect that all papers pertaining to such investment, loan or purchase are regular and that the title to such bonds, notes or real estate is good. The attorney making such examination shall be paid a reasonable fee, not to exceed one per cent of the amount so invested or loaned, which shall be paid by the guardian out of the funds of the ward. [Acts 1876, p. 182; Acts 1897, p. 196; Acts 1913, p. 321; G. L. Vol. 8, p. 1018; G. L. Vol. 10, p. 1250.]

Art. 4182. [4143] [2641] [2560] **Investing in real estate.**—When the guardian may think it best for his ward to have a surplus of money on hand invested in real estate, he shall file a written application in the court where the guardianship is pending, asking for an order of such court authorizing him to make such investment sought to be made, and the reasons why the guardian is of the opinion that it would be for the benefit of the ward to have the same made. [Acts 1876, p. 182; G. L. Vol. 8, p. 1018.]

Art. 4183. [4144] [2642] [2561] **Action of court.**—When such application is filed, the attention of the judge of the court shall be called thereto, and he shall make such investigation as

may be necessary to obtain all the facts concerning the investment; but shall not render an opinion or make any order on the application until after the expiration of five days from date of filing. [Acts 1876, p. 182; Acts 1913, p. 321; G. L. Vol. 8, p. 1018.]

Art. 4184. [4145] [2643] [2562] **Order of court.**—Upon the hearing of such application, either in term time or vacation, if the court is satisfied that such investment will be beneficial to the ward, an order authorizing the same shall be made. Such order shall specify the investment to be made, and shall contain such other directions as the court may think advisable. [Id.]

Art. 4185. [4146] [2644] [2563] **Approval of contract.**—When any contract has been made for the investment of money in real estate under order of the court, such contract shall be reported in writing to the court by the guardian, and the court shall inquire fully into the same, and if satisfied that such investment will benefit the estate of the ward and that the title to such real estate is valid and unincumbered, the court may approve the contract and authorize the guardian to pay over the money in performance of the same; but no money shall be paid out by the guardian on any such contract until such contract has been approved by the court by an order to that effect. Such order may be made at a regular term or in vacation. [Id.]

Art. 4186. [4147] [2645] [2564] **Title.**—When the money of the ward has been invested in real estate, the title to such real estate shall be made to such ward; and such real estate shall be inventoried, appraised, managed and accounted for by the guardian as other real estate of the ward.

Art. 4187. [4148] [2646] [2565] **Surplus.**—When there is any surplus money of the estate in the hands of the guardian, any person may, by written complaint filed in the court in which such guardianship is pending, cause such guardian to be cited to appear at a regular term of such court to show cause why such surplus money should not be invested or loaned at interest, in accordance with the provisions of this chapter. Upon the hearing of such complaint, the court shall enter such order as the law and the facts may require.

Art. 4188. [4149] [2647] [2566] **Duty of county judge.**—When there is surplus money belonging to the ward in the hands of the guardian, the county judge shall cause such guardian to be cited to appear at a regular term of the court and show cause why said money should not be invested or be loaned at interest, under the provisions of this chapter.

Art. 4189. [4150] [2648] [2567] **Liability for surplus.**—If the guardian neglects to invest or loan surplus money on hand at interest when he can do so by the use of reasonable diligence, he shall be liable for the principal and also for the highest legal rate of interest upon such principal for the time he so neglects to invest or loan the same. [Id.]

Art. 4190. [4151] [2649] [2568] **Liability for loans.**—The guardian shall not be personally responsible for money loaned

under the direction of the court, on security approved by the court, when the borrower is unable to pay the same, or because of failure of the security, unless such guardian has been guilty of fraud or negligence in respect to such loan or the collection of the same; in which case, he and the sureties upon his bond shall be liable for whatever loss his ward may have sustained by reason of such fraud or negligence. [Id.]

Art. 4191. [4152] [2650] [2569] **Report.**—The guardian shall report to the court in writing, verified by his affidavit, the renting or leasing of property or the investment or loaning of money belonging to the estate, within thirty days after such transaction, stating fully the facts thereof.

Art. 4192. **Mineral lease.**—Guardians of the estates of minors or other persons appointed under the laws of this State may make mineral leases upon the real estate belonging to the estates of their wards under the following rules:

1. The guardian shall file his sworn application with the county judge of the county where such guardianship is pending for authority to make such mineral lease, and the county judge, either in term time or vacation, shall hear such application, and shall require proof as to the necessity or advisability of such lease, and if he shall approve the same, he shall enter an order authorizing the guardian to make such mineral lease, which order shall set out the terms upon which it shall be made.

2. Previous notice thereof shall be given by the guardian for one week prior to the time the county judge shall hear such application by publishing same in some newspaper of the county where such guardianship is pending, for one issue of said paper. Said notice shall state when and where such application shall be heard.

3. After notice and hearing of said application and the granting of same by the court, said guardian shall be fully authorized to make the mineral lease upon the real estate of the ward, in accordance with the judgment of the court thereon.

4. No such lease shall extend beyond the time that the ward shall become twenty-one years of age, unless at that time the lessee shall have discovered such minerals as are specified in the lease, or any of such minerals, upon the premises described in such lease, in which event the same shall remain in full force so long as such minerals or any of them shall be produced in paying quantities. The marriage of the female ward shall not terminate any lease made hereunder until such ward actually reaches the age of twenty-one years. [Acts 1913, p. 261; Acts 1915, p. 85; Acts 1919, p. 185.]

CHAPTER EIGHT.

SALES.

1. MODE.

| | Article | | Article |
|-----------------------------|---------|------------------------------------|---------|
| Perishable property..... | 4193 | Notice of sale of real estate..... | 4203 |
| Wild stock..... | 4194 | Credit sale..... | 4204 |
| Real estate..... | 4195 | Purchase by guardian..... | 4205 |
| Application for sale..... | 4196 | Bidder's liability..... | 4206 |
| Guardian cited..... | 4197 | May continue sale..... | 4207 |
| Hearing on application..... | 4198 | Private sale..... | 4208 |
| Advantage of estate..... | 4199 | Mortgaged property..... | 4209 |
| Terms of sale..... | 4200 | Lien, discharge of..... | 4210 |
| Order of sale..... | 4201 | Interest on ward's debts..... | 4211 |
| Validating sales..... | 4201a | May renew debt..... | 4212 |
| Place of sale..... | 4202 | | |

Art. 4193. [4153] [2651] [2570] **Perishable property.**—The guardian of the estate, after appraisement, shall promptly apply for an order of the court to sell at public or private sale, for cash or on credit not exceeding six months, all the personal property belonging to the ward that is liable to perish, waste or deteriorate in value, or that will be an expense or disadvantage to the estate to keep. [Acts 1876, p. 181; G. L. Vol. 8, p. 1017.]

Art. 4194. [4154] [2652] [2571] **Wild stock.**—If he shall represent to the court on oath that there is stock belonging to the estate which he is unable to collect or command, the court may order that the same be sold at public auction, on such credit as the court may deem reasonable, not exceeding twelve months, taking notes bearing interest at the rate of ten per cent per annum from the date of sale, with good and sufficient security for the purchase money. Such sale shall be advertised, made, returned and acted upon by the court the same as sales of real estate. [Id.]

Art. 4195. [4155] **Guardian may sell real estate.**—When the income of the ward's estate, and the personal property thereof, and the proceeds of previous sales, are insufficient for the education and maintenance of the ward, or to pay the debts against the estate, the guardian, or any person holding a valid claim against the estate, may, by written application to the court in which such guardianship is pending, ask for an order for a sufficient amount of real estate to be sold to make up the deficiency, or when the property of the ward consists in whole or in part of an undivided interest in real estate and the guardian believes it to be the best interest of the estate of the ward to sell such real estate, he may, by written application to the court in which such guardianship is pending, ask for an order for such real estate to be sold; or when the real estate of such minor is encumbered by a valid lien to secure a debt which is due or is about to become due, or when the taxes are due on the property of said ward, or when the holder of such debt has applied for or is threatening to apply for an order of sale of the real estate of the minor and the guardian has not in his hands sufficient funds to pay such debts, such guardian may by written application to the court in which such guardianship is pending, apply in writing for an order to obtain an extension of such debt and to secure the same by a mortgage or deed of trust on the real estate of such

minor; or if the real estate of such minor or any part thereof is not revenue producing, or the revenue therefrom could be increased by making improvements or additional improvements or repairs thereon, such guardian may make a written application to such court to make such improvements or repairs on such real estate as he may deem beneficial to the ward, and to secure the payment for the same by mortgage, deed of trust, mechanics contracts and material men lien.

Art. 4196. [4156] **Application for sale.**—The guardian shall apply for such order as is provided in the preceding article, whenever it appears that a necessity exists therefor, and set forth fully in his application with an exhibit, under oath, showing fully the condition of the estate. [Acts 1925, p. 338.]

Art. 4197. [4157] [2655] [2574] **Guardian cited.**—When the application for the sale of real estate is made by any other person than the guardian of the estate, the guardian of the estate shall be cited to appear at a regular term of the court and show cause why the order should not be made and also to present to the court an exhibit, under oath, showing fully the condition of the estate.

Art. 4198. [4158] [2656] [2575] **Hearing on application.**—Whenever an application for the sale of real estate is filed, the clerk shall immediately call the attention of the judge of the court in which such guardianship is pending to the filing of the application, and the judge shall designate a day to hear such application, which may be heard in term time or vacation, provided such application shall remain on file at least five days before any orders are made, and the judge may continue such hearing from time to time until he is satisfied concerning the application. [Acts 1876, p. 181; Acts 1913, p. 321; G. L. Vol. 8, p. 1017.]

Art. 4199. [4160] [2658] [2577] **Advantage of estate.**—When a sale of real estate is ordered, it shall be of the property which the court may deem most advantageous to the estate to be sold. [Id.]

Art. 4200. [4161] [2659] [2578] **Terms of sale.**—A sale of real estate may be for cash, or for part cash and part credit, at public auction or private sale, as may appear to the court to be the best interest of the estate. [Acts 1892, C. S., p. 9; Acts 1913, p. 321; G. L. Vol. 10, p. 373.]

Art. 4201. [4162] [2660] [2579] **Order of sale.**—An order for the sale of real estate shall state:

1. The property to be sold, giving such description of it as will identify it.
2. Whether it is to be sold at public auction or at private sale, and if at public auction, the time and place of such sale.
3. The necessity and purpose of such sale.
4. It shall require the guardian to file a good and sufficient bond, subject to the approval of the court, in an amount equal to twice the amount for which such real estate is sold.
5. It shall require the sale to be made and the report thereof

to be returned to the court in accordance with law. [Acts 1876, p. 180; Acts 1913, p. 321; G. L. Vol. 8, p. 1016.]

Art. 4201a. Validating sales.—1. Wherever it shall appear that lands of a ward have been conveyed by a guardian of such ward, under an order of the county court, entered in the minutes of the county court, authorizing the making of such conveyance, and it shall appear that the order of sale in such proceeding failed to require the guardian to file the bond as provided by Subdivision No. 4, of Article 4201, or that the bond was not filed and approved by the court as required by Article 4191, either the guardian of the ward whose lands were conveyed, or the owner or anyone having an interest in the land, may, while the guardianship is still pending, apply to the county court of the county where the proceeding for the sale of the land was had, at a regular term of said court for an order confirming the sale and validating the title attempted to be conveyed by the guardian in the earlier proceeding. Such application shall state the name, age and residence of the ward and name and residence of the guardian, description of the property, date when sold, and reference to the proceedings formerly had.

2. Upon the filing of such application the clerk shall immediately issue citation which shall state that the application has been filed, by whom, a description of the property, and the purpose of the application, and shall name the ward, and guardian, if the applicant be other than the guardian, and shall cite all persons interested in the welfare of the ward, or having any interest in the property, to appear at a term of the court named in the citation, and contest such application if they see proper. Such citation shall be served as required for service of other citations in guardianship proceedings.

3. At a regular term of the county court, after citation has been properly served, the court shall inquire into the facts and hear evidence in support of the application, and if it shall appear to the satisfaction of the court that the sale was made for the reasonable value of the property at the time of sale, and that the guardian received the proceeds of the sale, the court shall require the guardian to make and file a satisfactory bond to be approved by the court in an amount equal to twice the amount for which the property was sold, and upon the making, filing and approval of such bond the court shall enter an order confirming such sale, and upon the entry of such order in the minutes of such court such sale shall be, and hereby is, validated.

4. Nothing in this Act shall be construed as attaching any liability to the sureties on the general bonds of guardians heretofore made that did not exist prior to the enactment of this Act.

Art. 4202. [4163] [2661] [2580] Place of sale.—All private sales of real estate shall be made in the county where the guardianship is pending; all public sales of real estate shall be made in the county where the real estate is situated. [Acts 1876, p. 180; Acts 1913, p. 321; G. L. Vol. 8, p. 1016.]

Art. 4203. Notice of sale of real estate.—The time and place of making a public sale of real estate by a guardian under

an order of the court shall be advertised by the officer by having notice thereof published in the English language once a week for three consecutive weeks preceding such sale in some newspaper published in the county where the land is situated. The first of said publications shall appear not less than twenty days immediately preceding the day of sale; said notice shall contain a statement of the authority by virtue of which the sale is to be made, and the time and place of sale. It shall also contain a brief description of the property to be sold, the number of acres of original survey, locality in the county and the name by which the land is most generally known. It shall not contain the field notes. If no newspaper is published in the county, or if published in the county refuses to publish the notice, the officer shall post notices in writing in three public places in the county, one of which shall be at the courthouse door, for at least twenty days successively next before the day of the sale. The publisher's fee shall be fifty cents per square for the first insertion and thirty cents per square for the subsequent insertions. Ten lines shall constitute a square. In no case shall the fee exceed five dollars.

Art. 4204. [4164] [2662] [2581] **Credit sale.**—When real estate is sold partly on credit, the cash payment shall not be less than one-third of the purchase price, and the purchaser shall execute notes for the deferred payments maturing in equal annual amounts, the last note to mature not later than five years from date of deed, to bear interest from date at a rate not less than six per cent, payable annually. Default of the payment of principal or interest or any part thereof when due, shall mature the whole debt; all notes for the deferred payments to be secured by vendor's lien, retained in deed and notes upon the property sold, and further secured by deed of trust upon the property sold with usual provisions for foreclosure and sale upon failure to make payments provided in deed and notes. [Acts 1892, C. S., p. 9; Acts 1913, p. 321; G. L. Vol. 10, p. 373.]

Art. 4205. [4165] [2663] [2582] **Purchase by guardian.**—The guardian shall not become the purchaser either directly or indirectly of any property of the estate sold by him. If any guardian shall, directly or indirectly, become the purchaser of any property of his ward, at a sale made by such guardian, upon written complaint of any person, and after service of citation upon such guardian, and upon proof, such sale shall be held void and by the court set aside by order to that effect. The costs of such sale, and of suit, shall be adjudged against such guardian individually.

Art. 4206. [4166] [2664] [2583] **Bidder's liability.**—When any person shall bid off property offered for sale by a guardian, and shall fail to comply with the terms of the sale, the facts shall be reported to the court by the guardian; and such person so failing to comply shall be liable to pay such guardian for the use of the estate, ten per cent on the amount of his bid; and, also, the deficiency, if any, in price on the second sale of such prop-

erty, to be recovered by suit in the county where such sale was made.

Art. 4207. [4167] [2665] [2584] **May continue sale.**—Public sales may be continued from day to day in case the day set apart for any such sale shall be insufficient to complete the same, by giving public notice verbally of such continuance at the conclusion of the sale each day. The continued sale shall commence and conclude within the hours prescribed for public sales under execution.

Art. 4208. [4169] [2667] [2586] **Private sale.**—Notice of a private sale of the property of the ward to be made by a guardian is not required to be given.

Art. 4209. [4170] [2668] [2587-2588] **Mortgaged property.**—Any person holding a claim against the estate of a ward, secured by mortgage or other lien, may obtain an order for the sale of the property upon which he has such mortgage or other lien, or so much thereof as may be required to satisfy the claim, by causing notice to be posted and the guardian to be cited to appear at a regular term of the court and show cause why such order should not be made. Such sale shall be made upon such terms as the court may direct, which shall be stated in the order of sale. The notice and other proceedings shall be the same as in other sales by guardians. [Id.]

Art. 4210. [4171] [2668] [2589] **Lien, discharge of.**—If it appears to the court that the discharge of such mortgage or other lien out of the general assets would be beneficial to the estate, the payment may be ordered to be so made, instead of ordering a sale of the property. [Id.]

Art. 4211. [4172] [2670] **Interest on ward's debts.**—Should an estate in the hands of a guardian be involved in debt, and it appears to the court that the guardian can discharge existing debts to the advantage of the estate by the hypothecation or mortgage of real estate at a lower rate of interest, or court may, in its discretion, by order, allow the guardian to pay off and discharge existing debts by the execution of a mortgage or deed of trust upon real estate to secure the person furnishing the money for that purpose; acts of guardians under this article shall be reported to the court and approved as in case of sales. No guardian shall renew any indebtedness or evidence thereof except by order of the court made upon application and notice as in case of sales of land. [Acts 1892, C. S., p. 10; G. L. Vol. 10, p. 374.]

Art. 4212. [4173] [2671] **May renew debt.**—Should a guardian not have sufficient funds in hand belonging to the estate of his ward to pay and discharge any existing debt, he may renew the evidence of the same in like manner as his ward could if able to act; and such act of the guardian shall have the same force and effect with reference to such novated paper as if done by the ward. No such guardian shall renew the evidences of any debt against the estate of his ward barred by the statutes of limitations; nor shall such guardian renew the evidences of any

debt that may have been made or contracted by his ward during his minority or other disability. [Acts 1892, C. S., p. 10; Acts 1913, p. 321; G. L. Vol. 10, p. 374.]

2. REPORTS AND APPROVAL OF SALES.

| | Article | | Article |
|--------------------------|---------|--------------------------------|---------|
| Time of report..... | 4213 | Conveyance of real estate..... | 4219 |
| Report of sale..... | 4214 | Prerequisites of grant..... | 4220 |
| Filing report..... | 4215 | Penalty..... | 4221 |
| Action of the court..... | 4216 | Vendor's lien..... | 4222 |
| Order for resale..... | 4217 | Failure to sell..... | 4223 |
| Conveyances..... | 4218 | | |

Art. 4213. [4174] [2672] [2590] **Time of report.**—All sales of the property of the ward shall be reported by the guardian to the court in which the guardianship is pending within thirty days after the sale is made.

Art. 4214. [4175] [2673] [2591] **Report of sale.**—Reports of sale shall be in writing, and subscribed and sworn to by the guardian. They shall show:

1. The time and place of the sale.
2. The property sold, describing it.
3. The name of the purchaser of the property.
4. The amount for which each article or property was sold.
5. The date of the order of sale.
6. Whether such sale was at public auction or a private sale.
7. The terms of the sale.
8. Whether the purchaser has complied with the terms of the sale.

Art. 4215. [4176] [2674] [2592] **Filing report.**—A report of sale may be made in term time or vacation, and, when returned, shall be filed by the clerk, and the filing thereof noted in the case upon the judge's docket.

Art. 4216. [4177] [2675] [2593] **Action of the court.**—At any time after the expiration of five days from the filing of a report of sale, the court shall inquire into the manner in which such sale was made, and hear evidence in support of or against such report, and if satisfied that such sale was fairly made and in conformity with law, and that the guardian has filed bond as required herein, which has been duly approved by the court, the court shall cause to be entered a decree confirming such sale, and order the report of sale to be recorded by the clerk, and the proper conveyance of the property sold to be made by the guardian to the purchaser, upon compliance by such purchaser with the terms of sale. [Acts 1876, p. 185; Acts 1913, p. 321; G. L. Vol. 8, p. 1021.]

Art. 4217. [4178] [2676] [2594] **Order for resale.**—If the court is not satisfied that the sale was fairly made, and in conformity with law, order shall be entered, setting the same aside, and ordering the property to be again sold if necessary.

Art. 4218. [4179] [2677] [2595] **Conveyances.**—After a sale has been confirmed by a decree of the court, and after the purchaser has complied with the terms of the sale, the guardian shall execute and deliver to the purchaser a proper conveyance

of the property. In sales of personal property, no conveyance shall be necessary; but the decree of the court confirming the sale shall vest the title of the ward to the property sold in the purchaser, and shall be prima facie evidence that the law has been complied with in making such sale. [Id.]

Art. 4219. [4180] [2678] [2596] **Conveyance of real estate.**—If real estate be sold, the conveyance shall be by deed, and shall refer to the decree of the court confirming the sale and ordering the conveyance to be made, by giving the date and term of the court of such order. Such conveyance shall vest the right and title of the ward to such real estate in the purchaser, and shall be prima facie evidence that the law has been complied with in making such sale. [Id.]

Art. 4220. [4181] [2679] [2597] **Prerequisites of grant.**—No conveyance of real estate sold shall be executed and delivered by the guardian to the purchaser until the terms of the sale shall have been complied with by such purchaser. When such sale has been made for part cash and part credit, the guardian shall, before delivering a conveyance of the property to the purchaser, take from such purchaser a note or notes for the deferred payment, bearing interest at the rate of not less than six per cent per annum, payable annually, secured by vendor's lien and a deed of trust, with usual provisions for foreclosure and sale, as additional security, and to file such deed of trust for record in the county where such real estate is situated. [Acts 1913, p. 321.]

Art. 4221. [4182] [2680] [2598] **Penalty.**—Should the guardian neglect to take the note, security and mortgage, and file such mortgage for record in the proper county before delivering a deed to the purchaser, such guardian and sureties upon his bond shall be liable for whatever loss may accrue to the estate of the ward by reason of such neglect.

Art. 4222. [4183] [2681] [2599] **Vendor's lien.**—All notes executed for the purchase money of real estate, under the provisions of this chapter, shall hold the vendor's lien on the real estate for which such notes were given against all persons having notice, express or implied, in favor of the estate, whether the mortgage be recorded or not; and such lien shall in no case be waived.

Art. 4223. [4184] [2682] [2600] **Failure to sell.**—If, from any cause, the guardian shall fail to sell any real estate ordered to be sold at the time specified in the order, he shall report under oath the facts to the court or judge, and the judge in term time or vacation may by an order appoint another day for such sale. [Id.]

CHAPTER NINE.

ANNUAL ACCOUNTS.

| | | | |
|-------------------------|-----------------|------------------------------------|-----------------|
| Guardian of person..... | Article 4224 | Annual account, requisites of..... | Article 4226 |
| Annual account..... | 4225 | Failure to return..... | 4227 |

Art. 4224. [4185] [2683] [2601] **Guardian of person.**—The guardian of the person, where there is a separate guardian of the estate, shall annually return to the court his sworn account

showing each item of expenditure since the last account for the education and maintenance of the ward. [Acts 1876, p. 186; G. L. Vol. 8, p. 1022.]

Art. 4225. [4186] [2684] [2602] **Annual account.**— The guardian of an estate shall annually return to the court an account showing:

1. Any property that may have come to his knowledge belonging to his ward which has not been previously inventoried or listed.

2. Any changes in the property of the ward which have not been previously reported.

3. A complete account of receipts and disbursements since the last annual account.

4. All claims that have been allowed by him against the estate since the last annual account that are still unpaid.

5. All claims that have been rejected by him since the last annual account, and whether the same have been sued upon or not.

6. The money and property still on hand, and the condition of such property, and the use that is being made of the same.

7. Such other facts as may be necessary to show the true and exact condition of the estate.

Annexed to such account, shall be a certificate by an executive officer of any bank or trust company in which the money on hand is deposited showing the amount thereof, and the affidavit of the guardian that such account contains a correct and complete statement of the matters to which it relates. Where the ward is a beneficiary of the United States Veterans Bureau or the United States Pension Bureau, a complete certified copy of annual and other accounts of the guardians, certified to by the clerk of the court shall be mailed by said clerk to the United States Veterans Bureau or Pension Bureau, as the case may be, within ten days after filing. [Acts 1925, p. 367.]

Art. 4226. [4187-8-9-90] **Annual account, requisites of.**— These rules shall govern an annual account:

1. When presented, it shall be filed, and the filing thereof noted upon the judge's docket, and before being acted on shall remain on file five days.

2. At any time after five days from the filing of an annual account, the judge may act thereon, and may continue the hearing thereon until fully advised as to all items of such account.

3. The guardian must produce and file proper vouchers for each item of credit claimed by him in his account, or support the same by satisfactory evidence.

4. If the account be found incorrect, it shall be corrected. When correct, it shall be approved by an order of the court. [Id. Acts 1913, p. 321.]

Art. 4227. [4191-2] **Failure to return.**—If the guardian fails to return an annual account, he shall be cited to return the same at the next term of the court, and to show cause for such failure. If the guardian fails to return such account after being so cited, or fails to show good cause for such failure, he may be

fined by the court not exceeding five hundred dollars, for the use of the county; and he and his sureties shall be liable for any fine imposed and all damages sustained by reason of such failure. [Id.]

CHAPTER TEN.

DEATH, RESIGNATION AND REMOVAL.

| | | | |
|-------------------------------|---------|-----------------------------|---------|
| | Article | | Article |
| Death | 4228 | Removal after citation..... | 4234 |
| Resignation | 4229 | Order of removal..... | 4235 |
| Notice | 4230 | Disqualification | 4236 |
| Service | 4231 | Transfer of property..... | 4237 |
| Resignation: proceedings..... | 4232 | Subsequent guardian..... | 4238 |
| Removal without notice..... | 4233 | | |

Art. 4228. [4194] [2691] [2609] **Death.**—When a guardian dies, the court, on application, shall appoint another. [Acts 1876, p. 179; G. L. Vol. 8, p. 1015.]

Art. 4229. [4195] [2692] [2610] **Resignation.**—A guardian who wishes to resign shall present his written application to that effect to the court accompanied by a full and complete sworn account of the condition of the estate and of his guardianship. [Id.]

Art. 4230. [4196] [2693] [2611] **Notice.**—Upon the filing of such application and account, the clerk shall issue a notice to all persons interested in such guardianship stating:

1. That such guardian has filed his application for leave to resign the guardianship, accompanied by an account for final settlement thereof.

2. It shall notify all persons interested in the guardianship that they may appear at a certain term of the court and contest the account of the guardian. [Id.]

Art. 4231. [4197] [2694] [2612] **Service.**—Three copies of such notice shall be duly posted in three public places, one of which shall be at the courthouse door, and the other two at two other public places in the county, not in the same city or town, and the officer posting such notices, shall make due return of such posting, for at least twenty days before the return term thereof. [Id.]

Art. 4232. [4198] [2695] [2613] **Resignation: Proceedings.**—Upon the hearing of such application and account, if it appear that such guardian has accounted for all the estate according to law, the court shall enter an order that he deliver the estate remaining in his possession, or the person of his ward, or both, to some person who has or may be appointed and qualified as guardian in his place. Upon compliance with such order and surrender of his letters of guardianship, such guardian shall be permitted to resign his trust and be discharged, and an order to that effect shall be made by the court. [Id.]

Art. 4233. [4199] [2696] [2614] **Removal without notice.**—Guardians shall be removed in the following cases, without notice, at a regular term of the court:

1. When they fail to return, within thirty days after qualification, an inventory and list of claims of the property of the estate which has come to their knowledge.

2. When they have been required to give a new bond, and fail to do so within the time prescribed.

3. When they have removed from the State. [Id.]

Art. 4234. [4200] [2697] [2615] **Removal after citation.**—A guardian may be removed by the court of its own motion, or on the motion of any person interested in the ward, or his estate, after being cited to answer:

1. When he fails to return any account which is required to be returned by any provision of this title.

2. When he fails to obey any proper order of the court or judge.

3. When there is good cause to believe that he has misapplied, embezzled or removed, or is about to misapply, embezzle or remove from the State, the property committed to his charge, or any part thereof.

Art. 4235. [4201] [2698] [2616] **Order of removal.**—The order removing a guardian shall state the cause of such removal, and shall require such guardian to surrender his letters of guardianship, and shall further require such guardian to deliver the person of the ward, or his estate, or both, to some person who has been appointed and has qualified as guardian in his place.

Art. 4236. [4202] [2699] [2617] **Disqualification.**—A person removed from the guardianship of the person or estate of a ward shall not be reappointed to such guardianship. [Id.]

Art. 4237. [4203] [2700] [2618] **Transfer of property.**—If a guardian die, resign, or be removed, he or his legal representatives shall account for, pay and deliver to the person legally entitled to receive the same, all the property of every kind belonging to the estate of the ward at such time and in such manner as the court shall order. In case of refusal to comply with such order, the same may be enforced by contempt proceedings. [Id.]

Art. 4238. [4204-5] **Subsequent guardian.**—When a guardian succeeds another, he shall be required to account for all the estate which came into the hands of his predecessor and shall be entitled to any order or remedy which the court has power to give, in order to enforce the delivery of the estate, and the liability of the sureties of his predecessor for so much as is not delivered. Such subsequent guardian shall be excused from accounting for such of the estate as he has failed to recover after the use of due diligence. A subsequent guardian shall succeed to all the rights, powers, and duties of his predecessor, and shall proceed with the guardianship as if it were a continuation of the same by the former guardian. [Id.]

CHAPTER ELEVEN.

CLAIMS AGAINST THE ESTATE.

| | Article | | Article |
|-------------------------------|---------|-------------------------------|---------|
| Payment | 4239 | Guardian's claim | 4253 |
| Claim of corporation | 4240 | "Exhibited claim" | 4254 |
| Affidavit of officer | 4241 | "Established claim" | 4255 |
| Indorsement by guardian | 4242 | Time of exhibit | 4256 |
| Failure to indorse | 4243 | Limitation interrupted | 4257 |
| Rejected claim: suit | 4244 | Purchase by guardian | 4258 |
| Memorandum evidence | 4245 | Filing claim | 4259 |
| Allowance of claim | 4246 | Cost of exhibition, etc. | 4260 |
| Examination of claim | 4247 | Claim docket | 4261 |
| May contest claim | 4248 | Payment of claims | 4262 |
| Hearing | 4249 | Order for payment | 4263 |
| Court indorsement | 4250 | Execution against guardian .. | 4264 |
| Lost claim | 4251 | Sureties cited | 4265 |
| Appeal | 4252 | Citation and judgment | 4266 |

Art. 4239. [4206-7-8] **Payment.**—A guardian may pay an unauthenticated claim against the estate of his ward which he knows to be just. Otherwise he shall not allow, and the court shall not approve, a claim unless it be accompanied by an affidavit of the claimant that the claim is justly due, that nothing has been paid or delivered toward the satisfaction of such claim, except what is mentioned or credited; that there are no counter claims known to affiant which have not been allowed. If the claim is not founded on a written instrument or account, the affidavit must also state the facts upon which the claim is founded. [Acts 1876, p. 179; G. L. Vol. 8, p. 1015.]

Art. 4240. [4209] [2706] [2624] **Claim of corporation.**—The cashier, treasurer or managing agent of a corporation shall make the affidavit required to authenticate a claim of a corporation. [Id.]

Art. 4241. [4210] [2707] [2625] **Affidavit of officer.**—When an affidavit authenticating a claim is made by an officer of a corporation, or an executor, administrator, trustee, assignee, agent or attorney, it shall be sufficient to state in such affidavit that he has made diligent inquiry and examination and that he believes that nothing has been paid and delivered toward the satisfaction of such claim except the amount credited, that there are no counter claims which have not been allowed, and that the sum claimed is justly due. [Id.]

Art. 4242. [4212] [2709] [2627] **Indorsement by guardian.**—When a duly authenticated claim is presented to the guardian, he shall indorse thereon or annex thereto a written memorandum signed by him, stating the time of its presentment, and that he allows or rejects it, or what portion thereof he allows, if any. [Id.]

Art. 4243. [4213] [2710] [2628] **Failure to endorse.**—The failure of a guardian to indorse on, or annex to, a claim presented to him, his allowance or rejection thereof, shall be deemed a rejection of such claim. In such case, if the claim be established, the costs shall be adjudged against the guardian to be paid out of his own estate. [Id.]

Art. 4244. [4214] [2711] [2629] **Rejected claim: suit.**—When a claim or a part thereof has been rejected by the guard-

ian, the claimant shall institute suit thereon within ninety days after such rejection, or the same shall be barred. [Id.]

Art. 4245. [4215] [2712] [2630] **Memorandum evidence.**—When a rejected claim is sued upon, the indorsement of its rejection thereon or annexed thereto shall be taken to be true without proof unless it be denied under oath. [Id.]

Art. 4246. [4216] [2713] [2631] **Allowance of claim.**—After a claim has been presented to the guardian and allowed, the claimant shall present it to the clerk of the court in which the guardianship is pending, who shall enter it upon the claim docket. [Id.]

Art. 4247. [4217] [2714] [2632] **Examination of claim.**—At each regular term of the court, all claims which have been allowed and entered on the claim docket shall be examined by the court and approved or disapproved, in the same manner as is provided for claims against the estates of decedents. [Id.]

Art. 4248. [4218] [2715] [2633] **May contest claim.**—Any person may contest the approval of a claim, or any part thereof, and shall be entitled to process for witnesses and the production of testimony as in ordinary suits. [Id.]

Art. 4249. [4219] [2716] [2634] **Hearing.**—Although a claim be properly authenticated and allowed, if the court is not satisfied that it is just, he shall examine the claimant and guardian under oath and hear other evidence. If not then entirely convinced by evidence other than the testimony of the claimant that the claim is just, it shall be disapproved. [Id.]

Art. 4250. [4220-22] **Court indorsement.**—When a claim is acted on by the court, he shall indorse thereon, or annex thereto, a memorandum in writing, signed officially, stating the action of the court upon such claim, and shall also enter such action upon the claim docket. Such order of approval or disapproval shall have the force and effect of a judgment. [Id.]

Art. 4251. [4223] [2720] [2638] **Lost claim.**—When a claim has been lost, the claimant may make an affidavit of the facts and present it to the guardian, with the same effect as the claim itself; but in such case, before the court shall approve it, the claim must be proved by competent testimony, other than such claimant's affidavit or oath, produced in court or taken by deposition. [Id.]

Art. 4252. [4221] [2718] [2636] **Appeal.**—When a claimant or any person interested in a ward shall be dissatisfied with the action of the court in approving or disapproving a claim in whole or in part, he may appeal therefrom to the district court, as in other cases.

Art. 4253. [4224] [2721] [2639] **Guardian's claim.**—A claim which the guardian held against the ward at the time of his appointment, or which has since accrued, is exhibited by being filed, verified by the affidavit of the guardian; after which it takes the same course as other claims. [Id.]

Art. 4254. [4225] [2722] [2640] **“Exhibited claim.”**—A claim is said to be legally exhibited:

1. When it is properly presented to the guardian, and after being allowed by him, is filed.

2. When, after being rejected, suit is commenced thereon. [Id.]

Art. 4255. [4226] [2723] [2641] **“Established claim.”**—A claim is said to be established:

1. When it has been allowed by the guardian and approved by the court.

2. When in a suit thereon, it has been sustained by the judgment of the proper court [Id.]

Art. 4256. [4227] [2724] [2642] **Time of exhibit.**—Claims which have not been legally exhibited within the year may be exhibited at any time afterward, before the estate is closed, or suit on such claims will be barred by the general law of limitation. [Id.]

Art. 4257. [4228] [2725] [2643] **Limitation interrupted.**—The general law of limitations is interrupted:

1. By filing a claim which has been allowed.

2. By bringing a suit upon a rejected or disapproved claim within ninety days after such rejection or disapproval.

Art. 4258. [4229] [2726] [2644] **Purchase by guardian.**—It shall be unlawful for a guardian, either directly or indirectly, to purchase for his own use any claim against the estate of his ward. Upon satisfactory proof of the violation of this provision, the court shall disapprove the claim.

Art. 4259. [4230] [2727] [2645] **Filing claim.**—When a claim has been established by judgment, a certified copy of such judgment shall be filed with the clerk of the court in which the guardianship is pending, and entered upon the claim docket as other claims are entered. [Id.]

Art. 4260. [4231] [2728] [2646] **Cost of exhibition, etc.**—The costs incurred in the exhibition and establishment of claims shall be taxed as follows:

1. If a claim be allowed and approved, the estate shall pay the costs.

2. If a claim be allowed, but disapproved, the claimant shall pay the costs.

3. If a claim which has been rejected be established, the estate shall pay the costs. [Id.]

Art. 4261. [4232] [2729] [2647] **Claim docket.**—The claim docket required to be kept in the estates of decedents shall be used also for the estates of wards under the same rules as far as applicable.

Art. 4262. [4233] [2730] [2648] **Payment of claims.**—The guardian shall pay all claims against the estate of his ward that have been allowed and approved, or established by suit, as soon as practicable. The court may, either in term time or vacation, direct the order in which the claims against the estate shall

be paid, and the amount to be paid on each claim, when the funds are not sufficient to pay them all in full.

Art. 4263. [4234] [2731] [2649] **Order for payment.**—Any creditor of an estate whose claim has been approved by the court, or established by judgment, may, upon written application to the court at a regular term thereof, obtain an order for the payment of such claim, where there are funds in the hands of the guardian subject thereto, or, if there be no funds, or not sufficient for the payment of such claim, and if to await the receipt of funds from other sources would involve an unreasonable delay, an order shall be made for the sale of property of the estate sufficient to pay the debt. [Id.]

Art. 4264. [4235] [2732] [2650] **Execution against guardian.**—If a guardian shall fail on demand to pay a claim ordered by the court to be paid, upon affidavit of the demand and failure to pay being filed with the clerk of the court making such order, an execution shall be issued for the amount ordered to be paid such claimant, and for the costs of such proceeding against the property of such guardian. [Id.]

Art. 4265. [4236] [2733] [2651] **Sureties cited.**—If such execution be returned not satisfied, the sureties upon such guardian's bond may be cited to appear at a regular term of the court from which such execution issued to show cause why judgment should not be rendered against them for such debt, interest and costs. [Id.]

Art. 4266. [4237] [2734] [2652] **Citation and judgment.**—Citation in such case may be issued to any county in the State; and upon the return thereof duly served, if good cause to the contrary be not shown, the court shall render judgment against the sureties so served in favor of the claimant for the amount of the claim ordered to be paid as aforesaid, and remaining unpaid, and ten per cent damages thereon, together with interest and costs; and execution may issue thereon. [Id.]

CHAPTER TWELVE.

LUNATICS AND DRUNKARDS.

| Article | Article | | |
|--------------------------------|---------|--------------------------------|------|
| Warrant | 4267 | Prior right..... | 4276 |
| Duty of county officer..... | 4268 | Confinement of ward..... | 4277 |
| Requisites of information..... | 4269 | Apprehension | 4278 |
| Jury impaneled..... | 4270 | Liability for maintenance..... | 4279 |
| Proceedings and trial..... | 4271 | Expenses of confinement..... | 4280 |
| Appointment of guardian..... | 4272 | County may recover..... | 4281 |
| New trial..... | 4273 | Restoration | 4282 |
| Provisions applicable..... | 4274 | Trial | 4283 |
| Support of ward's family..... | 4275 | Order of discharge..... | 4284 |

Art. 4267. [4238] [2735] [2653] **Warrant.**—Upon information that any person of the county is of unsound mind, or is an habitual drunkard, and is without a guardian, if satisfied that there is a good cause for the exercise of his jurisdiction, the county judge shall, either in term time or in vacation, issue a warrant to the proper officer commanding that such per-

son be brought before him at a time and place named in such warrant. [Acts 1876, p. 187; G. L. Vol. 8, p. 1023.]

Art. 4268. [4239] [2736] [2654] **Duty of county officer.**—Any county officer who may discover any person who resides in the county to be of unsound mind, and without a guardian, shall file information thereof with the county judge, who shall issue a proper warrant.

Art. 4269. [4240] [2737] [2655] **Requisites of information.**—Such information shall state that to the best of the knowledge and belief of affiant that such person is of unsound mind, or is an habitual drunkard, and shall state the name of the person so charged; or if unknown, such person shall be described and such information shall be subscribed and duly sworn to by the informant.

Art. 4270. [4241] [2738] [2656] **Jury impaneled.**—When the person charged is brought before the judge he shall, either in term time or in vacation, cause to be impaneled a qualified jury to try the case and decide whether such person is of unsound mind, or is an habitual drunkard.

Art. 4271. [4242] [2739] [2657] **Proceedings and trial.**—The case shall be docketed in the name of the county as plaintiff, and the person against whom the information is filed as defendant, and the proceedings and trial therein shall be governed by the same rules that govern in ordinary suits in the county court.

Art. 4272. [4243] [2740] [2658] **Appointment of guardian.**—If it be found by the jury that the defendant is of unsound mind or is an habitual drunkard, as charged, the court shall proceed, immediately and without further notice, to appoint a guardian of the person and estate of such defendant in the same manner as in the case of a minor. [Id.]

Art. 4273. [4244] [2741] [2659] **New trial.**—The court may, for good cause shown, at any time within ten days after the verdict has been returned, set aside such verdict and grant a new trial to either party; but, when two juries have concurred in a case, the second verdict shall not be set aside. [Id.]

Art. 4274. [4245] [2742] [2660] **Provisions applicable.**—Each provision of this title relating to the guardianship of the persons and estates of minors shall apply to the guardianship of the persons and estates of persons of unsound mind, and habitual drunkards, in so far as the same are applicable.

Art. 4275. [4246] [2743] [2661] **Support of ward's family.**—The court by which any person of unsound mind or habitual drunkard is committed to guardianship may make orders for the support of his family and the education of his children when necessary. [Id.]

Art. 4276. [4247] [2744] [2662] **Prior right.**—If the person committed to guardianship is married, the husband or wife of such person, as the case may be, shall be entitled first in order to the guardianship.

Art. 4277. [4248] [2745] [2663] **Confinement of ward.**—If any person shall be furiously mad, or so far disordered in his mind as to endanger his own person or the person or property of others, the guardian or other person under whose care he may be, and who is bound to provide for his support, shall confine him in some suitable place until the first regular term of the county court of his county, when the court shall make such order for the restraint, support and safe-keeping of such ward as the circumstances may require. [Id.]

Art. 4278. [4249] [2746] [2664] **Apprehension.**—If any such person of unsound mind as is specified in the preceding article shall not be confined by those having charge of him, or if there be no person having such charge, any magistrate may cause such insane person to be apprehended and may employ any person to confine him in some suitable place until the county court shall make further order thereon. [Id.]

Art. 4279. [4250] [2747] [2665] **Liability for maintenance.**—Where the person of unsound mind or habitual drunkard has no estate of his own, he shall be maintained:

1. By the husband or wife of such person, if able to do so.
2. By the father or mother of such person, if able to do so.
3. By the children and grandchildren of such person, if able to do so.
4. By the county in which said person has his residence.

[Id.]

Art. 4280. [4251] [2748] [2666] **Expenses of confinement.** The expenses attending the confinement of an insane person shall be paid by the guardian out of the estate of the ward, if he has an estate; and if he has none, such expense shall be paid by the person bound to provide for and support such insane person; and, if not so paid, the county shall pay the same. [Id.]

Art. 4281. [4252] [2749] [2667] **County may recover.**—In all cases of appropriations out of the county treasury for the support and confinement of any person of unsound mind or habitual drunkard, the amount thereof may be recovered by the county from the estate of such person, or from any person who, by law, is bound to provide for the support of such person, if there be any such person able to pay for same. [Id.]

Art. 4282. [4253] [2750] [2668] **Restoration.**—If any person shall allege in writing and under oath that a person who has been adjudged to be of unsound mind or an habitual drunkard has been restored to his right mind or to sober habits, the guardian of the person and of the estate of such ward shall be cited to appear before the county judge on a day and at a place named in such citation, either in term time or in vacation, and show cause why such ward should not be discharged from further guardianship, or the guardian may appear without such citation. [Id.]

Art. 4283. [4254] [2751] [2669] **Trial.**—If the facts of such alleged restoration be doubtful, the court shall, either in term time or in vacation, cause a qualified jury to be impaneled

to try the issue as in the first instance, and if such jury finds that the ward has been restored to his right mind, or has reformed, he shall be discharged from guardianship by an order to that effect; and the guardian shall immediately settle his accounts and deliver all the property remaining in his hands to such ward. [Id.]

Art. 4284. [4255] [2752] [2670] **Order of discharge.**—If the fact of such alleged restoration be not doubtful, the court may, without the intervention of a jury, make the order discharging the ward from guardianship, as provided in the preceding article. [Id.]

CHAPTER THIRTEEN.

NON-RESIDENT GUARDIANS AND WARDS.

Art. 4285. [4256] [2753] [2671] **Letters of guardianship.**—Where a guardian and his ward are non-residents, such guardian may file in the county court of any county a full and complete transcript from the records of a court of competent jurisdiction where he and his ward reside, showing that he has been appointed and has qualified as guardian of the estate of such ward; which said transcript shall be certified by the clerk of the court in which the proceedings were had, under the seal of such court, if there be one, together with a certificate from the judge, chief justice or presiding magistrate of such court, as the case may be, that the attestation of such transcript is in due form; and upon the filing of such transcript the same may be recorded, and the guardian shall be entitled to receive letters of guardianship of the estate of such minor situated in this State, upon filing a bond with sureties as provided in Article 4141. [Acts 1876, p. 180; G. L. Vol. 8, p. 1011; Acts 1st C. S. 1923, p. 13.]

Art. 4286. [4257] [2754] [2672] **May remove property.**—Upon the recovery of the property of the ward, if it be personal property, such guardian may remove the same out of the State, unless such removal would conflict with the tenure of such property, or the terms and limitations under which it is held; and if it be real property, he may obtain an order for the sale of it and remove the proceeds. Such sale shall be made, returned and acted upon by the court as other sales of real estate by a guardian made in accordance with this title. [Id.]

Art. 4287. [4258] [2755] [2673] **Delivery of property.**—Any resident executor, administrator or guardian, having any of the estate of such ward may be ordered by the court to deliver the same to such non-resident guardian. [Id.]

Art. 4288. [4259] [2756] [2674] **Requisites of removal.**—There shall be no removal from the State of any of such property, until all debts known to exist against the estate have been paid, or the payment thereof secured by bond payable to the county judge and approved by the clerk. [Id.]

Art. 4289. [4260] [2757] [2675] **Reciprocity.**—The benefit of the provisions of this chapter shall not extend to the residents of any State, territory, district or county in which a similar law does not exist in favor of the residents of this State. [Id.]

CHAPTER FOURTEEN.

REMOVAL OF GUARDIANSHIP.

Art. 4290. [4261] [2758] [2676] **Application.**—When a guardian desires to remove the transaction of the business of the guardianship from one county to another, he shall file in the court where such guardianship is pending a written application asking for authority to do so, and state in such application his reasons for desiring such removal. [Acts 1876, p. 185; G. L. Vol. 8, p. 1021.]

Art. 4291. [4262] [2759] [2677] **Citation to sureties.**—Upon the filing of such application, the clerk shall issue citation to the sureties upon the bond of such guardian citing them to appear at a regular term of the court, to be named in such citation, and show cause why such application should not be granted. [Id.]

Art. 4292. [4263] [2760] [2678] **Action of court.**—Upon the hearing of the application, if no good cause be shown to the contrary, and if it appears that the removal of the guardianship would be to the interest of the ward, the court shall enter an order authorizing such removal upon the payment of all costs that have accrued.

Art. 4293. [4264] [2761] [2679] **Transcript.**—When such order of removal has been made the clerk shall record all papers of the guardianship required to be recorded, and that have not already been recorded, and shall make out a full and complete certified transcript of all the orders, decrees, judgments and proceedings in such guardianship, and, upon the payment of his fees therefor, shall transmit such transcript, together with all the original papers in the case, to the county clerk of the county to which such guardianship has been removed.

Art. 4294. [4265] [2762] [2680] **Prerequisites.**—The order removing a guardianship shall not take effect until such transcript has been filed in the office of the county clerk of the county to which such guardianship has been ordered removed, and until a certificate of that fact from the clerk filing the same, under his official seal, has been filed in the court making such order of removal.

Art. 4295. [4266] [2763] [2681] **Guardianship continued.**—When a guardianship has been removed from one county to another, in accordance with the provisions of this chapter, it shall be proceeded with in the court to which it has been removed as if it had been originally commenced in said court; but it shall not be necessary to record any of the papers in the case that have been recorded in the court from which the same has been removed.

CHAPTER FIFTEEN.

FINAL SETTLEMENT.

| | Article | | Article |
|------------------------------|---------|-----------------------------|---------|
| When settled..... | 4296 | Restatement of account..... | 4303 |
| Account..... | 4297 | Proof of account..... | 4304 |
| Guardian may be cited..... | 4298 | Ward's attorney..... | 4305 |
| Citation to ward..... | 4299 | Bad debts..... | 4306 |
| Citation to executor..... | 4300 | Offsets and credits..... | 4307 |
| Publication of citation..... | 4301 | Failure of guardian..... | 4308 |
| Action of the court..... | 4302 | | |

Art. 4296. [4267] [2764] [2682] **When settled.**—When the ward dies, or if a minor, arrives at the age of twenty-one years, or if a female, marries, or, if a person of unsound mind or habitual drunkard, is restored and discharged from guardianship, the guardianship shall be immediately settled and closed and the guardian discharged, as provided in this chapter.

Art. 4297. [4268] [2765] [2683] **Account.**—The guardian shall file with the clerk of the court in which the guardianship is pending his account for final settlement of such guardianship; which account shall show fully and completely:

1. The property, rents, revenues and profits received by the guardian and belonging to his ward during his guardianship.
2. The disposition made of such property, rents, revenues, and profits.
3. The expenses and debts, if any, against the estate remaining unpaid.
4. The property of the estate remaining in the hands of such guardian, if any.
5. Such other facts as may be necessary to a full and definite understanding of the exact condition of the guardianship.
6. Such account shall be subscribed and duly sworn to by the guardian.

Art. 4298. [4269] [2766] [2684] **Guardian may be cited.**—If the guardian fails to file his account for final settlement at the proper time, the court shall, upon its own motion, or upon the written complaint of any one interested in the estate, cause such guardian to be cited to appear at a regular term of the court and file such account.

Art. 4299. [4270] [2767] [2685] **Citation to ward.**—Upon the filing of an account for final settlement, the clerk shall, if the ward be living and resident in the State, and his residence be known, issue a citation notifying such ward of the filing of such account, and of the term of court at which the same will be acted upon, and that he may appear and contest such account.

Art. 4300. [4271] [2768] [2686] **Citation to executor.**—If the ward be not living but there is an executor or administrator of his estate legally qualified, such executor or administrator shall be cited as provided in the preceding article.

Art. 4301. [4272] [2769] [2687] **Publication of citation.**—If the ward be not living, and there be no executor or administrator of his estate, or if the ward be a non-resident of the

State, or if his residence be unknown, citation shall be published once a week for three successive weeks in some newspaper published in the county if there be one regularly published therein; if not, then such citation shall be duly posted for at least twenty days before the return term thereof.

Art. 4302. [4273] [2770] [2688] **Action of the court.**—After citation has been duly served, the court shall proceed to examine the account for final settlement, and to hear any exception or objection thereto, and the evidence in support of or against such account, and if the same is found to be just and correct, an order shall be entered approving it and directing the guardian to deliver the estate remaining in his hands to the ward or other person legally authorized to receive the same. Upon compliance with such order, the guardian shall be discharged, and such guardianship closed by an order to that effect entered upon the minutes.

Art. 4303. [4274] [2771] [2689] **Restatement of account.**—If the account be found to be incorrect in any particular, the court shall cause the same to be corrected and restated, and make such order in relation thereto as may be necessary to a full and fair settlement of the guardianship.

Art. 4304. [4275] [2772] [2690] **Proof of account.**—The guardian must produce and file proper vouchers for every item of credit claimed by him in his account, or support the same by other satisfactory evidence.

Art. 4305. [4276] [2773] [2691] **Ward's attorney.**—When the ward is dead and there is no executor or administrator of his estate, or when the ward is a non-resident, or his residence is unknown, the court shall appoint an attorney to represent the interest of such ward in the final settlement with the guardian, and shall allow such attorney reasonable compensation for his services out of the ward's estate.

Art. 4306. [4277] [2774] [2692] **Bad debts.**—In the settlement of the account of the guardian, all debts due the estate which the court is satisfied could not have been collected by due diligence, and which have not been collected, shall be excluded from the computation. [Id.]

Art. 4307. [4278] [2775] [2693] **Offsets and credits.**—In the settlement of any of the accounts of the guardian, he shall account for the reasonable value of the labor or services of his ward, or the proceeds thereof, if any such labor or services have been rendered by such ward. The guardian shall be entitled to reasonable credits for the board, clothing and maintenance of his ward.

Art. 4308. [4279] [2776] [2694] **Failure of guardian.**—When a guardian who has been ordered by the court, upon final settlement, to deliver the estate to the ward or other person legally authorized to receive the same fails to obey such order, he may be attached and punished as for a contempt of court.

CHAPTER SIXTEEN.

COSTS OF GUARDIANSHIP.

| | Article | | Article |
|------------------------------|---------|------------------------------|---------|
| Guardian of person..... | 4309 | Costs against guardian..... | 4314 |
| Commissions of guardian..... | 4310 | Costs against applicant..... | 4315 |
| Extra compensation..... | 4311 | Unsound mind..... | 4316 |
| Expenses..... | 4312 | Laws applicable..... | 4317 |
| Pay of appraisers..... | 4313 | | |

Art. 4309. [4280] [2779] [2697] **Guardian of person.**—The guardian of the person alone is entitled to no compensation. [Acts 1876, p. 187; G. L. Vol. 8, p. 1023.]

Art. 4310. [4281] [2780] [2698] **Commissions of guardian.**—The guardian of the estate shall not be entitled to or receive any fee or commission on the estate of the ward when first delivered to him; but shall be entitled to a fee of five per cent on the gross income of the ward's estate and five per cent on all money paid out. The term "money paid out" shall not be construed to include any money loaned or invested or paid over on the settlement of the guardianship. [Acts 1876, p. 187; Acts 1913, p. 321; G. L. Vol. 8, p. 1023.]

Art. 4311. [4282] [2781] [2699] **Extra compensation.**—If the guardian manages a farm, plantation, manufactory or other business of his ward, the court may allow him a reasonable compensation for such services. [Id.]

Art. 4312. [4283] [2782] [2700] **Expenses.**—All necessary and reasonable expenses incurred by the guardian in the preservation and management of the ward's estate, and in collecting or attempting to collect claims or debts due the ward, and in recovering or attempting to recover property to which the ward has a title or claim, and all reasonable attorneys' fees necessarily incurred in the management of such guardianship, shall be allowed the guardian, to be paid out of the estate on satisfactory proof thereof being made to the court. [Id.]

Art. 4313. [4284] [2783] [2701] **Pay of appraisers.**—Appraisers appointed by the court to appraise the property of the ward shall be allowed two dollars each for each day that they are necessarily engaged in the performance of such duty, to be paid out of the estate.

Art. 4314. [4285] [2784] [2702] **Costs against guardian.**—In any case where the guardian shall neglect the performance of any duty required of him and shall be cited to appear before the court on account thereof, he shall pay all costs of such proceeding out of his own estate; and the court shall adjudge the same against him. [Id.]

Art. 4315. [4286] [2785] [2703] **Costs against applicant.**—In any case where a party shall make any application or opposition, and on the trial thereof shall be defeated, all costs occasioned by such application or opposition shall be adjudged against such party by the court. [Id.]

Art. 4316. [4287-8] **Unsound mind.**—When any person is found to be of unsound mind or to be an habitual drunkard, the

cost of the proceeding shall be paid out of his estate; or, if his estate be insufficient to pay the same, such costs shall be paid out of the county treasury, and the judgment of the court shall be accordingly. If the defendant be discharged, the person at whose instance the proceeding was had shall pay the costs of such proceeding; unless the informant be an officer acting in his official capacity in filing the information, in which case the costs shall be paid out of the county treasury. [Id.]

Art. 4317. [4289] [2788] [2706] **Laws applicable.**—The provisions of law regulating costs and security therefor shall apply to matters of guardianship when not expressly provided in this title. [Id.]

CHAPTER SEVENTEEN.

APPEAL.

| | Article | | Article |
|-------------------------------|---------|---------------------------------|---------|
| Right of appeal..... | 4318 | Judgment suspended..... | 4324 |
| Notice of appeal..... | 4319 | Judgment of district court..... | 4325 |
| Transcript on appeal..... | 4320 | Judgment dismissing appeal..... | 4326 |
| Joint appeals..... | 4321 | Trial of appeals..... | 4327 |
| Submission of transcript..... | 4322 | Bill of review..... | 4328 |
| Appeal bond..... | 4323 | Certiorari..... | 4329 |

Art. 4318. [4290] [2789] [2707] **Right of appeal.**—Any person who may consider himself aggrieved by any decision, order or judgment of the court, or by any order of the judge thereof, in relation to guardianships, may appeal to the district court, as a matter of right, without bond. [Acts 1876, p. 192; G. L. Vol. 8, p. 1028.]

Art. 4319. [4291] [2790] [2708] **Notice of appeal.**—An appeal is taken by causing an entry of notice thereof to be made on the record during the term at which such decision, order or judgment is entered; or, if such decision, order or judgment be made in vacation, by causing the entry of such notice to be made before the close of the next regular term of the court thereafter. [Id.]

Art. 4320. [4292] [2791] [2709] **Transcript on appeal.**—When notice of appeal has been given, the clerk shall make out a certified transcript of the proceedings and send it to the district court of the county; such transcript shall not contain anything that does not relate to the decision, order or judgment appealed from. [Id.]

Art. 4321. [4293] [2792] [2710] **Joint Appeals.**—When notice of appeal has been given by the same person from more than one decision, order or judgment of the court in the same guardianship, at the same term, all of the appeals may be embraced in the same transcript. [Id.]

Art. 4322. [4294] [2793] [2711] **Submission of transcript.**—If there be not time to make out such transcript before the first day of the next term of the district court after such appeal is taken, it shall be sent to such court within sixty days after such appeal is taken. [Id.]

Art. 4323. [4295] [2794] [2712] **Appeal bond.**—The appeal shall not suspend the decision, order or judgment except in

the cases mentioned in the succeeding article, unless the appellant, within twenty days after the entry of notice of appeal, shall file a bond in an amount fixed by the court at the time of entry of appeal, signed by two or more good and sufficient sureties, payable to and approved by the clerk, conditioned that the appellant shall perform the orders and judgment which the district court may make therein, in case the decision be against him. [Id.]

Art. 4324. [4296] [2795] [2713] **Judgment suspended.**—An appeal suspends the decision, order or judgment without bond:

1. When taken by a claimant from the disapproval of his claim.

2. When taken by the guardian or trustee, except where the controversy is respecting the rights of guardianship or the settlement of an account. [Id.]

Art. 4325. [4297] [2796] [2714] **Judgment of district court.**—When a certified copy of the judgment of the district court in the case is received, it shall be entered of record upon the minutes of the county court as the judgment of such county court. [Id.]

Art. 4326. [4298] [2797] [2715] **Judgment dismissing appeal.**—Where a certified copy of the judgment of the district court dismissing an appeal or quashing a supersedeas is received, it shall be entered of record on the minutes of the county court, and the decision, order or judgment of the county court which was appealed from shall stand as if no appeal or supersedeas had been taken or obtained. [Id.]

Art. 4327. [4299] [2798] [2716] **Trial of appeals.**—Appeals from the decision, order or judgment of the county court or county judge to the district court in cases of guardianship shall be tried in the district court de novo. The judgment of the district court therein shall be certified to the county court to be carried into effect. [Acts 1846, p. 378; G. L. Vol. 2, p. 1684.]

Art. 4328. [4300] [2799] [2717] **Bill of review.**—Any person interested may, by a bill of review, filed in the court in which the proceedings were had, have any decision, order or judgment rendered by such court, or by the judge thereof, revised and corrected on showing error therein. But no process or action under such decision, order or judgment shall be stayed except by writ of injunction. [Id.]

Art. 4329. [4301] [2800] [2718] **Certiorari.**—Any person interested may also have any decision, order or judgment of the county court or county judge revised and corrected by writ of certiorari from the district court under the same rules and regulations as are provided in estates of decedents.

TITLE 70.

HEADS OF DEPARTMENTS.

| | | | |
|---|------|-------------------------|------|
| Chapter | Page | Chapter | Page |
| 1 Secretary of State..... | 1153 | 3 State Treasurer..... | 1165 |
| 2 Comptroller of Public Ac- counts | 1156 | 4 Attorney General..... | 1170 |

CHAPTER ONE.

SECRETARY OF STATE.

| | | | |
|--------------------------------|--------------|------------------------------|--------------|
| Appointment and bond..... | Article 4330 | How distributed..... | Article 4336 |
| General duties..... | 4331 | May sell copies of laws..... | 4337 |
| Sale of reports..... | 4332 | Revision..... | 4338 |
| Advance sheets..... | 4333 | Receipt for books..... | 4339 |
| Reports sent to whom..... | 4334 | Chief clerk..... | 4340 |
| Officers entitled to laws..... | 4335 | Commission..... | 4341 |

Art. 4330. [4302-3] **Appointment and bond.**—By and with the advice and consent of the Senate, the Governor shall appoint a Secretary of State who shall continue in office during the term of service of the Governor by whom he was appointed. Such appointee shall first give a bond in the sum of twenty-five thousand dollars payable to and to be approved by the Governor, conditioned that he will faithfully execute the duties of his office. [Acts 1899, p. 3.]

Art. 4331. [4304-5-6-7-8-13-17-18] **General duties.**—Among other duties the Secretary of State shall:

1. Keep his office in the City of Austin or other place where the sessions of the Legislature may be held.

2. Appoint a chief clerk and such number of assistant clerks as may be authorized by law.

3. Affix the seal of the State to all certificates of official character that may emanate from his office.

4. Keep a fair register of all the official acts of the Governor, and when required shall lay the same and all minutes and other papers in relation thereto before the Legislature or either branch thereof.

5. Keep in a separate suitable book a complete register of all the officers appointed and elected in this State, and commission them when not otherwise provided by law.

6. Arrange and preserve all the books, maps, parchments, records, documents, and all papers that have been or may be properly deposited there, and sealed with the seal of the State, and also similar copies of any act, law or resolution of the United States, or either of them, from the originals in his office, which copies shall be as legal and conclusive in evidence, and to all intents and purposes, in the courts of this State, as the originals would have been; and furnish on request such copies to the Governor, the Legislature or either branch thereof.

7. Attend at every session of the Legislature to receiving bills which have become laws, and immediately after the close thereof cause all enrolled joint resolutions thereof and all such bills to be bound together in a volume to be kept in his office,

the date of the session to be placed thereon, and deliver a certified copy thereof and index thereof to the Board of Control, and carefully examine and compare the printed copy with the certified copy and correct each error contained in the former.

8. Distribute to the Governor and heads of departments, and to each member of the Legislature, a copy of the printed journals of both houses; and forward to the county judge of each county two copies of said journals, one to be deposited in the office of the clerk of the district court and the other in the office of the county clerk for the use of said courts respectively.

9. Turn over to the person in charge of the State Library, immediately upon their receipt, all books, maps, charts or other publications of a political or miscellaneous character received at his office, and all printed volumes of the statutes or laws of any Nation, State or Territory, and in like manner turn over to the Supreme Court Librarian all volumes of reports of any courts of any other Nation, State or Territory received by him.

10. Forward to the Librarian of Congress, the Secretary of State of the United States, the Secretary of the Treasury of the United States, and the executive departments of each State of the Union, to each foreign librarian or government with whom a system of library exchange may be established, as he may deem advisable, copies of all laws and judicial reports printed and published by order of the Legislature at the expense of the State.

11. Forward to each county clerk for the use of the county one copy of each Act of Congress which may be received in his office.

Art. 4332. Sale of reports.—The Secretary of State shall receive from the Supreme Court Reporter the printed and bound volumes of the Supreme Court Reports and the Reports of the Court of Criminal Appeals; he may sell single copies of such reports for the sum of the contract price for printing, exclusive of postage or express charges; he shall deliver to the State Treasurer the proceeds of all sales made by him, and shall make a full statement of such sales in his biennial report. [Acts 1919, p. 60.]

Art. 4333. Advance sheets.—The Secretary of State may transmit advance sheets of the reports as the publishing progresses, upon receipt of the price for the volume. The purchaser may return all the forms of the volume to the Secretary of State without further expense except the cost of transmitting the same to and from the State Department. [Id.]

Art. 4334. [4309] [2807] Reports sent to whom.—The Secretary of State shall deliver, by mail or otherwise, to each appellate judge, the Attorney General, the Governor, each district judge, each professor of law of the University of Texas, the librarian of said University, and to the county judge of each county for the use of the counties, one copy of the reports of said appellate courts hereafter issued; also furnish to each district judge of the United States for Texas one copy of each of said re-

ports for each branch of his courts; and, when it appears that any of the reports of either of said courts have been heretofore furnished and not returned to the Department of State, or when they are hereafter delivered by the State to either of said officers or authorities, the Secretary shall have no authority to send another copy, except on proof that the same have been destroyed by fire, or have been rendered valueless by long use, to be evidenced by the certificate of the officer demanding to be resupplied with such report. [Acts 1887, p. 114; G. L. Vol. 9, p. 912.]

Art. 4335. [4310] [2808] **Officers entitled to laws.**—The following officers shall be entitled to receive one copy of each of all general and special laws hereafter passed by the Legislature, to-wit: The Governor and heads of departments, each member of the Legislature, the judges of the several courts throughout the State, and the clerks of said courts, and each county attorney. The following officers shall be entitled to receive one copy each of all general laws hereafter passed by the Legislature, to-wit: county treasurer, county surveyor, sheriff, assessor of taxes, tax collector, inspector of hides and animals, justice of the peace, constable and county commissioner. [Acts 1885, p. 68; G. L. Vol. 9, p. 688.]

Art. 4336. [4311] [2809] **How distributed.**—The Secretary of State shall distribute the printed laws of each session of the Legislature to the officers named in the preceding article, as follows: He shall mail or deliver in person to the Governor and heads of departments, and to all State or District officers, a copy each, and shall forward to the county judge of each county a sufficient number of said laws to supply each county officer named in the preceding article with a copy. [Acts 1850, p. 99; P. D. 4585; G. L. Vol. 3, p. 537.]

Art. 4337. [4312] [2810] **May sell copies of laws.**—Said Secretary is authorized to sell copies of the general and special laws of the State of Texas that have or may be published at a price not exceeding twenty-five per cent above cost of publishing; provided, that a sufficient number of all laws published be reserved from sale for the use of the State. Any money realized in excess of the costs attending such sale shall be placed to the account of the general revenue in the State Treasury. [Acts 1883, p. 33; G. L. Vol. 9, p. 339.]

Art. 4338. [4314-15] **Revision.**—Whenever a revision of the laws of the State has been or shall be subscribed for, or published by the State, a sufficient number of copies of each volume thereof shall be forwarded to the county judge of each county to furnish one of said copies to each judge of the appellate and district courts, to each clerk of the district and county courts, and appellate courts, and to each justice of the peace that may be a resident in said county. The Secretary of State shall also deliver to each executive officer at the seat of government one of said copies. [Id.]

Art. 4339. [4316] [2811] **Receipt for books.**—Whenever any officer shall receive a copy of any report, statute, digest or

journal, he shall receipt for the same to the officer distributing it, who shall file such receipt in his office. Said books shall be deemed to belong to the office of said officer to whom they are delivered, and shall, at all reasonable hours, be subject to the examination of any citizen of this State. If any said officer fails or refuses to deliver any said book to his successor in office when demanded by him, the officer so failing or refusing shall be liable to pay such successor the costs and charges that may be necessary to supply the office of such successor with any said book that he shall so fail or refuse to deliver. [Id. P. D. 4588.]

Art. 4340. [4319] [2817] **Chief Clerk.**—The Chief Clerk may perform all the duties required by law of the office of Secretary of State if the said secretary be absent or unable to act from any cause.

Art. 4341. **Commission.**—The Secretary of State shall not be required to forward copies of laws to nor attest the authority of any officer in this State who fails or refuses to take out his commission. [Acts 1919, p. 80.]

CHAPTER TWO.

COMPTROLLER OF PUBLIC ACCOUNTS.

| Article | Article | | |
|-------------------------------|---------|-------------------------------------|------|
| Election and term..... | 4342 | Claims and accounts..... | 4355 |
| Bond..... | 4343 | Claims classified..... | 4356 |
| Certain duties..... | 4344 | List of claims to be kept..... | 4357 |
| Account of Comptroller..... | 4345 | Pay warrants..... | 4358 |
| Custodian of obligations..... | 4346 | Pay warrants register..... | 4359 |
| When accounts closed..... | 4347 | Pension warrants..... | 4360 |
| Statement to Governor..... | 4348 | Registration of bonds..... | 4361 |
| Special claims..... | 4349 | Bond clerk..... | 4362 |
| Warrants on treasurer..... | 4350 | Account by funds kept separate..... | 4363 |
| Notified of deficiencies..... | 4351 | Ledgers..... | 4364 |
| Chief clerk..... | 4352 | Duplicate warrants..... | 4365 |
| Deposit warrants..... | 4353 | To examine and cancel warrants..... | 4366 |
| Deposit receipts..... | 4354 | | |

Art. 4342. [4320] **Election and term.**—At each biennial general election a Comptroller of Public Accounts shall be elected for a term of two years. The word “Comptroller”, whenever used in any law of this State, shall mean the Comptroller of Public Accounts of the State of Texas. [Acts 3rd. C. S. 1910, p. 37.]

Art. 4343. [4322] **Bond.**—Within twenty days after receipt of notice of his election or appointment and before he enters upon the duties of his office, the Comptroller shall give a bond with not less than six good sureties, in the sum of seventy-five thousand dollars, payable to and to be approved by the Governor, conditioned that he will faithfully execute the duties of his office. [Id.]

Art. 4344. **Certain duties.**—Among other duties the Comptroller shall:

1. Procure a seal with words “Comptroller’s Office, State of Texas” engraved around the margin and a five-pointed star in the center, which shall be used as the seal of his office to authenticate all his official acts, except warrants drawn on the State Treasury.

2. Adopt such regulations not inconsistent with the constitution and laws as he may deem essential to the speedy and proper assessment and collection of the revenues of the State.

3. Superintend the fiscal concerns of the State, as the sole accounting officer thereof, and manage the same in the manner required by law.

4. Require all accounts presented to him for settlement not otherwise provided for by law to be made on forms prescribed by him, all such accounts to be verified by affidavit as to their correctness, and he may administer the oath himself in any case in which he may deem it necessary.

5. Prescribe and furnish the form to be used by all persons in the collection of the public revenue and the mode and manner of keeping and stating their accounts.

6. Prescribe forms of the same class, kind and purpose so as to be uniform in size, arrangement, matter and form.

7. From time to time require all persons receiving money or having the disposition or management of any property of the State, of which an account is kept in his office, to render statements thereof to him.

8. Require all persons who have received and not accounted for any money belonging to the State to settle their accounts.

9. Keep and settle all accounts in which the State is interested, including all moneys received by the State as interest and other payments on land and office fees of his and other departments of the State government, and all other moneys received by the State from whatever source and for whatever purpose.

10. Examine and settle the accounts of all persons indebted to the State and certify the amount or balance to the Treasurer, and direct and superintend the collection of all moneys due the State.

11. Audit the claims of all persons against the State in cases where provision for the payment thereof has been made by law, unless the audit of any such claim is otherwise specially provided for.

12. Keep a book to register and index all audited claims against the State, and on the meeting of the regular session of the Legislature make a minute report of the same to both houses thereof, giving the names and amounts of all audited claims.

13. Keep and state all accounts between this State and the United States.

14. Keep journals through which all entries are made in the ledger.

15. Remit or make an allowance to each tax collector in the auditing of his accounts for all sums of money which, in his judgment, have been illegally assessed.

16. Draw warrants on the Treasurer for the payment of all moneys directed by law to be paid out of the Treasury.

17. Suggest plans for the improvement and management of the general revenue.

18. Preserve the books, records, papers and other things

belonging in his office and deliver the same in good condition to his successor. [Id.]

Art. 4345. [4336] **Account of Comptroller.**—The account of the Comptroller against the State shall not be passed to the Treasurer until approved by the Secretary of State. [Id.]

Art. 4346. [4337] **Custodian of obligations.**—Except as otherwise specially provided, all deeds to the State, all liens, mortgages, bonds, notes and other securities for money given to the State or any officer for the use of the State, contracts involving pecuniary obligations to the State, and all other documents or instruments creating a pecuniary obligation in favor of the State, shall be deposited in the office of the Comptroller.

Art. 4347. [4339] **When accounts closed.**—The accounts of the Comptroller shall be annually closed on the last day of August; and he shall exhibit all books, papers, vouchers and all other matters pertaining to his office, for the examination of either branch of the Legislature, or any committee which may be by them appointed, whenever required by them to do so. [Acts 3rd. C. S. 1910, p. 37.]

Art. 4348. [4340] **Statement to Governor.**—In addition to the reports required by the Constitution, the Comptroller shall exhibit to the Governor, on the first Monday of November of each year, and at such other times as he shall require, an exact and complete statement of the funds of the State, of its revenues, and of the public expenditures during the preceding year (or for such other times as may be required), with a detailed estimate of the expenditures to be defrayed from the Treasury for the ensuing year, specifying therein each object of the expenditures and distinguishing between such as are provided for by general or special appropriation, and such as are required to be provided for by law, and showing the means from which such expenditures are to be defrayed. [Id.]

Art. 4349. [4330-1] **Special claims.**—Each sheriff, attorney or other party holding claims against the State for which no warrant has been issued, and the appropriation for which has been exhausted, shall present them to the Comptroller for his consideration at least thirty days before the meeting of each regular session of the Legislature. The Comptroller shall not audit any such claim not presented within said time until all claims presented prior to that time have been considered and passed upon by him. [Id.]

Art. 4350. [4332] **Warrants on Treasurer.**—Every warrant shall refer to the law under which it is drawn. No warrant shall be issued to any person indebted to the State, or to his agent or assignee, until such debt is paid. [Id.]

Art. 4351. [4342] **Notified of deficiencies.**—All heads of departments, managers of State institutions or other persons intrusted with the power or duty of contracting for supplies, or in any manner pledging the credit of the State for any deficiency that may arise under their management or control, shall, at least thirty days before such deficiency shall occur, make out

a sworn estimate of the amount necessary to cover such deficiency until the meeting of the next Legislature. Such estimate shall be immediately filed with the Governor, who shall thereupon carefully examine the same and approve or disapprove the same in whole or in part. When such deficiency claim, or any part thereof, has been so approved by the Governor he shall indorse his approval thereon, designating the amount and items thereof approved and the items disapproved, and file same with the Comptroller; and the same shall be authority for the Comptroller to draw his deficiency warrant for so much thereof as may be approved; but no claim, or any part thereof, shall be allowed or warrants drawn therefor by the Comptroller, or paid by the Treasurer, unless such estimate has been so approved and filed. If there is a deficiency appropriation sufficient to meet such claims, then a warrant shall be drawn therefor and the same shall be paid; but, if there is no such appropriation, or if such appropriation be so exhausted that it is not sufficient to pay such deficiency claim, then a deficiency warrant shall issue therefor; and such claim shall remain unpaid until provision be made therefor at some session of the Legislature thereafter. The provisions of this article shall not apply to fees and dues for which the State may be liable under the general laws. When any injury or damage shall occur to any public property from flood, storm or any unavoidable cause, the estimate may be filed at once but must be approved by the Governor as provided in this article. [Id.]

Art. 4352. [4343] **Chief clerk.**—The Comptroller shall appoint a chief clerk, who shall take the official oath and give bond in the sum of ten thousand dollars payable in like manner as the bond of the Comptroller, conditioned for the faithful performance of his duties. Said clerk shall perform the duties of the Comptroller when the Comptroller may be unavoidably absent or incapable, from sickness or other cause, to discharge said duties, and, under the direction of the Comptroller supervise the keeping of the books, records and accounts of the department, and perform such other duties as may be required of him by law and by the Comptroller. If the office of the Comptroller should become vacant by death, resignation or otherwise, said chief clerk shall act as Comptroller until a Comptroller is appointed and qualified. [Id.]

Art. 4353. [4344] **Deposit warrants.**—The Comptroller shall have printed uniform deposit warrants, which shall be of four classes: "State revenue," "available school" "permanent school" and "miscellaneous;" and which shall be prepared in triplicate and marked "original," "duplicate" and "triplicate" respectively. Each class shall be separately serially numbered, and shall be on paper of a different color from the other classes. He shall provide for the use of his department a warrant register for each class of deposit warrants, each volume of which shall be appropriately designated by number or otherwise, and the pages of which shall be ruled and the lines numbered consec-

utively. When a deposit warrant is prepared, it shall be registered in the deposit warrant register for the class to which it belongs and on the line in such register corresponding in number with the number of the deposit warrant registered. A distribution of the amount stated in each deposit warrant shall be posted in detail to the ledger containing accounts for each source of revenue. The triplicate deposit warrant shall be, on receipt by the Treasurer of the amount stated therein, receipted by the Treasurer and delivered to the person making the deposit, the original to the Treasurer, who shall file the same numerically; and the duplicate shall be, on the receipt of the amount stated therein, receipted by the Treasurer, and by him returned to the Comptroller, who shall file same numerically. The printed forms for these warrants shall be so prepared and arranged that the original, duplicate and triplicate may, by use of carbon sheets, all be prepared at one and the same writing. No deposit shall be received into the State Treasury on any account, except upon a deposit warrant issued as herein provided. [Id.]

Art. 4354. [4345] **Deposit receipts.**—The Comptroller shall have printed uniform deposit receipts, to be issued by the Comptroller to cover moneys and other securities received and held by the State Treasurer for which no deposit warrant is issued, or the issuance of a deposit warrant which is deferred, except office fees of the State Treasurer. Such receipts shall be prepared in duplicate and marked "original" and "duplicate," respectively, and shall be serially numbered. The printed form for these receipts shall be so prepared and arranged that the original and duplicate may, by the use of carbon sheets, both be prepared at one and the same writing. The duplicate shall be receipted by the Treasurer, and by him returned to the Comptroller, and the original delivered to, and retained by the State Treasurer. He shall provide his office with separate registers, prepared in like manner and form as the register provided for in this chapter, in which he shall register the deposit receipts, issued in like manner as is provided for the registration of deposit warrants, and shall provide a separate ledger in which shall be kept appropriate accounts for all matters for which such deposit receipts are issued. [Id.]

Art. 4355. [4346] **Claims and accounts.**—All claims and accounts against the State shall be submitted on forms prescribed by the Comptroller and in duplicate, when required by him, except claims for pensions, and shall be so prepared as to provide for the entering thereon, for the use of the Comptroller's Department, as well as other appropriate matters, the following:

1. Signature of the head of the department or other person responsible for incurring the expenditure, or of the person on whose account the expenditure was incurred.
2. Appropriation number.
3. Initials of the person ascertaining if there are funds available.

4. Initials of the person auditing the claim.
5. Number and date of warrant issued with the initials of the person preparing the warrant.
6. Initials of the person posting to ledger.
7. Initials of the person comparing the claim and warrant.

[Id.]

Art. 4356. [4347] **Claims classified.**—There shall be three classes of claim forms as follows:

1. "General" which shall consist of: (a) payrolls, covering departmental and institutional services; (b) traveling expense vouchers; (c) purchases and services other than personal; and (d) sheriff and court claims; and under the head of sheriff and court claims the Comptroller may provide for different forms, such as those for sheriffs, county attorneys, district attorneys, district clerks, district judges, witnesses and all other like claims relating to the judiciary.

2. "Special," covering all claims for which special warrants are issued.

3. "Pensions," the form for which shall be prescribed by the Comptroller. [Id.]

Art. 4357. [4348] **List of claims to be kept.**—When claims and accounts are received, it shall be ascertained if there are funds available therefor; and the person making the examination shall indicate such fact by marking his initials upon such claim; and if there are no funds available, that fact shall be written or stamped upon such claim; and the same shall be held to await the authority to issue a proper warrant therefor. When a claim has been audited and warrant drawn therefor, the claim shall be numbered with the same number as the warrant; and such claim shall be filed numerically according to class, "general," "special," "pension," respectively. There shall be kept, either in book form or in the form of a card index, an alphabetical index of claimants; but, as to payrolls, the department or institution shall be the claimant. The index shall show only the name of the claimant and the number of the claim. After the expiration of two years, such claims shall be removed from the files and otherwise securely stored and preserved as records. [Id.]

Art. 4358. [4349] **Pay warrants.**—The Comptroller shall have printed uniform pay warrants, which shall be of three classes, "general," "special," and "pension." Such warrants shall be prepared in duplicate, and shall be marked "original" and "duplicate," respectively; and each class shall be serially numbered and shall be of a color of paper different from the other class. Such warrants shall be prepared so as to provide for entering thereon, in addition to other appropriate matter, the following:

1. Initials of the person in the Comptroller's department comparing the warrant with the claim.
2. Initials of the person in the Comptroller's department registering the warrant.

3. Designation of the fund against which the warrant is drawn. [Id.]

Art. 4359. [4350] **Pay warrants register.**—The Comptroller shall provide a pay warrant register for each class of pay warrants, each volume of which shall be appropriately designated by number or otherwise, and the pages of which shall be ruled, and the lines numbered consecutively. When a pay warrant is prepared, it shall be registered in the pay warrant register for the class to which it belongs; and such entries in those registers shall be on the line corresponding in number with the number on the pay warrant register; and such registry shall consist only of an entry of the amount and name of the payee of such warrant. If a warrant is erroneously prepared and not issued, or is cancelled, or is properly shown to be lost or destroyed, such fact shall be noted in the register opposite the number of such warrant in the register. One person shall be designated by the Comptroller as warrant clerk and such person shall prepare or be responsible for the preparation of all pay warrants, and shall be accountable to the Comptroller for warrants coming into his possession. No warrant shall be prepared except on presentation to the warrant clerk of a properly verified and audited claim, the proper auditing of which claim shall be evidenced by the initials written thereon by the person auditing the same; and such claim so verified and audited shall be sufficient and the only authority for the preparation of a warrant or warrants. When a warrant has been properly prepared, the claim upon which it was prepared shall be initialed with initials of the warrant clerk, and such warrant shall be registered as herein provided; and the fact of the registration thereof shall be shown by writing thereon the initials of the person registering the same. When a warrant is properly prepared, it shall be, with the claim upon which it is based, passed to the Comptroller for his signature or the signature of such person as may be authorized by law to sign the same in his stead. Such warrant shall then be passed to, and registered in, the Treasurer's department and signed by the State Treasurer, or some person authorized by law to sign for him, and returned to the Comptroller's department. Such warrant shall then be delivered by the Comptroller to the person entitled to receive it; and he shall at his option take a receipt from such person therefor and file it in his office. The printed forms for these warrants shall be so prepared and arranged that the original and duplicate shall by the use of carbon sheets be prepared at one writing. [Id.]

Art. 4360. [4351] **Pension warrants.**—Applications for pensions and the issuance of pension warrants shall not be subject to the provisions of this chapter. Such warrants shall be separately serially numbered. [Id.]

Art. 4361. [4352] **Registration of bonds.**—The Comptroller shall procure for the use of his department suitable books to be known as "bond registers," the volumes of which shall be separately designated by number or otherwise, in which he shall

register alphabetically all State, county, school, municipal and drainage or such other bonds required by law to be registered by him. Neither the bonds nor opinion of the attorney general, nor the record or other papers or documents relative thereto, shall be recorded in full; but only the name of the authority issuing and the names and official capacities of the officers signing such bonds, the date of the issue, date of registration, amount of principal, date of maturity, number, time of option of redemption, rate of interest and day of the month of each year when the interest shall fall due, of each bond so registered, shall be entered upon such register. On the same line where such entry is made, shall be provided blank spaces in which shall be entered the date of payment or redemption of each bond when the same is paid or redeemed. When any bond is paid or redeemed the proper officer or the authority paying such bond shall notify the Comptroller of the fact and date of such payment or redemption, and all papers and documents pertaining to such bonds shall be filed and appropriately numbered. [Id.]

Art. 4362. **Bond Clerk.**—The Comptroller shall appoint a bond clerk whose term of office shall be at the pleasure of the Comptroller, and who shall first take the official oath and give bond in the sum of ten thousand dollars payable to the Comptroller, conditioned upon the faithful performance of his duties. Such clerk shall under the supervision, direction and authority of the Comptroller, perform all duties with reference to the registration of bonds imposed upon the Comptroller by the provisions of the preceding and succeeding articles, and shall have authority to sign the name of the Comptroller to all certificates of registration of bonds required by law to be registered by the Comptroller, and which bonds are registered by such bond clerk, as provided herein. In the absence of the bond clerk the duties herein imposed upon such bond clerk may be performed in like manner by the chief clerk. [Acts 2nd. C. S. 1923, p. 23.]

Art. 4363. [4353] **Account by funds kept separate.**—The Comptroller shall keep appropriate accounts by funds, showing a short description of the essential features of each, of each bond or of each purchase of similar or like bonds, or other securities purchased by and belonging to the permanent school and other funds of the State; each of which accounts shall be charged with the principal of such bond or purchase; and, with each separate item of interest payments to accrue thereon, and shall be credited with payments as made. He shall also keep controlling or total accounts of such bonds or other securities; which accounts shall be kept with respect to the total amount of bonds or other securities belonging to each separate fund; each of which controlling accounts shall be balanced quarterly at the same time as, and the balance of which shall correspond with, like accounts kept by the State Treasurer. [Acts 3rd. C. S. 1910, p. 37.]

Art. 4364. [4354-5-6-7] **Ledgers.**—The Comptroller shall maintain a double entry system of book-keeping to be in charge

of the chief book-keeper. The Comptroller shall keep the following ledgers:

1. State General Ledger.—The accounts of each fund shall be opened in a State general ledger. No entry shall be made in the ledger except by means of the double entry system. An account shall be opened with the State Treasurer and charged with the cash on hand and the balance in depositories. Each charge shall represent the aggregate amount of cash held by him for the various funds. Warrants issued shall be charged in monthly totals to the fund account. An account shall be opened for the purpose of showing the amount of outstanding pay warrants from time to time, which shall be credited with the warrants issued and charged with the warrants paid. The Comptroller shall charge the State Treasurer in totals of all deposit warrants as issued, and credit him with warrants paid, so that the balance in the Treasurer's hands, together with the balance in the State depositories, shall agree with the balance shown by this account.

2. Revenue ledger.—A "revenue ledger" in which a distribution shall be made of the revenues derived by the State from all sources, and the amounts derived from each source as stated. The sources of revenue printed on the back of the duplicate in each deposit warrant issued therefor by the Comptroller shall be posted to this ledger, and its balances periodically agreed with the deposit warrants issued.

3. Accounts of Tax Collectors.—One ledger for current taxes, and one ledger for delinquent and insolvent taxes, each to be made self balancing by means of controlling accounts, in which he shall keep the accounts of tax collectors.

4. Account of State Treasurer.—A suspense ledger in which the accounts of the State Treasurer shall be stated in respect to moneys held by him pending the issuance of deposit warrants and moneys and securities held, other than those for State purposes, for all of which the Comptroller shall issue deposit receipts, posting the same in totals to this ledger. It shall also include the accounts with heads of departments for all moneys received by them and not deposited with the State Treasurer; which accounts shall be kept in monthly totals based upon monthly reports furnished to the Comptroller by each of the heads of departments. [Id.]

Art. 4365. [4359] **Duplicate warrants.**—The Comptroller, when satisfied that any original warrant drawn upon the State Treasurer has been lost or destroyed, or when any certificate or other evidence of indebtedness approved by the auditing board of the State has been lost, is authorized to issue a duplicate warrant in lieu of the original warrant or a duplicate or a copy of such certificate, or other evidence of indebtedness in lieu of such original; but no such duplicate warrant, or other evidence of indebtedness, shall issue until the applicant has filed with the Comptroller his affidavit, stating that he is the true owner of

such instrument, and that the same is in fact lost or destroyed, and shall also file with the Comptroller his bond in double the amount of the claim with two or more good and sufficient sureties, payable to the Governor, to be approved by the Comptroller, and conditioned that the applicant will hold the State harmless and return to the Comptroller, upon demand being made therefor, such duplicates or copies, or the amount of money named therein, together with all costs that may accrue against the State on collecting the same. After the issuance of said duplicate or copy if the Comptroller should ascertain that the same was improperly issued, or that the applicant or party to whom the same was issued was not the owner thereof, he shall at once demand the return of said duplicate or copy if unpaid, or the amount paid out by the State, if so paid; and, upon failure of the party to return same or the amount of money called for, suit shall be instituted upon said bond in Travis County. [Id.]

Art. 4366. [4361] **To examine and cancel warrants.**—The Comptroller shall examine the disbursements of the Treasurer at the end of each quarter, and shall, together with the Treasurer, cancel the warrants which have been paid in such manner as to prevent their future circulation, and shall examine if the receipts acknowledged by the Treasurer during the quarter correspond with the deposits, and if the balance of money reported to be in his possession is actually in his hands. [Id.]

CHAPTER THREE.

STATE TREASURER.

| | Article | | Article |
|---|---------|---------------------------------------|---------|
| Election and term..... | 4367 | Deposit warrant register..... | 4380 |
| Bond..... | 4368 | Shall post daily totals..... | 4381 |
| New bond required..... | 4369 | Register of warrants issued..... | 4382 |
| To receive moneys from Comptroller..... | 4370 | Other accounts..... | 4383 |
| Money paid out, how..... | 4371 | Outstanding warrants..... | 4384 |
| To keep accounts..... | 4372 | General revenue account..... | 4385 |
| Annual exhibit to Governor..... | 4373 | Certain special funds abolished..... | 4386 |
| Only public moneys to be kept..... | 4374 | Appropriation ledger..... | 4387 |
| Employees..... | 4375 | Daily statement from land office..... | 4388 |
| Chief clerk to act..... | 4376 | Office fee book..... | 4389 |
| Delivery to successor..... | 4377 | Cash balancing book..... | 4390 |
| School fund bonds..... | 4378 | Ledger..... | 4391 |
| Money returned to counties..... | 4379 | Bond book..... | 4392 |
| | | Securities register..... | 4393 |

Art. 4367. [4362] [2849] **Election and term.**—At each biennial general election a State Treasurer shall be elected for a term of two years. [Acts 2nd C. S. 1909, p. 438.]

Art. 4368. [4364] [2850] **Bond.**—The State Treasurer shall, within twenty days after he shall have received notice of his election, and before he enters upon the duties of his office, give a bond payable to and to be approved by the Governor, in the sum of seventy thousand dollars with a good and solvent surety company authorized to do business in this State, conditioned that he will faithfully execute the duties of his office. All expense necessary and incident to the execution of such bond shall be paid by the State by appropriation. [Acts 1923, p. 310.]

Art. 4369. [4365-6] **New bond required.**—The Attorney General, with the Comptroller, shall on the first days of June and December of every year, examine the bond of the Treasurer and make diligent inquiry into the condition of the sureties on said bond; and, if in the opinion of the Attorney General, said bond is not sufficient to secure the State in her rights, then, the Attorney General shall notify said Treasurer in writing of the insufficiency of said bond; and, should said Treasurer fail for the space of twenty days from the date of such notice to furnish a sufficient new bond, the Governor shall forthwith suspend said Treasurer from office. If the Treasurer be so suspended from office the Governor shall appoint some suitable person as Treasurer who shall give bond as required by the provisions of the preceding article. The appointee shall perform the duties of Treasurer until the suspended officer shall give a new bond to be approved by the Governor. [Acts 1873, p. 62; G. L. Vol. 7, p. 514; Acts 2nd. C. S. 1909, p. 438.]

Art. 4370. [4367] [2854] **To receive moneys from Comptroller.**—The Treasurer shall receive, on the warrants of the Comptroller, all moneys which shall from time to time be paid into the State Treasury, receipting for the same upon duplicate and triplicate warrants; which duplicate shall be deposited with the Comptroller, and the triplicate given to the person depositing such money. [Acts 1846, p. 10; G. L. Vol. 2, p. 1316.]

Art. 4371. [4368] [2855] **Money paid out, how.**—He shall countersign and pay all warrants drawn by the Comptroller on the Treasury which are authorized by law. No money shall be paid out of the Treasury except on the warrants of the Comptroller. [Id.]

Art. 4372. [4369-70] **To keep accounts.**—He shall keep true accounts of the receipts and expenditures of the public moneys of the Treasury, and close his accounts annually on the thirty-first day of August, with the proper legal vouchers for the same, distinguishing between the receipts and disbursements of each fiscal year. He shall also open an account in the Treasury for all appropriations of money made by law, so that the appropriations and the application in pursuance thereof may clearly and distinctly appear. [Id. P. D. 5287.]

Art. 4373. [4371] [2859] **Annual exhibit to Governor.**—In addition to the reports required by the Constitution, the Treasurer shall submit to the Governor on the first Monday of November of each year, and at such other times as he shall require, an exact statement of the condition and situation of the Treasury, and of the balance of money remaining therein to the credit of the State, with a summary of the receipts and payments of the Treasury during the preceding year, or for such other period of time as may be specially required, and shall exhibit all books, papers, vouchers and other matters pertaining to his office, for the examination of the Legislature, or either branch thereof, or

any committee which may be by them appointed, whenever required by them to do so. [Id. P. D. 5288.]

Art. 4374. [4372] [2860] **Only public moneys to be kept.**—All moneys received by the Treasurer shall be kept in the safes and vaults of the Treasury; and the Treasurer shall not keep or receive into the building, safes or vaults of the Treasury any money, or the representative of money, belonging to any individual except in cases expressly provided for by law; nor shall said Treasurer appropriate to his own use, or lend, sell or exchange any money, or the representative of money, in his custody or control as such Treasurer. [Id. P. D. 5290.]

Art. 4375. [4373] [2861] **Employes.**—The Treasurer shall appoint a Chief Clerk who shall be required to give bond with a good and solvent surety company authorized to do business in this State, in the sum of twenty-thousand dollars, payable to and to be approved by the Governor, and conditioned as is the bond of the State Treasurer, and shall appoint such other employes and clerks as may be authorized by law. All such employes, whether clerks or otherwise, who, as a part of their duties, handle any money, drafts, checks, bills of exchange, warrants, or securities or other evidences of debt which are, or may be, convertible into money, shall give bond with a good and solvent surety company authorized to do business in this State, payable to the Treasurer in such sum as he may require, conditioned that he or she will faithfully execute and perform the duties of his or her position. The cost and expense incident to the execution of the bond of the chief clerk and of the bonds of the respective employes shall be paid by the State by appropriation. [Acts 1923, p. 310.]

Art. 4376. [4374] [2862] **Chief clerk to act.**—Whenever the Treasurer from sickness, unavoidable absence or other cause is not able to act, the chief clerk shall sign his own name as "Acting Treasurer" and do such other acts and things as the State Treasurer himself might legally do. The legal acts and signatures of such chief clerk as Acting Treasurer, shall be as valid as the acts and signatures of the Treasurer himself. [Acts 2nd C. S. 1909, p. 438.]

Art. 4377. [4375] [2863] **Delivery to successor.**—The Treasurer shall, at the close of his term of office, deliver into the possession of his successor the moneys, securities and all other property of the State together with books, vouchers, papers and evidences of property in his possession, and all other matters and things which pertain to that office. [Acts 1846, p. 10; G. L. Vol. 2, p. 1316; Acts 1909, 2nd. C. S. p. 438.]

Art. 4378. [4376-7] **School fund bonds.**—The Treasurer shall be the custodian of all bonds in which the school funds of the State have been or may hereafter be invested, and shall keep said bonds in his custody until the same have been paid off, discharged or otherwise disposed of by the proper authorities of this State, and shall upon the payment of any installment of in-

terest see that the proper credit is given, and the coupons on said bonds, when paid, shall be properly separated therefrom and canceled by him. [Acts 1895, p. 9; G. L. Vol. 10, p. 739; Acts 2nd. C. S. 1909, p. 440.]

Art. 4379. [4378] **Money returned to counties.**—Whenever there is money in the State Treasury for the purpose of paying off any obligation due by any county, city or town, and it is made to appear to the Comptroller by certified copy of the records of the commissioners court, or by other satisfactory evidence, that said obligations are no longer outstanding against such county, city or town, then the Comptroller shall draw a warrant on the State Treasury in favor of such county, city or town, for the amount of money so remaining in the Treasury; and the Treasurer shall pay such money on said warrant of the Comptroller to the Treasurer of such county, city or town, for the benefit of its general fund. [Acts 1901, p. 19.]

Art. 4380. [4379] **Deposit warrant register.**—The Treasurer shall cause to be prepared a deposit warrant register designed with columns for State revenue, available school fund, and miscellaneous; all warrants to be entered consecutively and distributed to the proper columns. [Acts 2nd C. S. 1909, p. 438.]

Art. 4381. [4380] **Shall post daily totals.**—The State Treasurer shall cause the daily totals of State revenue and all available school deposit warrants to be posted to the fund accounts in the ledger, and the items in the miscellaneous column to be posted in detail, except that deposit warrants for bonds sold or redeemed shall be posted in a bond book. [Id.]

Art. 4382. [4381] **Register of warrants issued.**—The Treasurer shall keep registers of warrants issued, one for general warrants, and one for special warrants. In case of pensions, the Comptroller shall furnish a list of those issued; which list shall be compared with the warrants and shall constitute the Treasurer's register of pension warrants issued. The date of payment of all warrants shall be stamped on the above registers. The Treasurer shall keep a "warrants paid register" with columns headed "general," "special," and "pensions." In this register the general and special warrants shall be entered when paid in detail and the pension warrants in one daily total. [Id.]

Art. 4383. [4382] **Other accounts.**—He shall keep accounts called "warrants payable, general," "warrants payable, special," and "warrants payable, pensions," to which shall be credited the daily totals of the several registers of warrants issued and charged with the daily total of warrants paid of each class, so that the balance of these accounts shall represent the aggregate amount of outstanding warrants. [Id.]

Art. 4384. [4383] **Outstanding warrants.**—Outstanding warrants shall be listed each month from the registers of warrants issued, and a list thereof sent to the Comptroller for his

record. With this list the Treasurer shall furnish a statement showing the aggregate amount of general, special and pension warrants paid during the month. [Id.]

Art. 4385. [4384] **General revenue account.**—He shall charge the daily totals of the general warrants issued from the register to “general revenue” accounts in the ledger. The daily total of pension warrants issued shall be similarly treated; while the special warrants issued shall be charged to the fund account to which they apply, except that those issued for bonds purchased shall be posted in the bond book. [Id.]

Art. 4386. **Certain special funds abolished.**—All warrants on the State Treasury shall be general warrants, and shall be on an equal basis with each other except that in the event of a question and necessity arising as to the priority of payment of any such warrants, they shall be paid in order of their serial number, such warrants to be numbered at all times in the order of receiving the accounts in the Comptroller’s office. This article shall not apply to warrants drawn on the Special Game Fund nor on funds collected for and appropriated to the State Highway Department nor to any special fund created or provided in the State Constitution, nor shall it apply to any special fund consisting of taxes set aside and remitted or donated by the Legislature to any county, city or locality. Such constitutional funds and special tax remitting funds and the warrants against the same shall be handled under present laws. [Acts 2nd C. S. 1923, p. 61.]

Art. 4387. [4385] **Appropriation ledger.**—The State Treasurer shall charge all pay warrants issued under the authority of appropriations in detail to the “appropriation ledger,” an account being kept for each appropriation, which shall be credited with the amount of the appropriation. The total of the appropriation so credited shall be charged to an account called “appropriation voted.” The daily totals of the general warrants issued shall be credited to this account, so that the balance shall represent the aggregate amount of unused appropriation. [Id.]

Art. 4388. [4386] **Daily statement from Land Office.**—He shall receive daily from the General Land Office a detailed list of remitters of money for interest, principal and leases of school, university and asylum lands together with the actual remittances, which he shall cash and deposit in his vault, if the necessity arises. A deposit receipt shall be issued by the Comptroller for the daily total of such remittances; and the cashier of the Treasurer’s department shall keep a cash book, to be called “suspense cash book,” in which to enter these deposit receipts, and any others issued for cash received for which no deposit warrants can be issued, or when their issuance is delayed. When deposit warrants are issued, they shall be credited in this cash book, as well as any refunds, and the balance shall represent the aggregate of the items still in suspense. Refunds shall

be made in a manner similar to that in present use, except that they shall be made on the Comptroller's authority. [Id.]

Art. 4389. [4387] **Office fee book.**—The Treasurer shall keep an office fee book in which shall be entered in detail all fees earned by the Treasury department; which fees shall be deposited in the Treasury to the credit of the general revenue at the end of each month on a deposit warrant issued by the Comptroller. [Id.]

Art. 4390. [4388] **Cash balancing book.**—He shall keep a book, to be called "cash balancing book," for the purpose of arriving at the daily cash balance, in which shall be entered the daily totals of all receipts and disbursements. [Id.]

Art. 4391. [4389] **Ledger.**—The ledger kept by the Treasurer shall contain accounts for each fund, which shall be credited with the existing balances and with the daily totals of deposit warrants except those issued for bonds. The pay warrants issued, except those for bonds, shall be charged to the several fund accounts from the warrant register in daily totals. [Id.]

Art. 4392. [4390] **Bond book.**—He shall keep a bond book, with columns for each fund, which shall start with the aggregate amount of bonds now held and be charged with all subsequent additions and credited with all bonds sold or redeemed. The entries in the bond book shall be posted from the deposit warrant and special warrant registers, being the deposit warrants issued for bonds sold or redeemed and special warrants for bonds purchased. He shall also keep a bond register, in which shall be entered the essential details of all bonds held by him and belonging to any State fund. [Id.]

Art. 4393. [4391] **Securities register.**—He shall keep a suitable register in which to enter all bonds, cash and other securities lodged with him by bond investment, surety and insurance companies, and State depository banks, and all other bonds lodged with him under the provisions of the statutes, the registration of which is not otherwise provided for by law. The relinquishment of these securities shall be on the authority of the Comptroller. The Treasurer shall keep a separate bond book in which to enter all these transactions consecutively, posting each item to the register; which book shall be opened with the aggregate of securities now held. [Id.]

CHAPTER FOUR.

ATTORNEY GENERAL.

| | Article | | Article |
|-------------------------------------|---------|------------------------------|---------|
| Election and term | 4394 | Agent to bid and sell | 4404 |
| To represent State in higher courts | 4395 | Judgments against insolvents | 4405 |
| Collection suits | 4396 | Official register | 4406 |
| To prepare forms | 4397 | Collections | 4407 |
| To examine bonds | 4398 | Forfeiture of charters | 4408 |
| Whom to advise | 4399 | Inquiry into charter rights | 4409 |
| Shall inspect accounts | 4400 | Escheats | 4410 |
| To attend sales and bid in land | 4401 | No admission to prejudice | 4411 |
| To execute deeds | 4402 | First office assistant | 4412 |
| May sell such property | 4403 | Biennial report | 4413 |

Art. 4394. [4411-30] **Election and term.**—At each biennial

general election an Attorney General shall be elected for a term of two years. He shall reside and keep his office in the city of Austin.

Art. 4395. [4413] [2886] **To represent State in higher courts.**—The Attorney General shall prosecute and defend all actions in the Supreme Court or the Courts of Civil Appeals in which the State may be interested. [Act May 11, 1846, p. 206; P. D. 198; G. L. Vol. 2, p. 1512.]

Art. 4396. [4415-16] **Collection suits.**—He shall transmit to the proper district or county attorney, with such instructions as he may deem necessary, any certified account, bond or other demand which the Comptroller has delivered to him for prosecution and suit. He shall require the several district and county attorneys to report to him at the close of the courts of their respective districts and counties, in such form as he may prescribe, precise information of the situation of all suits instituted by them for the collection of public money. He shall report to the Comptroller annually, on the last day of October and at such other times as the Comptroller may request, a full and correct statement of the status of all such suits. [Id.]

Art. 4397. [4417] [2890] **To prepare forms.**—He shall whenever requested by the Comptroller, prepare proper forms for contracts, obligations and other instruments which may be wanted for use of the State. [Id.]

Art. 4398. [619] **To examine bonds.**—He shall carefully examine all county and municipal bonds sent to him as provided by Article 709, in connection with the facts and the Constitution and laws on the subject of the execution of such bonds, and if, as the result of such examination, he shall find that such bonds were issued in conformity with the Constitution and laws, and that they are valid and binding obligations upon the county, city, or town, by which they are executed, he shall so officially certify. [Acts 1893, p. 84; G. L. Vol. 10, p. 514.]

Art. 4399. **Whom to advise.**—The Attorney General at the request of the Governor, or the head of any department of the State government, including the heads and boards of penal and eleemosynary institutions, and all other State boards, regents, trustees of the State educational institutions, committees of either branch of the Legislature, and county auditors authorized by law, shall give them written advice upon any question touching the public interest, or concerning their official duties. He shall advise the several district and county attorneys of the State, in the prosecution and defense of all actions in the district or inferior courts, wherein the State is interested, whenever requested by them, after said attorney shall have investigated the question, and shall with such question, also submit his brief. He shall advise the proper legal authorities in regard to the issuance of all bonds that the law requires shall be approved by him. He is hereby prohibited from giving legal advice or

written opinions to any other than the officers or persons named herein. [Acts 1917, p. 376.]

Art. 4400. [4419] [2892] **Shall inspect accounts.**—He shall at least once a month inspect the accounts of the offices of the State Treasurer and the Comptroller, of all officers and persons charged with the collection or custody of funds of the State. He shall proceed immediately to institute, or cause to be instituted, against any such officer or person who is in default or arrears, suit for the recovery of funds in his hands. He shall also institute immediately criminal proceedings against whoever has violated the laws by misapplying, or retaining in his hands, funds belonging to the State.

Art. 4401. [4420] [2893] **To attend sales and bid in land.**—If any property shall be sold by virtue of any execution or order of sale issued upon any judgment in favor of the State, except executions issued upon judgments in cases of scire facias, the agent or attorney representing the State, by and with the advice and consent of the Attorney General is hereby authorized and required to attend such sales and bid on, and buy in, for the State, said property, when it shall be deemed proper to protect the interest of the State in the collection of such judgment. His bid shall not exceed the amount necessary to satisfy said judgment and all costs due thereon. [Acts 1879, S. S., pp. 9-10; G. L. Vol. 9, p. 41.]

Art. 4402. [4421] [2894] **To execute deeds.**—In all cases where property is so purchased by the State, the officer selling the same shall execute and deliver to the State a deed to the same, such as is prescribed for individuals in similar cases. [Id. Sec. 2.]

Art. 4403. [4422] [2895] **May sell such property.**—The agent or attorney of the State buying for the State any such property at such sale shall be authorized, by and with the advice and consent of the Attorney General, at any time to sell or otherwise dispose of said property so purchased in the manner and upon such terms and conditions as he may deem most advantageous to the State. If sold or disposed of for a greater amount than is necessary to pay off the amount due upon the judgment and all costs, the remainder shall be paid into the State Treasury to the credit of the general revenue. When such sale is made the Attorney General shall, in the name of the State, execute and deliver to the purchaser a deed of conveyance to said property, which deed shall vest all the right and title to the same in the purchaser thereof. [Id. Sec. 3.]

Art. 4404. [4423] [2896] **Agent to bid and sell.**—When any such property is sold under execution or order of sale issued upon any judgment in favor of the county, including executions issued upon judgments in cases of scire facias in the name of the State, the attorney or agent so representing the county, by and with the advice and consent of the commissioner's court, shall have the same authority to buy and dispose of such prop-

erty for the county as the agent or attorney for the State is given in this law in similar cases. When any property is so purchased by the agent or attorney of the county, the officer so selling the same shall execute and deliver to the county a deed of conveyance to the same. Whenever the property so bought in for the county is sold, the commissioner's court shall execute and deliver to the purchaser thereof a deed in the name of the county to such property. [Id. Sec. 4.]

Art. 4405. [4424] [2897] **Judgments against insolvents.**—If the principal and sureties upon any judgment held by the State are insolvent, so that under any existing process of law said judgment or any part thereof cannot be collected, there shall be, and is hereby constituted a board consisting of the Attorney General, Comptroller and State Treasurer, who are hereby empowered and authorized by such advertising as they may deem necessary to offer for sale at public outcry, or by private sale, as they may deem to the best interest of the State, all the right of the State to such judgment; and, if by public sale, the amount bid on the same shall not be deemed sufficient, they shall refuse to accept the same, and dispose of the same in any manner deemed by them to the best interest of the State, and upon sale shall make a proper assignment of said judgment to the purchaser. [Id. Sec. 5.]

Art. 4406. [4425] [2898] [2803] **Official register.**—The Attorney General shall keep in proper books a register of all his official acts and opinions, of all actions and demands prosecuted or defended by him or any district or county attorney, in which any portion of the revenue of the State is involved, and of all proceedings had in relation thereto, and shall deliver the same to his successor in office. [Acts 1846, p. 204; Id. Sec. 12; P. D. 209; G. L. Vol. 2, p. 1512.]

Art. 4407. [4426] [2899] [2804] **Collections.**—He shall immediately pay into the State Treasury all money received by him for debts due or penalties. [Id. P. D. 208.]

Art. 4408. [4427] [2900] [2805] **Forfeiture of charters.**—The Attorney General, unless otherwise expressly directed by law, whenever sufficient cause exists therefor shall seek a judicial forfeiture of the charters of private corporations. He shall at once take steps to seek such forfeiture in any case where satisfactory evidence is laid before him that any corporation receiving State aid has, by the non-performance of its charter conditions or any violation of its charter, or by any act or omission, mis-user or non-user, forfeited its charter or any rights thereunder. [Acts 1876, p. 312; G. L. Vol. 8, p. 1148.]

Art. 4409. [4428] [2901] [2806] **Inquiry into charter rights.**—He shall also inquire into the charter rights of all private corporations and, in the name of the State, take such legal action as may be proper and necessary to prevent any private corporation from exercising any power or demanding or collecting any species of taxes, tolls, freight or wharfage not authorized by law. [Const. Art. 4, Sec. 22.]

Art. 4410. **Escheats.**—The Attorney General shall institute and prosecute, or cause to be instituted and prosecuted, all suits and proceedings necessary to recover for and on behalf of the State all properties, real, personal or mixed, that have escheated or may escheat to the State under the laws of the State. [Acts 1917, p. 376.]

Art. 4411. [4429] [2902] [2807] **No admission to prejudice.**—No admission, agreement or waiver, made by the Attorney General, in any action or suit in which the State is a party, shall prejudice the rights of the State. [Acts 1846, p. 206; P. D. 211; G. L. Vol. 2, p. 1148.]

Art. 4412. [4431] **First office assistant.**—In case of the absence or inability of the Attorney General to act, the first office assistant of the Attorney General shall discharge the duties which devolve by law upon the Attorney General. [Act 1903, p. 117.]

Art. 4413. **Biennial report.**—The Attorney General shall report to the Governor biennially on the first Monday in December next preceding the expiration of his official term the number of indictments which have been found by grand juries in this State for the two preceding years; the offenses charged, the number of trials, convictions and acquittals for each offense; the number of dismissals and also a summary of the judgments rendered on conviction, the nature and amount of penalties imposed and the amount of fines collected. This report shall also give a general summary of all the business, civil and criminal, disposed of by the Supreme Court and Court of Criminal Appeals, so far as the State may be a party, and all civil causes to which the State is a party prosecuted or defended by him in any other courts, State or Federal. [Acts 1885, p. 61; G. L. Vol. 9, p. 681.]

TITLE 71.

HEALTH—PUBLIC.

| Chapter | Page | Chapter | Page |
|----------------------------------|------|---------------------|------|
| 1 Health boards and laws | 1175 | 7 Nurses | 1233 |
| 2 Special quarantine regulations | 1191 | 8 Pharmacy | 1237 |
| 3 Food and drugs | 1195 | 9 Dentistry | 1242 |
| 4 Sanitary code | 1198 | 10 Optometry | 1244 |
| 5 County hospitals | 1216 | 11 Chiropody | 1250 |
| 6 Medicine | 1224 | 12 Embalming board | 1253 |
| | | 13 Anatomical board | 1255 |

CHAPTER ONE.

HEALTH BOARDS AND LAWS.

| | Article | | Article |
|--|---------|-------------------------------------|---------|
| Appointment | 4414 | City health officer removed | 4431 |
| Bond of president | 4415 | Charges against city health officer | 4432 |
| Salaries and expenses | 4416 | Annual conference | 4433 |
| Meetings | 4417 | Co-operation | 4434 |
| Officers and assistants | 4418 | In unincorporated towns | 4435 |
| General duties and powers | 4419 | Health control in certain cities | 4436 |
| May enter and inspect | 4420 | Hospitals | 4437 |
| Investigations by board | 4421 | Indigent sick | 4438 |
| No county physician | 4422 | Isolation of lepers | 4439 |
| County health officer | 4423 | Indigent consumptives | 4440 |
| No city physician | 4424 | Protecting eyes of new-born | 4441 |
| City health officer | 4425 | Maternity home | 4442 |
| Health officers appointed by board, when | 4426 | Child hygiene | 4443 |
| Duties of county health officer | 4427 | Polluting public body of water | 4444 |
| Removal of county health officer | 4428 | Veneral diseases | 4445 |
| Charges against county health officer | 4429 | Legal proceedings | 4446 |
| Duties of city health officer | 4430 | Charbon districts | 4447 |

Art. 4414. [4521-25] **Appointment.**—The Governor shall biennially, on or before the tenth of March following his inauguration, appoint for a term of two years seven legally qualified physicians of good professional standing, graduates of reputable medical colleges and with at least ten years experience in actual practice of medicine within this State, to constitute the Texas State Board of Health. The Governor with the advice and consent of the Senate shall designate one member of said board as State Health Officer, who shall be president and executive officer of said board. Upon presentation of their official oaths and certificates of appointment, the Secretary of State shall issue commissions to the members of said board, which shall be evidence and be authority to act as such members. [Acts 1909, 1st C. S., p. 340.]

Art. 4415. [4526] **Bond of president.**—The State Health Officer shall execute a bond in the sum of ten thousand dollars payable to and to be approved by the Governor, conditioned for the faithful performance of his official duties. [Id.]

Art. 4416. [4522] **Salaries and expenses.**—The members of said board other than the president shall receive no salary, but each of said members shall be allowed ten dollars for each day he shall be in attendance upon the meetings of the board, including the time spent in travel, and three cents per mile going and coming for actual expenses, to be paid on their vouchers when approved by the president of the board and the Governor by warrant drawn by the Comptroller against the appropriation

provided therefor, provided no member other than the president shall receive more than five hundred dollars annually. [Id.]

Art. 4417. [4523] **Meetings.**—The board shall meet at Austin quarterly on a day to be fixed by it, or whenever and wherever it deems necessary. The president shall give timely notice of such meetings. The board shall be convened on call of the president, or on written demand of three of its members to the president. The office of said board shall be in Austin, and it shall be furnished with all necessary equipment and supplies, including suitable rooms for its offices and laboratories necessary for carrying on its work. [Id.]

Art. 4418. [4524] **Officers and assistants.**—The president of the board shall appoint, with the approval of the Governor, the following officers and assistants:

1. An assistant State health officer who shall be a legally qualified practitioner of medicine under the laws of this State, and who shall have had five years experience in the practice of medicine in this State, who shall assist the president of the board in a general supervision of the affairs of his office and in the enforcement of quarantine and sanitation throughout the State.

2. A State Registrar of Vital Statistics, who shall superintend the collection, filing and compilation of all birth and death certificates. Such Registrar shall be a licensed physician under the laws of Texas with not less than five years experience as a general practitioner and two years experience as a Vital Statistician, and shall not engage in private practice during the time he serves as such Registrar. He shall also be secretary of the board.

3. A deputy State Registrar of Vital Statistics, with at least two years practical experience as such statistician, who shall act as assistant to the State Registrar and perform such duties as the State Registrar may assign him.

4. A chemist and bacteriologist, who shall be learned in chemistry, pathology, and bacteriology. He shall make examinations and analysis of such things and matters as the board or the State Health Officer may submit to him, and report results of such examinations in such manner and form as the board may direct.

5. One stenographer and bookkeeper combined.

6. One inspector, who shall conduct such inspection as required by the board and its president, and assist in the enforcement of all sanitary and quarantine laws of the State, and perform such other necessary services as the president of the board may prescribe. [Id. Acts 1917, p. 328.]

Art. 4419. [4528] **General duties and powers.**—The State Board of Health shall have general supervision and control of all matters pertaining to the health of citizens of this State, as provided herein. It shall make a study of the causes and pre-

vention of infection of contagious diseases affecting the lives of citizens within this State and except as otherwise provided in this chapter shall have direction and control of all matters of quarantine regulations and enforcement and shall have full power and authority to prevent the entrance of such diseases from points without the State, and shall have direction and control over sanitary and quarantine measures for dealing with all diseases within the State and to suppress same and prevent their spread. The president of the board shall have charge of and superintend the administration of all matters pertaining to State quarantine. [Id. Acts 1913, p. 147.]

Art. 4420. [4536] **May enter and inspect.**—The members of the State Board of Health or any person duly authorized by them, upon presentation of proper authority in writing, are hereby empowered, whenever they may deem it necessary in pursuance of their duties, to enter into, examine, investigate, inspect and view any ground, public building, factory, slaughter house, packing house, abattoir, dairy, bakery, manufactory, hotel, restaurant and any other public place and public building where they deem it proper to enter for the discovery and suppression of disease and for the enforcement of the rules of the sanitary code for Texas and of any health law, sanitary law or quarantine regulation of this State. [Acts 1909, 1st C. S. p. 340.]

Art. 4421. [4537] **Investigations by board.**—The members of said Board of Health and its officers are severally authorized to administer oaths and to summon witnesses and compel their attendance in all matters proper for said board to investigate, such as the determination of nuisances, investigation of public water supplies, of any sanitary conditions, of the existence of infection, or the investigation of any matter requiring the exercise of the discretionary powers invested in said board and its officers and members, and in the general scope of its authority invested by this chapter. The several district judges and courts are hereby charged with the duty of aiding said board in its investigations and in compelling due observance of the provisions of this chapter; and if any witness summoned by said board or any of its officers or members shall prove disobedient or disrespectful to the lawful authority of such board, officer or member, such person shall be punished by the district court of the county in which such witness is summoned to appear, as for contempt of said court. [Id.]

Art. 4422. [4538] **No county physician.**—The office of county health officer shall be filled by a competent physician legally qualified to practice under the laws of this State and of reputable professional standing. [Id.]

Art. 4423. [4539] **County health officer.**—The commissioners court by a majority vote in each organized county shall biennially appoint a proper person for the office of county health officer for his county, who shall hold office for two years. Said county health officer shall take and subscribe to the offi-

cial oath, and shall file a copy of such oath and a copy of his appointment with the Texas State Board of Health; and, until such copies are so filed, said officer shall not be deemed legally qualified. Compensation of said county health officer shall be fixed by the commissioners court; provided, that no compensation or salary shall be allowed except for services actually rendered. [Id.]

Art. 4424. [4540] **No city physician.**—The office of city physician is abolished, and instead the office of city health officer is created. The office of city health officer shall be filled by a competent physician, legally qualified to practice medicine within this State, of reputable professional standing. [Id.]

Art. 4425. [4541] **City health officer.**—The governing body of each incorporated city and town within this State shall elect a qualified person for the office of city health officer by a majority of the votes of the governing body, except in cities which may be operated under a charter providing for a different method of selecting city physicians, in which event the office of city health officer shall be filled as is now filled by the city physician, but in no instance shall the office of city health officer be abolished. The city health officer, after appointment, shall take and subscribe to the official oath, and shall file a copy of such oath and a copy of his appointment with the Texas State Board of Health, and shall not be deemed to be legally qualified until said copies shall have been so filed. [Id.]

Art. 4426. [4542] **Health officers appoint by board, when.**—If said authorities shall fail, neglect or refuse to fill the office of county or city health officer as in this chapter provided then the State Board of Health shall have the power to appoint such county or city health officer to hold office until the local authorities shall fill said office, first having given ten days notice in writing to such authority of the desire for such appointment. [Id.]

Art. 4427. [4543] **Duties of county health officer.**—Each county health officer shall perform such duties as have been required of county physicians, with relation to caring for the prisoners in county jails and in caring for the inmates of county poor farms, hospitals, discharging duties of county quarantine and other such duties as may be lawfully required of the county physician by the commissioners court and other officers of the county, and shall discharge any additional duties which it may be proper for county authorities under the present laws to require of county physicians; and, in addition thereto, he shall discharge such duties as shall be prescribed for him under the rules, regulations and requirements of the Texas State Board of Health, or the president thereof, and is empowered and authorized to establish, maintain and enforce quarantine within his county. He shall also be required to aid and assist the State Board of Health in all matters of local quarantine, inspection, disease prevention and suppression, vital and mortuary statistics and general sanitation within his

county; and he shall at all times report to said State board, in such manner and form as it shall prescribe, the presence of all contagious, infectious and dangerous epidemic diseases within his jurisdiction; and he shall make such other and further reports in such manner and form and at such times as said State board shall direct; touching on such matters as may be proper for said State board to direct; and he shall aid said State board at all times in the enforcement of its proper rules, regulations, requirements and ordinances, and in the enforcement of all sanitary laws and quarantine regulations within his jurisdiction. [Id.]

Art. 4428. [4544] **Removal of county health officer.**—In all matters with which the State Board of Health may be clothed with authority, said county health officer shall at all times be under its direction; and any failure or refusal on the part of said county health officer to obey the authority and reasonable commands of said State Board of Health shall constitute malfeasance in office, and shall subject said county health officer to removal from office at the relation of the State Board of Health; and pending charges for removal, said county health officer shall not receive any salary or compensation. Said cause shall be tried in the district court of the county in which such county health officer resides. [Id.]

Art. 4429. [4546] **Charges against county health officer.**—If any county health officer shall fail or refuse to properly discharge the duties of his office, as prescribed by this chapter, the State Board of Health shall file charges with the commissioners court for the proper county, specifying wherein such officer has failed in the discharge of his duties; and at the same time the State Board of Health shall file a protest with the county clerk and the county treasurer against the payment of further fees, salary or allowance to said county health officer; and, pending such protest and charges, it shall not be lawful for such county health officer to be paid or to receive any subsequently earned salary, fees or allowances on account of his office, unless such charges are shown to be untrue and are not sustained. After five days notice in writing to said county health officer, the commissioners court shall hear the charges, at which hearing the county judge shall preside, and the State Board of Health may be represented. Either party, the State Board or the county health officer, may appeal from the decision of said court to the district court of the county; and, pending such appeal, no salary, fees or allowances shall be paid to said county health officer for any subsequently earned salary; and, if the charges shall be sustained, the county health officer shall be adjudged to pay all costs of court, and shall forfeit all salary, fees and allowances, earned subsequently to the date of filing the charges and protests. [Id.]

Art. 4430. [4548] **Duties of city health officer.**—Each city health officer shall perform such duties as may be required

of him by general law and city ordinances with regard to the general health and sanitation of towns and cities, and perform such other duties as shall be legally required of him by the mayor, governing body or the ordinances of his city or town. He shall discharge and perform such duties as may be prescribed for him under the directions, rules, regulations and requirements of the State Board of Health and the president thereof. He shall be required to aid and assist the State Board of Health in all matters of quarantine, vital and mortuary statistics, inspection, disease prevention and suppression and sanitation within his jurisdiction. He shall at all times report to the State Board of Health, in such manner and form as said board may prescribe, the presence of all contagious, infectious and dangerous epidemic diseases within his jurisdiction, and shall make such other and further reports in such manner and form and at such times as said State board shall direct, touching all such matters as may be proper for said board to direct, and he shall aid said State board at all times in the enforcement of proper rules, regulations and requirements in the enforcement of all sanitary laws, quarantine regulations and vital statistics collection, and perform such other duties as said State board shall direct. [Id.]

Art. 4431. [4549] **City health officer removed.**—In all matters in which the State Board of Health may be clothed with authority, said city health officer shall at all times be governed by the authority of said board, and failure or refusal on the part of said city health officer to properly perform the duties of his office as prescribed by this chapter shall constitute malfeasance in office, and shall subject said city health officer to removal from office at the relation of the State Board of Health. Said cause shall be tried in the district court of the county in which such city health officer resides. [Id.]

Art. 4432. [4550] **Charges against city health officer.**—If said city health officer fails or refuses to properly discharge his duties of his office, the State Board of Health shall file charges against said city health officer with the governing body of the proper town or city, which shall specify in what particulars said city health officer has failed in respect to the discharge of his duties, and shall at the same time file a protest with the city secretary and city treasurer against the payment to said city health officer of further fees, salary or allowance; and, pending such charges and protest, no further salary, fees or allowance shall be paid to said city health officer, unless such charges are shown to be untrue and not sustained. After five days notice in writing to said city health officer, the charges shall be heard before the mayor and governing body of the town or city in which said city health officer shall reside, at which hearing the State Board of Health may be represented, and either the city health officer or the State Board of Health shall have the right of appeal to the

county court of the county in which the city or town is situated. If said charges be sustained, said city health officer shall be adjudged to pay all costs of court, and forfeit all salary, fees and allowances accrued subsequent to the date of filing of the charges and protest originally and which may be due him on account of his office. [Id.]

Art. 4433. [4552] **Annual conference.**—An annual conference of county and city health officers of this State shall be held at such time and place as the State Board of Health shall designate, at which conference the president or some member of said State board shall preside. The several counties, towns and cities may provide for and pay the necessary expense of its county health officer or city health officer for attendance upon said conference. [Id.]

Art. 4434. [2251] [1547] **Co-operation.**—The municipal authorities of towns and cities, and commissioners courts of the counties wherein such towns and cities are situated, may co-operate with each other in making such improvements connected with said towns, cities and counties as said authorities and courts may deem necessary to improve the public health and to promote efficient sanitary regulations; and, by mutual arrangement, they may provide for the construction of said improvements and the payment therefor. [Acts S. S. 1879, p. 9; G. L. Vol. 9, p. 41.]

Art. 4435. [2248-49] **In unincorporated towns.**—The commissioners court of any county in which an unincorporated town or village may be situated, shall have power to designate the lines of such town or village, and may appoint a board of health for it, consisting of three persons, two or more of whom shall be regular practicing physicians. Said court when such appointments are made shall at once notify the State Health Officer. Said board shall elect one of their members as presiding officer; and such presiding officer, if the premises of any citizen residing within the prescribed limits of said town or village are in an unclean or unhealthy condition, shall notify him of the fact, and that he must proceed at once to clean the same. [Acts 1889, p. 139; Acts 1st C. S. 1901, p. 29.]

Art. 4436. [984] **Health control in certain cities.**—In cities of thirty-five thousand population, or over, the governing body of a city or town whether acting under a special charter or incorporated under the general laws of Texas, shall have the power to require the filling up, drainage, and regulating of any lot or lots, grounds or yards, or any other places in the city or town which shall be unwholesome, or have stagnant water therein, or from any other cause be in such condition as to be liable to produce disease; to cause all premises to be inspected and to impose fines on the owners of houses under which stagnant water may be found, or upon whose premises such stagnant water may be found, and to pass such ordinances as they may deem necessary for the purposes aforesaid and for making, filling up, alter-

ing or repairing of all sinks, and privies, and directing the mode and material for constructing them in the future, and for cleaning and disinfecting the same; and for cleansing of any house, building, establishment, lot, yard or ground from filth, carrion or other impure or unwholesome matter of any kind; to require the owner of any lot or lots within such city or town to keep the same free from weeds, rubbish, brush and any and all other objectionable, unsightly or unsanitary matter of whatever nature, and if such owner fails or refuses to do so, within ten days after notice in writing, or by letter addressed to such owner at his post-office address, or by publication as many as two times within ten consecutive days, if personal service may not be had as aforesaid, or the owner's address be not known, such city or town may do such work or may cause the same to be done and may pay therefor and charge the expenses incurred in doing or having such work done or improvements made, to the owner of such property as herein provided; and to punish any owner or occupant violating the provisions of any ordinance so passed, as aforesaid; and the governing body of such town or city shall also, in addition to the foregoing remedy, have the power to cause any of the improvements above mentioned to be done at the expense of the city or town, on account of the owners, and cause the expense thereof to be assessed on the real estate, or lot or lots upon which such expense is incurred. On filing with the county clerk of the county in which the city or town is situated, a statement by the mayor or city health officer of such city or town of such expenses, such city or town shall have a privileged lien thereon, second only to tax liens and liens for street improvements to secure the expenditures so made, and ten per cent interest on the amount from the date of such payment. For any such expenditures, and interest, as aforesaid, suit may be instituted and recovery and foreclosure had in the name of the corporation; and the statement so made, as aforesaid, or a certified copy thereof, shall be prima facie proof of the amount expended in any such work or improvements. [Acts 1875, p. 113; G. L. Vol. 8, p. 485; Acts 1917, p. 405.]

Art. 4437. **Hospitals.**—If by will or otherwise a fund of fifty thousand dollars or more was or may be left to establish and maintain a hospital in a city of ten thousand or more inhabitants, in which hospital the sick and wounded of such city or of this State may be admitted and receive medical and surgical attention, the commissioners court of the county and the governing body of the city in which said hospital shall be established, either or both, may from time to time appropriate and pay toward the maintenance of such hospital such sums of money as in the judgment of such court or body making such appropriation may be proper to provide hospital accommodations and medical and surgical attention for the sick and wounded of such county or city who are indigent. [Acts 1921, p. 93.]

Art. 4438. [2247] [1543] [1520] **Indigent sick.**—If there

is a regular established public hospital in the county, the commissioners court shall provide for sending the indigent sick of the county to such hospital. If more than one such hospital exists in the county, the indigent patient shall have the right to select which one of them he shall be sent to. [Acts 1876, p. 51; G. L. Vol. 8., p. 890.]

Art. 4439. Isolation of lepers.—The unexpended sum remaining in the State treasury heretofore appropriated for the purpose of establishing a home for lepers, is hereby appropriated and made available to be expended by and under the direction of the State Health Officer for the isolation and care of persons in this State now known and who may hereafter be found to be afflicted with leprosy. [Acts 1909, p. 334; Acts 1st C. S. 1917, p. 29; Acts 1919, pp. 261 and 262.]

Art. 4440. [4545] Indigent consumptives.—When any indigent person suffering from tuberculosis is sojourning in any other county than his residence and makes application for financial relief to any county health officer or commissioners court or to the mayor or health officer of any city, before any relief is granted, he shall make an affidavit that he is indigent and unable to provide for himself. When such affidavit is made, the county health officer, mayor, city health officer or county judge shall forthwith notify the State Health Officer of the case, giving the name of the patient and the place of his residence. If such patient is a bona fide citizen of any county within this State, it shall be the duty of the State Health Officer, and he shall have the power, to purchase a ticket for said patient and furnish him with sufficient means to purchase food en route to his former home, and return such patient thereto. [Acts 1st C. S. 1909, p. 337.]

Art. 4441. Protecting eyes of new-born.—All doctors, midwives, nurses, or those in attendance at child birth, shall use prophylactic drops in the child's eyes of a one per cent solution of silver nitrate or other prophylactic solution approved by the State Board of Health, to prevent ophthalmia neonatorum in the new-born, and said board shall furnish such solution or other prophylactic drops free of cost to the poor of the State, namely those upon whom it would work a hardship to buy the same. [Acts 1921, p. 172.]

Art. 4442. Maternity home.—

1. Every individual, firm, association, or corporation, owning, keeping, conducting or managing an institution or home for the boarding or sheltering of infant children, or so-called "Baby Farm," or any lying-in hospital, hospital ward, maternity home or other place for the reception, care and treatment of pregnant women, and charging a fee or receiving or expecting compensation in the way of room rent or board, shall obtain an annual license which shall be issued by the State Board of Health without fee, shall not be transferable to other persons or other premises, and shall expire on the thirty-first day of December next following the issuance. The application for such license

shall state the name and address of the licensee, the specific location of the building used, and the number of inmates which may be boarded there at one time, and shall be approved by the local health officer. No greater number of inmates shall be housed at one time in the building than is authorized by the license, and no pregnant woman or infant shall be kept in a building or place not designated in the license. A record of licenses issued shall be kept by the State Board of Health.

2. Whenever any such license is issued, the board shall forthwith give notice of the granting and terms to the local health officer, who shall keep informed of the nature and reputation of every such institution in his jurisdiction, and shall visit and inspect the same from time to time, and for such purposes shall at all reasonable hours be given free and unrestricted access to such institution.

3. Every such licensee shall report to the local health officer, within twenty-four hours next after it occurs, the birth of any child, including stillborn or prematurely born children at such institution; the arrival of any child, stating the name, sex, age, color, and from whom received; and the removal of any child, stating its name, age, and disposition made of it.

4. Whenever a keeper, manager or owner of any such institution as is defined in this article shall be convicted of keeping or conducting a "disorderly house" as that term is defined in the Penal Code, the State Board of Health shall forthwith revoke the license issued authorizing the keeping of such house; and should any such manager, keeper or owner refuse to permit any person authorized by this article to inspect such house at any reasonable hour, or should they fail to make such reports to the local health officer within the time and in the manner required by this article, then said State Board of Health may suspend said license for any period of time not to exceed six months. Upon any subsequent failure to permit such visits of inspection or to make said reports, said State Board of Health is authorized to revoke the license issued for the conducting of such house. [Acts 1921, p. 146.]

Art. 4443. **Child hygiene.**—The State of Texas hereby accepts the provisions of the Act of Congress approved November 23, 1921, entitled "An Act for the promotion of the welfare and hygiene of maternity and infancy, and for other purposes," and the State Board of Health is hereby authorized and directed through its Bureau of Child Hygiene to co-operate with the Federal Children's Bureau in the administration of the provisions of said Act of Congress and do all things necessary to entitle the State of Texas to receive all the benefits thereof. Provided that no official, agent or representative of the Bureau of Child Hygiene, or any department having to do with the administration of this law, shall, by virtue hereof, have any right to enter any home over the objection of the owner thereof, or to take charge of any child over the objection of the parents, or

either of them, or of the person standing in loco parentis, or having the custody of such child, or without the express permission of the owner of such home, or the parents, or either of them, or the person standing in loco parentis, or having the custody of such child. Nothing in this article shall be construed as limiting the power of the parent or guardian or person standing in the position of loco parentis to determine what treatment or correction shall be provided for the child, or the agency or agencies to be employed for such purpose. All correspondence between the Bureau of Child Hygiene or any official agent or representative thereof, and any parent, owner of a home, or person standing in loco parentis of any child, shall be held confidential, and not publicly disclosed, except by the permission of such parent, owner of the home or person standing in loco parentis, unless the public welfare shall demand that it be disclosed or used in furtherance of public welfare. The State Treasurer is hereby designated as the custodian of all funds allotted to the State of Texas from appropriations made by Congress or in pursuance of said Act to be disbursed in accordance with law through the State Health Board. [Acts 1923, p. 68.]

Art. 4444. Polluting public body of water.—No person, firm or corporation, private or municipal, shall pollute any water course or other public body of water, by throwing, casting or depositing or causing to be thrown, cast or deposited any crude petroleum, oil or other like substance therein, or pollute any water course, or other public body of water from which water is taken for the uses of farm livestock, drinking and domestic purposes, in this State, by the discharge, directly or indirectly, of any sewage or unclean water or unclean or polluting matter or thing therein, or in such proximity thereto that it will probably reach and pollute the waters of such water course or other public body of water from which water is taken, for said uses. Drain ditches, where waste oil finds its way into water courses or public bodies of water, shall be equipped with traps of sufficient capacity to arrest the flow of oil. In so far as concerns the protection of fish and oysters, the Game, Fish and Oyster Commissioner or his deputies, may have jurisdiction in the enforcement hereof. This article shall not apply to any place or premises of manufacturing plants whose affluents contain no organic matter that will putrify, or any poisonous compounds, or any bacteria dangerous to public health or destructive of the fish life of streams or other public bodies of water. Upon the conviction of any person for violating this law, the court or judge thereof in which such conviction is had, shall issue a writ of injunction enjoining and restraining the person or corporation responsible for such pollution. For a violation of such injunction, the said court and the judge thereof shall have the power of fine and imprisonment as for contempt of court within the limits prescribed by law in other cases, and this remedy by injunc-

tion and punishment for violation thereof shall be cumulative of the fine imposed. The State Board of Health shall enforce the provisions of this article. The Governor shall appoint an inspector to act under the direction of said board and the State Health Officer, and said inspector shall make such investigations, inspection and reports and perform such other duties in respect to the enforcement hereof as the said health officer may require. [Acts 1913, p. 90; Acts 1915, p. 38; Acts 1923, p. 177.]

Art. 4445. **Venereal diseases.**—Syphilis, gonorrhoea and chancroid, hereinafter designated venereal diseases, are hereby declared to be contagious, infectious, communicable, and dangerous to the public health:

Sec. 1. Any physician or other person who makes a diagnosis in, or treats, a case of syphilis, gonorrhoea or chancroid, and every superintendent or manager of a hospital, dispensary, or charitable or penal institution, in which there is a case of venereal disease, shall report such case immediately, in writing, to the local health officer, stating the name and address or the office number, age, sex, color, and occupation of the diseased person, and the date of the onset of the disease, and the probable source of infection, provided that the name and address of the diseased person need not be stated, except as hereinafter specifically required in Section 5, and provided, further, that all information and reports concerning persons having venereal disease shall be held secret in accordance with provisions in Section 8. The report shall be enclosed in a sealed envelope and sent to the local health officer who shall report weekly on the prescribed form to the State Board of Health, all cases reported to him. The physicians and others residing in cities having no city health officer, shall make reports required in this section direct to the county health officer, where there is a county health officer in the county in which they reside, and where there is no county health officer, all such reports shall be made direct to the State Board of Health.

Sec. 2. It shall be the duty of every physician and of every other person who examines or treats a person having syphilis, gonorrhoea or chancroid, to instruct him in measures for preventing the spread of such disease, and of the necessity for treatment until cured, and to hand him a copy of the circular of information obtainable for this purpose from the State Board of Health.

Sec. 3. All city, county, or other health officers shall use every available means to ascertain the existence of, and to investigate all cases of syphilis, gonorrhoea, and chancroid within their several territorial jurisdictions, and to ascertain the sources of such infections. Local health officers are hereby empowered and directed to make such examinations of persons reasonably suspected of having syphilis, gonorrhoea or chancroid as may be necessary for carrying out the provisions of this law. Owing to the prevalence of such diseases among prostitutes and persons

associated with them, all such persons are to be considered within the above class.

Sec. 4. Upon receipt of a report of a case of venereal disease, the local health officer shall institute measures for protection of other persons from infection by such venereally diseased person:

1. Local health officers are authorized and directed to quarantine persons who have, or are reasonably suspected of having syphilis, gonorrhea, or chancroid, whenever, in the opinion of said local officer, or the State Board of Health, or its executive officer, quarantine is necessary for the protection of the public health. In establishing quarantine the local health officer shall designate and define the limits of the area in which the person known to have, or reasonably suspected of having syphilis, gonorrhea, or chancroid, and his immediate attendant, are to be quarantined, and no person other than the attending physician, shall enter or leave the area of quarantine without the permission of the local health officer.

No one but the local health officer shall terminate said quarantine, and this shall not be done until the quarantined person has become non-infectious, as determined by the local health officer or his authorized deputy through clinical examination and all necessary laboratory tests, or until permission has been given him to do so by the State Board of Health or its executive officer.

2. The local health officer shall inform all persons who are about to be released from quarantine for venereal disease, in case they are not cured, what further treatment should be taken to complete their cure. Any person not cured, before released from quarantine, shall be required to sign the following statement after the blank spaces have been filled to the satisfaction of the health officer:

"I _____ residing at _____ hereby acknowledge the fact that I am at this time infected with _____; and agree to place myself under the medical care of _____, (name of physician or clinic) _____ (address) within _____ hours, and that I will remain under the treatment of said physician or clinic until released by the health officer of _____ or until my case is transferred, with the approval of said health officer, to another regular licensed physician or an approved clinic.

"I hereby agree to report to the health officer within four days after beginning treatment as above agreed, and will bring with me a statement from the above physician or clinic of the medical treatment applied in my case, and thereafter will report as often as may be demanded of me by the health officer.

"I agree further, that I will take all precautions recommended by the health officer to prevent the spread of the above

disease to other persons and that I will not perform any act which will expose other persons to the above disease.

"I agree, until finally released by the health officer, to notify him of any change of address and to obtain his consent before moving my abode outside of his jurisdiction.

Signature

Date

All such agreements shall be filed with the health officer and kept inaccessible to the public.

The commissioners courts of the various counties and the governing body of all incorporated towns and cities are hereby empowered and directed to provide suitable places for the detention of persons who may be subject to quarantine and who should be segregated for the execution of the provisions of this law; and such commissioners courts and governing bodies of incorporated cities and towns are hereby authorized to incur, on behalf of their said counties, cities or towns, the expenses necessary to the enforcement of this law.

Sec. 5. 1. When a person applies to a physician or other person for the diagnosis or treatment of syphilis, gonorrhoea or chancroid, it shall be the duty of the physician or person so consulted to inquire of, and ascertain from, the person seeking such diagnosis or treatment, whether such person has heretofore consulted with, or has been treated by, any other physician or person, and if so, to ascertain the name and address of the physician or person last consulted. It shall be the duty of the physician or other person whom the applicant consults to notify the physician or other person last consulted of the change of advisers. Should the physician or person previously consulted fail to receive such notice within ten days after the last date upon which the patient was instructed by him to appear, it shall be the duty of such physician or person to report to the local health officer the name and address of such venereally diseased person.

2. If an attending physician or other person knows or has good reasons to suspect that a person having syphilis, gonorrhoea, or chancroid is so conducting himself or herself as to expose other persons to infection, or is about so to conduct himself or herself, he shall notify the local health officer of the name and address of the diseased person and the essential facts in the case.

Sec. 6. All local and State health officers are directed to co-operate with proper officials whose duty it is to enforce laws directed against prostitution, and otherwise to use every proper means for the repression of prostitution.

Sec. 7. Physicians, health officers, and all other persons are prohibited from issuing certificates of freedom from venereal disease, provided this section shall not prevent the issuance of statements of freedom from infectious diseases written

in such form, or given under such safeguards, that their use for solicitation for sexual intercourse would be impossible.

Sec. 8. All information and reports concerning persons infected with venereal diseases shall be inaccessible to the public except in so far as publicity may attend the performance of the duties imposed by the laws of the State.

Sec. 9. Any health officer or other physician who shall wilfully fail to perform the duties required of him in this article shall, in addition to the fines imposed by law, forfeit his right and license to practice medicine within this State; and the district courts of the State shall have jurisdiction of suits for the forfeiture of such license in such cases, and the suit may be filed by any citizen of the State in a court having jurisdiction, under the ordinary rules of venue, and it shall be the duty of the county and district attorneys to represent the petitioners in such suit. [Acts 4th C. S. 1918, p. 179.]

Art. 4446. [4547-53] **Legal proceedings.**—In all matters wherein the State Board of Health shall invoke the aid of the courts, the action shall run in the name of the State of Texas. The Attorney General shall assign a special assistant to attend to all legal matters of the board. Upon demand of the board, the Attorney General shall furnish the necessary assistance to the board to attend to all its legal requirements. No bond for costs, or bond on appeal or writ of error, shall be required of the State Board of Health or State officials in any action brought or maintained under this chapter. [Id. Acts 1909, 1st C. S., p. 340.]

Art. 4447. **Charbon districts.**—All of that portion of this State in which charbon or anthrax has been prevalent or any district of this State in which charbon or anthrax may become prevalent, shall be known as charbon districts and shall be subject to the following provisions:

1. **Bacteriologist.**—The State Board of Health shall employ a bacteriologist at a salary of not more than \$300.00 per month and during the time that charbon or anthrax is prevalent he shall make an examination and analysis and a scientific research for the purpose of combating with said disease and he may be kept in the district affected by charbon as many months each year as said board deems necessary.

2. **Visits and isolation.**—The State Board of Health acting through one of the members or through the local health office in the county where charbon is reported to be prevalent shall in person or through some one employed by them, visit all stock reported to have charbon or anthrax and see that proper steps be taken for the isolation of same from other stock, and also isolate other stock which have been exposed to said disease and so keep same isolated for such period as it may deem necessary.

3. **Proclamation.**—The proclamation of the county health officer shall be sufficient if it name the kinds or classes of stock

to which it shall apply. It shall be published in some newspaper published in the county, if there be one; and if none, it shall be posted in three public places in said county, one of which shall be at the courthouse door of such county if the proclamation pertains to the whole county, but if only a subdivision of the county, then in any three public places in such subdivision. One insertion in a newspaper shall be sufficient, and such proclamation shall be effective three days after such notice is given.

4. Elections.—In all counties now or which may become affected with charbon or anthrax, the qualified voters of such county or any political subdivision thereof may, in the manner hereinafter provided, prohibit the running at large of cattle, horses, sheep, goats and hogs or any of such animals within such county or subdivision thereof; upon the petition of ten per cent of the qualified voters of such county or subdivision thereof presented to the commissioners court of such county in open session, requesting such court to order an election to be held in such county or political subdivision thereof, said petition to state the territory within which an election is requested, the kinds of animals to be affected, and also for what portions of the year it is desired to prohibit such stock from running at large, or whether the entire year, said court shall order such election to be held within such territory as may be petitioned for, naming the kinds of animals to be affected thereby and as designated in the order for such election; and the court shall also designate in said order of election the time within which such stock is to be prohibited from running at large, whether for the entire year or for portions thereof; which the said court is hereby authorized to do in accordance with the petition therefor. It is made the duty of said court to provide for the holding of such elections and compensation of officers thereof. The expense of such election shall be borne by the county wherein such election is ordered and held. In any such election so to be held the ballots shall read as follows:

“For the Running at Large of Domestic Animals,” and
“Against the Running at Large of Domestic Animals.”

Returns of such election shall be made by the presiding officers of the precinct or precincts of the county where such election is held, to the county judge of such county, who shall forthwith call the commissioners court together for the purpose of canvassing the returns; and if it shall be found by the commissioners court, upon a canvass of such returns, that a majority of the qualified voters of the county or subdivision thereof wherein such election was held, is in favor of prohibiting the running at large of such domestic animals as herein named, then said court shall forthwith declare the result of said election and give public notice thereof by proclamation of such court to be issued and posted within three public places of the county or subdivision thereof in which such election has been held. [Acts 1913, p. 147.]

CHAPTER TWO.

SPECIAL QUARANTINE REGULATIONS.

| | Article | | Article |
|--|---------|----------------------------------|---------|
| Governor's proclamation..... | 4448 | Incoming vessels stopped..... | 4456 |
| May issue proclamation..... | 4449 | Vessels from infected ports..... | 4457 |
| Local quarantine..... | 4450 | Expenses itemized..... | 4458 |
| Local subordinate to State author- ities..... | 4451 | Local quarantine..... | 4459 |
| Shelter to those detained..... | 4452 | County quarantine..... | 4460 |
| Expenses of quarantine..... | 4453 | Health officer at Galveston..... | 4461 |
| Stations provided..... | 4454 | To prescribe rules etc..... | 4462 |
| Local health officer..... | 4455 | Sale of condemned property..... | 4463 |
| | | Vessels disinfected..... | 4464 |

Art. 4448. [4554] [4321] **Governor's proclamation.**—The Governor is empowered to issue his proclamation declaring quarantine on the coast, or elsewhere within this State, whenever in his judgment quarantine may become necessary; and such quarantine may continue for any length of time as in the judgment of the Governor the safety and security of the people may require. [Acts 1891, p. 188; G. L. Vol. 10, p. 190.]

Art. 4449. [4555] [4324] **May issue proclamation.**—Whenever the Governor has reason to believe that the State of Texas is threatened at any point or place on the coast, border or elsewhere within the State with the introduction of dissemination of yellow fever contagion, or any other infectious and contagious disease that can and should, in the opinion of the Texas State Board of Health, be guarded against by State quarantine, he shall by proclamation, immediately declare said quarantine against any and all such places, and direct the State Board of Health to promptly establish and enforce the restrictions and conditions imposed and indicated by said quarantine proclamation; and when from any cause the Governor can not act, and the exigences of the threatened danger require immediate action, the Texas State Board of Health is empowered to declare quarantine as prescribed in this article, and maintain the same until the Governor shall officially take such action as he may see proper. [Acts 1891, p. 189; G. L. Vol. 10, p. 191.]

Art. 4450. [4556] [4326] **Local quarantine.**—The law in regard to local quarantine by the inhabitants of any point or points on the coast or elsewhere in the State shall remain in full force when in conformity with this title; provided, that in all differences and disputes between any such points, contiguous or remote, within this State, such differences and disputes shall be immediately by the local health authorities, if any, and if none, by the inhabitants themselves, reported and submitted to the Governor; and, on the receipt of such report, he shall forthwith order the State Health Officer to such points with instructions to investigate the same and report the exact condition of things, and upon investigation of such report shall issue his proclamation declaring the determination of the issue, and by said proclamation the aforesaid differences shall be governed and determined. [Id.]

Art. 4451. [4557] [4328] **Local subordinate to State authorities.**—Whenever quarantine is declared by the Governor or

by any county or corporate authorities in the State, such authorities shall establish a quarantine station or stations where any person may be detained for such length of time as, in the discretion of the quarantine officers, the public safety may demand; provided, that all county and municipal quarantine shall be subordinate, subject to and regulated by such rules and regulations as may be prescribed by the Governor or Texas State Board of Health. [Id.]

Art. 4452. [4558] [4329] **Shelter to those detained.**—The State Board of Health shall furnish persons detained by them with necessary shelter and subsistence (not including crews of vessels, except such as are removed by the quarantine officers from infected vessels), and provide all other things essential for the protection and comfort of those held in quarantine, and all such expenses authorized by the said board and approved by the Governor shall be paid by the State. [Id.]

Art. 4453. [4559] [4330] **Expenses of quarantine.**—All quarantine officers appointed by the Governor shall be selected and commissioned by the Governor, and shall be paid by the State, and all health authorities of the State, or of any county or city thereof, shall obey the rules and regulations prescribed by the Governor or State Board of Health. The regular officers in charge of regular established quarantine stations on the coast shall be allowed one hundred and fifty dollars per month while on duty at their respective stations; except that the officer in charge of the station at Galveston shall receive two hundred dollars per month. Temporary officers, or those commissioned by the Governor to guard against threatened epidemics, and those stationed at railway crossings on the Rio Grande shall receive one hundred and fifty dollars per month while on duty, and such other pay for extra expenses actually incurred as may be deemed just by the Governor and the State Board of Health. [Acts 1891, p. 188; G. L. Vol. 10, pp. 188 and 872; Acts 1895, p. 142.]

Art. 4454. [4560] [4331] **Stations provided.**—Each county, town or city authority upon the coast or elsewhere in Texas, at as early a day as practicable after the promulgation of the Governor's proclamation declaring quarantine, shall provide suitable stations where they are not now provided, at sufficient distance from the usual places of landing of vessels, or the depots of railroads coming into their respective counties, towns, or cities, and select, appoint and employ a competent physician as health officer, subject to the approval of the Governor, at such stations, and furnish said officer with such guards, employes and other things as may be necessary to render such quarantine effective; and said county, town or city authorities may provide for the establishment and maintenance of quarantine, subordinate, subjected to, and regulated by, such rules and regulations as the Governor and State Board of Health may prescribe. [Acts 1883, p. 17; G. L. Vol. 9, p. 323.]

Art. 4455. [4561] [4332] **Local health officer.**—Whenever

on the coast of Texas or elsewhere in this State the authorities of any county, town or city fail, refuse or neglect to establish quarantine as provided in the preceding article, then the Governor shall appoint a health officer and prescribe such regulations for the government of the same as he may deem necessary. [Acts 1891, p. 190; G. L. Vol. 10, p. 192.]

Art. 4456. [4562] [4333] **Incoming vessels stopped.**—All health officers and all quarantine authorities shall, if deemed necessary, stop each and every vessel from any infected port or district, tho the said vessel may have a clean bill of health. Such health officers or quarantine authorities shall have power to take the affidavit of the master of said vessel as to the health of himself and crew from the time of sailing from said infected port or district. Such officers and authorities shall detain said vessel at quarantine for such length of time as the Governor and State Board of Health may prescribe in their rules and regulations governing quarantine. All such officers and authorities may use force if necessary in order to discharge the duties imposed upon them by the provisions of this title and the rules and regulations of the Governor and Texas State Board of Health. [Acts 1883, p. 17; G. L. Vol. 9, p. 323.]

Art. 4457. [4563-64] **Vessels from infected ports.**—Any vessel arriving at any quarantine station of this State, designated by the proper authorities, from any infected port or district, without a clean bill of health from the proper officers from said port or district, shall be taken possession of by the health officer or other quarantine authority at the station at which said vessel arrives, and be held by the same until all fines that may have been assessed against the master of said vessel for a violation of the quarantine laws, rules and regulations have been paid, or until said vessel shall have been replevied in accordance with law. The payment of the fine which may be assessed against the master of such vessel shall not operate as a release or discharge of the vessel from quarantine, but the same rules shall apply as in case of other vessels placed in quarantine. [Acts 1891, p. 190; G. L. Vol. 10, p. 192.]

Art. 4458. [4565] [4336] **Expenses itemized.**—The county, town or city authorities aforesaid, as soon as quarantine ceases to exist, shall forward to the Comptroller an itemized account of all receipts and expenditures made by them, and when approved by the Governor and State Board of Health, said Comptroller shall draw his warrant upon the treasurer for the payment of any balance that may be due said authorities, or either of them, and pay into the treasury any excess of receipts over expenditures. [Acts 1883, p. 18; G. L. Vol. 9, p. 324.]

Art. 4459. [4566] [4337] **Local quarantine.**—No provision of this title shall be construed to prevent any town, city or county from establishing any quarantine which they may think necessary for the preservation of the health of the same; provided, that the rules and regulations of such quarantine be not inconsistent with the provisions of this title, and be consistent

with, and subordinate to, said provisions and the rules and regulations prescribed by the Governor and State Board of Health. [Id.]

Art. 4460. [4568] [4340] **County quarantine.**—Whenever the commissioners court of any county has reason to believe that they are threatened at any point within or without the county limits with the introduction or dissemination of a dangerous, contagious or infectious disease that can and should be guarded against by quarantine they may direct their county health officer to declare and maintain said quarantine against any and all such dangerous diseases; to establish, maintain and supply stations or camps for those held in quarantine; to provide hospitals, tents or pest houses for those sick of contagious and infectious disease; to furnish provisions, medicine and all other things absolutely essential for the comfort of the well and the convalescence of the sick. The county physician shall keep an itemized account of all lawful expenses incurred by local quarantine, and his county shall assume and pay them as other claims against the county are paid. Chartered cities and towns are embraced within the purview of this article, and the mere fact of incorporation does not exclude them from the protection against epidemic diseases given by the commissioners court to other parts of their respective counties. The medical officers of chartered cities and towns may perform the duties granted or commanded in their several charters, but must be amenable and obedient to rules prescribed by the State Board of Health. This article, however, must not be construed as prohibiting any incorporated town or city from declaring, maintaining and paying for local quarantine. [Id.]

Art. 4461. [4569] [4341] **Health officer at Galveston.**—The quarantine or health officer at Galveston shall give bond, with two or more good and sufficient sureties, payable to the Governor, in the sum of ten thousand dollars, conditioned for the care and preservation of any steam vessel or vessels belonging to the State at his station, and for the faithful performance of his duty. [Id.]

Art. 4462. [4570] [4342] **To prescribe rules, etc.**—The Governor and State Board of Health shall prescribe such rules and regulations as may be necessary for the disinfection of all vessels and their cargoes and passengers arriving at any port on the coast of Texas from any infected port or district, the object of such rules and regulations being to provide safety for the public health of the State without unnecessary restrictions upon commerce and travel. [Id.]

Art. 4463. [4571] [4342a] **Sale of condemned property.**—The State Health Officer is hereby authorized, with the advice and consent of the Governor, to sell to the best advantage of the State, for cash, any property in the quarantine service that is useless, and to apply the proceeds thereof to the general revenue of this State, and make due report of said sale or sales to the Governor. [Acts 1895, p. 2; G. L. Vol. 10, p. 732.]

Art. 4464. [4572] **Vessels disinfected.**—Any vessel arriving at a port of this State, and required to be disinfected by the terms of the Governor's quarantine proclamation, shall be disinfected by the quarantine officer of such port and before being released from quarantine shall pay to such quarantine officer such fees as the Governor may prescribe. All vessels boarded by the quarantine officer of any port shall pay to such officer such fees as the Governor prescribes. The quarantine officer receiving such fees shall give bond in such sum as may be prescribed by the Governor for the safe keeping of such collections and shall report and remit them to the State Board of Health at least once every month. [Acts 1901, p. 266.]

CHAPTER THREE.

FOOD AND DRUGS.

| | Article | | Article |
|-----------------------------------|---------|--|---------|
| Director | 4465 | Adulterated or misbranded food or drug | 4471 |
| Duties | 4466 | Definitions | 4472 |
| Administration and expenses | 4467 | Preservatives added | 4473 |
| Bulletins | 4468 | Milk | 4474 |
| Registration | 4469 | Baking powder compound | 4475 |
| Condemnation | 4470 | Self-rising flour | 4476 |

Art. 4465. **Director.**—The State Health Officer shall biennially appoint a suitable person to be known as the Chief Director of the Food and Drug Division of the State Board of Health, hereinafter called the Director, who shall hold office for a term of two years. He shall take the official oath and give bond in the sum of ten thousand dollars, payable to and to be approved by the Governor, conditioned for the faithful performance of his duties. The State Health Officer may remove said Director at any time for cause and appoint a successor. [Acts 1911, p. 76; Acts 1921, p. 14.]

Art. 4466. **Duties.**—The director shall:

1. Keep his office and laboratory in Austin.
2. Make, publish and enforce rules consistent with this law, and adopt standards for foods, food products, beverages, drugs, etc., and the modern methods of analysis authorized as official by the Federal Department of Agriculture.
3. Inquire into the quality of the foods and drug products manufactured or sold or exposed for sale, or offered for sale in this State, and for such purpose he may enter any creamery, factory, store, salesroom, drug store or laboratory or place where he has reason to believe foods or drugs are made, prepared, sold or offered for sale or exchange, and open any cask, tub, jar, bottle or package containing or supposed to contain any article of food or drug and examine or cause to be examined the contents thereof, and he shall take samples therefrom and make analysis thereof. When making such inspection he shall seal and mark such sample and tender to the vendor or person having custody of same the value thereof, and a written statement stating the reason for taking such sample.

4. Make complaint and institute proceedings against any manufacturer or person who violates any provision of the food and drug laws of this State. He need not give security for costs in proceedings so instituted.

5. Report to the Governor on or before the 31st day of August of each year, showing the entire work of his office for the preceding year, the number of factories and other places inspected and by whom, the number of specimens of food and drug articles analyzed, and the number of complaints entered for violations of such laws, the number of convictions had, and the amount of fines imposed therefor, together with recommendations relative to the laws in force. Such report shall be published at the expense of the State. [Acts 1911, p. 76.]

Art. 4467. **Administration and expenses.**—The Director may appoint two inspectors who shall make inspections and perform such duties as he may require. With the consent of the State Health Officer he may appoint two assistant chemists, who shall each enter into bond in the sum of five thousand dollars, payable, approved and conditioned as the Director's bond. The Director may appoint one stenographer, and such additional inspectors, chemists, clerks and other assistants as he deems necessary. The actual and necessary expenses of the Director and his assistants and deputies shall be paid by the State, the amounts thereof to be audited by the Comptroller. [Id.]

Art. 4468. **Bulletins.**—The Director may issue bulletins quarterly, or as often as he deems advisable, showing the work of his division.

Art. 4469. **Registration.**—All manufacturers of foods and drugs doing business in Texas, or all such persons as shall bring into and offer for sale in this State any article of food or drug, shall annually register with the Director and pay him a fee of one dollar for such registration on or before the first day of each September. The Director shall promptly remit such fees as collected to the State Treasurer. [Id.]

Art. 4470. **Condemnation.**—Any article of food or drug that is adulterated or misbranded within the meaning of this law shall be liable to be condemned, confiscated and forfeited by a suit to be brought in the district court of the county where said article of food or drug is located, in the name of the State of Texas as plaintiff, and in the name of the owner thereof as defendant, if said owner be known; if he be unknown, then in the name of said article of food or drug, and service shall be obtained as in civil cases. Upon a trial of said case, if it be determined by the court or jury trying said case that said article of food or drug is misbranded or adulterated, or of a poisonous or deleterious character within the meaning of this law, the same shall be disposed of by destruction or sale in accordance with the judgment of the court, and the proceeds thereof, if sold, less the legal cost and charges, shall be paid into the State Treasury. District and county attorneys shall file forfeiture and condemna-

tion suits under this law at the request of the Director. Said attorney shall be entitled to a fee of \$15.00, to be paid out of the proceeds arising from the sale of the property condemned, said fee to be in addition to all other fees allowed by law, and shall be over and above the fees allowed under the General Fee Act of this State. Upon payment of the costs of such forfeiture or condemnation proceeding by the owner of the property proceeded against and by his executing and delivering a good and sufficient bond in double the value of the goods proceeded against, payable to the State of Texas, conditioned that said articles shall not be sold or otherwise disposed of contrary to the provisions of this law, the court may by order direct that said goods be delivered to the owner thereof. In all proceedings begun under this article, either party may demand trial by jury, of any issue of fact joined in any such case. [Id.]

Art. 4471. **Adulterated or misbranded food or drug.**—No person, firm or corporation shall within this State manufacture for sale, have in his possession with the intent to sell, offer or expose for sale, or sell or exchange any article of food or drug which is adulterated or misbranded within the meaning of this chapter. The term "food" shall include all articles used by man for food, drink, flavoring, confectionary or condiment, whether simple, mixed or compounded. The term "drug" shall include all medicines and preparations for internal or external use recognized in the United States Pharmacopoeia or National Formulary, and any substance or mixture of substances intended to be used for the cure, mitigation or prevention of disease of either man or animal. [Id.]

Art. 4472. **Definitions.**—The terms "adulterated" and "misbranded," as used in this chapter, shall be held to have the same meaning as is given those terms in chapter two of title 12 of the Penal Code. [Id.]

Art. 4473. **Preservatives added.**—No person shall manufacture, sell, offer or expose for sale or exchange any article of food to which has been added formaldehyde, boric acid or borates, benzoic acid or benzoate sulphurous acids or sulphites, salicylic acid or salicylates, abralstal, beta naphthal, flourine compounds, dulcin, glucin, cocaine, sulphuric acid or other mineral acid except phosphoric acid, any preparation of lead or copper or other ingredient injurious to health. Nothing herein shall be construed as prohibiting the sale of catsups, sauces, concentrated fruits, fruit juices, and like substances preserved with one tenth of one per cent benzoate of soda, or the equivalent benzoic acid, when a statement of such fact is plainly indicated upon the label. The oxides of sulphur may be used for bleaching, clarifying and refining food products. [Id.]

Art. 4474. **Milk.**—No person either by himself or agent shall sell or expose for sale or exchange any unwholesome, watered, adulterated, or impure milk, or swill milk, or colostrum, or milk from cows kept upon garbage, swill, or any other substance in a state of putrefaction or other deleterious substances, or from

sick or diseased cows, or from cows kept in connection with any family in which there are infectious diseases. Skim milk may be sold if on the container from which such milk is sold, the words "skim milk" are distinctly printed in letters not less than one inch in length. [Id.]

Art. 4475. **Baking powder compound.**—Whoever manufactures for sale within this State, or offers or exposes for sale or exchange or sells any baking powder or compound intended for use as a baking powder under any name or title whatsoever shall securely affix or cause to be securely affixed to the outside of every box, can or package containing such baking powder or like mixture or compound a label distinctly printed in plain capital letters in the English language, containing the name and residence of the manufacturer or dealer, and the ingredients of the baking powder. Baking powder containing less than 10 per cent of available carbon dioxide shall be deemed to be adulterated. [Id.]

Art. 4476. **Self-rising flour.**—Whoever manufactures for sale within this State, or offers or exposes for sale or exchange, or sells any Self-rising Flour, or compound intended for use as a Self-rising Flour, under any name or title whatsoever shall securely affix or cause to be securely affixed to the outside of every box, can, sack or package containing such Self-rising Flour or like mixture or compound, a label distinctly printed in plain capital letters in the English language, containing the name and domicile of the manufacturer or dealer, and the percentage by weight of each of the chemical leavening ingredients of the contents thereof. Such Self-rising Flour or any compound so termed or styled, when sold for use shall produce not less than one-half of one per cent, by weight, of available carbon dioxide gas, and there shall not be contained in such Self-rising Flour more than three and one-half per cent of chemical leavening ingredients, otherwise such flour or compound shall be deemed adulterated. Self-rising Flour is defined to be a combination of flour, salt, and chemical leavening ingredients. The flour shall be of the grade of "straight" or better, and the chemical leavening ingredients shall be Bicarbonate of Soda, and either Calcium Acid Phosphate, Sodium Aluminium Sulphate, Cream of Tarter, Tartaric Acid or combinations of the same. [Acts 1923, p. 96.]

CHAPTER FOUR.

SANITARY CODE.

Art. 4477. **Sanitary code.**—The following rules are hereby enacted as the "Sanitary Code for Texas," adopted for the promotion and protection of the public health and for the general amelioration of the sanitary and hygienic condition within this State, for the suppression and prevention of infectious and contagious diseases, and for the proper enforcement of quarantine, isolation and control of such diseases, to wit:

QUARANTINE AND DISINFECTION.

Rule 1. Physician to report.—Every physician in this State shall report in writing or by an acknowledged telephone communication to the local health authority, immediately after his or her first professional visit, each patient he or she shall have or suspect of suffering with any contagious disease. If such disease is of a pestilential nature, he shall notify the President of the State Board of Health at Austin by telegraph or telephone at State expense, and report to him every death from such disease immediately after it shall have occurred. The attending physician is authorized to and he shall place the patient under restrictions of the character described herein in the case of each respective disease.

Rule 2. "Local health authority."—For the purpose of these regulations, the term "local health authority" shall be held to designate the city or county health officer, or local board of health, within their respective jurisdictions.

Rule 3. "Contagious diseases."—The term "contagious disease" as used in these regulations shall be held to include the following diseases, whether contagious or infectious; and as such shall be reported to all local health authorities and by said authority reported in turn to the President of the State Board of Health: Asiatic cholera, bubonic plague, typhus fever, yellow fever, leprosy, smallpox, scarlet fever (scarlatina), diphtheria (membranous croup), epidemic cerebrospinal meningitis, dengue typhoid fever, epidemic dysentery, trachoma, tuberculosis and anthrax.

Rule 4. Health officers to keep record.—City and county health authorities shall keep a careful and accurate record of all cases of contagious diseases as reported to them, with the date, name, age, sex, race, location and such other necessary data as may be prescribed by the State Board of Health. They shall also make a monthly report of all contagious diseases of which they may be cognizant, to the President of the State Board of Health, before the fifth of the following month, upon blank forms provided by the State Board of Health. The reports on tuberculosis are to be privately kept and are to be considered in the light of a confidential communication, not for the purpose of isolation, but with the object of education in sanitary precautions, and to supply literature of the State Board of Health.

Rule 5. Rules to quarantine and disinfection.—The following rules of instruction for the regulation of quarantine, isolation and disinfection in the several contagious diseases, hereinbefore mentioned, are to be observed by all boards of health, health officers, physicians, school superintendents and trustees, and others. All health authorities of counties, cities, and towns in this State are hereby directed and authorized to establish local quarantine, hold in detention, maintain isolation and practice disinfection as hereinafter provided for, of all such infected persons, vehicles or premises which are infected or are suspected of

being infected with any of the above named diseases whenever found.

(a) Absolute quarantine includes, first, absolute prohibition of entrance to or exit from the building or conveyance except by officers or attendants authorized by the health authorities, and the placing of guards if necessary to enforce this prohibition; second, the posting of a warning placard stating "contagious disease," in a conspicuous place or places on the outside of the building or conveyance; third, the prohibition of the passing out of any object or material from the quarantined house or conveyance; fourth, provision for conveying the necessaries of life under careful restrictions to those in quarantine.

(b) Modified quarantine includes prohibition of entrance and exit, and in absolute quarantine except against certain members of the family authorized by the health authorities to pass in and out under certain definite restrictions; the placing of a placard as before; isolation of patient and attendant; prohibition of the carrying out of any object or material unless the same shall have been thoroughly disinfected.

(c) Absolute isolation includes, first, the confinement of the patient and attendants to one apartment or suite of apartments, to which none but authorized officers or attendants shall have admission; second, screening of room and entire house if necessary with not less than 16-mesh wire gauze; third, the prohibition of passing out of the sick room of any object or material until the same has been thoroughly disinfected; fourth, protection of the air of the house by hanging a sheet, kept constantly moist with a disinfectant solution, over the doorway of the patient's room or rooms and reaching from the top of the door; fifth, if in the opinion of the local health authority the patient can not be treated, with reasonable safety to the public, at home, the removal of the patient and exposures to a contagious disease hospital or pest house.

(d) Modified isolation includes the confinement of the patient and attendants to one room or suite of rooms, to which none but authorized officers or attendants shall have admission, but allowing the attendants to pass out of the room after disinfection of person and complete change of clothing; screening as above mentioned; the prohibition of passing any object or material out of the sick room until it has been disinfected; protection of the doorway as before.

(e) Special isolation includes, first, prohibition of patient from attending any place of public assemblage; second, the providing of separate eating utensils for the patient; third, prohibition of sleeping with others, or using the same towels or napkins.

(f) By complete disinfection is meant disinfection during illness, under direction of attending physician, of patient's body, of all excretions or discharges of patient and of all articles of clothing and utensils used by patient, and after recovery, death

or removal, the disinfection of walls, woodwork, furniture, bedding, etc.

(g) By partial disinfection is meant disinfection of discharges or excretions of patients and their clothing and the room or rooms occupied by the patient during illness.

Rule 6. Disinfection.—All disinfection prescribed in these regulations shall be a part of the control of the disease, and shall be done according to the direction of the Texas State Board of Health in its circular on disinfection.

Rule 7. Health authority shall placard all houses where contagious diseases exist.—Upon notice that smallpox, diphtheria, scarlet fever, or other quarantinable disease exists within his jurisdiction, it shall be the duty of the local health authority to have the house in which such disease prevails placarded by placing a yellow flag or card not less than eight inches wide and twelve inches long with the words “contagious disease” and the quarantine regulations printed thereon in a conspicuous place on said house.

Rule 8. Going to or leaving quarantined premises.—After the house is flagged or placarded, all persons except the attending physician or health officer are forbidden from going in or leaving such premises, without the permission of the local health authority, and the carrying off, or causing to be carried off, of any material whereby such disease may be conveyed, is prohibited until after the disease has abated and the premises, dwelling and clothing have been disinfected and cleaned as the local health authority may direct.

Rule 9. Person exposed to diseases shall obey authority.—It shall be the duty of all persons infected with any contagious disease, or who, from exposure to contagion from such disease, may be liable to endanger others who may come in contact with them, to strictly observe such instructions as may be given them by any health authority of the State, in order to prevent the spread of such contagious disease, and it shall be lawful for such health authorities to command any person thus infected or exposed to infection to remain within designated premises for such length of time as such authority may deem necessary.

Rule 10. Certain persons not allowed on thoroughfares.—All persons having any quarantinable disease are prohibited from riding on any public vehicle or conveyance, and from being upon public thoroughfares or in public assemblages.

Rule 11. Placard not to be destroyed or removed.—No person shall alter, deface, remove, destroy or tear down any card posted by a local health authority. The occupant or person having possession or control of a building upon which a quarantine notice has been placed shall within twenty-four hours after the destruction or removal of such notice by other than the proper health authority, notify the local health authority of such destruction or removal.

Rule 12. Quarantinable pestilential disease.—In the management and control of the following pestilential diseases: cholera,

plague, typhus fever and yellow fever, the house must be placarded, premises placed in absolute quarantine, patient in absolute isolation and a complete disinfection done upon death or recovery taking place.

Rule 13. Dangerous contagious diseases; modified quarantine.— In the management and control of leprosy, smallpox, scarlet fever (scarletina), diphtheria (membranous croup), and dengue, it is required that the house be placarded, premises placed in modified quarantine, patient in modified isolation, and complete disinfection done upon death or recovery.

Rule 14. Non-quarantinable contagious disease.—The management and control of typhoid fever, cerebro-spinal meningitis (epidemic), epidemic dysentery, trachoma (acute catarrhal conjunctivitis), tuberculosis and anthrax require special isolation and partial disinfection.

Rule 15. Quarantinable for school purposes.—Persons suffering from measles, whooping cough, mumps, German measles (rotheln) and chickenpox, shall be required to be barred from school for twenty-one days (at the discretion of the local health officer) from date of onset of the disease, with such additional time as may be deemed necessary; and may be readmitted on a certificate by him attesting to their recovery and non-infectiousness.

Rule 16. Minor diseases to be excluded during illness.—Those actually suffering from tonsilitis, scabies (itch), impetigo contagiosa, favus, shall be excluded from school during such illness and be readmitted on the certificate of the attending physician attesting to their recovery and non-infectiousness.

Rule 17. Rules not exclusive.—The above requirements shall in no sense be construed as abrogating any additional precautionary measures enforced by local health authorities, but it is expected that additional restrictive measures will be taken at the discretion of the local health authority when the necessity arises, more especially in the more densely populated cities and towns, or when violations of quarantine occur.

Rule 18. Authorities to investigate reported cases.—Whenever a local health authority is informed or has reason to suspect that there is a case of smallpox, scarlet fever, or other reportable disease within the territory over which he has jurisdiction, he shall immediately examine into the facts of the case and shall adopt the quarantine or employ the sanitary measures as herein provided.

Rule 19. Shall see that quarantine and disinfection is carried out.—Within his jurisdiction, each and every local health authority shall see that the quarantine or disinfection of any house, building, car, vessel, or vehicle, or any part thereof, and of any articles therein likely to retain infection, is carried out, and that all persons who have been in quarantine are required to take a disinfecting bath before the same are released. In the event of the disease having been smallpox, all persons ex-

posed shall be isolated for eighteen days from the time of last exposure unless successfully vaccinated.

Rule 20. Premises to be disinfected before re-occupied.—No person shall offer for hire or cause or permit any one to occupy apartments, previously occupied by a person ill with smallpox, scarlet fever, diphtheria or tuberculosis, or any quarantinable disease, until such apartments shall have been disinfected under the supervision of the local health authority.

Rule 21. Placard premises on failure to disinfect.—Whenever these rules and regulations, or whenever the order or direction of the local health authority requiring the disinfection of articles, premises or apartments, shall not be complied with, or in case of any delay, said authority shall forthwith cause to be placed upon the door of the apartment or premises a placard as follows: "These apartments have been occupied by a patient suffering with a contagious disease and they may have become infected. They must not again be occupied until my orders directing the renovation and disinfection of same have been complied with. This notice must not be removed, under penalty of the law, except by an authorized health official."

Rule 22. Nurses to report redness of eyelids or inflammation.—Whenever any nurse, midwife or other person not legally qualified practitioner of medicine shall notice inflammation of the eyes or redness of the lids in a new-born child under his or her care, it shall be the duty of such person to report the same to the local health authority or in his absence, any reputable physician, within twelve hours of the time the disease is first noticed.

Rule 23. Householders to report contagious diseases.—Every hotel proprietor, keeper of a boarding house or inn, and householder or head of a family in a house wherein any case of reportable contagious disease (including tuberculosis) may occur, shall report the same to the local health authority within twelve hours of the time of his or her first knowledge of the nature of such disease, unless previous notice has been given by the physician in attendance; and in cases of quarantinable diseases until instructions are received from the said local health authority shall not permit any clothing or other article which may have been exposed to infection to be removed from the house; nor shall any occupant of said house change his residence elsewhere without the consent of the said local health authority.

Rule 24. Employes with reportable diseases.—No person who resides in a house in which there exists a case of smallpox, scarlet fever, diphtheria, or typhoid fever, shall work or be permitted in or about any dairy, or any establishment for the manufacture of food products, until the local health authority has given such a person a written certificate to the effect that no danger to the public will result from his or her employment or presence in such establishment.

Rule 25. To send physician printed matter.—Immediately

after being notified of any case of smallpox, scarlet fever, diphtheria, typhoid fever, or tuberculosis, the local health authority shall send to the attending physician, or with his approval directly to the patient the printed matter published by the State Board of Health relative to the prevention and control of such diseases.

Rule 26. Persons excluded from schools.—Persons afflicted with trachoma, granulated lids, or contagious catarrhal conjunctivitis must be excluded from schools, public assemblages, and from close association with other individuals, unless they are under the constant care and strict supervision of a competent physician, and hold a certificate from said physician stating that active inflammation has subsided, said certificate to be countersigned by a local health authority.

Rule 27. Schools temporarily closed.—A schoolhouse wherein a child suffering from smallpox, scarlet fever or diphtheria has been present, shall be deemed infected and must be temporarily closed and thoroughly disinfected and cleaned under the supervision of the local health authority before reopening of the school.

Rule 28. School to open after disinfection.—In the event of the aforementioned disease being smallpox and in the case the Board of Trustees having passed a regulation requiring a successful vaccination of all teachers and pupils, the school may be reopened immediately after the disinfection and cleaning, and all teachers and pupils who have been successfully vaccinated may return; otherwise the school shall be kept closed eighteen days or until the local health authority directs otherwise.

Rule 29. To notify superintendents of pupils from infected houses.—The local health authority shall notify the superintendent or principal of any school of the location of quarantinable diseases, and if the superintendent or principal finds any attendants in such school who live in said houses, he shall deny them admission to the said schools, only admitting them again upon presenting a certificate from the attending physician, countersigned by the local health authority, that there is no longer danger from contagion.

Rule 30. Children with diseases shall not attend school.—No superintendent, principal or teacher of any school, and no parent, master or guardian of any child or minor, having the power and authority to prevent, shall permit any child or minor, having any quarantinable disease, or any child residing in any house in which any such disease exists or has recently existed, to attend any public, private, parochial, church or Sunday school until the requirements of these rules have been complied with.

Rule 31. Health authorities to assume control of quarantine.—In all incorporated cities and towns the city health authorities shall assume control and management of contagious diseases and exposures and practice quarantine, isolation and disinfection as herein provided. In those portions of all coun-

ties outside of incorporated cities and towns the county health officer shall assume management and control of contagious diseases and exposures and practice quarantine, isolation and disinfection as herein provided.

Rule 32. These rules not to prevent local rules.—These regulations shall not be construed to prevent any city, county or town from establishing any quarantine which they deem necessary for the preservation of the health of the same; provided, that the rules and regulations of such quarantine be not inconsistent with the provisions of these regulations and be subordinate to said provisions, and the rules and regulations prescribed by the Governor and State Board of Health. The local health authority shall at once furnish the President of the State Board of Health with a true copy of any quarantine orders and regulations adopted by said local authorities.

Rule 33. Authorities may pass through quarantine lines.—All health authorities shall be allowed to pass through all quarantine lines, whether instituted at the instance of State or local authorities, they first requesting permission and acquainting the officers or guards in charge with the fact of their being properly authorized health officers, and with the additional statement that they are fully acquainted with the nature of the disease that they are visiting, and further that they will take proper precautions to prevent carrying the infection themselves.

VITAL STATISTICS.

Rule. 34. To report births. —All physicians, surgeons or accoucheurs (midwives) who may attend at the birth of a child, or, in the absence of such attendance, either parent of the child, shall report the fact, together with all statistical data relating thereto, within five days from time of the birth, to the city or county registrar as hereinafter provided for.

Rule. 35. Undertakers to report deaths.—Every person acting as undertaker shall file with the proper registrar a certificate of death and all persons furnishing a coffin or box in which to bury the dead shall be deemed undertakers.

Rule. 36. City and county "registrar".—For the purposes of these rules and regulations the phrase "county registrar" shall be held to designate the clerk of the county court, when a birth or death is returnable from a county, outside of incorporated cities or towns; and in all such incorporated cities and towns the term registrar shall be held to designate the city health officer or other city official acting as registrar for said city, and all returns of births and deaths occurring outside of incorporated cities and towns shall be made to the county registrar of the county in which said births and deaths occur; all returns of births and deaths occurring within any incorporated city or town shall be made to the city registrar of the city or town in which said births and deaths occur, and all returns of deaths where the bodies are buried within any incorporated city or town shall be made to the city registrar.

Rule 37. Accounts and fees.—The city or county registrar shall receive a fee of twenty-five cents for each birth and for each death certificate completely filled in and properly registered and filed by him with the State Registrar as required by the rules and regulations of the Sanitary Code for Texas and the provisions of this title, and, all accounts payable to a county registrar shall be paid by the county treasurer out of the general fund of the county. Each account shall, in addition to the approval of the commissioners court of the county, or the county auditor, as the case might be, bear approval of the State Registrar. The State Registrar shall each year certify to the commissioners court of the several counties the number of birth and death certificates properly returned to the Bureau of Vital Statistics during the preceding year, together with the name and the amount due each county registrar at the rate fixed herein. All accounts payable to a city registrar shall be approved by the city council, or city commissioner, as the case might be, and also bear the approval of the State Registrar, and the same shall be paid out of the general fund of the city. In all incorporated cities or towns where the official who performs the duties of city registrar receives any salary, compensation or reward for his services, the twenty-five cents provided for each certificate herein shall not be allowed.

Rule 38. Failure of local registrar.—When any county registrar shall fail or refuse to secure and return to the Bureau of Vital Statistics the birth and death certificates required to be secured and returned by him as such county registrar, then the State Health Officer, upon the written recommendation of the State Registrar, shall petition the commissioners court of such county to appoint some qualified person to perform the duties of local or precinct registrar for each commissioners' precinct within such county. Such person so appointed shall be a bona fide resident of the county and of such commissioners' precinct, and shall receive the twenty-five cents provided herein for each birth or death certificate. Such local or precinct registrar shall forward the original birth or death certificate to the Bureau of Vital Statistics in the same manner as provided by law for city and county registrars, and shall also send on the same date a copy or duplicate of such birth or death certificate to the county clerk to be recorded by him in the record kept by him in his office for that purpose. When any city registrar shall fail or refuse to secure and return to the Bureau of Vital statistics the birth and death certificates required to be secured and returned by him as city registrar, then the State Health Officer, upon the written recommendation of the State Registrar, shall petition the city council, or commission, of such city or town to appoint some qualified person to perform the duties of city registrar, provided that such person so appointed shall be a bona fide resident of such city or town, and shall receive twenty-five cents provided herein for each birth or death certificate.

Rule. 39. Precinct registrar.—Whenever a commissioners precinct of a county is located so as not to be conveniently accessible to the county registrar, and that fact is brought to the knowledge of the State Registrar, or the County Health Officer shall recommend in writing that the State Health Officer petition the commissioners court of such county to appoint some qualified person to perform the duties of precinct registrar for such precinct. The commissioners court, upon receipt of such petition from the State Health Officer, shall appoint such precinct registrar, who shall possess the qualifications, perform the duties, and receive the rate of compensation above prescribed for precinct registrars.

Rule 40. Disposing of body.—The body of any person whose death occurs within, or which may be found dead within, this State shall not be interred or deposited in a vault, or tomb, or cremated, or otherwise disposed of, or removed from or into any registration district, or be held temporarily pending further disposition, for a period of more than seventy-two hours after death, unless a permit for burial, removal or other disposition thereof shall have been properly issued by the registrar of the city, county or precinct in which the death occurred or the body was found. This article shall not apply to counties of less than two thousand inhabitants. No such burial or removal permit shall be issued by any registrar until a complete certificate of death has been filed with him as herein provided. When a body is transported from one registration district to another district or from another State into another registration district within this State for burial or other disposition, the transit or removal permit issued in accordance with law shall be accepted by the registrar of the district into which the body is transported for burial or other disposition as a basis upon which he may issue a local burial permit. The registrar shall note upon the face of such permit the fact that the body was shipped in for burial or other disposition, and shall state thereon the actual place of death.

Rule. 41. Form of certificate.—All certificates of births or deaths shall be made on a form and of a size prescribed by the State Registrar.

Rule 42. Death certificate.—Every death certificate shall contain the following items, which are hereby declared to be personal and statistical particulars and medical particulars necessary to complete such certificate: (1) place of death, including city or village; (2) full name of decedent; (3) sex; (4) color and race; (5) whether single, married, widowed or divorced; (6) date of birth (year, month and day); (7) age (year, month and day); (8) occupation described in full; (9) place of birth; (10) name of father; (11) birthplace of father; (12) maiden name of mother; (13) birthplace of mother; (14) signature and address of informant; (15) date of death (year, month and day); (16) certification as to medical attendance on the decedent, fact and

time of death, time last seen alive and cause of death, with contributory cause, if any, and duration of each, and whether due to dangerous and unsanitary conditions of employment, together with signature and address of physician or official making the medical certificate and date of certification; (17) length of residence at place of death; (18) place of burial or removal and date of same; (19) signature of undertaker or person acting as such. Subdivisions 5 to 13 inclusive may be omitted if information is not obtainable and the death certificate shall be so endorsed. [Id.]

Rule 43. Birth certificate.—Each birth certificate shall contain the following items, which are declared to be necessary statistical data to complete said certificate: (1) place of birth, county, city or village; (2) full name of child; (3) sex of child; (4) whether twin, triplet or plural birth; (5) whether legitimate or illegitimate; (6) date of birth, year, month and day; (7) full name of father; (8) residence of father; (9) color or race of father; (10) age of father at last birthday; (11) occupation of father; (12) birthplace of father; (13) maiden name of mother; (14) residence of mother; (15) color or race of mother; (16) age of mother at last birthday; (17) birthplace of mother; (18) occupation of mother; (19) number of children born to this mother prior to this birth; (20) number of children of this mother living; (21) the certification of attending physician, surgeon or midwife as to attendance at birth, including the statement of the year, month, day and hour of birth, and whether the child was born alive or still-born; provided that such certificate shall be signed by the physician or surgeon, or midwife, with the date of signature and address of such physician, surgeon, or midwife. If there was no physician, surgeon, or midwife in attendance, then the father or mother of the child or the owner of the premises shall notify the local registrar within five days after the birth, and such registrar shall fill in this item and the party so notifying the registrar shall sign such certificate, and such certificate shall fully and completely contain all the facts in connection with said birth. [Id.]

Rule 44. Undertaker's certificate.—In case of death (including still-births) in which any undertaker buries the dead or assists at such burial, it shall be the duty of such undertaker to accurately and properly fill out the death certificate as provided in this chapter, and he shall obtain from the physician or coroner the answers to questions necessary to complete the death certificate; said certificate to be mailed to the county registrar within five days after said death occurs; provided that if the undertaker cannot communicate with the physician or coroner within the five days he shall mail the death certificate to such physician or coroner, as accurately and properly filled out as possible, for such physician or coroner to complete the particulars of such certificate in which event the said physician or coroner shall make a report to the proper registrar.

Rule 45. Physician to give particulars.—It shall be the duty

of every physician in the event of a death, including still-births, occurring in any case at which said physician is last in attendance, to promptly and accurately fill out the items necessary to complete the death certificate when such certificate is presented by the undertaker.

Rule 46. Report of rural deaths.—If a death occurs in the rural districts and no undertaker was in attendance or responsible for the report of the death, the physician, or the coroner in the event of his being called in, shall accurately and completely fill out the certificate of death and transmit it to the county registrar.

Rule 47. Coroner and head of house to report.—Where a coroner shall hold an inquest he shall fill out the items of the medical particulars as fully as his information from the inquest will permit, and when one dies without medical attention and does not require the attendance of a coroner, the head of the house where such death occurs, or the next of kin, shall immediately notify the local health authority, who shall, after proper investigation, and if deemed necessary by him after an autopsy, issue a certificate of death.

Rule 48. Death in hospital.—If the deceased died in a hospital or other institution, the person acting as undertaker shall present the certificate to the superintendent or head of such institution for the items of the certificate. The undertaker shall then fill in the other information required by law and transmit the complete certificate to the proper registrar.

Rule 49. Undertaker to report neglect.—In the event of the neglect or refusal of the physician, coroner, superintendent or person in charge of any hospital or other institution to promptly and accurately fill out the death certificate when so requested by an undertaker, the same shall be immediately reported by the undertaker to the State Registrar for prosecution.

Rule 50. Report of still-born.—All still-born children—those dead at birth after seven months gestation—shall be registered as births and also as deaths, and a certificate of both the birth and the death shall be filed with the proper registrar in the usual form and manner.

Rule 51. County clerk to record and report.—Each county clerk shall record all statistical data relating to such births and deaths as are reported to him from his county outside incorporated cities and towns in a permanently bound book which he shall secure and keep for that purpose, in form as supplied by the State Registrar, and shall transmit the original certificates by the tenth of each month following the month in which they are received.

Rule 52. Sexton's record.—All sextons or superintendents of cemeteries are required to file all burial permits received and to record in a permanently bound book the names of all persons interred, date of interment, place of burial, number of the grave or section of cemetery where buried and name of undertaker;

and shall before the tenth of the following month make a report to the State Registrar of all deceased persons deposited in their respective cemeteries during the preceding month.

Rule 53. State Registrar to supply blanks, etc.—The State Registrar shall prepare, print and supply to all city and county registrars all blanks and forms used in reporting births and deaths or in otherwise carrying out the purposes of this regulation, and each county shall print and supply their county registrar and each city council shall supply their city registrar with a permanently bound book, in form prepared by the State Registrar for recording all statistical data relating to births and deaths in their respective jurisdictions; and the State Registrar shall prepare and issue such detailed instructions as may be required to secure the uniform observance of its provisions and the maintenance of a perfect system of registration. He shall carefully examine all certificates received and if any such are incomplete or unsatisfactory he shall require such further information to be furnished as may be necessary to make the record complete and satisfactory. He shall further arrange, bind and permanently preserve the certificates in a systematic manner. All physicians, midwives, informants or undertakers connected with any case, and any other person having knowledge of the facts shall furnish such information as they may possess regarding any birth or death, upon demand of the State Registrar, in person, by mail, or through the county or city registrar.

Rule 54. Local registrars to furnish blanks.—The city and county registrars shall supply blank forms of certificates and such instructions as are applied to them by the State Registrar to all in their respective jurisdictions who are required to make reports under this law.

Rule 55. Local registrars to examine certificates.—Each city and county registrar shall carefully examine each certificate of birth or death when received, and if any such are incomplete or unsatisfactory, he shall require such further information to be furnished as may be necessary to make the record complete and satisfactory. He shall number consecutively the certificates of birth and death, in two separate series, beginning with the number "one" for the first birth and first death in each calendar year.

Rule 56. System exclusive.—No system for the registration of births and deaths shall be continued or maintained in any city or county of this State other than the system provided for and prescribed by the provisions of this chapter.

Rule 57. Certified copy.—The State Registrar of Vital Statistics shall, upon the request of any applicant, furnish a certified copy of any birth or death record registered under the provisions of this chapter. For such certified copy he shall be entitled to a fee of fifty cents to be paid by the applicant. Such copy of the record of birth or death, when properly certified by the State Registrar of Vital Statistics as a true copy of the origi-

nal, shall be prima facie evidence in all courts and places of such facts therein stated.

DEPOTS, COACHES AND SLEEPERS.

Rule 58. Diseases barred from public vehicles.—No person known to be suffering with any contagious diseases such as smallpox, scarlet fever, diphtheria, measles, or whooping cough shall be allowed to enter or ride in any day coach, sleeping car, interurban car or street car, and when any such person is discovered to be in any car as mentioned above, it shall be the duty of the conductor or other person in charge of said car to notify the nearest or most accessible county or city health officer and the latter shall remove and isolate said patient as is proper in such case.

Rule 59. Ventilation and heat.—Each depot, railway coach, sleeping car, interurban car and street car while in use for the accommodation of the public shall be properly ventilated, and, if necessary, heated, and a sufficient amount of heat shall be furnished in time of need so that fresh air can be supplied without causing it to become unduly uncomfortably cold; and the janitor, conductor or other person in charge shall see to it that the air is replenished with fresh air from time to time as needed to prevent the same from becoming foul, unsanitary and oppressive.

Rule 60. Cuspidors.—Cuspidors must be provided in adequate numbers in all waiting rooms of depots and railway stations; each day coach shall be provided with one cuspidor for each seat or every two chairs and two in each smoking apartment, except in each parlor car there may be as few as one cuspidor to every three seats and two cuspidors used in the smoking apartment; in each sleeping car shall be placed one cuspidor to each section and three cuspidors in the smoking apartment, one of which cuspidors, in the absence of a dental lavatory, shall be of an unusually large size and placed near the wash basin for use in washing the teeth; each said cuspidor shall contain not less than one-third of a pint of an approved disinfectant solution, and the cuspidor shall be emptied, washed in a similar solution and replenished each trip or every twenty-four hours.

Rule 61. Dry cleaning prohibited.—Dry cleaning and dry sweeping is prohibited at all times in waiting rooms of depots and railway stations, or in railway coaches, sleeping cars, interurban cars and street cars.

Rule 62. Coaches.—Railway day coaches shall be thoroughly cleaned at the end of each trip, and in no instance shall the day coach go uncleaned longer than two days when such coach is in use; the thorough cleaning of day coaches shall consist as follows:

- (a) Windows and doors shall be first opened and the aisle-strip, if any, removed and when possible thoroughly sunned.
- (b) All upholstery shall be dusted and brushed, using the vacuum process cleaning apparatus whenever possible.

(c) The floor shall be mopped or swept after it has been sprinkled with an approved disinfectant solution or preferably cleaned by sprinkling with sawdust moistened with said disinfectant and sweeping. After cleaning as described, the floor must be scrubbed with soap and water, to which may be added the same disinfectant solution.

(d) Closet floors, urinals, toilet bowls, and walls must be cleaned by washing, scouring and wiping with an approved disinfectant solution, to which soda ash or other cleansing agent may be added.

(e) All arms of seats and window ledges must be wiped free of dust with a damp cloth, preferably one wet with disinfectant solution.

(f) Provided, that where the vacuum cleaning apparatus is installed and coaches are thoroughly cleaned with this method daily, the aforementioned method of brushing, cleansing and scrubbing may be used as seldom as once in each period of seven days.

Rule 63. Railway stations.—The sanitary method of cleaning as prescribed in the foregoing rule must be followed in the sanitation of waiting rooms of depots and railway stations once in every twenty-four hours.

Rule 64. Parlor, buffet and dining cars.—Parlor, buffet and dining cars must be cleaned at cleaning terminals, as set forth in the article relating to day coaches. Carpets and draperies to be removed, dusted, sunned and aired. Food boxes, refrigerators, closets, drawers and cupboards to be cleaned, scalded and treated with a solution containing 2 per cent formaldehyde or other approved disinfectant.

Rule 65. Interurban and street cars.—Interurban and street cars must be washed with a hose and scrubbed thoroughly once every twenty-four hours, and must be disinfected with formaldehyde gas under the supervision of the local health authority immediately after any case of contagious disease has been discovered therein.

Rule 66. Sleeping cars.—All sleeping cars shall be cleaned at cleaning terminals according to the methods set forth in the article relating to day coaches at least twice during a period of every seven days; shall be disinfected with formaldehyde gas at least twice during a period of seven days; upon routes designated by the President of the State Board of Health all sleeping cars shall be disinfected as seldom as once during a period of seven days. In addition to the foregoing all sleeping cars shall be disinfected immediately after any case of contagious or infectious disease is discovered therein. All blankets used in sleeping cars must be thoroughly sterilized and washed at intervals of not more than ninety days.

Rule 67. Record of disinfection.—On each passenger car operated in this State a disinfection record must be kept and preserved and on same the following records are to be entered and

kept: (1) place and date of each disinfection; (2) length of time devoted to each such thorough disinfection; and (3) each item in said record shall be inserted immediately after each act recorded, and the signature of the person or persons doing said cleaning or disinfection must appear beneath the said records.

Rule 68. Water coolers.—All depots, railway coaches, sleeping cars or interurban cars must be provided with a water cooler for the use of patrons and the traveling public; such water cooler must be so constructed as to be easily removed for the purpose of cleaning; must be emptied, rinsed and cleaned, and must be scalded and sunned when possible once in each period of twenty-four hours, and must be filled with good and wholesome drinking water when in service. Ice for use in water coolers must not be dumped on floors, sidewalks or car platform, but must be washed and must be handled with ice-tongs.

Rule 69. Expectoating on floors.—Expectoating on the floor or walls or furniture of any waiting room in any depot, on any depot platform, in any railway coach, sleeping car, interurban car, or street car is prohibited. Placards calling attention of passenger and employes shall be hung in a conspicuous place in each of the said rooms and cars.

Rule 70. Expectoating in basins.—Brushing of teeth or expectoating in basins used for lavatory purposes is prohibited, and placards calling attention of passengers and employes shall be hung in a conspicuous place in the dressing room of passenger coaches.

Rule 71. Separate compartment for porter.—Sleeping car companies shall provide compartments and bedding for their negro porters separate from those provided for their white passengers.

Rule 72. Negro porter not to sleep in berth.—Negro porters shall not sleep in sleeping car berths nor use bedding intended for white passengers.

Rule 73. Certain floor covering prohibited.—No waiting room in any depot or railway station shall be floored in part or entirely with burlap, cocoa matting or sacking cloth.

Rule 74. Water closets.—All depots and railway stations shall provide adequate urinals and water closets for patrons and the traveling public; must keep them in proper sanitary condition, and if within five hundred feet of any public sewer must make permanent sanitary connection with same. Any privy or box closet furnished by such railway company shall be protected from flies by screening or other effective method including hinged lids or other device for covering the opening in the seats of said closets. Such privies and closets as are not in connection with a sanitary sewer shall be provided with a water-tight box or other receptacle underneath, and when full or at any time when its condition shall create a nuisance or become unsanitary, it must be emptied, and in no instance shall such box closet go longer than one month before it must be emptied and dis-

infected with 5 per cent carbolic acid solution or other approved disinfectant solution.

Rule 75. Railway premises shall be drained.—The premises of all depots and railway stations shall be thoroughly drained so that no stagnant water will collect on said premises.

Rule 76. Water containers screened.—All cisterns, fire water barrels, or other water containers upon the premises of any depot or railway station shall be screened with not less than 16 mesh wire gauze.

TRANSPORTATION OF DEAD BODIES.

Rule 77. Bodies dead of pestilential diseases.—No body or any person dead of Asiatic cholera, bubonic plague, typhus fever or smallpox shall be transported except in a hearse or undertaker's wagon unless said body shall have been cremated.

Rule 78. Bodies dead of contagious diseases.—The bodies of those who have died of diphtheria (membranous croup), scarlet fever (scarlatina, scarlet rash), glanders, anthrax or leprosy, shall not be accepted for transportation unless prepared for shipment by being thoroughly disinfected by (a) arterial and cavity injection with an approved disinfectant fluid, (b) disinfecting and stopping all orifices with absorbant cotton, and (c) washing the body with the disinfectant, all of which must be done by a licensed embalmer, holding a certificate as such. After being disinfected as above, such body shall be encased in an air-tight zinc, tin, copper or lead-lined coffin, or iron casket, all joints and seams hermetically soldered, and all enclosed in a strong, tight wooden box. Or, the body being prepared for shipment by disinfecting as above, may be placed in a strong coffin or casket and said coffin or casket enclosed in an air-tight copper or tin case, all joints and seams hermetically soldered and all enclosed in a strong outside wooden box.

Rule 79. Bodies dead of non-quarantinable contagious disease.—The bodies of those dead of typhoid fever, puerperal fever, erysipelas, tuberculosis and measles, or other dangerous communicable disease, other than those specified in rules 77 and 78, may be received for transportation when prepared for shipment by filling cavities with an approved disinfectant, washing the exterior of the body with the same, and stopping all orifices with absorbent cotton and encased in an air-tight coffin or casket; provided, that this shall apply only to bodies which can reach their destination within forty-eight hours from time of death. In all other cases such bodies shall be prepared for transportation in conformity with Rule 78. But when the body has been prepared for shipment by being thoroughly disinfected by an embalmer holding a certificate, as in Rule 78, the air-tight sealing may be dispensed with.

Rule 80. Bodies dead of other diseases.—The bodies of those dead of diseases that are not contagious, infectious or communicable may be received for transportation when encased in a sound coffin or casket and enclosed in a strong outside box; provided,

they reach their destination within thirty hours from time of death. If the body can not reach its destination within thirty hours from time of death, it must be prepared for shipment by filling cavities with an approved disinfectant, washing the exterior of the body with the same, and stopping all orifices with absorbent cotton, and encased in an air-tight coffin or casket. But when the body has been prepared for shipment by being thoroughly disinfected by a licensed embalmer as in Rule 78, the air-tight sealing may be dispensed with.

Rule 81. Persons accompanying bodies dead of contagious diseases.—In cases of contagious or infectious diseases, the body must not be accompanied by persons or articles which have been exposed to the infection of the disease, unless certified by the health officer as having been properly disinfected; and before selling passage tickets, agents shall carefully examine the transit permit and note the name of the passenger in charge and of any other proposing to accompany the body, and see that all necessary precautions have been taken to prevent the spread of disease. The transit permit in such cases shall specifically state who is authorized by the health authorities to accompany the remains. In all cases where bodies are forwarded under Rule 78, notice must be sent by telegraph to health officer at destination, advising the date and train on which the body may be expected. This notice must be sent by or in the name of the health officer of the initial point, and is to enable the health officer at destination to take all necessary precautions at that point.

Rule 82. Bodies not shipped by express.—Every dead body not shipped by express must be accompanied by a person in charge, who must be provided with a passage ticket and also present a full first-class ticket marked "corpse" for the transportation of the body, and a transit permit showing physician's or coroner's certificate, name of deceased, date and hour of death, age, place of death, cause of death, and if of a contagious or infectious disease, the point to which the body is to be shipped, and when death is caused by any of the diseases specified in rule 78, the names of those authorized by the health authorities to accompany the body. The transit permit must be made in duplicate, and the signatures of the physician or coroner, health officer and undertaker must be on both the original and duplicate copies. The undertaker's certificate and paster of the original shall be detached from the transit permit and pasted on the end of the coffin box. The physician's certificate and transit permit shall be handed to the passenger in charge of the corpse. The whole duplicate copy shall be sent to the official in charge of the baggage department of the initial line and by him to the Secretary of the State Board of Health at Austin.

Rule 83. Bodies shipped by express.—When dead bodies are shipped by express, the whole original transit permit shall be pasted upon the outside box, and the duplicate forwarded by the express agent to the Secretary of the State Board of Health at Austin.

Rule 84. Disinterred bodies treated as contagious.—Every disinterred body, dead from any disease or cause, shall be treated as contagious or dangerous to the public health and shall not be accepted for transportation unless removal has been approved by the State or local health authorities having jurisdiction where such body is disinterred, and the consent of the health authorities of the locality to which the corpse is consigned has first been obtained; and all such disinterred remains shall be enclosed in a hermetically sealed (soldered) zinc, tin or copper-lined coffin or box. Bodies deposited in receiving vaults shall be treated and considered the same as buried bodies.

Rule 85. Transfer of bodies in transit.—When necessary to transfer dead bodies in transit from one railway train to another, or from one station to another, or from a station to a ferry, the affidavit of the undertaker and permit of the local health officer accompanying the remains shall be in all cases sufficient authority for such transfer.

Rule 86. Certificate by undertaker.—No common carrier shall accept for transportation any body unless a certificate is furnished by the undertaker preparing such body for shipment to the effect that the foregoing rules have been complied with in the preparation for transportation of said body. [Acts 1911, p. 173; Acts 1917, p. 328.]

CHAPTER FIVE.

COUNTY HOSPITAL.

| | Article | | Article |
|-----------------------------|---------|------------------------------|---------|
| Authority | 4478 | Support of patients | 4487 |
| Board of managers | 4479 | Inspection | 4488 |
| Powers of board | 4480 | Poorhouse | 4489 |
| Clinics | 4481 | Additional hospitals | 4490 |
| School for children | 4482 | Contract with hospital | 4491 |
| Health bulletins | 4483 | Contracts with cities | 4492 |
| Records | 4484 | Adequate facilities | 4493 |
| Superintendent | 4485 | Counties may join | 4494 |
| Admission of patients | 4486 | | |

Art. 4478. **Authority.**—The commissioners court of any county shall have power to establish a county hospital and to enlarge any existing hospitals for the care and treatment of persons suffering from any illness, disease or injury, subject to the provisions of this chapter. At intervals of not less than twelve months, ten per cent of the qualified property tax paying voters of a county may petition such court to provide for the establishing or enlarging of a county hospital, in which event said court within the time designated in such petition shall submit to such voters at a special or regular election the proposition of issuing bonds in such aggregate amount as may be designated in said petition for the establishing or enlarging of such hospital. Whenever any such proposition shall receive a majority of the votes of the qualified property tax payers voting at such election, said commissioners court shall establish and maintain such hospital and shall have the following powers:

1. To purchase and lease real property therefor, or acquire

such real property, and easements therein, by condemnation proceedings.

2. To purchase or erect all necessary buildings, make all necessary improvements and repairs and alter any existing buildings, for the use of said hospital. The plans for such erection, alteration, or repair shall first be approved by the State Health Officer, if his approval is requested by the said commissioners court.

3. To cause to be assessed, levied and collected, such taxes upon the real and personal property owned in the county as it shall deem necessary to provide the funds for the maintenance thereof, and for all other necessary expenditures therefor.

4. To issue county bonds to provide funds for the establishing, enlarging and equipping of said hospital and for all other necessary permanent improvements in connection therewith; to do all other things that may be required by law in order to render said bonds valid.

5. To appoint a board of managers for said hospital.

6. To accept and hold in trust for the county, any grant or devise of land, or any gift or bequest of money or other personal property or any donation to be applied, principal or income or both, for the benefit of said hospital, and apply the same in accordance with the terms of the gift. [Acts 1913, p. 71.]

Art. 4479. **Board of managers.**—When the commissioners court shall have acquired a site for such hospital and shall have awarded contracts for the necessary buildings and improvements thereon, it shall biennially appoint five citizens of the county, of whom at least two shall be practicing physicians, and at least one a woman, who shall constitute a board of managers of said hospital. The term of office of each member of said board shall be two years. Appointments to fill vacancies occurring by death, resignation or other cause shall be made for the unexpired term. Failure of any manager to attend three consecutive meetings of the board shall cause a vacancy in his office, unless said absence is excused by formal action of the board of managers. The managers shall receive no compensation for their services, but shall be allowed their actual and necessary traveling and other expenses within this State to be audited and paid by the commissioners court in the same manner as other expenses of the hospital. Any manager after being cited may at any time for cause be removed from office by said court. [Id.]

Art. 4480. **Powers of board.**—The board of managers shall elect from among its members a president, and one or more vice-presidents and a secretary and a treasurer. It shall appoint a superintendent of the hospital who shall hold office at the pleasure of said board. Said superintendent shall not be a member of the board, and shall be a qualified practitioner of medicine, or be specially trained for work of such character.

The board shall also appoint a staff of visiting physicians who

shall serve without pay from the county, and who shall visit and treat hospital patients at the request either of the managers or of the superintendent.

Said board shall fix the salaries of the superintendent and all other officers and employes within the limit of the appropriation made therefor by the commissioners court, and such salaries shall be compensation in full for all services rendered. The board shall determine the amount of time required to be spent at the hospital by said superintendent in the discharge of his duties. The board shall have the general management and control of the said hospital, grounds, buildings, officers and employes thereof; of the inmates therein, and of all matters relating to the government, discipline, contracts and fiscal concerns thereof; and make such rules and regulations as may seem to them necessary for carrying out the purposes of such hospital. They shall maintain an effective inspection of said hospital and keep themselves informed of the affairs and management thereof; shall meet at the hospital at least once in every month, and at such other times as may be prescribed in the by-laws; and shall hold an annual meeting at least three weeks prior to the meeting of the commissioners court at which appropriations for the ensuing year are to be considered. [Id.]

Art. 4481. **Clinics.**—The board of managers may also establish and operate an outpatient department or free dispensary and clinic at the hospital or in the city nearest to which the hospital is located, with branch dispensaries or clinics in every city or town in the county of five thousand population and over. They shall appoint a physician or physicians, who shall serve at such dispensaries or clinics, and shall determine the amount of time required to be spent at such dispensaries or clinics by such physicians, and shall fix the salaries, if any, of such physicians. Said board shall also appoint one or more trained visiting nurses to serve in connection with each such dispensary or clinic, and in connection with the hospital, and shall fix their salaries within the limits of the appropriation made therefor by the commissioners court. [Id.]

Art. 4482. **School for children.**—The board may also establish, at the hospital or in the city nearest to which the hospital is situated, or in the largest city in the county, a special and separate school for the education, care and treatment of children suffering from tuberculosis. Said school shall be conducted as a branch of the hospital and the pupils and inmates of said school shall be considered as inmates of the hospital and subject to all the provisions of this law. Said board shall appoint a teacher or teachers, specially qualified, to instruct and care for the pupil inmates of said school. Said Board shall delegate the superintendent of the hospital, a member or members of the staff of visiting physicians, a physician or physicians in attendance upon any county dispensary, or shall employ a physician, to attend the inmates of said school, and to supervise their care

and treatment, and shall delegate one of the hospital nurses, or a visiting nurse, or shall employ a nurse to assist in the care and treatment of said pupils. [Id.]

Art. 4483. **Health bulletins.**—The State Board of Health, from time to time, shall make rules and regulations for the care of persons suffering from communicable disease and for the prevention and spread of such diseases; and prepare bulletins and other publications giving information as to the cause, nature, treatment and prevention of disease. The board of managers, shall from time to time, purchase from the State Board of Health, at the actual cost of printing, printed copies of such rules and regulations, bulletins and other publications, or shall have same printed, and shall send or deliver such copies to all practicing physicians in the county, to all public schools and to such private schools as request such copies, and such organizations, churches, societies, unions and individuals as may present written requests for copies of circulars, pamphlets, bulletins and such other publications prepared by the State Board of Health.

Art. 4484. **Records.**—The board of managers shall keep in a book provided for that purpose a proper record of its proceedings, which shall be open at all times to the inspection of its members, to the members of the commissioners court and to any citizen of the county. The board shall certify all bills and accounts, including salaries and wages, and transmit them to the commissioners court, who shall provide for their payment in the same manner as other charges against the county are paid.

The board of managers shall make to the commissioners court annually, and at such times as said court shall direct, a detailed report of the operation of the hospital dispensaries and school during the year, showing the number of patients received and the methods and results of their treatment, together with suitable recommendations and such other matter as may be required of them, and shall furnish full and detailed estimates of the appropriations required during the ensuing year for all purposes, including maintenance, the erection of buildings, repairs, renewals, extensions, improvements, betterments or other necessary purposes. [Id.]

Art. 4485. **Superintendent.**—The superintendent shall be the chief executive officer of the hospital, but shall at all times be subject to the by-laws, rules and regulations thereof, and to the powers of the board of managers.

He shall, with the consent of the board of managers, equip the hospital with all necessary furniture, appliances, fixtures and all other needed facilities for the care and treatment of patients, and for the use of officers and employes thereof, and shall purchase all necessary supplies, not exceeding the amount provided for such purposes by the commissioners court.

He shall have general supervision and control of the records, accounts and buildings of the hospital, and all internal affairs,

and maintain discipline therein, and enforce compliance with and obedience to all rules, by-laws and regulations adopted by the board of managers for the government, discipline and management of said hospital and the employes and inmates thereof. He shall make such further rules, regulations and orders as he may deem necessary, not inconsistent with law or with the rules, regulations and directions of the board of managers. He shall, with the consent of the board of managers, appoint such resident officers and such employes as he may think proper and necessary for the efficient performance of the business of the hospital, and prescribe their duties; and for cause stated in writing, he may discharge any such officer or employe at his discretion, after giving such officer or employe an opportunity to be heard.

He shall cause proper accounts and records of the business and operations of the hospital to be kept regularly from day to day in books and on records provided for that purpose; and shall see that such accounts and records are correctly made up for the annual report as required by this law, and present the same to the board of managers who shall incorporate them in their report to the commissioners court.

He shall receive into the hospital, under the general direction of the board of managers, in order of application, or according to the urgency of need of treatment, any person found to be suffering from any illness, disease or injury, who has been an actual resident and inhabitant of the county for a period of at least one year prior to his application for admission to said hospital. He shall also receive into the hospital, patients sent by the commissioners court of any adjacent county, which has contracted with the board for the care and treatment of its sick and diseased and injured persons, resident in such counties for a period of at least one year. Such patients shall not be received and cared for unless there is sufficient provision for the care of the sick, diseased and injured of the county in which the hospital is situated. Said superintendent shall cause to be kept proper accounts and records of the admission of all patients, their names, age, sex, color, marital condition, residence, occupation and place of past employment.

He shall cause a careful examination to be made of the physical condition of all persons admitted to the hospital and provide for the treatment of each such patient according to his need; and shall cause a record to be kept of the condition of each patient when admitted and from time to time thereafter.

He shall temporarily or permanently discharge from said hospital any patient who shall wilfully or habitually violate the rules thereof; or who is found not to be sick, diseased or injured; or who is found to have recovered therefrom; or who for any other reason is no longer a suitable patient for treatment therein; and shall make a full report thereof at the next meeting of the board, and the said board shall make such final disposition of the

case as they may think proper. From the decision of the board of managers there shall be no appeal.

He shall collect and receive all moneys due the hospital, keep an accurate account of the same, report the same at the monthly meeting of the board of managers, and transmit the same to the county collector within ten days after such meeting.

He shall before entering upon the discharge of his duties, give a bond in such sum as the board of managers may determine, to secure the faithful performance of the duties of his office. [Id.]

Art. 4486. **Admission of patients.**—Any resident of the county in which the hospital is situated, desiring treatment in such hospital, may apply in person to the superintendent or to any reputable physician for examination, and such physician, if he finds that such person is suffering from any illness, disease or injury may apply to the superintendent of the hospital for his admission. Blank forms for such application shall be provided by the hospital and shall be forwarded by the superintendent thereof free to any reputable physician in the county upon request. So far as practicable, applications for admission to the hospital shall be made upon such forms. The superintendent upon receipt of such application, if it appears therefrom that the patient is suffering from illness, disease or injury, and if there be a vacancy in said hospital, shall notify the person named in such application to appear in person at the hospital. If, upon personal examination of such patient, or of any patient applying in person for admission, the superintendent is satisfied that such person is suffering from any illness, disease or injury, he shall admit him to the hospital as a patient. All such applications shall state whether, in the judgment of the physician, the person is able to pay in whole or in part for his care and treatment while at the hospital. Every application shall be filed and recorded in a book kept for that purpose in the order of its receipt. No discrimination shall be made in the accommodations, care or treatment of any patient because of the fact that the patient or his relatives contribute to the cost of his maintenance, in whole or in part. No patient shall be permitted to pay for his maintenance in such hospital a greater sum than the average per capita cost of maintenance therein, including a reasonable allowance for the interest on the cost of the hospital. No officer or employee of such hospital shall accept from any patient thereof, any fee, payment or gratuity whatsoever for his services. [Id.]

Art. 4487. **Support of patients.**—Whenever a patient has been admitted to said hospital from the county in which the hospital is situated, the superintendent shall cause inquiry to be made as to his circumstances, and of the relatives of such patient legally liable for his support. If he finds that such patient or said relatives are liable to pay for his care and treatment in whole or in part, an order shall be made directing such patient, or said relatives to pay to the treasurer of such hospital for the support of such patient a specified sum per week, in proportion

to their financial ability, but such sum shall not exceed the actual per capita cost of maintenance. The superintendent shall have power and authority to collect such sum from the estate of the patient, or his relatives legally liable for his support, in the manner provided by law for the collection of expenses of the last illness of a deceased person. If the superintendent finds that such patient, or said relatives are not able to pay, either in whole or in part, for his care and treatment in such hospital, the same shall become a charge upon the county. Should there be a dispute as to the ability to pay, or doubt in the mind of the superintendent, the county court shall hear and determine same, after calling witnesses, and shall make such order as may be proper, from which there shall be no appeal. [Id.]

Art. 4488. **Inspection.**—The resident officer of the hospital shall admit the managers into every part of the hospital and the premises and give them access on demand to all books, papers, accounts, and records pertaining to the hospital, and shall furnish copies, abstracts, and reports whenever required by them. All hospitals established or maintained under the provisions of this law shall be subject to inspection by any duly authorized representative of the State Board of Health, or any State board of charities that may hereafter be created, and of the commissioners court of the county; and the resident officers shall admit such representatives into every part of the hospital and its buildings and give them access on demand to all records, reports, books, papers and accounts pertaining to the hospital. [Id.]

Art. 4489. **Poorhouse.**—Wherever a county hospital for the care and treatment of persons suffering from any illness, disease or injury exists in connection with, or on the grounds of a county poorhouse or elsewhere, the commissioners' court shall appoint a board of managers for such hospital, and such hospital and its board of managers shall thereafter be subject to each provision of this law, in like manner as if it had been originally established hereunder. Any hospital which may hereafter be established by any commissioners court shall in like manner be subject to each provision of this law. [Id.]

Art. 4490. **Additional hospitals.**—When deemed advisable by the commissioners court, and approved by the State Board of Health, a county may maintain more than one county hospital for the purpose aforesaid. [Id.]

Art. 4491. **Contract with hospital.**—Any commissioners court of any county which has no city with a population of more than ten thousand persons, may contract for a period not exceeding one year, with any regularly incorporated society or hospital or municipality within the county maintaining a hospital, or with any other adjacent county, for the care of any or all of the sick, diseased or injured inhabitants of the county, upon such terms and conditions as they may by agreement think proper. Where a county has established such hospital, the board of managers may contract with any regularly incorporated society or hospital or city or town within the county maintaining

a hospital, for the care of some of the sick, injured or diseased persons applying for admission to the county hospital. [Id.]

Art. 4492. **Contracts with cities.**—Any commissioners court may co-operate with and join the proper authorities of any city having a population of ten thousand persons or more in the establishment, building, equipment and maintenance of a hospital in said city, and to appropriate such funds as may be determined by said court, after joint conference with the authorities of such city or town, and the management of such hospital shall be under the joint control of such court and city authorities. [Id.]

Art. 4493. **Adequate facilities.**—Where no county hospital is now provided for the purpose aforesaid, or where such provision is inadequate, the commissioners court of each county which may have a city with a population of more than ten thousand persons, within six months from the time when such city shall have attained such population, such population to be ascertained by such court in such manner as may be determined upon resolution thereof, shall provide for the erection of such county hospital or hospitals as may be necessary for that purpose, and provide therein a room or rooms, or ward or wards for the care of confinement cases, and a room or rooms or ward or wards for the temporary care of persons suffering from mental or nervous disease, and also make provision in separate buildings for patients suffering from tuberculosis and other communicable diseases, and from time to time add thereto accommodations sufficient to take care of the patients of the county. This time may be extended by the State Board of Health for good cause shown. Unless adequate funds for the building of said hospital can be derived from current funds of the county available for such purpose, issuance of county warrants and script, the commissioners court shall submit, either at a special election called for the purpose, or at a regular election, the proposition of the issuance of county bonds for the purpose of building such hospital. If the proposition shall fail to receive a majority vote at such election said court may be required thereafter at intervals of not less than twelve months, upon petition of ten per cent of the qualified voters of said county, to submit said proposition until same shall receive the requisite vote authorizing the issuance of the bonds. [Id.]

Art. 4494. **Counties may join.**—Where found to be more practicable, and when approved by the State Board of Health, two or more adjacent counties, having each a population of less than fifteen thousand persons, may join for the purposes of this law, and erect one or more hospitals for their joint use, under the terms and conditions above set forth for a single county.

In such cases such combined counties shall have the same powers and be subject to the same liabilities as a single county, herein provided for. [Id.]

CHAPTER SIX.

MEDICINE.

| | Article | | Article |
|--------------------------------|---------|------------------------------------|---------|
| Medical board..... | 4495 | May refuse to admit certain per- | |
| Organization and meetings..... | 4496 | sons..... | 4505 |
| Board shall keep register..... | 4497 | Revocation of license..... | 4506 |
| Physicians to register..... | 4498 | To suspend or cancel license..... | 4507 |
| Medical register..... | 4499 | Duty of Attorney General..... | 4508 |
| Reciprocal arrangements..... | 4500 | Injunction..... | 4509 |
| Examination..... | 4501 | Who regarded as practicing medi- | |
| Disposition of fees..... | 4502 | cine..... | 4510 |
| Details of examinations..... | 4503 | Definitions..... | 4511 |
| Construction of this law..... | 4504 | Malpractice cause for revoking li- | |
| | | cence..... | 4512 |

Art. 4495. [5733] **Medical board.**—The Board of Medical Examiners for the State of Texas shall consist of eleven men learned in medicine, legal and active practitioners in this State, who shall have resided and practiced medicine in this State under a diploma from a legal and reputable college of medicine of the school to which said practitioner shall belong for more than three years prior to their appointment. No school shall have a majority representation on said board. Said board shall be appointed biennially by the Governor within ninety days after his inauguration, and the term of office of its members shall be two years. No member of said board shall be a stockholder or a member of the faculty or a board of trustees of any medical school. The word "medicine" as used in this article shall have the same meaning and scope as given to it in the article defining it. [Acts 1907, p. 224, Sec. 1.]

Art. 4496. [5734] **Organization and meetings.**—Each member of said board shall qualify by taking the official oath in the county of his residence. At the first meeting of said board after each biennial appointment, the board shall elect a president, vice-president and secretary-treasurer. Regular meetings shall be held at least twice a year, at such times and places as the board shall deem most convenient for applicants. Due notice of such meetings shall be given by publication in such papers as may be selected by the board. Special meetings may be held upon a call of three members of the board. The board may prescribe rules, regulations and by-laws, in harmony with the provisions of this title, for its own proceedings and government for the examination of applicants for the practice of medicine and obstetrics. [Id. Sec. 2.]

Art. 4497. [5735] **Board shall keep register.**—The board shall preserve a record of its proceedings in a book kept for that purpose, showing name, age, place and duration of residence of each applicant, the time spent in medical study in respective medical schools, and the year and school from which degrees were granted; said register shall also show whether applicants were rejected or licensed, and shall be prima facie evidence of all matters contained therein. The Secretary of the board shall on March 1 of each year, transmit an official copy of said register to the Secretary of State for permanent record, a certified copy of which, with hand and seal of the secretary of said board,

or the Secretary of State, shall be admitted in evidence in all courts. [Id. Sec. 3]

Art. 4498. [5736] **Physicians to register.**—No person shall practice medicine in any of its branches upon human beings within the limits of this State who has not registered in the district clerk's office of the county in which he resides, lawful authority to so practice medicine as herein prescribed, together with an affidavit subscribed and sworn to by him before said clerk stating his age, post-office address, place of birth, school of practice to which he professes to belong, that he is the identical person to whom the license offered for registration was issued, and that the same has not been canceled. The fact that said oath was so made, and said license so recorded, shall be endorsed by the district clerk upon the license. The holder of the license must in similar manner have the same recorded upon each change of residence to another county, and shall in each instance be required to make the affidavit provided above. The absence of such record in the office of the district clerk shall be prima facie evidence that no such license exists, and of failure to comply with the law in reference to the registration of license to practice medicine. [Acts 1923, p. 292.]

Art. 4499. [5737] **Medical Register.**—Every district clerk shall keep as a permanent record of his office a book of suitable size, to be known as the "Medical Register", and shall record therein all licenses to practice medicine issued by the State Board of Medical Examiners which shall be presented to him for registration and all the matters and things required by the preceding article to be recorded, and shall, as required by law, make therein notation of the cancellation of licenses so registered, and of the death and removal from the county of physicians whose licenses are so registered. When any district court shall cancel the license of any person to practice medicine, the clerk of said court shall, if said license is registered in his county, note the cancellation of said license upon the medical register of said county, and shall forthwith certify to the Secretary of the Board of Medical Examiners, under the seal of said court, the fact that said license was so canceled by said court, giving the exact date of said cancellation, and shall tax the fee for making said certificate as part of the costs of the suit to cancel said license. Each county health officer shall keep informed of the death and removal of all registered physicians residing in the county where he resides, and upon the death or removal of any such physician from said county shall certify such death or removal, giving the name of the physician who has died, or so removed, the date, or approximate date of such death or removal, and shall date and sign such certificate and deliver the same either in person or by registered mail, to the district clerk of said county, and said clerk shall forthwith make notation of said death or removal in said Medical Register, and notify the Secretary of the State Board of Medical Examiners of the said death or removal. The notation of such cancellation,

if made by a district court, shall consist of writing in large, legible letters across the face of the record of the license cancelled the words "Cancelled by the district court of _____ County, on the _____ day of _____, 19____," (filling the blanks so as to correctly indicate the name of the county and the date of the cancellation) and such notation shall be dated and signed officially by the clerk. The notation of the death or removal of a registered physician by the district clerk shall consist of noting the fact of such death or removal upon the record of the license of the physician who has died or removed from the county in large, legible letters, the date of said notation, and the official signature of the clerk. The district clerk shall collect from each physician who presents a license for registration the sum of one dollar at the time such license is presented to him for registration, and that sum shall be full compensation for recording said license and making all notations in the medical register required by law to be so made in reference to the physician named in said license. All matters pertaining to each physician shall be kept and written upon one page of said medical register, and no other entry or registration shall ever be made on said page. It shall be unlawful for any district clerk to make a certified copy of any page or entry in said medical register, or any part thereof, which is not an exact copy of the entire page, or which does not include all notations regarding the cancellation of license, death, or removal of the physician in question, appearing in the office of said clerk. A copy from the medical register pertaining to any person whose license is registered therein certified to by the district clerk having the custody of said medical register under the seal of said court shall be competent evidence in all trial courts. The certificate of a district clerk under the seal of his office certifying that the person named in said certificate is not registered as a physician in the office of said district clerk shall also be prima facie evidence in all trial courts. [Acts 1907, p. 224; Acts 1923, p. 285.]

Art. 4500. [5738] **Reciprocal arrangements.**—The State Board of Medical Examiners may in its discretion, upon payment by the applicant for registration of a fee of fifty dollars, grant license to practice medicine to any reputable physician who is a graduate of a reputable medical college or has qualified on examination for the certificate of medical qualification for a commission in the medical corps of the United States Army or Navy, and to licentiates of other states or territories having requirements for medical registration and practice equal to those established by this law. Applications for license under the provisions of this article shall be in writing, and upon a form to be prescribed by the State Board of Medical Examiners. Said application shall be accompanied with a diploma or a photograph thereof, awarded to the applicant by a reputable medical college, or a certified transcript of the certificate or license or commission issued to the applicant by the medical corps of the

United States Army or Navy, or by a license or a certified copy of license to practice medicine, lawfully issued to the applicant by some other State or territory; and also be accompanied by an affidavit from an executive officer of the medical corps of the United States Army or Navy, the president or secretary of the Board of Medical Examiners who issued the said license, or by a legally constituted medical registration officer of the State or territory in which the certificate or license was granted upon which the application for medical registration in Texas is based. Said affidavit shall recite that the accompanying certificate or license has not been cancelled or revoked except by honorable discharge from the medical corps of the United States Army or Navy, and that the statement of qualifications made in the application for medical registration in Texas is true and correct. Applicants for license under the provisions of this article shall subscribe to an oath in writing, which shall be a part of said application, stating that the license, certificate, or authority under which the applicant practiced medicine in the State or territory from which the applicant removed was at the time of such removal in full force and not suspended or cancelled; that the applicant is the identical person to whom the said certificate, license or commission and the said medical diploma were issued, and that no proceeding was pending at the time of such removal, or is at the present time pending against the applicant for the cancellation of such certificate, license, or authority to practice medicine in the State or territory in which the same was issued, and that no prosecution was then, or is at the time of the application pending against the applicant in any State or Federal court for any offense which under the law of Texas is a felony. [Acts 1907, p. 224; Acts 1915, p. 112; Acts 1923, p. 286.]

Art. 4501. [5739] **Examination.**—All applicants for license to practice medicine in this State, not otherwise licensed under the provisions of law, must successfully pass an examination before the Board of Medical Examiners established by this law. Applicants, to be eligible for examination, must present satisfactory evidence to the board that they are more than twenty-one years of age, of good moral character, and graduates of bona fide, reputable medical schools. Such school shall be considered reputable within the meaning of this law, whose entrance requirements and course of instruction are as high as those adopted by the better class of medical schools of the United States, whose course of instruction shall embrace not less than four terms of eight months each. Application for examination must be made in writing under affidavit to the secretary of the board, on forms prepared by the board, accompanied by a fee of twenty-five dollars; except when an applicant desires to practice obstetrics alone, the fee of which shall be five dollars. Such applicant shall be given due notice of the date and place of examination. Applicants to practice obstetrics in this State, upon

proper application, shall be examined by the board in obstetrics only, and upon satisfactory examination shall be licensed to practice that branch only; provided, this shall not apply to those who do not follow obstetrics as a profession, and who do not advertise themselves as obstetricians or midwives, or hold themselves out to the public as so practicing. If any applicant, because of failure to pass examination, be refused a license, he or she shall, at such time as the Board of Medical Examiners shall fix, be permitted to take a subsequent examination upon such subjects required in original examinations as the said board may prescribe, upon the payment of such part of twenty-five dollars as the said board may determine and state; and said board may, in the event satisfactory grades shall be made in the subjects prescribed and taken in such re-examination, grant to the applicant license to practice medicine. [Acts 1907, p. 224; Acts 1915, p. 112; Acts 1923, p. 287.]

Art. 4502. [5740] **Disposition of fees.**—The fund realized from the aforesaid fees shall be applied first to the payment of necessary expenses of the board of examiners; any remaining funds shall be applied by the order of the board to compensating members of the board in proportion to their labors. [Acts 1907, p. 224.]

Art. 4503. **Details of examinations.**—All examinations to practice medicine shall be conducted in writing in the English language and in such manner as shall be entirely fair and impartial to all individuals and to every school, or system of medicine, the applicants being known to the examiners only by numbers, without names or other method of identification on examination papers by which members of the board may be able to identify such applicants, or examinees, until after the general averages of the examinees' numbers in the class have been determined and license ordered, granted or refused. Examinations shall be conducted on anatomy, physiology, chemistry, histology, pathology, bacteriology, diagnosis, surgery, obstetrics, gynecology, hygiene, and medical jurisprudence. Upon satisfactory examination under the rules of the board, applicants shall be granted license to practice medicine. All questions and answers, with grades attached, shall be preserved in the executive office of the board for one year. All applicants examined at the same time shall be given identical questions in each of the above named branches. All certificates shall be attested by the seal of the board and signed by all members of the board, or a quorum thereof. The board may in its discretion give its examination for license in two parts. The first part shall include such of the required scientific branches of medicine named above as may be prescribed by the board. The second, or final part of the examination shall not be given until the applicant has graduated and received a diploma from a reputable medical college. This, the second or final part of the examination shall include all of the scientific branches of medicine prescribed by this law not included and passed by the applicant in the first, or partial,

examination, but no license to practice medicine shall issue to such an applicant or examinee unless and until he or she has been examined in all of the scientific branches of medicine prescribed by this law and made the general average or averages required by the board. The application for the first partial examination shall be accompanied by an affidavit from the dean or registrar of a reputable medical college, stating that the applicant has successfully completed the work of the first two years of the college course, and a fee of fifteen dollars; the application for the second, or final, part of the examination shall include an affidavit showing that the applicant is a graduate of a reputable medical college, in good standing with this board, and a fee of twenty-five dollars. The board is authorized to make all rules as to credit to be given for partial examinations, and re-examinations of failed examinees in partial or complete examinations, and changes in procedure necessary to conduct the examination for license in two parts. But it shall be optional with the applicant for examination for license whether he or she shall take the twelve branches of medicine prescribed by this law in one examination session of the board or in two separate sessions. All applicants for examination by said board who cannot speak or write the English language must pay an additional charge of thirty dollars for the services of an interpreter, who shall fairly and accurately translate to the applicant each question propounded to applicants in such examination, and receive from said applicant full answer to said question and translate the said answer fully and with accuracy for the applicant and write the answer thus translated in the answers to said questions furnished to the board for examination and grading. [Acts 1907, p. 224; Acts 1923, p. 288.]

Art. 4504. [5742] **Construction of this law.**—Nothing in this law shall be so construed as to discriminate against any particular school or system of medical practice, nor to affect or limit in any way the application or use of the principles, tenets or teachings of any church in the ministrations to the sick or suffering by prayer without the use of any drug or material remedy, provided sanitary and quarantine laws and regulations are complied with, and that no charge is made therefor, directly or indirectly. The provisions of this chapter do not apply to dentists legally qualified and registered under the laws of this State who confine their practice strictly to dentistry; nor optometrists who confine their practice strictly to optometry, as defined in this title; nor to nurses who practice only nursing; nor to masseurs in their particular sphere of labor who publicly represent themselves as such; nor to commissioned or contract surgeons of the United States Army, Navy or Public Health and Marine Hospital Service in performance of their duties, but shall not engage in private practice without license from the Board of Medical Examiners; nor to legally qualified physicians of other States called in consultation, but who do not open office or ap-

point places in this State where patients may be met or called to see. This law shall be so construed as to apply to persons other than licensed druggists of this State not pretending to be physicians who offer for sale on the streets or other public places remedies which they recommend for the cure of disease. [Acts 1907, p. 224, Acts 1923, p. 289.]

Art. 4505. [5743] **May refuse to admit certain persons.**—The State Board of Medical Examiners may refuse to admit persons to its examinations, or to issue the certificate provided for in this law, for any of the following causes:

1. The presentation to the board of any license, certificate or diploma which was illegally or fraudulently obtained, or when fraud or deception has been practiced in passing the examination.

2. Conviction of a crime of the grade of a felony, or one which involves moral turpitude, or procuring or aiding or abetting the procuring of a criminal abortion.

3. Other grossly unprofessional or dishonorable conduct of a character likely to deceive or defraud the public; or for habits of intemperance or drug addiction calculated to endanger the lives of patients; provided, that any applicant who may be refused admittance to examination before said board shall have his right of action to have such issue tried in the district court of the county in which some member of the board shall reside. [Id. Sec. 11.]

Art. 4506. [5744] **Revocation of license.**—The right to practice medicine in this State may be revoked by any court of competent jurisdiction, upon proof of the violation of the law in any respect in regard thereto, or for any cause for which the State Board of Medical Examiners is authorized to refuse to admit persons to its examinations as provided in the preceding article; and it shall be the duty of the several district and county attorneys of this State to file and prosecute appropriate judicial proceeding in the name of the State, on request of any member of said board. [Id. Sec. 12.]

Art. 4507. **To suspend or cancel license.**—The district courts of the State shall have the authority to cancel or suspend the license of any practitioner of medicine when it shall appear to the satisfaction of said court, upon hearing that such practitioner of medicine has been convicted in a State or Federal court of an offense, which in this State is a felony, or for any offense involving moral turpitude, or that the practitioner obtained his examination for license upon a diploma, certificate, or license which had been illegally or fraudulently obtained, upon a fictitious or bogus certificate, license, or diploma, or one issued to a person other than the applicant, or that the practitioner was guilty of fraud, false swearing, or deception in obtaining examination by the board, or in passing examination for medical license, or in procuring the issuance of a license to him or in securing registration of his license by a district clerk,

or that the practitioner has, in the judgment of the court, been guilty of grossly improper or dishonorable conduct of a character likely to deceive or defraud the public, or when it shall be shown to the satisfaction of the court that he is addicted to the habitual use of narcotics, or to habits of intemperance reasonably calculated to endanger the lives of his patients. When complaint is made to the court by any county or district attorney, as provided in the preceding article, said court shall order the practitioner of medicine to show cause why his license shall not be suspended or revoked. Such complaint shall be made in writing, the charge and the grounds thereof shall be set out distinctly and the same shall be subscribed and sworn to by the prosecutor and filed with the clerk of the court. Citation thereon shall be issued in the name of the State of Texas, and in manner and form as in other cases, and the same shall be served upon the defendant at least ten days before the trial day set therein. Upon the return of said citation executed, if the defendant shall appear and deny the charge, the cause shall be docketed for trial, and conducted in the name of the State of Texas against the defendant. The State shall be represented by the county or district attorney. A jury of twelve men shall be impaneled unless waived by the defendant, and the cause shall be tried in like manner as other cases. If the said practitioner of medicine be found guilty, or shall fail to appear and deny the charge after being cited as aforesaid, the said court may, by proper order entered on the minutes, suspend his license for a time, or revoke and cancel it entirely, and may also give proper judgment for costs. [Acts 1919, p. 231, Acts 1921, p. 145, Acts 1923, p. 290.]

Art. 4508. Duty of Attorney General.—Upon the application of the Board of Medical Examiners, or a majority thereof, to the Attorney General, setting forth that the county or district attorney of a county or district has failed to prosecute or proceed against any person violating the terms of this chapter, setting forth that application and request has been made of such county or district attorney and that such request or application has been neglected or refused, the Attorney General shall proceed against such a person in the county of residence of the person complained against, either by civil or criminal proceedings. [Acts 1923, p. 291.]

Art. 4509. Injunction.—The actual practice of medicine in violation of the provisions of this title, or in violation of any provision of Title 12, chapter 6, of the Penal Code, shall be enjoined at the suit of the State, but such suit for injunction shall not be entertained in advance of the previous final conviction of the party sought to be enjoined of the violation of any provision of said chapter of the Penal Code. In such suits for injunction, it shall not be necessary to show that any person is personally injured by the acts complained of. Any person who may be or about to be so unlawfully practicing medicine in this

State, may be made a party defendant in said suit. The Attorney General, the district attorney of the district in which the defendant resides, the county attorney of the county in which the defendant resides, or any of them, shall have the authority, and it shall be their duty, and the duty of each of them, to represent the State in such suits. No injunction, either temporary or permanent, shall be granted by any court, until after a hearing on complaint is had by a court of competent jurisdiction on its merits. In such suit no injunction or restraining order shall be issued until final trial and final judgment on the merits of the suit. If on the final trial it be shown that the defendant in such suit has been unlawfully practicing medicine, or is about to practice medicine unlawfully, the court shall by judgment perpetually enjoin the defendant from practicing or continuing the practice of medicine in violation of law as complained of in said suit. Disobedience of said injunction shall subject the defendant to the penalties provided by law for the violation of an injunction. The procedure in such cases shall be the same as in any other injunction suit as nearly as may be. The remedy by injunction given hereby shall be in addition to criminal prosecution. Such causes shall be advanced for trial on the docket of the trial court, and shall be advanced and tried in the appellate courts in the same manner and under the same laws and regulations as other suits for injunction. [Acts 1923, p. 291.]

Art. 4510. [5745] Who regarded as practicing medicine.—Any person shall be regarded as practicing medicine within the meaning of this law:

1. Who shall publicly profess to be a physician or surgeon and shall treat, or offer to treat, any disease or disorder, mental or physical, or any physical deformity or injury, by any system or method, or to effect cures thereof;

2. Or who shall treat or offer to treat any disease or disorder, mental or physical, or any physical deformity or injury by any system or method, or to effect cures thereof and charge therefor directly or indirectly, money or other compensation. [Acts 1907, p. 224.]

Art. 4511. [5746] Definitions.—The terms, "physician," and "surgeon," as used in this law, shall be construed as synonymous, and the terms, "practitioners," "practitioners of medicine," and, "practice of medicine," as used in this law, shall be construed to refer to and include physicians and surgeons. [Acts 1907, p. 224.]

Art. 4512. [5747] Malpractice cause for revoking license.—Any physician or person who is engaged in the practice of medicine, surgery, osteopathy, or who belongs to any other school of medicine, whether they use the medicines in their practice or not, who shall be guilty of any fraudulent or dishonorable conduct, or of any malpractice, or shall, by any untrue or fraudulent statement or representations made as such physician or person to a patient or other person being treated by such

physician or person, procure and withhold, or cause to be withheld, from another any money, negotiable note, or thing of value, may be suspended in his right to practice medicine or his license may be revoked by the district court of the county in which such physician or person resides, or of the county where such conduct or malpractice or false representations occurred, in the manner and form provided for revoking or suspending license of attorneys at law in this State. [Act 1905, p. 370.]

CHAPTER SEVEN.

NURSES.

| | | | |
|-----------------------------------|---------|-------------------------------------|---------|
| | Article | | Article |
| Board of examiners..... | 4513 | Certificate from another State..... | 4521 |
| Organization of board..... | 4514 | Use of "R. N."..... | 4522 |
| Salaries..... | 4515 | Temporary permit..... | 4523 |
| Educational secretary..... | 4516 | Recording certificate..... | 4524 |
| Bond and salary of secretary..... | 4517 | Revoking certificate..... | 4525 |
| Qualifications of applicants..... | 4518 | Re-registration..... | 4526 |
| Examination and fee..... | 4519 | Fees..... | 4527 |
| Exempt from examination..... | 4520 | Exceptions..... | 4528 |

Art. 4513. **Board of Examiners.**—The Governor shall biennially appoint a Board of Nurse Examiners to consist of five members, two of whom shall be appointed for three years and three for two years. Each member of said board shall be a registered graduate nurse of at least twenty-five years of age, of good moral character and a graduate of a school of nursing connected with a general hospital or sanitarium of good standing presided over by a graduate registered nurse, where a two or more years training with a systematic course of instruction is given, and shall have had at least three years experience in educational work among nurses. The members of the board and the educational secretary shall each make and subscribe to the official oath and the same shall, within thirty days after their appointment, be filed with the Secretary of State. [Acts 1923, p. 413.]

Art. 4514. **Organization of board.**—The members of the said board shall elect from their number a president, and a secretary who shall also act as treasurer. Special meetings of said board shall be called by the president or by the secretary upon the written request of any two members. The board may make such by-laws and rules as may be necessary to govern its proceedings and to carry into effect the purpose of this law. The secretary shall be required to keep a record of each meeting of said board, including a register of the names of all nurses registered under this law, which shall at all times be open to public inspection. Said board shall assist the proper legal authorities in the prosecution of all persons violating any provision of this law. [Id.]

Art. 4515. **Salaries.**—The members of said board shall receive such per diem as may be fixed by the board, not to exceed ten dollars per day for each day they are actually engaged in the work of the board, and the board may defray all necessary

traveling and other expenses incurred by its members in attending meetings. [Id.]

Art. 4516. **Educational secretary.**—The board shall appoint an educational secretary, who shall be at least thirty years old, and shall have had at least five years experience in educational work among nurses. The duties of said secretary shall be to visit all schools of nursing in the State at least once a year to confer with superintendents of hospitals and superintendents of nursing schools as to the system of instruction given and as to accommodations and rules governing said school in reference to its students. The board shall prescribe such methods and rules of visiting, and such methods of reporting by said secretary as may in its judgment be deemed proper. [Id.]

Art. 4517. **Bond and salary of secretary.**—The secretary-treasurer of the board shall, within thirty days of her election by the board, execute a bond in the sum of one thousand dollars payable to the Governor, conditioned that she shall faithfully perform the duties of her office and account for all funds coming into her hands as secretary-treasurer; said bond to be signed by two or more good and sufficient sureties or by a surety company authorized to do business in this State, to be approved by the president of said board. The salary of the secretary shall be fixed and paid by the board and shall be exclusive of such traveling and other expenses as may be incurred with the approval of the board in the discharge of the official duties of said secretary. [Id. p. 414.]

Art. 4518. **Qualifications of applicants.**—Applicants for registration under this law must have had two years continuous training under a registered nurse in a school of nursing from which she has graduated. Such school of nursing must be an accredited school approved by the board. Said school of nursing, if located in Texas, must be presided over by a nurse registered in Texas. Applicants who have had two years training in nursing schools connected with a special hospital may be accepted for registration, provided he or she shall have had additional training in an accredited school of nursing connected with a general hospital of at least one year. [Id.]

Art. 4519. **Examination and fee.**—Upon filing application for examination each applicant shall pay an examination fee of fifteen dollars which shall in no case be returned to applicant. If the applicant passes the examination, then no further fee shall be required for registration. Any applicant for registration who fails to successfully pass the examination herein provided for shall have the right after six months and within one year to stand a second examination on those subjects wherein he or she has failed to make a grade of seventy per cent, without payment of any additional fees. If more than three examinations are necessary, an additional fee of two dollars shall be charged for each. A grade of not less than seventy on any one subject shall be required to pass the examination. The examination shall be

of such character as to determine the fitness of the applicant to practice professional nursing. If the result of the examination be satisfactory to the board, a certificate shall be issued to the applicant, signed by the president and secretary and attested by the seal of said board, which certificate shall qualify the person receiving the same to practice professional nursing in this State. [Id.]

Art. 4520. **Exempt from examination.**—No nurse who is engaged in professional nursing at the time of the passage of this law and who has qualified under any previous law of this State and received a certificate from the board under such provisions of law regulating professional nursing, shall be required to stand any further examination under this law, but shall register with the county clerk in the county where she then resides. [Id.]

Art. 4521. **Certificate from another State.**—Any applicant of good character who holds a registration certificate as a professional nurse from another State whose requirements are equal to those of Texas, and whose individual qualifications shall be equivalent to those required in this law, may be granted a license to practice nursing in this State without examination, provided a fee of fifteen dollars is paid to the board by such applicant. [Id.]

Art. 4522. **Use of "R. N."**—A nurse who has received his or her license or permit according to the provisions of this law shall be styled a "registered nurse," and may use the title or abbreviation "R. N." [Id.]

Art. 4523. **Temporary permit.**—The board shall issue to graduate nurses from accredited schools of nursing who are actually engaged in the pursuit of their profession, a temporary permit to practice their profession until such time as the applicant can qualify for registration. A fee of two dollars shall be paid upon filing application for such permit. [Id.]

Art. 4524. **Recording certificate.**—Every person receiving a certificate of registration as provided in this law shall within thirty days thereafter file the same for record with the county clerk of the county where such person resides, together with a certificate of his or her identity as the person to whom the same was issued, and his or her place of residence at the time of the examination and registration. The county clerk shall record such certificate together with the certificate of identity, in a book kept for that purpose, for which service he shall be paid by the holder of such certificate a fee of fifty cents. The county clerk shall furnish annually on the first day of January to the Board of Nurse Examiners, upon blanks supplied by said Board, a duplicate list of all certificates so recorded by him during the preceding year, including therein the date of recording and the name and residence of the person filing the same, for which the board shall pay him a fee of two and one-half dollars. [Id.]

Art. 4525. **Revoking certificate.**—The Board of Nurse Examiners may by unanimous vote file a complaint against any

registered nurse in the county court where such certificate is recorded, charging gross incompetency, malpractice, dishonesty, intemperance or any other act derogatory to the morals and standing of the profession of nursing. Thereupon the person against whom such complaint is filed shall be cited in writing to appear before said court on a date named in such citation not less than ninety days from the issuance of said notice, to which citation there shall be attached a certified copy of the complaint so filed. If such court shall decree a revocation of the certificate of such nurse, he or she shall have the right to appeal to the district court of such county. Such certificate shall upon such appeal remain in full force and effect until the same shall be disposed of by such district court, the decision of which shall be final. Upon the revocation of any certificate as herein provided, the secretary of said board shall strike the name of the holder of such certificate from the roll of registered nurses kept by such board. [Id.]

Art. 4526. **Re-registration.**—On or before the first day of March of each year, the secretary of the board shall mail to each nurse registered in this State a blank application for re-registration, addressing the same to the post-office address as shown by the records of said board. Upon receipt of such application blank, which shall contain space for such information as the board shall deem necessary, he or she shall sign and swear to the accuracy of the same before some officer authorized to administer oaths, after which he or she shall forward such sworn statement and application for renewal of his or her registration certificate to the secretary of the board, together with a fee of fifty cents. Upon receipt of such application and fee and having verified the accuracy of the same by comparison with the applicant's initial registration statements, the secretary of the board shall issue and mail to the applicant a certificate of re-registration which shall render the holder thereof a legally qualified registered nurse for the ensuing year. In case of refusal, notice of such fact shall be given. Certificates of re-registration shall bear the date of April of the year of issue, and shall expire on the last day of March in the year following. Should any registered nurse continue to practice nursing and caring for the sick beyond the time for which he or she is registered or re-registered, he or she shall be deemed to be an illegal practitioner and his or her license may be suspended or revoked by the board. All nurses already registered in this State at the time of the passage of this law shall make application to the secretary of the board for a re-registration blank, upon receipt of which he or she shall, in the manner hereinbefore prescribed, make application for re-registration, failing which the delinquent may be dealt with as provided in regard to the suspension or revocation of license. [Id.]

Art. 4527. **Fees.**—All fees received by said Board under this law shall be paid to the treasurer thereof; who shall pay

the same out only on vouchers issued and signed by the president and secretary of said board. All money so received and placed in said fund may be used by said board in defraying its expenses in carrying out the provisions of this law. No expenses incurred by said board shall be paid by the State. [Id.]

Art. 4528. **Exceptions.**—This law shall not be construed to apply to the gratuitous nursing of the sick by friends, nor any person nursing the sick for hire who does not in any way assume or profess to practice as a graduate certified registered nurse. [Id.]

CHAPTER EIGHT.

PHARMACY.

| | | | |
|-----------------------------------|---------|---------------------------------|---------|
| | Article | | Article |
| Appointment of board..... | 4529 | Renewal of license..... | 4537 |
| Organization of board..... | 4530 | Applicant registered in foreign | |
| Duty of board..... | 4531 | country..... | 4538 |
| Meetings for examination..... | 4532 | License to be posted..... | 4539 |
| Application for license..... | 4533 | Pharmacists to be licensed..... | 4540 |
| Qualifications of applicants..... | 4534 | Record and register..... | 4541 |
| Board to issue license..... | 4535 | Fees of board..... | 4542 |
| Temporary certificate..... | 4536 | | |

Art. 4529. [6286] **Appointment of board.**—The Governor shall biennially on or before September 1st after his inauguration appoint five persons to constitute a board to be styled "The Texas State Board of Pharmacy," hereinafter referred to as the board. Any member of said board may be removed by the Governor for good cause shown. Each member of said board shall be a licensed pharmacist and shall have been actively engaged in the practice of pharmacy in this State at the time of his appointment and for the five years immediately preceding such appointment. No one who is connected in any way with any school or college of pharmacy shall be appointed as a member of said board. No two members of the board shall reside in the same county. [Acts 1907, p. 349.]

Art. 4530. [6287] **Organization of board.**—The board shall within thirty days after their appointment and annually thereafter, meet and organize by the election of a president, secretary and a treasurer, who shall hold office for one year from the date of their election. The president and the treasurer shall be members of the board, but the secretary need not be a member. The secretary shall receive such salary as the board may prescribe, and his necessary expense while engaged in the performance of his official duties. The treasurer and the secretary shall give bond, payable to the Governor, in such sum as the board may determine, conditioned for the faithful performance of all duties imposed by law or by order of the board, which at no time shall be for less amount than the sum handled by them annually. The board shall pay the expense of making such bonds. The secretary shall collect all money due the board from all sources, and pay the same over to the treasurer within ten days, taking his receipt therefor. The board shall prescribe the pay of the members thereof, but at no time shall the amount exceed five dollars per day for each member, to be

paid to them for such days during which they are actually engaged in the discharge of their official duties, and shall pay them the amounts they actually incur for expenses in the discharge of their duties for mileage, hotel bills, stamps and stationery. No bill either of services or expense of such member shall be paid until an itemized statement of such service and each item of expense has been made out and duly sworn to by such member of such board, and such account has been filed with and approved by said board. The State shall never be liable for the salary and expense of any member of said board. [Id.]

Art. 4531. [6289] **Duty of board.**—The board shall adopt such by-laws and regulations not inconsistent with the provisions of this law as they deem necessary to carry out such provisions, and shall examine all applications for registration of such persons as may be entitled to the same under the provisions of this law. It shall make an annual report to the Governor, a copy of which shall be furnished to the Texas State Pharmaceutical Association, upon the condition of pharmacy in Texas; which report shall embrace all the proceedings of the board, and give an itemized account of all money received and disbursed by said board, and shall show to whom paid and for what purpose it was paid, and also show the names of all pharmacists duly registered under this law. The board shall deliver all money on hand at the end of the term of each board, after all outstanding debts have been paid, over to their successors in office. [Id.]

Art. 4532. [6290] **Meetings for examination.**—The board shall hold meetings for the examination of applicants for registration, and for the transaction of such other business as may legally come before it, at least once in four months, and such additional meetings as may be necessary. Said regular meetings shall be held on the third Tuesday of January, May and September of each year, in such places as the board may select, or places as shall be deemed most convenient for applicants. Due notice of such meetings thirty days in advance thereof, shall be given by publication in such papers as the board may select. [Id.]

Art. 4533. [6294] **Application for license.**—Every person who desires to be licensed as a pharmacist, shall file with the secretary of the board of pharmacy an application upon blanks furnished by the board of pharmacy for that purpose, duly verified under oath, setting forth the name and age of the applicant, the place or places at which and the time spent in the study of the science and art of pharmacy, the experience in compounding physician's prescriptions which the applicant has had under the direction of a legally licensed pharmacist, and shall appear at a time and place designated by the board of pharmacy, and submit to an examination as to his or her qualifications for registration as a licensed pharmacist or assistant pharmacist. If any applicant should fail to pass a satisfactory examination,

he or she may at any subsequent meeting of the board of pharmacy, within six months, be permitted to be re-examined without cost. [Id.]

Art. 4534. [6295] **Qualifications of applicants.**—In order to be licensed as a pharmacist, each applicant shall be not less than twenty-one years of age, and shall have been licensed as an assistant pharmacist for not less than two years prior to his application for license as a pharmacist, or he shall present to the board satisfactory evidence that he is a graduate of a reputable school or college of pharmacy, or that he has had four years practical experience in pharmacy under the instruction of a pharmacist; and he shall also pass a satisfactory examination by or under the direction of a board of pharmacy. In order to be licensed as an assistant pharmacist, an applicant shall not be less than eighteen years of age and shall have a sufficient preliminary general education, and shall have had not less than two years experience in pharmacy, and shall pass a satisfactory examination by or under the direction of the board of pharmacy. In the case of persons who have attended a reputable school or college of pharmacy, the actual time of attendance at school or college of pharmacy may be deducted from the time of experience required of a pharmacist and assistant pharmacist, but in no case shall less than two years experience be required for registration as a licensed pharmacist. [Id.]

Art. 4535. [6296] **Board to issue license.**—If the applicant for license as a pharmacist or assistant pharmacist has complied with each requirement of this law, the board shall enroll his name upon the register of pharmacists or assistant pharmacists, and issue to him a license which shall entitle him to practice as pharmacist or assistant pharmacist for a period of two years from the date of said license. The board may refuse to grant a license to any person who has been convicted of a felony or who has been guilty of gross immorality, or who is addicted to the use of alcoholic liquors or narcotic drugs to such extent as to render him unfit to practice. The board, after due notice, may revoke a license for like cause, or may revoke any license which has been procured by fraud. [Id.]

Art. 4536. [6291] **Temporary certificate.**—Upon satisfactory proof that the applicant is competent, any member of the board may issue a temporary certificate which shall be null and void after the first meeting of the board next after granting said certificate. Only one such certificate shall be granted to any one person.

Art. 4537. [6296] **Renewal of license.**—Every licensed pharmacist or assistant pharmacist who desires to continue in the practice of his profession shall, within thirty days next preceding the expiration of his license or permit, file with the board an application for the renewal thereof, accompanied by the fee hereinafter prescribed. If the board shall find that the appli-

cant has been legally licensed in this State and is entitled to renewal of license, or to a renewal of such permit, it shall issue to him a certificate attesting the fact. If any pharmacist or assistant pharmacist shall fail, for a period of sixty days after the expiration of his license, to make application to the board for its renewal, his name shall be erased from the register of licensed pharmacist or assistant pharmacist; and such person, in order to become registered as a licensed pharmacist or assistant pharmacist, shall be required to pay the same fee as in the case of original registration. [Id.]

Art. 4538. [6297] **Applicant registered in foreign country.**—The board may issue license to practice as pharmacist or assistant pharmacist in this State, without examination, to such persons as have been legally registered or licensed as pharmacists or assistant pharmacists in other states, or foreign countries; provided, the applicant for such license shall present satisfactory evidence of qualifications equal to those required from licentiates in this State, and that he was registered or licensed by examination in such other state, or foreign country, and that the standard of competency required in such other state, or foreign country, accords similar recognition to the licentiates of this State. Applicants for license under this article shall, with their application, forward to the secretary of the board the same fees as are required of other candidates for license. [Id.]

Art. 4539. [6298] **License to be posted.**—Every certificate of license to practice as pharmacist or assistant pharmacist, and every license to any proprietor or employee to conduct a drug store in towns of not more than one thousand inhabitants and every renewal of such license shall be conspicuously exposed in the pharmacy, drug store or place of business of which the pharmacist or assistant pharmacist or other person to whom it is issued is the owner or manager, or in which he is employed. [Id.]

Art. 4540. [6293] **Pharmacists to be licensed.**—No person not licensed as a pharmacist, within the meaning of this law, shall conduct or manage any pharmacy, drug or chemical store, apothecary shop, or other place of business, for the retailing, compounding or dispensing of any drug, chemical or poison, or for the compounding of physician's prescriptions, or keep exposed for sale at retail any drug, chemical or poisons, except as hereinafter provided. No person not licensed as a pharmacist or assistant pharmacist, within the meaning of this law, shall compound, dispense or sell at retail any drug, chemical, poison, or pharmaceutical preparation upon the prescription of a physician or otherwise, or compound physician's prescriptions, except as an aid to or under the supervision of a person licensed as a pharmacist under this law. No owner or manager of a pharmacy or drug store, or other place of business, shall cause or permit any other than a person licensed as a pharmacist or assistant pharmacist to compound, dispense, or sell at retail any

medicine or poison, except as an aid to or under the supervision of a person licensed as a pharmacist. Nothing in this article shall be construed to prevent any person from engaging in the business herein described as proprietor and owner thereof, provided such proprietor or owner shall have employed in his business to conduct same some one qualified under this chapter, nor to interfere with any legally registered practitioner of medicine or dentistry in the compounding of his prescriptions, or to prevent him from supplying his patients such medicine as he may deem proper, nor with exclusively wholesale business of any dealer who shall be licensed as a pharmacist, or who shall keep in his employ at least one person who is licensed as a pharmacist, nor with the selling at retail of non-poisonous domestic remedies, nor with the sale of patent or proprietary preparations, when sold in unbroken packages, nor with the sale of poisonous substances which are sold exclusively for use in the arts, or for use as insecticides, when such substances are sold in unbroken packages bearing a label having plainly printed upon it the name of the contents, the word "poison" and the names of at least two readily obtainable antidotes. [Id.]

Art. 4541. [6290] **Record and register.**—The board shall keep a record of its proceedings and a register of all persons to whom certificates or license as pharmacist or assistant pharmacist and permits have been issued, and all renewals thereof. The books and register of the board, or a copy of any part thereof certified by the secretary, shall be accepted as competent evidence in all the courts. [Id.]

Art. 4542. [6292] **Fees of board.**—The board shall be entitled to charge the following fees: For the examination of an applicant for license as a pharmacist, five dollars; for the examination of an applicant for license as an assistant pharmacist, two dollars and fifty cents. Every registered pharmacist and every registered assistant pharmacist in the meaning of this law, who desires to continue in the pursuit of pharmacy in this State shall annually, after the expiration of the first year of registration and on or before the first day of January of each year, pay to the secretary of the board a renewal fee to be fixed by the board which shall not exceed three dollars, in return for which a renewal of registration shall be issued. The board shall each year turn over to the State Pharmaceutical Association for the advancement of the science and arts of pharmacy out of the annual fees collected by it, such sum as it may deem advisable, not to exceed two dollars for each pharmacist and assistant pharmacist who shall have paid his renewal fee during such year. Those holding a certificate of pharmacy and not engaged in the active practice of pharmacy, shall be issued a renewal certificate upon payment of an annual fee of one dollar. Said Association shall report annually to said board on the condition of pharmacy in the State. [Acts 2nd C. S. 1919, p. 88.]

CHAPTER NINE.

DENTISTRY.

| | Article | | Article |
|------------------------------------|---------|-----------------------------------|---------|
| Appointment and qualification..... | 4543 | License required to practice..... | 4548 |
| Duty of board..... | 4544 | Revoking license..... | 4549 |
| Qualifications of applicants..... | 4545 | Record of board..... | 4550 |
| To record license..... | 4546 | Fees and expenses..... | 4551 |
| Persons already licensed..... | 4547 | | |

Art. 4543. **Appointment and qualification.**—The State Board of Dental Examiners shall consist of six practicing dentists, to be appointed biennially by the Governor. Each member shall serve two years. No person shall be eligible to appointment unless he has been actively engaged in the practice of dentistry for the three years next preceding his appointment. Before entering upon the duties of his office, each member of the board shall make written oath that he will faithfully and impartially discharge the duties incumbent upon him to the best of his ability; said oath shall be filed with the county clerk of the county in which affiant resides; and such clerk shall duly record the same on the records of his office, and shall receive fifty cents therefor. The board shall elect one member president and one secretary. [Acts 1919, p. 50.]

Art. 4544. **Duty of Board.**—The Board shall have authority to examine all applicants for license to practice dentistry or dental surgery in this State, and shall examine and grade all papers submitted by such applicants and report thereon to such applicant within thirty days from the time of the meeting of such board. The applicant upon passing a satisfactory examination before said board on the subjects pertaining to dentistry shall be granted a license to practice dentistry or dental surgery in this State. The board shall meet at least twice in each year. The proceedings shall be open to the public. [Id.]

Art. 4545. **Qualifications of applicants.**—Each applicant shall be not less than twenty-one years of age, and shall present a diploma from a reputable dental college and evidence of good moral character. Any person upon proof satisfactory to the board that he or she has been regularly engaged in the legal practice of dentistry in any State of the United States for at least three years next preceding the application shall be entitled to an examination without presentation of a diploma. A dental college shall be held reputable whose entrance requirements and courses of instruction are as high as those adopted by the better class of dental colleges of the United States. The decision of the board as to whether a college is reputable shall be final. [Id.]

Art. 4546. **To record license.**—Every person to whom license is issued by the Board of Examiners shall, before beginning the practice of dentistry in this State, present the same to the county clerk of the county in which he or she resides or expects to practice; who shall record said license in a book provided for that purpose and receive fifty cents therefor. [Id.]

Art. 4547. **Persons already licensed.**—Any person who has heretofore been licensed, authorized, or granted permission to practice dentistry or dental surgery under the laws of this State, and who has so practiced under said license, authorization or permit, previous to the passage of this law, and who desires to obtain a license of authority from the board created under this law, upon presentation and surrender to the board of said license, authorization or permit, and an affidavit that he is the same person to whom same was originally granted, shall be granted a license under this law. No person shall be required to surrender an old license for a new one unless he so desires. If any license issued under this or any former law in Texas shall be lost or destroyed, the holder of said license may present his application to the board for a duplicate license together with his affidavit of such loss or destruction and that he is the same person to whom said license was issued, and shall be granted a license under this law. If the records of said board fail to show that such person was ever licensed, the board may exercise its discretion in granting said duplicate license. [Id.]

Art. 4548. **License required to practice.**—No person shall practice or offer, or attempt to practice dentistry or dental surgery in this State, without first having obtained a license from the State Board of Dental Examiners, as provided for in this law, provided that physicians and surgeons may, in the regular practice of their profession, extract teeth or make application for the relief of pain. Nothing herein applies to any person legally engaged in the practice of dentistry in Texas at the time of the passage of this law. [Id.]

Art. 4549. **Revoking license.**—Any member of the Board of Examiners when it shall be made to appear to said member by satisfactory evidence that any person who has been granted a license to practice dentistry or dental surgery in this State has been convicted of a felony, or has been guilty of any fraudulent or dishonorable conduct or malpractice, or any deception or misrepresentation for the purpose of soliciting or obtaining business, shall report the same to the county or district attorney, who shall, if in his judgment the evidence is sufficient, file a complaint to the district court of said county, requiring accused to appear before said court, at a regular term of said court, and upon the trial of said cause, if the defendant is found guilty of said charge, said court shall revoke the license of said defendant. No one shall be required to stand trial, unless a copy of said charge shall have been furnished him at least ten days before said trial, and he shall be cited to appear under the same rules as govern other civil cases in said court. [Id.]

Art. 4550. **Record of Board.**—Said Board shall keep a record in which shall be registered the name and residence or place of business of all persons authorized under this law to practice dentistry or dental surgery in this State. [Id.]

Art. 4551. **Fees and expenses.**—Each applicant for examination for license under this law shall pay to the Secretary of the

Board twenty-five dollars which shall not be returned to said applicant. For each license of authority and each duplicate license issued the board shall receive a fee of one dollar.

Each member of the board shall receive for his services five dollars per day for each day actually engaged in the duties of his office, together with all legitimate expenses incurred in the performance of such duties. All expenses of said board shall be paid from money received by the board from applicants as provided for in this law. No money shall ever be paid to any member of the board from any fund in the State Treasury. Any excess money remaining in the hands of the board, after all expenses in the performance of their duty have been paid, shall be kept in the hands of the secretary for the proper enforcement of this law, and for other legitimate expenses of the board. The secretary shall be required to give bond payable to the board in such sum as the board may require for the faithful performance of his duty in the safekeeping of and the proper delivery of said money. [Id.]

CHAPTER TEN.

OPTOMETRY.

| | Article | | Article |
|---------------------------------|---------|------------------------------|---------|
| "Optometry" | 4552 | Duty of licensee | 4564 |
| Board of examiners | 4553 | Fees and expenses | 4565 |
| Term of office | 4554 | Fee | 4565a |
| Organization and meetings | 4555 | Renewal license | 4565b |
| Record of proceedings | 4556 | Defining terms | 4565c |
| Application for license | 4557 | "Fitting Lenses" | 4565d |
| Subjects of examinations | 4558 | Selling as merchandise | 4565e |
| Examinations | 4559 | Acts unlawful | 4565f |
| Reciprocity | 4560 | Optical mechanics | 4565g |
| To record license | 4561 | Spectacles as premiums | 4565h |
| Optometry register | 4562 | Exceptions | 4566 |
| Revocation of license | 4563 | | |

Art. 4552. "Optometry."—The practice of optometry is defined to be the employment of objective or subjective means, without the use of drugs, for the purpose of ascertaining and measuring the powers of vision of the human eye, and fitting prisms to correct or remedy any defect or abnormal condition of vision. Nothing herein shall be construed to permit optometrists to treat the eyes for any defect whatsoever in any manner nor to administer nor to prescribe any drugs or physical treatment whatsoever, unless such optometrist is a regularly licensed physician or surgeon under the laws of this State. [Acts 1st C. S. 1921, p. 159.]

Art. 4553. Board of Examiners.—The Texas State Board of Examiners in Optometry shall be composed of five members who shall possess the necessary qualifications to practice optometry and who shall have been residents of this State, actually engaged in the practice of optometry for at least five years immediately preceding their appointment. The board may prescribe rules, regulations and by-laws in harmony with the provisions of this chapter for its own proceedings and government and for the examination of applicants for license to practice optometry. [Id.]

Art. 4554. **Term of office.**—The members of the Board, to be appointed by the Governor, shall be divided into three classes: one, two and three, and their term of office shall be determined by lot at the first meeting of the board. Two members shall hold their offices for two years, two members for four years, and one member for six years, respectively, from the time of their appointment. The members of one of the above classes of said board shall thereafter be appointed biennially by the Governor and shall hold office for six years. Only optometrists licensed under the laws of Texas and actively engaged in the practice of optometry shall be eligible for appointment on said board. [Id.]

Art. 4555. **Organization and meetings.**—The Board shall elect a president, a vice-president, and a secretary-treasurer biennially, at its first meeting after the appointment of a member of said board. Regular meetings shall be held at least twice a year, at such time and place as shall be deemed most convenient for applicants for license. Not less than ten days notice of such meeting shall be given by publication in at least three daily newspapers of general circulation to be selected by the board. Special meetings may be held upon call of three members of the board. [Id.]

Art. 4556. **Record of proceedings.**—The Board shall preserve a record of its proceedings in a book kept for that purpose, showing the name, age, place and present residence of each applicant, the name and location of any school of optometry from which he holds credentials, and the time devoted to the study and practice of same, together with such other information as the board may desire to record. Said record shall also show whether applicants were rejected or licensed and shall be prima facie evidence of all matters contained therein. The secretary of the board shall on March first of each year send a certified copy of said record to the Secretary of State for permanent record a certified copy from which, with hand and seal of the secretary of said board, or the Secretary of State, shall be admitted as evidence in all courts. When a license or certificate is issued it shall be numbered and recorded in a book kept by the secretary of the board. [Id.]

Art. 4557. **Application for license.**—Whoever desires to begin the practice of optometry shall make application for license by presenting to the secretary of the board, on forms furnished by the board, satisfactory sworn evidence that he or she has attained the age of twenty-one years, is of good moral character, and has graduated from a school of optometry maintaining a standard which meets with the requirements of said board, or has studied optometry in Texas not less than two years in the office of an optometrist licensed under this law before taking the examination which shall be prescribed by the board. [Id.]

Art. 4558. **Subjects of examinations.**—Said examinations shall consist of tests in practical, theoretical, and physiological

optics, in theoretical and practical optometry, and in the anatomy, physiology, and pathology of the eye as applied to optometry. Every candidate successfully passing examination shall be registered by the board as possessing the qualifications required by this law, and shall receive from said board a license to practice optometry in this State. [Id.]

Art. 4559. **Examinations.**—Each applicant shall be given due notice of the date and place of examination. All examinations shall be conducted in writing and by such other means as the board shall determine adequate to ascertain the qualifications of applicants, and in such manner as shall be entirely fair and impartial to all individuals and every recognized school of optometry. All applicants examined at the same time shall be given identical questions. The board may refuse to admit persons to its examination or to issue licenses for any of the following reasons:

1. The presentation to the board of any untrue statement or any document or testimony which was illegally or fraudulently obtained, or when fraud or deceit has been practiced in passing the examination.

2. Conviction of a felony, or of a misdemeanor which involves moral turpitude.

3. Other grossly unprofessional or dishonorable conduct of a character likely to deceive or defraud the public, or for habits of intemperance or drug addiction. Any applicant who may be refused an examination or a license, after legal notice and a full and impartial hearing, shall have his right of action to have such issue tried in the district court of any county in which one of the members of the board shall reside. [Id.]

Art. 4560. **Reciprocity.**—The board shall have authority, at its discretion, to recognize the license which has been issued, after full examination, by State Boards of Examiners in Optometry of other states having a standard satisfactory to the Texas State Board of Examiners in Optometry and may issue to such persons a license to practice optometry in Texas, or in its discretion, may admit for full examination any person presenting an unrevoked certificate of examination from the Board of Examiners of any other state. [Id.]

Art. 4561. **To record license.**—It shall be unlawful for any person to begin to practice optometry within the limits of this State who has not registered in the county clerk's office of the county in which he resides, and in each county in which he practices, his license for so practicing as herein prescribed, together with his age, post-office address, place of birth, subscribed and verified by his oath. The fact of such oath and record shall be endorsed by the county clerk upon the license. The absence of record of such license in the county clerk's office shall be prima facie evidence of the lack of possession of such license to practice optometry. [Id.]

Art. 4562. **Optometry register.**—Each county clerk in this State shall purchase a book of suitable size to be known as the "Optometry Register" of such county, and set apart at least one full page for the registration of each optometrist, and record in said Optometry Register the name and record of each optometrist who presents for record a license or certificate issued by the State Board of Examiners in Optometry. The county clerk shall receive one dollar for each document registered as provided in this article, which shall be his full compensation for all duties herein required. When an optometrist shall have his license revoked, said county clerk, upon being notified by the board, shall make a note of the fact beneath the record in the Optometry Register, which entry shall close the record. On the first day of January in each year, said county clerk shall, upon the request of the board, certify to the secretary of the board a correct list of the optometrists then registered in the county, together with such other information as said board may require. [Id.]

Art. 4563. **Revocation of license.**—The right herein to practice optometry in this State may be revoked by any district court upon proof of the violation of the law in any respect in regard thereto, or for any cause for which the State Board of Examiners in Optometry is authorized to refuse to admit persons to examinations or to issue licenses as provided herein, and it shall be the duty of the several district and county attorneys of this State to file and prosecute proceedings in the name of the State upon request of any member of said board. [Id.]

Art. 4564. **Duty of licensee.**—Every person practicing optometry in this State shall display his license or certificate in a conspicuous place in the principal office where he practices optometry, and whenever required, exhibit such license or certificate to said board, or its authorized representative, and whenever practicing said profession of optometry outside of, or away from said office or place of business, he shall deliver to each person fitted with glasses a bill, which shall contain his signature, post-office address, and number of his license or certificate, together with a specification of the lenses and material furnished and the prices charged for the same respectively. [Id.]

Art. 4565. **Fees and expenses.**—The board shall charge a fee of fifteen dollars for examining an applicant for license, which fee must accompany the application. If an applicant, because of failure to pass examination, be refused a license, he shall, after six months, be permitted to take a second examination without additional fee. The fee for issuing a license or certificate shall be five dollars, to be paid to the secretary of the board. The fund realized from fees shall first be applied to the payment of all necessary expenses of the board and the remainder be applied, by order of the board, to compensating

members of the board in proportion to their labors. Said compensation shall in no case exceed twenty dollars per day for the time occupied. The board shall defray all expenses under this law from fees provided in this title and no part of same shall be paid from the State Treasury, nor shall any appropriation ever be made from the State Treasury for any expenditures made necessary by this law. All fees in excess of five thousand dollars remaining in the hands of the board at the end of any fiscal year shall be paid into the general fund of this State. [Id.]

Art. 4565a. **Fee.**—On or before January 1st, 1926, and on or before January 1st, of each year thereafter, every licensed optometrist in this State shall pay to the secretary-treasurer of the Texas State Board of Examiners in Optometry, an annual renewal fee of \$5.00 for the renewal of his or her license to practice optometry for the current year. Practicing optometry without an annual renewal certificate for the current year, as provided, shall be subject to all penalties prescribed by this Act, for practicing optometry without a license.

When an optometrist shall have failed to pay his annual renewal fee and said annual renewal fee has been due and unpaid for a period of one year, it shall be the duty of the board to notify such optometrist or optometrists by notifying him or them by notice sent by registered mail, and the return receipt to be the only valid evidence that said notice has been delivered and that he or they have been notified that said annual renewal fee is due and unpaid. Thirty days after date of receipt of such notice it shall be the duty of the board, under this Act, to declare the license void for non-payment of annual renewal fee. After a license has been declared void by the board for non-payment of annual renewal fee, it shall be the duty of the county clerk, of the county, in which such license may have been registered, upon receipt of notice from said board, to enter upon the optometry register of such county the fact that such license is void for non-payment of annual renewal fee and to notify the board in writing that such entry has been made. After the board has declared a license void, as provided for in this section, the board may thereafter, at its discretion, refuse to issue a new license until such optometrist, whose license has been declared void for non-payment of annual renewal fee, has passed the regular examination for license as provided for by this Act.

Art. 4565b. **Renewal license.**—On the receipt of said annual renewal fee by the Texas Board of Examiners in Optometry, it shall issue an annual renewal certificate, bearing the number of the license, the year for which renewed and other information from the records of the board that the said board may deem necessary to the proper enforcement of this Act.

Art. 4565c. **Defining terms.**—For the purpose of this Act, the words "Ascertaining and measuring the powers of vision of the human eye," as employed in Article 4552, shall be construed to include:

(1) The examination of the eye to ascertain the presence of defects or abnormal conditions which may be corrected, remedied, or relieved, or the effects of which may be corrected, remedied or relieved by the use of lenses or prisms, or

(2) The employment of any objective or subjective means to determine the accommodative or refractive condition, or the range or powers of vision of muscular equilibrium of the human eye, or

(3) The employment of any objective or subjective means for the examination of the human eye for the purpose of ascertaining any departure from the normal, measuring its power of vision or adapting lenses or prisms for the aid or relief thereof, and it shall be construed as a violation of this Act, for any person not a licensed optometrist or a licensed physician to do any one act or thing, or any combination of acts or things, named or described in this article; provided, that nothing herein shall be construed to permit optometrists to treat the eye for any defect whatsoever in any manner, nor to administer any drug or physical treatment whatsoever, unless said optometrist is a duly licensed physician and surgeon, under the laws of this State.

Art. 4565d. "Fitting Lenses."—For the purpose of this Act the words "and fitting lenses or prisms," as employed in Article 4552, shall be construed to include:

(1) Prescribing or supplying, directly or indirectly, lenses or prisms, by the employment of objective or subjective means or the making of any measurements whatsoever involving the eyes or the optical requirements thereof;

(2) The adaptation or supplying of lenses or prisms to correct, relieve or remedy any defect or abnormal condition of the human eye or to correct, relieve or remedy or attempt to correct, relieve or remedy the effect of any defect or abnormal condition of the human eye.

(3) It shall be construed as a violation of this Act for any person not a licensed optometrist or a licensed physician to do any one thing or act, or any combination of things or acts, named or described in this article.

Art. 4565e. **Selling as merchandise.**—For the purpose of this Act the words "Persons who sell spectacles and eye-glasses as merchandise," as employed in Article 4566, shall be construed to mean merchants who do not practice optometry, or offer to practice optometry, but who sell spectacles or eye-glasses as merchandise, after they have been selected by their customers alone without aid from the merchant, either in person or indirectly, or by the provision of any mechanical or eye-testing machine or self-testing eye-machine, either for purposes of exhibition or use, or offering to provide or providing any self-testing system or methods, or other means, either for purposes of exhibition of use, other than the particular and complete and ready-to-wear spectacles or eye-glasses selected by the customer in person from trays or other containers, containing such mer-

chandise, and any other method of sale or delivery shall be construed as practicing optometry.

Art. 4565f. **Acts unlawful.**—In the interest of public health, welfare, safety and comfort, after the passage of this Act, it shall be unlawful, and a violation hereof to:

(1) Sign or cause to be signed, a prescription for an ophthalmic lens without first making a personal examination of the eyes of the person prescribed for, or

(2) For any person licensed under this Act to practice optometry, when he, or she, is knowingly suffering from a contagious or infectious disease.

Art. 4565g. **Optical mechanics.**—Nothing in this Act shall be so construed as to prevent an optical mechanic from doing the merely mechanical work of manufacturing ophthalmic lenses or to prevent the sale of such ophthalmic lenses to those who are licensed and legally qualified to prescribe them, nor to prevent such optical machanic, who does not practice optometry, from following the specific directions of a competently and legally signed prescription where he does no more than manufacture or dispense the spectacles or eye-glasses, or component parts thereof, called for by such prescription. Nor shall this Act be so construed as to prevent selling ready-to-wear spectacles or eye-glasses as merchandise at wholesale to merchants for purposes of re-sale as merchandise, as provided for in this Act when neither the wholesaler nor merchant to whom he sells practices optometry.

Art. 4565h. **Spectacles as premiums.**—It shall be unlawful for any person in this State to give, or cause to be given, deliver, or cause to be delivered, in any manner whatsoever, any spectacles or eye-glasses, separate or together, as a prize or premium, or as an inducement to sell any book, paper, magazine or any work of literature or art, or any item of merchandise whatsoever.

Art. 4566. **Exceptions.**—Nothing in this Act shall be construed to apply to persons who sell spectacles and eye-glasses as merchandise; officers or agents of the United States or the State of Texas, in the discharge of their official duties; nor to prevent physicians and surgeons, duly licensed as such under the laws of the State of Texas regulating the practice of medicine, from treating the human eye or prescribing lenses or glasses, or fitting lenses or glasses for the aid thereof. [Acts 1925, p. 149.]

CHAPTER ELEVEN.

CHIROPODY.

| | Article | | Article |
|-----------------------------------|---------|--------------------------------|---------|
| Definitions | 4567 | Reciprocity | 4572 |
| Selecting board of examiners..... | 4568 | Revoking license | 4573 |
| Subjects of examination | 4569 | Compensation and expenses..... | 4574 |
| Examinations | 4570 | Exceptions | 4575 |
| Licenses | 4571 | | |

Art. 4567. **Definitions.**—“Chiropody” means the diagnosis, medical and surgical treatment of the human foot. A chiropodist is one who practices chiropody. [Acts 1923, p. 357.]

Art. 4568. **Selecting Board of Examiners.**—At the regular

annual meeting of the State Board of Medical Examiners, it shall each year select two physicians from its own membership and two graduate chiropodists, residents of this State, and actively engaged in the practice of chiropody, who together with the Secretary of the State Medical Examiners shall constitute the State Board of Chiropody Examiners which shall serve for a period of one year. [Id.]

Art. 4569. **Subjects of Examination.**—Any person, other than those exempt from examination under this law desiring a license to practice chiropody shall be examined by the Board of Chiropody Examiners in the following subjects: anatomy, chemistry, dermatology, diagnosis, materia medica, pathology, physiology, therapeutic clinical and orthopedic chiropody, limited in their scope to the treatment of the human foot. If the applicant possesses the qualifications required and shall pass the examination prescribed with a general average of seventy-five per cent in all subjects, and not less than fifty per cent in any one subject, he shall be issued a license by the said Chiropody Board to practice chiropody in this State. Each applicant before taking the examination shall pay to the secretary of said Chiropody Board an examination fee of fifty dollars. Any applicant failing in the examination, and being refused a license shall be entitled, at the expiration of six months from the time of such refusal, to a re-examination without the payment of an additional fee for such examination. [Id.]

Art. 4570. **Examinations.**—Examinations to procure a license to practice chiropody in this State shall be held semi-annually at such times and places as the Board of Chiropody Examiners shall fix. All applicants for a license to practice chiropody under the provisions of this law shall have attained the age of twenty-one years and shall be of good moral character; they shall have had at least one year of instruction in and be graduates of some school of chiropody recognized as being in good standing by the Board of Chiropody Examiners. No school of chiropody shall be accredited by said board as a school of good standing which does not require for graduation a course of study of at least two years. [Id.]

Art. 4571. **Licenses.**—All licensees shall be designated as "Registered Chiropodists", and shall not use any title or abbreviations thereof without the designation "Registered Chiropodist, practice limited to the foot", shall not mislead the public as to their limited professional qualifications to treat human ailments. All licenses shall be recorded in the same manner as medical licenses in the office of the district clerk of the county in which the licensee practices. Every registered chiropodist shall renew his license on July 1st, of each year by the payment to the secretary of the State Board of Chiropody Examiners for the State of Texas, a fee of one dollar, and if such renewal fee is not paid within three months subsequent to July 1st, of each year such license shall be considered revoked and shall be re-

issued upon another application and examination, and the payment of the examination fee of fifty dollars. All licenses granted under this Act shall be conspicuously displayed at the office or other place of practice of the licensee, [Acts 1923, p. 358.]

Art. 4572. **Reciprocity.**—Upon the payment of a fee of fifty dollars a license without examination may be issued to chiropractors of other states, removing to this State, maintaining statutory requirements equal to those fixed in this law for the practice of chiropractic and extending the same reciprocal privileges for the practice of chiropractic, to this State. [Id.]

Art. 4573. **Revoking license.**—The board may, after due hearing, refuse to grant or renew and may revoke any license issued under the provisions of this law to a person, otherwise qualified, who obtained such license by fraudulent representation or dishonesty in taking an examination; or who makes use of untruthful and improbable statements to patients or in his advertising, or for habitual intoxication, or for unprofessional and immoral conduct; or who gives away or sells drugs or alcohol for other than legitimate purposes in his practice; or who may be convicted of amputating the human foot or toe or of using an anesthetic other than local. When a license has been granted it shall not be revoked or the renewal thereof refused without at least fifteen days notice to the licensee, who shall be entitled to a hearing by the board, and shall have the right to be represented by counsel. At least ten days prior to the date of such hearing the licensee shall be notified of the filing of the charges and of the nature thereof. Any person licensed to practice chiropractic in this State whose license shall be cancelled by such board may, within thirty days after the cancellation thereof, and not thereafter, have his right of action for reinstatement against such board in the district court of Travis county. If the person whose license has been cancelled by the board shall, within ten days after receiving information of such cancellation, give written notice to the secretary of the board of his intention to file such suit, the action of the board in cancelling the license of such person shall be suspended for a period of thirty days, but unless such suit shall be filed within said time, the action of the board shall be final. If suit shall be filed against the board to reinstate such license within said time, the action of the board shall remain suspended until the validity of the license in question shall be determined by the court. In such suit the burden shall be upon the plaintiff to show cause for reinstatement of his license. The board may, at its discretion, in case license has been revoked or the renewal thereof refused, reissue such license at the expiration of six months from the time such license was revoked. [Id.]

Art. 4574. **Compensation and expenses.**—Each member of the board shall receive for his services ten dollars a day and necessary traveling and incidental expenses, while actually en-

gaged in the service of the board. The secretary shall receive his necessary expenses for services actually performed for the board. All printing, postage and other contingent expenses, necessarily incurred in administering this law shall be paid from the fees received by the board, and all expenses shall be itemized, verified, audited and an account kept thereof by the secretary of the board, who shall pay the same out of said fees which accrue to it. [Id.]

Art. 4575. **Exceptions.**—This law shall not apply to the physicians licensed by the State Board of Medical Examiners, nor to surgeons of the United States Army, Navy and United States Public Health Service, when in actual performance of their official duties. [Id.]

CHAPTER TWELVE.

EMBALMING.

| | | | |
|-------------------------------|--------------|----------------------------------|--------------|
| Embalmng board | Article 4576 | License revoked | Article 4580 |
| Duties and powers | 4577 | Department self-sustaining | 4581 |
| Application for license | 4578 | Provisions do not apply | 4582 |
| Renewal of license | 4579 | | |

Art. 4576. [4596-7-8] **Embalmng board.**—The State Board of Embalmng shall consist of five members, the term of each to be two years, to be appointed biennially by the State Board of Health on or before the first day of June. The members of said board shall be practical embalmers having experience in said business and the care and disposition of dead human bodies. The appointing board shall remove any such appointee for neglect of duty, incompetency or improper conduct. All temporary vacancies on such board shall be filled by the Board of Health for the unexpired term. The Board of Health shall furnish each appointee a certificate of appointment upon which shall be noted that such appointee has taken the official oath. [Acts 1903, p. 123.]

Art. 4577. [4599] **Duties and powers.** The Board of Embalmng shall have the power and it shall be its duty:

1. To prescribe and maintain a standard of proficiency as to the qualifications of those engaged, and who may engage in the practice of embalmng in connection with the care and disposition of dead human bodies in this State, and shall have the right, to be exercised at its discretion, to employ capable and efficient lecturers and demonstrators in the science of embalmng for the benefit of all licensed embalmers in this State. The said lecturers and demonstrators shall meet not more than once in each year with annual session of the Texas Funeral Directors' and Embalmers' Association.

2. To meet in regular session once a year at such time and place as may be determined by said board at its previous annual meeting. Special meetings may be held at such time and place as may be determined by the president of said board. Notice of such special meetings shall be given in at least three daily newspapers published in different cities in the State. The

board shall make an annual report to the State Health Officer on or before June first of each year on the condition of embalming in Texas, which shall embrace all the proceedings of the board and give an itemized account of money received and paid out and for what purpose; also the names of all embalmers duly licensed under this chapter. A copy of said report shall be furnished to each licensed embalmer in this State. The secretary of said board shall deliver all money on hand at the end of the term of each board to his successor in office.

3. To elect a president and secretary from the members of said board who shall serve for one year, or until their successors shall be elected and qualified.

4. To adopt rules, regulations and by-laws from time to time not inconsistent with the laws of this State or the United States, whereby the performance of all the duties of said board and the practice of embalming dead human bodies shall be regulated. [Id. Acts 1915, p. 211.]

Art. 4578. [4600] **Application for license.**—Any person engaged or desiring to engage in the practice of embalming in connection with the care and disposition of dead human bodies within this State shall make a written application to the State Board of Embalming for a license, accompanying the same with a license fee of ten dollars, whereupon the applicant shall come before said board at its regular annual meeting or at a special meeting thereof. If the board finds that the applicant is of good moral character, possessed of knowledge of the arterial system, the location of the heart, lungs, and other organs of the human body, and the location of abdominal, pleural and thoracic cavities, location of the carotid, brachial, radial, ulnar, femoral and tibial arteries, a knowledge of the science of embalming and the care and disposition of the dead, and has a reasonable knowledge of sanitation and the disinfection of the bodies of diseased persons, and the apartment, clothing and bedding in case of death by infectious or contagious diseases, the board shall issue to said applicant a license as a duly licensed embalmer, authorizing him to practice the science of embalming. Such license shall be signed by a majority of the board. All persons receiving license under the provisions of this law shall have said license registered in the county clerk's office in the county in which it is proposed to carry on said practice, and shall display said license conspicuously in the place of business of the licensee. [Id. Acts 1915, p. 180.]

Art. 4579. [4601] **Renewal of license.**—Every registered embalmer, who desires to continue the practice of his profession, shall annually thereafter during the time he shall continue in such practice, on such date as said board may determine, pay to the secretary of said board a fee of five dollars for the renewal of said license. [Id.]

Art. 4580. [4602] **License revoked.**—The Board of Embalming is hereby authorized for good cause to revoke any li-

cense issued by it subject to the right of appeal to the State Board of Health, whose decision shall be final. [Acts 1903, p. 123.]

Art. 4581. [4603] **Department self-sustaining.**—All expenses, salaries and per diem to the members of this board shall be paid from fees received under the provisions of this law, and shall in no manner be an expense to the State. All moneys received in excess of per diem allowance, and other expenses provided for, shall be held by the secretary of said board as a special fund for meeting the expenses of the board. [Id.]

Art. 4582. [4605] **Provisions do not apply.**—Nothing in this law shall apply to, or in any manner interfere with, the duties of any municipal, county and State officer, or State institution, nor apply to any person simply engaged in the furnishing of burial receptacles for the dead, but only to such person or persons engaged in the business of embalming in connection with the care and disposition of the dead. [Id.]

**CHAPTER THIRTEEN.
ANATOMICAL BOARD**

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| <table border="0" style="width: 100%;"> <tr> <td style="width: 80%;">Board and duties _____</td> <td style="width: 20%; text-align: right;">Article 4583</td> </tr> <tr> <td>Regulations for delivering bodies _____</td> <td style="text-align: right;">4584</td> </tr> <tr> <td>Distribution of bodies to institutions _____</td> <td style="text-align: right;">4585</td> </tr> <tr> <td>Regulations for moving bodies _____</td> <td style="text-align: right;">4586</td> </tr> </table> | Board and duties _____ | Article 4583 | Regulations for delivering bodies _____ | 4584 | Distribution of bodies to institutions _____ | 4585 | Regulations for moving bodies _____ | 4586 | | <table border="0" style="width: 100%;"> <tr> <td style="width: 80%;">May dissect bodies _____</td> <td style="width: 20%; text-align: right;">Article 4587</td> </tr> <tr> <td>Parties receiving bodies to give bond _____</td> <td style="text-align: right;">4588</td> </tr> <tr> <td>Expenses _____</td> <td style="text-align: right;">4589</td> </tr> <tr> <td>Compensation of board _____</td> <td style="text-align: right;">4590</td> </tr> </table> | May dissect bodies _____ | Article 4587 | Parties receiving bodies to give bond _____ | 4588 | Expenses _____ | 4589 | Compensation of board _____ | 4590 |
| Board and duties _____ | Article 4583 | | | | | | | | | | | | | | | | | |
| Regulations for delivering bodies _____ | 4584 | | | | | | | | | | | | | | | | | |
| Distribution of bodies to institutions _____ | 4585 | | | | | | | | | | | | | | | | | |
| Regulations for moving bodies _____ | 4586 | | | | | | | | | | | | | | | | | |
| May dissect bodies _____ | Article 4587 | | | | | | | | | | | | | | | | | |
| Parties receiving bodies to give bond _____ | 4588 | | | | | | | | | | | | | | | | | |
| Expenses _____ | 4589 | | | | | | | | | | | | | | | | | |
| Compensation of board _____ | 4590 | | | | | | | | | | | | | | | | | |

Art. 4583. [5756] **Board and duties.**—The professor of anatomy and the professor of surgery of each of the medical schools or colleges now incorporated, and of the several medical and dental schools and colleges which may hereafter be incorporated in this State are constituted a board, to be known as the Anatomical Board of the State of Texas, for the distribution and delivery of dead human bodies, hereinafter described, to and among such institutions as, under the provisions of this law, are entitled thereto. The board shall have power to establish rules and regulations for its government, and to appoint and remove proper officers of such board, and shall keep full and complete minutes of its transactions. Records sufficient for identification shall also be kept, under its direction, of all bodies received and distributed by said board and of persons to whom the same may be distributed, which minutes and records shall be open at all times to the inspection of each member of said board and of any district attorney or county attorney of this State. [Act 1907, p. 117, Sec. 1.]

Art. 4584. [5757] **Regulations for delivering bodies.**—All public officers, agents, and servants, and all officers, agents and servants of any county, city, town, district, or other municipality, and of any and every almshouse, prison, morgue, hospital, or any other public institution, other than the State Orphan's Home, the Confederate Home, the State Blind Institute, and the State Deaf and Dumb Institute, insane asylum, and epileptic colony, or any other home for the indigent, or other eleemosy-

nary institution maintained by the State, having charge or control of dead human bodies required to be buried at public expense, are hereby required, after notification in writing by said board or its duly authorized officers, or persons designated by the authorities of said board, then and thereafter to announce to said board, its authorized officer or agent, whenever such body or bodies come into his or their possession, charge or control, and shall without fee or reward greater than the value of such fee as was paid in any county, city, town, or municipality on the third day of April, 1907, for the burial of pauper bodies, deliver such body or bodies, and permit the said board and its agents and the physicians and surgeons, from time to time designated by them, who may comply with the provisions of this law, to take and remove all such bodies as are not desired for post mortem examinations by the medical staff of public hospitals or institutions for the insane, to be used within this State for the advancement of medical science; but no such notice need be given, nor any such body be delivered, if any person claiming to be and satisfying the authorities in charge of such body that he or she is of a kindred or is related by marriage to the deceased, or is a bona fide friend or representative of an organization of which the deceased was a member, shall claim the said body for burial, but it shall be surrendered without cost to such claimant for interment, or shall, upon such claimant's request, be interred in the manner provided for the interment of bodies not coming within the operation of this law. No notice shall be given for the body to be delivered, if the deceased died of contagious disease, save tuberculosis, or syphilis; nor shall notice be given if such deceased person were a traveler who died suddenly, in which cases the body shall be buried. It is further required that due effort be made by those in charge of such almshouse, prison, morgue, hospital or other public institution having charge or control of such dead human bodies, to find kindred or relatives of such deceased and notify him or her of the death; and failure to claim such body by kindred or relation within twenty-four hours after receipt of such notification shall be recognized as bringing such body under the provisions of this law, and delivery shall be made as soon thereafter to said board, its officers, or agents as may be possible. Such person in charge of such public institution shall file with the county judge an affidavit that he has made diligent inquiry to find the kindred or relatives of the deceased, stating such inquiry as he has made. In case a body is claimed by relatives within ten days after it has been delivered to an institution or person entitled to receive the same under the provisions of this law, it shall be delivered to them for burial and without cost. [Id., Sec. 2.]

Art. 4585. [5758] **Distribution of bodies to institutions.**—The board, or their duly authorized agents, may take and receive such bodies so delivered as aforesaid, and shall, upon receiving them, distribute and deliver them to and among the

schools, colleges, physicians and surgeons aforesaid in the manner following: Those bodies needed for lecture and demonstration in the said incorporated schools and colleges shall first be supplied; the remaining bodies shall then be distributed proportionately and equitably, the number assigned to each to be based upon the number of students receiving instruction or demonstration in normal or morbid anatomy and operative surgery, which number shall be certified by the dean of each school or college to the board at such times as it may direct. Instead of receiving and delivering said bodies themselves through their agent or servant, the said board may, from time to time, either directly or by their designated officer or agent authorize physicians and surgeons to receive them, and the number which each shall receive. [Id. Sec. 3.]

Art. 4586. [5759] **Regulations for moving bodies.**—The board may employ public carriers for the conveyance of said bodies, which shall be carefully deposited, with the least possible public display. The sender shall keep on permanent file a description by name, color, sex, age, place and cause of death of each body transmitted by him; or where the body shall be one of a person unknown, the color, age, sex, place and supposed cause of death; and any other data available for identification, such as scars, deformities, etc., shall be put on record. A duplicate of this description shall be mailed, or otherwise safely conveyed, to the person or institution to whom the body is being sent; and the person or institution receiving such body shall, without delay, safely transmit to the sender a receipt for the same in the full terms of the description furnished by the sender. All these records shall be filed in a manner to be determined by the board so that they may be at any time available for inspection by the board, or any district or county attorney of this State. [Id. Sec. 4.]

Art. 4587. [5760] **May dissect bodies.**—Any and all schools, colleges, and persons who may be designated by said Anatomical Board shall be authorized to dissect, operate upon, examine, and experiment upon such bodies hereinbefore described and distributed for the furtherance of medical science; and such dissections, operations, examinations, and experiments shall not be considered as amenable under any existing laws for the prevention of mutilation of dead human bodies. Such persons, schools, or colleges shall keep a permanent record, sufficient for identification of each body received from such anatomical board or agent, which record shall be subject to inspection by the board, or its authorized officer or agent. The board shall also have power to authorize incorporated schools or colleges and individual physicians and surgeons to experiment on the lower animals under bond as hereinafter designated. [Id. Sec. 5.]

Art. 4588. [5761] **Parties receiving bodies to give bond.**—No school, college, physician, or surgeon shall be allowed or

permitted to receive any such body or bodies until bond shall have been given to the State by such physician or surgeon, or by or in behalf of such school or college, to be approved by the clerk of the county court in and for the county in which such physician or surgeon may reside, or in which such school or college may be situated, and to be filed in the office of said clerk; which bond shall be in the penal sum of one thousand dollars, conditioned that all such bodies which the said physician or surgeon, or said college, shall receive thereafter shall be used, and that all experiments on the lower animals shall be conducted only for the promotion of medical science. [Id. Sec. 6.]

Art. 4589. [5762] Expenses.—Neither the State, nor any county, nor municipality, nor any officer, agent or servant thereof, shall be at any expense by reason of the delivery or distribution of any such body; but all expense thereof, and of said board of distribution, shall be paid by those receiving the bodies in such manner as may be specified by said Anatomical Board, or otherwise agreed upon. [Id. Sec. 7.]

Art. 4590. [5763] Compensation of board.—No compensation other than actual traveling expenses shall be received for their services in this capacity by members of this board. [Id. Sec. 9.]

TITLE 72.**HOLIDAYS—LEGAL.**

Art. 4591. [4606] [2939] Enumeration.—The first day of January, the twenty-second day of February, the second day of March, the twenty-first day of April, the third day of June, the fourth day of July, the first Monday in September, the twelfth day of October, the eleventh day of November, and the twenty-fifth day of December, of each year, and all days appointed by the President of the United States, or by the Governor, as days of fasting and thanksgiving, and every day on which an election is held throughout the State, are declared legal holidays, on which all the public offices of the State may be closed, and shall be considered and treated as Sunday or the Christian Sabbath for all purposes regarding the presenting for payment or acceptance and of protesting for and giving notice of the dishonor of bills of exchange, bank checks and promissory notes placed by the law upon the footing of bills of exchange. [Acts 1893, p. 4; Acts 1911, p. 52; Acts 1921, p. 99.]

TITLE 73.

HOTELS AND BOARDING HOUSES.

Art. 4592. **Liability for valuables.**—Any hotel, apartment hotel or boarding house keeper, who constantly has in his hotel, apartment hotel or boarding house a metal safe or vault in good order and fit for the custody of money, jewelry, articles of gold or silver manufacture, precious stones, personal ornaments, or documents of any kind, and who keeps on the doors of the sleeping rooms used by guests suitable locks or bolts and proper fastening on the transom and window of said room, shall not be liable for the loss or injury suffered by any guest on account of the loss of said valuables in excess of the sum of fifty dollars, which could reasonably be kept in the safe or vault of the hotel, unless said guest has offered to deliver such valuables to said hotel, apartment hotel or boarding house keeper for custody in such metal safe or vault, and said hotel, apartment hotel or boarding hotel or boarding house keeper has omitted or refused to deposit said valuables in such safe or vault and issue a receipt therefor; provided, such loss or injury does not occur through the negligence or wrong doing of said hotel, apartment hotel or boarding house keeper, his servants, or employes, and that a printed copy of this law is posted on the door of the sleeping room of such guest. [Acts 1923, p. 317.]

Art. 4593. **Gratuitous bailee.**—Whenever any person shall allow his baggage or other property to remain in any hotel, apartment hotel or boarding house after the relation of innkeeper and guest has ceased without checking same, or shall leave his baggage or other property in the lobby of any hotel, apartment hotel or boarding house prior to checking it or becoming a guest, or shall forward any baggage to such hotel, apartment hotel or boarding house before becoming a guest, said hotel, apartment hotel or boarding house keeper may, at his option, hold such baggage or other property at the risk of said owner. If any person should check his baggage or other property at any hotel, apartment hotel or boarding house and leave it there free of charge for a period of one week without being a guest, said hotel, apartment hotel or boarding house keeper may, after the expiration of such time and in the absence of any special agreement, hold such baggage or other property at the risk of the owner. [Id.]

Art. 4594. [5663] [3318] [3182] **Lien.**—Proprietors of hotels or boarding houses shall have a lien on the baggage and other property of guests in such hotel or boarding house, for all sums due for board, lodging, extras furnished or money advanced at the request of such guest, and shall have the right to retain possession of such baggage or other property until the amount of such charges is paid. Such baggage and other property shall be exempt from attachment or execution while in the

possession of such proprietor. [Acts 1874, p. 200; G. L., Vol. 8, p. 202; Acts 1919, p. 117.]

Art. 4595. **Sale to satisfy lien.**—The keeper of the inn, boarding house or hotel shall retain such baggage and other property upon which he has a lien for a period of thirty days, at the expiration of which time if such lien is not satisfied, he may sell such baggage or other property, at public auction, first giving notice of the time and place of sale by posting at least three notices thereof in public places in the county where the inn, hotel or boarding house is situated and also by mailing a copy of such notice to said guest or boarder at the place of residence shown on the register of such inn or hotel, if shown. After satisfying the lien and any costs that may accrue, the residue shall on demand, within sixty days be paid such guest or boarder. If not demanded within sixty days, from date of sale, such residue shall be deposited by such keeper with the treasurer of the county in which said hotel, inn or boarding house is located, accompanied with a sworn true and correct statement. Such residue shall be retained by the county treasurer and if not claimed within one year by the owner thereof, such treasurer shall pay the same into the State Treasury, and it shall be placed to the credit of the escheat fund. [Acts 1919, p. 117.]

Art. 4596. **Definition.**—As used herein, a hotel or inn includes rooming houses, and is a place where the business is to furnish food and lodging or either, to all who apply and pay therefor. [Id.]

TITLE 74.

HUMANE SOCIETY.

Art. 4597. **Appointment of Bureau.**—The Governor shall appoint a State Bureau of Child and Animal Protection which shall not have less than nine nor more than twenty-one members from the members of the directorate of the Texas State Humane Society. The Governor, the Superintendent of Public Instruction and the Attorney General shall be ex-officio members of the Board of Directors of said State Bureau. [Acts 1913, p. 103.]

Art. 4598. **Duty of Bureau.**—It shall be the duty of said bureau to secure the enforcement of the laws for the prevention of wrongs to children and dumb animals as now or hereafter defined by law; to appoint local and State agents to assist in this work; to assist the organization of district and county societies, and to give them representation in the State Bureau; to aid such societies and agents in the enforcement of the laws for the prevention of wrongs to children and dumb animals as prescribed by law; and to promote the growth of education and sentiment favorable to the protection of children and dumb animals. [Id.]

Art. 4599. **Annual meeting.**—Said bureau shall hold its annual meeting on the second Monday in November in each year, at the State capitol, for the transaction of its business and the election of officers, at which meeting all questions relating to child and animal protection may be considered. [Id.]

Art. 4600. **Annual Report.**—The said bureau shall make an annual report before the first day of January of each year to the Secretary of State, embracing the proceedings of the Bureau for the preceding year, and statistics showing the work of the Bureau and its agents and county and district societies throughout the State, together with such papers, facts and recommendations as they may deem useful to the interests of the children and dumb animals in the State, said report to be fully prepared for publication. The Secretary of State shall cause the same to be published in pamphlet or book form by the State, under the supervision of the Bureau. [Id.]

Art. 4601. **Distribution of Report.**—The number of copies of said report to be published shall not be less than five thousand, all bound in uniform style, every two years in one volume, and shall be distributed by the Secretary of State as follows: ten copies, each, to the Governor, Secretary of State, Comptroller and State Treasurer, five to each judge of the Supreme Court, and the Attorney General, two to each member of the Legislature, and one to each judge and clerk of the district, county and federal courts, one to each county commissioner, one to each newspaper office in the State, ten each to the State University, State Industrial Schools, and the Warden of the penitentiary, two to each college of learning in the State, two to each of the other State Boards, and the remainder to the Bureau of Child and Animal Protection. [Id.]

TITLE 75.

HUSBAND AND WIFE.

| | | | |
|--------------------------------|------|--------------------------------|------|
| Chapter | Page | Chapter | Page |
| 1 Celebration of marriage..... | 1263 | 3 Rights of married women..... | 1265 |
| 2 Marriage contracts..... | 1264 | 4 Divorce..... | 1268 |

CHAPTER ONE.

CELEBRATION OF MARRIAGE.

| | | | |
|------------------------------------|--------------|--|--------------|
| Who authorized to celebrate..... | Article 4602 | Record and return of license..... | Article 4606 |
| Who shall not marry..... | 4603 | Certain intermarriages prohibited..... | 4607 |
| License..... | 4604 | Marriages by bond, etc..... | 4608 |
| Consent of parent or guardian..... | 4605 | Cohabitation of slaves..... | 4609 |

Art. 4602. [4608] [2954] [2838] **Who authorized to celebrate.**—All licensed or ordained ministers of the gospel, Jewish rabbis, judges of the district and county courts, and justices of the peace are authorized to celebrate the rites of matrimony between persons legally authorized to marry. [Acts 1866, p. 72; Acts 1891, p. 96; P. D., 7119; G. L., Vol. 5, p. 990; G. L., Vol. 10, p. 98.]

Art. 4603. [4609] [2955] [2839] **Who shall not marry.**—Males under sixteen and females under fourteen years of age shall not marry. [Id.]

Art. 4604. [4610] [2956] [2840] **License.**—Persons who desire to marry shall procure from the county clerk a license directed to all persons authorized by law to celebrate the rites of matrimony, which shall be sufficient authority to celebrate such marriage. [Acts 1837, p. 234; G. L. Vol. 1, p. 1294.]

Art. 4605. [4611] [2957] [2841] **Consent of parent or guardian.**—No clerk shall issue a license without the consent of the parent or guardian of the parties applying, if there be a guardian. Such consent may be given in person, or in writing signed and acknowledged by said parent or guardian before an officer authorized to take acknowledgments, unless the parties so applying are, in the case of the male twenty-one years of age, and in case of the female eighteen years of age. If there be any doubt in the mind of the clerk, he shall not issue said license unless there shall be presented to him a sworn certificate from the parent or guardian or some person other than the contracting parties that the contracting parties have attained the ages aforesaid. Nothing herein shall be construed to affect the issuance of marriage license in seduction prosecution. If a minor has neither parent nor guardian, then the clerk shall not issue a license without the consent of the county judge of the county of the residence of such minor, such consent to be in writing and signed and acknowledged by such county judge. [P. D., 4667; Acts 1911, p. 63.]

Art. 4606. [4612] [2958] [2842] **Record and return of license.**—The clerk shall record all licenses so issued by him in a well bound book kept for that purpose. It shall be the duty of the person solemnizing the rites of matrimony to indorse the

same on the license and return it to the county clerk within sixty days after the celebration aforesaid; such return shall be recorded with the license. [P. D., 4668.]

Art. 4607. [4613] [2959] [2843] **Certain intermarriages prohibited.**—It shall not be lawful for any person of Caucasian blood or their descendants to intermarry with Africans or the descendants of Africans. If any person shall violate any provision of this article, such marriage shall be null and void. [P. D., 4670; P. C., 346.]

Art. 4608. [4614-15] [2960-61] [2844-45] **Marriages by bond, etc., validated.**—All marriages by bond or those performed by officers of justice not authorized to celebrate the rites of matrimony, and those marriages celebrated agreeably to the custom of the times, which occurred prior to the passage of an Act approved June 5, 1837, regulating marriages and for other purposes, are legal and valid, and the issue of such persons are legitimate children capable of inheritance. [Acts 1841, p. 126; P. D., 4671; G. L., Vol. 2, p. 640.]

Art. 4609. [4616] [2962] [2846] **Cohabitation of slaves.**—All persons who at any time heretofore have lived together as man and wife, and both of whom by the laws of bondage, were precluded from the rites of matrimony, and continued to live together until the death of one of the parties shall be considered as having been legally married, and the issue of such cohabitation is declared legitimate; and all such persons as were so living together in such relation on the fifteenth day of August, 1870, shall be considered as having been legally married, and the children born of such cohabitation are declared legitimate. [Acts 1870, p. 127; P. D., 7120; G. L., Vol. 6, p. 301.]

CHAPTER TWO.

MARRIAGE CONTRACTS.

Art. 4610. [4617-19] **Stipulations.**—Parties intending to marry may enter into such stipulations as they may desire, provided they be not contrary to good morals or to some rule of law; and in no case shall they enter into an agreement, or make any renunciation, the object of which would be to alter the legal orders of descent, either with respect to themselves, in what concerns the inheritance of their children or posterity, which either may have by any other person, or in respect to their common children; nor shall they make any agreement to impair the legal rights of the husband over the persons of their common children. No matrimonial agreement shall be altered after the celebration of the marriage. [Acts 1840, p. 3; P. D., 4632; G. L., Vol. 2, p. 177.]

Art. 4611. [4618] [2964] [2848] **How authenticated.**—Every matrimonial agreement must be acknowledged before an officer authorized to take acknowledgments to deeds and attested by at least two witnesses; the minor capable of contract-

ing matrimony may give his consent to any agreement which this contract is susceptible of, but such agreement must be made by the written consent of both parents, if both be living; if not, by that of the survivor; if both be dead, then by the written consent of the guardian of such minor. [P. D., 4633.]

Art. 4612. [4620] [2966] [2850] **Reservation by wife recorded.**—When the wife, by a marriage contract, reserves to herself any property, or rights to property, whether such rights be in esse or expectancy, such reservation to be valid as to the subsequent purchasers or creditors of her husband, must be acknowledged and recorded as provided by law. [P. D., 4635.]

CHAPTER THREE.

RIGHTS OF MARRIED WOMEN.

| | Article | | Article |
|------------------------------------|---------|-------------------------------------|---------|
| Husband's separate property..... | 4613 | Community property liable for | 4620 |
| Wife's separate property..... | 4614 | debts..... | 4621 |
| Compensation for personal injuries | 4615 | Community property not liable..... | 4621 |
| to wife..... | 4615 | Funds in bank..... | 4622 |
| Wife's separate property protect- | 4616 | Subject to debts of wife..... | 4623 |
| ed..... | 4616 | Judgment and execution..... | 4624 |
| When wife may convey, etc..... | 4617 | Female emancipated by marriage..... | 4625 |
| Sale of homestead..... | 4618 | Application to be feme sole..... | 4626 |
| Community property..... | 4619 | Rights of persons married else | 4627 |
| | | where..... | |

Art. 4613. [4621] [2967] [2851] **Husband's separate property.**—All property of the husband, both real and personal, owned or claimed by him before marriage, and that acquired afterwards by gift, devise, or descent, as also the increase of all lands thus acquired, and the rents and revenues derived therefrom, shall be his separate property. The separate property of the husband shall not be subject to the debts contracted by the wife, either before or after marriage, except for necessaries furnished herself and children after her marriage with him, nor for torts of the wife. During marriage the husband shall have the sole management, control and disposition of his separate property, both real and personal. [Acts 1848, p. 77; G. L., Vol. 3, p. 77; Const., Art. 16, Sec. 15; Acts 1913, p. 61; Acts 1917, p. 436; Acts 1921, p. 251.]

Art. 4614. [4621] [2967] [2851] **Wife's separate property.**—All property of the wife, both real and personal, owned or claimed by her before marriage, and that acquired afterward by gift, devise or descent, as also the increase of all lands thus acquired, and the rents and revenues derived therefrom, the interest on bonds and notes belonging to her and dividends on stocks owned by her, shall be the separate property of the wife. The wife shall have the sole management, control and disposition of her separate property, both real and personal; provided however, the joinder of the husband in the manner now provided by law for conveyances of the separate real estate of the wife shall be necessary to the incumbrance or conveyance by the wife of her lands, and the joint signature of the husband and wife shall be necessary to a transfer of stocks and bonds

belonging to her or of which she may be given control by this law. [Id.]

Art. 4615. **Compensation for personal injuries to wife.**—All property or moneys received as compensation for personal injuries sustained by the wife shall be her separate property, except such actual and necessary expenses as may have accumulated against the husband for hospital fees, medical bills and all other expenses incident to the collection of said compensation. [Acts 1915, p. 103.]

Art. 4616. [4621] [2967] [2851] **Wife's separate property protected.**—Neither the separate property of the wife, nor the rents from the wife's separate real estate, nor the interest on bonds and notes belonging to her, nor dividends on stocks owned by her, nor her personal earnings, shall be subject to the payment of debts contracted by the husband nor of torts of the husband. [Acts 1848, p. 77; G. L., Vol. 3, p. 77; Const., Art. 16, Sec. 15; Acts 1913, p. 61; Acts 1917, p. 436; Acts 1921, p. 251.]

Art. 4617. [4621] [2967] [2851] **When wife may convey, etc.**—If the husband be insane or shall have permanently abandoned his wife, or shall refuse to join in such encumbrance, conveyance or transfer of such property, the wife may apply to the district court of the county of her residence, and the court, in term time or vacation, upon satisfactory proof that such encumbrance, conveyance or transfer would be advantageous to the interests of the wife, shall make an order granting her permission to make such encumbrance, conveyance or transfer without the joinder of her husband, and she may then encumber, convey or transfer said property without such joinder. [Id.]

Art. 4618. [4621] [2967] [2651] **Sale of homestead.**—The homestead, whether the separate property of the husband or wife, or the community property of both, shall not be disposed of except by the joint conveyance of both the husband and the wife, except where the husband is insane or has permanently abandoned the wife, in which instances the wife may sell and make title to any such homestead, if her separate property, in the manner herein provided for conveying or making title to her other separate property. [Id.]

Art. 4619. [4622-3] **Community property.**—All property acquired by either the husband or wife during marriage, except that which is the separate property of either, shall be deemed the common property of the husband and wife, and during coverture may be disposed of by the husband only. All the effects which the husband and wife possess at the time the marriage may be dissolved shall be regarded as common effects or gains, unless the contrary be satisfactorily proved. [Acts 1840, p. 3; G. L., Vol. 2, p. 177; Acts 1913, p. 61.]

Art. 4620. [4627] [2973] [2857] **Community property liable for debts.**—The community property of the husband and wife shall be liable for their debts contracted during marriage, except in such cases as are specially excepted by law. [Acts 1856, p. 51; G. L., Vol. 4, p. 469; P. D., 4646.]

Art. 4621. [4621] [2967] [2851] **Community property not liable.**—The community property of the husband and wife shall not be liable for debts or damages resulting from contracts of the wife except for necessaries furnished herself and children, unless the husband joins in the execution of the contract; provided, that her rights with reference to the community property on permanent abandonment by the husband shall not be affected by this provision. [Acts 1848, p. 77; Const., Art. 16, Sec. 15; Acts 1913, p. 61; Acts 1917, p. 436; Acts 1921, p. 252.]

Art. 4622. [4622] [2968] [2852] **Funds in bank.**—Funds on deposit in any bank or banking institution, whether in the name of the husband or wife, shall be presumed to be the separate property of the party in whose name they stand, regardless of who made the deposit, and unless said bank or banking institution is notified to the contrary, it shall be governed accordingly in honoring checks and orders against such account. [P. D. 4642; Acts 1913, p. 61.]

Art. 4623. [4624] [2970] [2854] **Subject to debts of wife.**—Neither the separate property of the husband nor the community property other than the personal earnings of the wife, and the income, rents and revenues from her separate property, shall be subject to the payment of debts contracted by the wife, except those contracted for necessaries furnished her or her children. The wife shall never be the joint maker of a note or a surety on any bond or obligation of another without the joinder of her husband with her in making such contract. [Id. Acts 1848, p. 77; G. L. Vol. 3, p. 77.]

Art. 4624. [4625] [2971] [2855] **Judgment and execution.**—Upon the trial of any suit as provided for in the preceding article, if it shall appear to the satisfaction of the court and jury that the debts so contracted or expenses so incurred were for the purposes enumerated in said article, and also that the debts so contracted or expenses so incurred were reasonable and proper, the court shall decree that execution may be levied upon either the common property or the separate property of the wife at the discretion of the plaintiff. [P. D. 4644.]

Art. 4625. [4628] [2974] [2953] **Female emancipated by marriage.**—Every female under the age of twenty-one years who shall marry in accordance with the laws of this State, shall, from and after the time of such marriage, be deemed to be of full age and shall have all the rights and privileges to which she would have been entitled had she been at the time of her marriage of full age. [Acts 1848, p. 77; G. L. Vol. 3, p. 77.]

Art. 4626. **Application to be feme sole.**—Any married woman within this State may, with the consent of and joined by her husband, apply by written petition addressed to the district court of the county in which she may be a bona fide resident for judgment or orders of the said court removing her disabilities of coverture and declaring her feme sole for mercantile and trading purposes. Such petition shall set out the causes which

make it to the advantage of said married woman to be so declared feme sole, and shall be filed and docketed as in other cases, and at any time thereafter the district court may, in term time, take up and hear said petition and evidence in regard thereto. If upon a hearing of said petition and evidence relating thereto, it appears to the court that it would be to the advantage of the woman applying, then said court shall enter its decree declaring said married woman feme sole for mercantile or trading purposes, and thereafter she may, in her own name, contract and be contracted with, sue and be sued, and all of her separate property not exempt from execution under the laws of Texas shall thereafter be subject to her debts and liable under execution therefor, and her contracts and obligations shall be binding on her. [Acts 1911, p. 92.]

Art. 4627. [4629] [2975] [2859] **Rights of persons married elsewhere.**—The marital rights of persons married in other countries who may remove to this State shall, in regard to property acquired in this State, during the marriage, be regulated by the laws of this State. [P. D. 4639.]

CHAPTER FOUR.

DIVORCE.

| | Article | | Article |
|------------------------------------|---------|-------------------------------|---------|
| Annulment | 4628 | Inventory and appraisal | 4635 |
| Grounds for divorce | 4629 | Temporary orders | 4636 |
| Adultery and seduction | 4630 | Alimony | 4637 |
| Residence of plaintiff | 4631 | Division of property | 4638 |
| Procedure | 4632 | Children | 4639 |
| Testimony of husband or wife | 4633 | Remarriage | 4640 |
| Debts created after suit | 4634 | Costs | 4641 |

Art. 4628. [4630] [2976] [2860] **Annulment.**—The marriage relation may be dissolved where the causes alleged therefor shall be natural or incurable impotency of body at the time of entering into the marriage contract, or any other impediment that renders such contract void, and the court may decree the marriage to be null and void. [Acts 1841, p. 19; G. L. Vol. 2, p. 483.]

Art. 4629. [4631-2] **Grounds for divorce.**—Except where the husband or wife is insane, a divorce may be decreed in the following cases:

1. Where either party is guilty of excesses, cruel treatment or outrages toward the other, if such ill treatment is of such a nature as to render their living together insupportable.

2. In favor of the husband, where his wife shall have been taken in adultery, or where she shall have voluntarily left his bed and board for the space of three years with the intention of abandonment.

3. In favor of the wife, where the husband shall have left her for three years with intention of abandonment, or where he shall have abandoned her and lived in adultery with another woman.

4. Where a husband and wife have lived apart without cohabitation for as long as ten years.

5. In favor of either the husband or wife, when the other shall have been convicted, after marriage, of a felony and imprisoned in the State penitentiary; provided, that no suit for divorce shall be sustained because of the conviction of either party for felony until twelve months after final judgment of conviction, nor then if the Governor shall have pardoned the convict; provided that the husband has not been convicted on the testimony of the wife; nor the wife on the testimony of the husband. [Acts 1876, p. 16; G. L. Vol. 8, p. 852; Acts 1913, p. 183.]

Art. 4630. [4632—5] **Adultery and seduction.**—In any suit for divorce for the cause of adultery, if it shall be proved that the complainant has been guilty of the like crime, or has admitted the defendant into conjugal society or embraces after he or she knew the criminal fact, or that the complainant, if the husband, connived at his wife's prostitution, or exposed her to lewd company, whereby she became ensnared to the crime aforesaid, it shall be a good defense and a perpetual bar against said suit; or if it appears that the adultery complained of is occasioned by collusion of the parties, and done with the intention to procure a divorce, or where both parties shall be guilty of adultery, then no divorce shall be decreed. A man who to escape prosecution for seduction marries the woman he seduced shall not be entitled to a divorce for any cause within three years after such marriage. [Acts 1873, p. 117; G. L. Vol. 7, p. 569; Acts 1913, p. 183.]

Art. 4631. [4632] [2978] [2862] **Residence of plaintiff.**—No suit for divorce shall be maintained in the courts of this State unless the petitioner for such divorce shall at the time of exhibiting his or her petition, be an actual bona fide inhabitant of this State for a period of twelve months, and shall have resided in the county where the suit is filed for six months next preceding the filing of same. A citizen of this State who is or has been absent from this State for more than six months in the military or naval service of the United States or of this State, shall be entitled to sue for divorce in this State and in the county in which such person had his or her residence before entering such service. [Acts 1921, p. 163; Id.]

Art. 4632. [4632-3] **Procedure.**—Suit shall not be heard or divorce granted before the expiration of thirty days after the same is filed. In all such suits the defendant shall not be compelled to answer upon oath nor shall the petition be taken as confessed for want of answer, but the decree of the court shall be rendered upon full and satisfactory evidence, upon the judgment of the court affirming the material facts alleged in the petition. Either party may demand a jury. [Id.]

Art. 4633. [4633] [2979] [2863] **Testimony of husband or wife.**—In all such suits and proceedings the husband and wife shall be competent witnesses for and against each other, but neither party shall be compelled to testify as to any matter that

will criminate himself or herself; and where the husband or wife testifies, the court or jury trying the case shall determine the credibility of such witness and the weight to be given such testimony; but no divorce shall be granted upon the evidence of either husband or wife, if there be any collusion between them.

Art. 4634. [4637] [2983] [2867] **Debts created after suit.**—On and after the day on which the suit for divorce shall be brought, it shall not be lawful for the husband to contract any debts on account of the community, nor to dispose of the lands belonging to the same; and any alienation made by him after that time shall be null and void, if it be proved to the satisfaction of the court that such alienation was made with a fraudulent view of injuring the rights of the wife. [P. D. 3457.]

Art. 4635. [4638] [2984] [2868] **Inventory and appraisement.**—At any time during a suit for divorce the wife may, for the preservation of her rights, require an inventory and an appraisement to be made of both real and personal estate which are in the possession of the husband, and an injunction restraining him from disposing of any part thereof in any manner. [P. D. 3458.]

Art. 4636. [4639] [2985] [2869] **Temporary orders.**—Pending suit for a divorce the court, or the judge thereof, may make such temporary orders respecting the property and parties as shall be deemed necessary and equitable. [P. D. 3454.]

Art. 4637. [4640] [2986] [2870] **Alimony.**—If the wife, whether complainant or defendant, has not a sufficient income for her maintenance during the pendency of the suit for a divorce, the judge may, either in term time or in vacation, after due notice, allow her a sum for her support in proportion to the means of the husband, until a final decree shall be made in the case. [P. D. 3456.]

Art. 4638. [4634] [2980] [2864] **Division of property.**—The court pronouncing a decree of divorce shall also decree and order a division of the estate of the parties in such a way as the court shall deem just and right, having due regard to the rights of each party and their children, if any. Nothing herein shall be construed to compel either party to divest himself or herself of the title to real estate. [P. D. 3452.]

Art. 4639. [4636-41] **Children.**—A divorce shall not in anywise affect the legitimacy of the children of the parents so divorced. The court shall have power, in all divorce suits, to give the custody and education of the children to either father or mother, as the court shall deem right and proper, having regard to the prudence and ability of the parents, and the age and sex of the children, to be determined and decided on the petition of either party; and in the meantime to issue any injunction or make any order that the safety and well-being of any such children may require. [P. D. 3461.]

Art. 4640. [4632] [2978] [2862] **Remarriage.**—Neither party to a divorce suit, where a divorce is granted upon the

ground of cruel treatment, shall marry any other person for a period of twelve months next after such divorce is granted, but the parties so divorced may marry each other at any time. In all other cases either party may marry again after the dissolution of the marriage. [Acts 1873, p. 117; G. L. Vol. 7, p. 569; Acts 1913, p. 183; Acts 1921, p. 163.]

Art. 4641. [4642] [2988] [2872] **Costs.**—The court may award costs to the party in whose behalf the sentence or decree shall pass, or that each party shall pay his or her own costs, as the court shall deem reasonable.

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CIVIL STATUTES

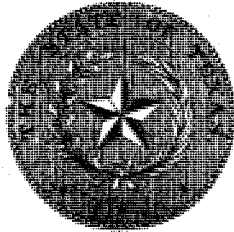
OF THE

STATE OF TEXAS

ADOPTED AT THE REGULAR SESSION OF THE
THIRTY-NINTH LEGISLATURE

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INCLUDING CONSTITUTION OF THE UNITED STATES AND
CONSTITUTION OF THE STATE OF TEXAS



(IN TWO VOLUMES)

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TITLE 76.

INJUNCTIONS.

1. IN GENERAL.

| Article | Article |
|--------------------------------------|---------------------------------------|
| Grounds for | Service and return |
| Issuance by non-resident judge | Notice |
| Against well or mine operator | Citation on independent writ |
| Against a judgment | Jurisdiction for trial |
| To stay execution | The answer |
| Sworn petition | Dissolution |
| Indorsement of judge | Bond on dissolution |
| Applicant's bond | Damages for delay |
| Filing and docketing | Disobedience |
| Requisites of writ | Appeals |
| Clerk to issue writ | Principles of equity applicable |

Art. 4642. [4643] [2989] **Grounds for.**—Judges of the district and county courts shall, in term time or vacation, hear and determine applications for and may grant writs of injunction returnable to said courts in the following cases:

1. Where the applicant is entitled to the relief demanded and such relief or any part thereof requires the restraint of some act prejudicial to him.

2. Where a party does some act respecting the subject of pending litigation or threatens or is about to do some act or is procuring or suffering the same to be done in violation of the rights of the applicant when said act would tend to render judgment ineffectual.

3. Where the applicant shows himself entitled thereto under the principles of equity, and the provisions of the statutes of this State relating to the granting of injunctions.

4. Where a cloud would be put on the title of real estate being sold under an execution against a party having no interest in such real estate subject to the execution at the time of the sale, or irreparable injury to real estate or personal property is threatened, irrespective of any legal remedy at law. [Acts 1907, p. 206; Acts 1909, p. 354; Const., Art. 5, Secs. 8, 16.]

Art. 4643. [4643] [2989] **Issuance by non-resident judge.**—No district judge shall grant a writ of injunction returnable to any other court than his own except in the following cases:

1. Where the resident judge cannot hear and act upon the application by reason of his absence, sickness, inability, inaccessibility, disqualification or refusal to act, when such facts are fully set out in the application or in an affidavit accompanying same, and if such judge refuses to act, such refusal shall be indorsed by said judge on such writ with his reasons therefor. In such case no district judge shall grant the writ when the application therefor has once been acted upon by another district judge of this State.

2. To stay execution, or to restrain foreclosure, sales under deeds of trust, trespasses, the removal of property, or acts injurious to or impairing riparian or easement rights, when satisfactory proof is made to such non-resident judge that it is impracticable for the applicant to reach the resident judge and

procure his action in time to effectuate the purpose of the application.

3. When the resident judge cannot be reached by the ordinary and available means of travel and communication in sufficient time to effectuate the purpose of the writ sought. In such case the applicant or his attorney seeking a writ on the ground of such inaccessibility shall attach to his application an affidavit fully stating the facts of such inaccessibility and his efforts made to reach and communicate with said judge, and the result thereof, and unless such efforts appear to have been fair and reasonable the application shall not be heard. Such injunction may be subsequently dissolved upon it being shown that the petitioner did not first make reasonable efforts to procure a hearing upon said application before the resident judge. [Id.]

Art. 4644. **Against well or mine operator.**—No injunction or temporary restraining order shall ever be issued prohibiting sub-surface drilling or mining operations on the application of an adjacent land owner claiming injury to his surface or improvements or loss of or injury to the minerals thereunder, unless the party against whom drilling or mining operations is alleged as a wrongful act is shown to be unable to respond in damages for such injury as may result from such drilling or mining operations; provided, however, that the party against whom such injunction is sought shall enter into a good and sufficient bond in such sum as the judge hearing the application shall fix, securing the complainant in the payment of any injuries that may be sustained by such complainant as the result of such drilling or mining operations. The court may, when he deems it necessary to protect the interests involved in such litigation, in lieu of such bond, appoint a trustee or receiver with such powers as the court may prescribe, to take charge of and hold the minerals produced from the lands of those complained against or the proceeds thereof subject to the final disposition of such litigation. [Acts 1919, p. 311.]

Art. 4645. [4647] [2990] **Against a judgment.**—No injunction shall be granted to stay any judgment or proceeding at law, except so much of the recovery or cause of action as the complainant shall in his petition show himself equitably entitled to be relieved against and so much as will cover the costs. [Acts 1848, p. 363; P. D. 3930.]

Art. 4646. [4648] [2991] **To stay execution.**—No injunction to stay an execution upon any valid and subsisting judgment shall be granted after the expiration of one year from the rendition of such judgment, unless it be made to appear that an application for such injunction has been delayed in consequence of the fraud or false promises of the plaintiff in the judgment, practiced or made at the time, or after rendition, of such judgment, or unless for some equitable matter or defense arising after the rendition of such judgment. If it be made to appear that the applicant was absent from the State at the time such

judgment was rendered and was unable to apply for such writ within the time aforesaid, such injunction may be granted at any time within two years from the date of the rendition of the judgment. [Id. P. D. 3931.]

Art. 4647. [4649] [2992] **Sworn petition.**—No writ of injunction shall be granted unless the applicant therefor shall present his petition to the judge verified by his affidavit and containing a plain and intelligible statement of the grounds for such relief. [P. D. 3929.]

Art. 4648. [4650] [2993] **Indorsement of judge.**—If it shall appear to the judge from the facts stated in the petition that the applicant is entitled to the writ, he shall indorse thereon or annex thereto his written order directing the clerk of the proper court to issue the writ of injunction prayed for, upon such terms and under such modifications, limitations and restrictions as may be specified in said order. The judge shall also specify in such order the amount of the bond to be given by the applicant as a prerequisite to the issuance of the writ. If the injunction be applied for to restrain the execution of a money judgment or the collection of a debt, the bond shall be fixed in double the amount of such judgment or debt. [P. D. 3933.]

Art. 4649. [4654] [2997] **Applicant's bond.** Upon the filing of the petition and order of the judge and before the issuance of the writ of injunction, the complainant shall execute and file with the clerk a bond to the adverse party, with two or more good and sufficient sureties, to be approved by such clerk in the sum fixed in the order of the judge granting the writ, conditioned that the complainant will abide the decision which may be made therein, and that he will pay all sums of money and costs that may be made therein, and that he will pay all sums of money and costs that may be adjudged against him if the injunction be dissolved in whole or in part. [P. D. 3933.]

Art. 4650. [4652] [2995] **Filing and docketing.**—Upon the grant of a writ of injunction, the party to whom the same is granted shall file his petition therefor, together with the order of the judge granting the same, with the clerk of the proper court; and, if such writ of injunction does not pertain to a pending suit in said court, the cause shall be entered on the civil docket of the court in its regular order in the name of the party to whom the writ is granted as plaintiff and of the opposite party as defendant.

Art. 4651. [4656] [2999] **Requisites of writ.**—The writ of injunction shall be sufficient if it contains substantially the following requisites:

1. Its style shall be, "The State of Texas."
2. It shall be directed to the person or persons enjoined.
3. It must state the names of the parties to the proceeding, plaintiff and defendant, and the nature of the plaintiff's application, with the action of the judge thereon.
4. It must command the person or persons to whom it is di-

rected to desist and refrain from the commission or continuance of the act enjoined, or to obey and execute such order as the judge has seen proper to make.

5. It shall state the term of the court to which it is returnable.

6. It shall be dated and signed by the clerk officially, and attested with the seal of his office and the date of its issuance must be indorsed thereon.

Art. 4652. [4655-7-8] **Clerk to issue writ.**—When the petition, order of the judge and bond are filed, the clerk shall issue the writ of injunction directed in such order, in conformity with the terms thereof, and deliver the same to the sheriff or any constable of the county of the residence of the person enjoined. If several persons are enjoined, residing in different counties, the writ shall issue to each such county.

Art. 4653. [4659] [3002] **Service and return.**—The officer receiving a writ of injunction shall indorse thereon the date of its receipt by him, and shall forthwith execute the same by delivering to the party enjoined a true copy thereof. The original shall be returned to the court from which it issued on or before the return day named therein with the action of the officer indorsed thereon or annexed thereto showing how and when he executed the same.

Art. 4654. [4651] [2994] **Notice.**—If it appear to the judge that delay will not prove injurious to either party, and that justice may be subserved thereby, he may cause notice of such application to be served upon the opposite party, his agent or attorney, in some manner as he may direct, and fix a time and place for the hearing of such application.

Art. 4655. [4662] [3005] **Citation on independent writ.**—On the issuance of a writ of injunction not pertaining to a suit pending in the court, the clerk of such court shall issue a citation to the defendant as in other civil cases, which shall be served and returned in like manner as ordinary citations issued from said court. No citation shall be necessary when notice is given as provided in the preceding article.

Art. 4656. [4653] [2996] **Jurisdiction for trial.**—Writs of injunction granted to stay proceedings in a suit, or execution on a judgment, shall be returnable to and tried in the court where such suit is pending, or such judgment was rendered; writs of injunction for other causes, if the party against whom it is granted be an inhabitant of the State, shall be returnable to and tried in the district or county court of the county in which such party has his domicile, according as the amount or matter in controversy comes within the jurisdiction of either of said courts. If there be more than one party against whom a writ is granted, it may be returned and tried in the proper court of the county where either may have his domicile. [Acts 1846, p. 363; P. D. 3932; G. L. Vol. 2, p. 1669.]

Art. 4657. [4663] [3006] **The answer.**—The defendant to

an injunction proceeding may answer as in other civil actions; but no injunction shall be dissolved before final hearing because of the denial of the material allegations of the plaintiff's petition, unless the answer denying the same is verified by the oath of the defendant. [P. D. 3929.]

Art. 4658. [4664] [3007] **Dissolution.**—In all cases of injunction, motions to dissolve the same without determining the merits, may be heard after answer filed, in vacation or in term time, at least ten days notice of such motion being first given to the opposite party or his attorney. In such cases, the proceedings upon such hearing, including the action of the judge upon the motion, shall be entered upon the minutes of the proper court by the clerk thereof, on or before the first day of the succeeding term of such court, and thereafter shall constitute a part of the record of the same. [P. D. 3934.]

Art. 4659. [4665-66] **Bond on dissolution.**—Upon the dissolution of an injunction restraining the collection of money, by an interlocutory order of the court or judge, made in term time or vacation, if the petition be continued over for trial, the court or judge shall require of the defendant in such injunction proceedings a bond, with two or more good and sufficient sureties, to be approved by the clerk of the court, payable to the complainant in double the amount of the sum enjoined, and conditioned to refund to the complainant the amount of money, interest and costs which may be collected of him in the suit or proceeding enjoined if such injunction is made perpetual on final hearing. If such injunction is so perpetuated, the court, on motion of the complainant, may enter judgment against the principal and sureties in such bond for such amount as may be shown to have been collected from such complainant.

Art. 4660. [4667] [3010] **Damages for delay.**—Upon the dissolution of an injunction, either in whole or in part, on final hearing, where the collection of money has been enjoined, if the court be satisfied that the injunction was obtained only for delay, damages thereon may be assessed by the court, at ten per cent on the amount released by the dissolution of the injunction exclusive of costs. [P. D. 3935.]

Art. 4661. [4661-8-9-70] **Disobedience.**—An injunction restrains the attorneys, agents, servants and employes of the party enjoined, as well as the party himself, effective from the service or notice of the injunction and during its continuance in force. Disobedience of an injunction may be punished by the court or judge, in term time or in vacation, as a contempt. In case of such disobedience, the complainant, his agent or attorney, may file in the court in which such injunction is pending or with the judge in vacation, his affidavit stating the person guilty of such disobedience and describing the acts constituting the same; and thereupon the court or judge shall cause to be issued an attachment for such person, directed to the sheriff or any constable of the proper county, and requiring such officer to arrest the

person therein named and have him before the court or judge at the time and place named in such writ. On return of such attachment, the judge shall proceed to hear proof; and if satisfied that such person has disobeyed the injunction, either directly or indirectly, he shall be committed to jail without bail until he purges himself of such contempt, in such manner and form as the court or judge may direct.

Art. 4662. [4644-5-6] **Appeals.**—Any party to a civil suit wherein a temporary injunction may be granted or refused or when motion to dissolve has been granted or over-ruled, under any provision of this title, in term time or in vacation, may appeal from such order or judgment to the Court of Civil Appeals by filing the transcript in such case with the clerk of the said appellate court not later than twenty days after the entry of record of such order or judgment. Such appeal shall not have the effect to suspend the order appealed from unless it shall be so ordered by the court or judge who enters the order. Such case may be heard in the Court of Civil Appeals or Supreme Court on the bill and answer and such affidavits and evidence as may have been admitted by the judge of the court below. If the appellant desires to file a brief in said appellate court he shall furnish the appellee with a copy thereof not later than two days before the case is called for submission in such court, and the appellee shall have until the day the case is called for submission to answer such brief. Such case may be advanced in the Court of Civil Appeals or Supreme Court on motion of either party, and shall have priority over other cases pending therein. [Acts 1909, p. 354; Acts 1907, p. 206; Acts 1919, p. 22.]

Art. 4663. [4671] [3014] **Principles of equity applicable.**—The principles, practice and procedure governing courts of equity shall govern proceedings in injunctions when the same are not in conflict with the provisions of this title or other law.

2. IN PARTICULAR CASES.

| | Article | | Article |
|------------------------------|---------|--------------|---------|
| Nuisance | 4664 | Pool halls | 4668 |
| Nuisance; evidence | 4665 | Revenue laws | 4669 |
| Nuisance; prosecution | 4666 | Procedure | 4670 |
| Gaming and disorderly houses | 4667 | | |

Art. 4664. **Nuisance.**—Any hotel, rooming house or boarding house, country club, garage, rent car stand or other place to which the public commonly resort for board or lodging or commonly congregate for business or pleasure, where intoxicating liquors are kept, possessed, sold, manufactured, bartered or given away, or to which persons resort in assembling of two or more persons to the room for the purpose of drinking intoxicating liquor, or where intoxicating liquors are furnished to minors or to students of any educational institution, or where persons resort for the purpose of gambling, or for the purpose of prostitution, is hereby declared to be a common nuisance. Any person who knowingly maintains or assists in maintaining such a place is guilty of maintaining a nuisance. [Acts 2nd C. S. 1923, p. 57.]

Art. 4665. **Nuisance; evidence.**—Proof that any of said prohibited acts are frequently committed in any of said places shall be prima facie evidence that the proprietor knowingly permitted the same, and evidence that persons have been convicted of committing any said act in a hotel, boarding house or rooming house, is admissible to show knowledge on the part of the defendants that this law is being violated in the house. The original papers and judgments or certified copies thereof in such cases of convictions may be used in evidence in the suit for injunction and oral evidence is admissible to show that the offense for which said parties were convicted was committed in said house. Evidence of general reputation of said houses shall also be admissible to prove the existence of said nuisance. [Id.]

Art. 4666. **Nuisance; prosecution.**—Whenever the Attorney General, or the district or county attorney has reliable information that such a nuisance exists, either of them shall file suit in the name of this State in the county where the nuisance is alleged to exist against whoever maintains such nuisance to abate and enjoin the same. If judgment be in favor of the State, then judgment shall be rendered abating said nuisance and enjoining the defendants from maintaining the same, and ordering that said house be closed for one year from the date of said judgment, unless the defendants in said suit, or the owner, tenant or lessee of said property make bond payable to the State at the county seat of the county where such nuisance is alleged to exist, in the penal sum of not less than one thousand nor more than five thousand dollars, with sufficient sureties to be approved by the judge trying the case, conditioned that the acts prohibited in this law shall not be done or permitted to be done in said house. On violation of any condition of such bond, the whole sum may be recovered as a penalty in the name and for the State in the county where such conditions are violated, all such suits to be brought by the district or county attorney of such county. [Id.]

Art. 4667. [4685-93] **Gaming and disorderly houses.**—The habitual use, actual, threatened or contemplated, of any premises, place or building or part thereof, for any of the following uses shall be enjoined at the suit of either the State or any citizen thereof:

1. For gaming or keeping or exhibiting games prohibited by law.
2. For keeping, being interested in, aiding or abetting the keeping of a bawdy or disorderly house, as those terms are defined in the Penal Code.
3. For carrying on bucket shops as defined in the Penal Code, or the habitual use by or permitting to remain in any such bucket shop, any telegraph or telephone wires or instruments, under circumstances prohibited by the Penal Code.

Any person who may use or be about to use, or who may aid or abet another in the use of any such premises for any purpose mentioned in this article may be made a party defendant in such suit. The Attorney General or any district or county

attorney may bring and prosecute all suits that either may deem necessary to enjoin such uses, and need not verify the petition; or any citizen of this State may sue in his own name and shall not be required to show that he is personally injured by the acts complained of.

Art. 4668. Pool halls.—No person acting for himself or others shall maintain or operate a pool hall within this State. The term "Pool Hall," as used herein, includes any room, hall, building or part thereof, tent or enclosure of any kind similar to those named, or any inclosed open space, in which are exhibited for hire, revenue, fees or gain of any kind, or for advertising purposes of any kind, any pool or billiard table or stand or structure of any kind or character on which may be played pool or billiards, or any game similar to pool or billiards played with balls, cues or pins or any similar device. Any such table, stand or structure of any kind used or exhibited in connection with any place where goods, wares or merchandise or other things of value are sold or given away or where or upon which any money or thing of value is paid or exchanged shall be regarded as a place where is exhibited the same for hire, revenue or gain. The habitual, actual, or contemplated use of any premises, place, room, building or part thereof or tent, or any kind or character of enclosure similar to those named, or any uninclosed open space for the purpose of exhibiting any table, stand or structure of any kind described in this article may be enjoined at the suit of either the State or any citizen thereof. The Attorney General of this State, or any district or county attorney, or any citizen of any county in which any pool hall is maintained, operated or contemplated may, either in term time or vacation, apply to the district judge of the district in which is located the place where such pool hall is maintained, operated or contemplated, or to any district judge in Travis County, for an injunction to prohibit the maintenance and operation of any such pool hall. Such judge upon the presentation of a petition for such injunction shall issue a temporary injunction or restraining order, and, if upon final hearing thereof the fact be shown that the defendant is guilty of keeping, maintaining, or operating a pool hall, or of contemplating such act, the court before which the case is tried shall grant a permanent injunction against such party as prayed for in the petition. Any person operating or contemplating the operation of any pool hall in violation of any provision of this article, or anyone aiding or abetting such person may be made a party defendant in such suit. [Acts 1919, p. 18.]

Art. 4669. [4672] [3015] **Revenue laws.**—The full right, power and remedy of injunction may be invoked by the State at the instance of the county or district attorney or Attorney General, to prevent, prohibit or restrain the violation of any revenue law of the State. [Acts 1888, p. 8; G. L. Vol. 9, p. 1006.]

Art. 4670. Procedure.—The procedure in any suit under this subdivision shall be the same as near as may be as in other suits for injunction.

TITLE 77.

INJURIES RESULTING IN DEATH.

| | Article | | Article |
|---------------------------------|---------|---------------------------------------|---------|
| Cause of action | 4671 | Institution of suit | 4675 |
| Character of wrongful act | 4672 | Executor, etc., made party when | 4676 |
| Exemplary damages | 4673 | Damages apportioned | 4677 |
| Crime no bar | 4674 | Death in foreign State | 4678 |

Art. 4671. [4694] [3017] [2899] **Cause of action.**—No agreement between any owner of any railroad, street railway, steamboat, stage-coach or other vehicle for transporting passengers or goods, or any industrial or public utility plant, or other machinery, and any person, corporation, trustee, receiver, lessee, joint stock association or other person in control of, or operating the same, shall release such owner, person, trustee, lessee, corporation or joint stock association from any liability fixed by the provisions of this article. An action for actual damages on account of the injuries causing the death of any person may be brought in the following cases:

1. When an injury causing the death of any person is caused by the wrongful act, neglect, carelessness, unskilfulness, or default of another person, association of persons, joint stock company, corporation or trustee or receiver of any person, corporation, joint stock company, or association of persons, his, its or their agents or servants, such persons, association of persons, joint stock company, corporation, trustee or receiver, shall be liable in damages for the injuries causing such death. The term "corporation," as used in this article, shall include all municipal corporations, as well as all private and public and quasi public corporations, except counties and common and independent school districts.

2. When an injury causing the death of any person is caused by the wrongful act, neglect, carelessness, unskilfulness, or default of the proprietor, owner, charterer or hirer of any industrial or public utility plant, or any railroad, street railway, steamboat, stage-coach, or other vehicle for the conveyance of goods or passengers, or by the unfitness, wrongful act, neglect, carelessness, unskilfulness or default of his, their or its servants or agents, such proprietor, owner, charterer or hirer shall be liable in damages for the injuries causing such death.

3. When an injury causing the death of any person is caused by the wrongful act, neglect, carelessness, unskilfulness or default of the receiver, trustee or other person in charge of or in control of any railroad, street railway, steamboat, stage-coach, or other vehicle for the conveyance of goods or passengers, or any industrial plant, public utility plant, or any other machinery, or by the wrongful act, neglect, carelessness, unfitness, unskilfulness or default of his or their servants or agents, such receiver, trustee, or other person shall be liable in damages for the injuries causing such death, and the liability here fixed against such receiver, trustee, or other person shall extend to

all cases in which the death is caused by reason of any bad or unsafe condition of the railroad, street railway or other machinery under the control or operation of such receiver, trustee or other person, and to all other cases in which the death results from any other reason or cause for which an action may be brought for damages on account of personal injuries, the same as if said railroad, street railway or other machinery were being operated by the owner thereof. [Acts 1860, p. 32; G. L. Vol. 4, p. 1394; Acts 1887, p. 44; G. L. Vol. 9, p. 842; Acts 1913, p. 288; Acts 1921, p. 212.]

Art. 4672. [4695] [3018] [2900] **Character of wrongful act.**—The wrongful act, negligence, carelessness, unskilfulness or default mentioned in the preceding article must be of such character as would, if death had not ensued, have entitled the party injured to maintain an action for such injury. [Acts 1860, p. 32; Acts 1887, p. 44; Acts 1st C. S. 1892, p. 5; G. L., Vol. 10, p. 369.]

Art. 4673. [4696] [3019] [2901] **Exemplary damages.**—When the death is caused by the wilful act or omission, or gross negligence of the defendant, exemplary as well as actual damages may be recovered. [Const., Art. 16, Sec. 26.]

Art. 4674. [4697] [3020] [2902] **Crime no bar.**—The action may be commenced and prosecuted, although the death has been caused under circumstances amounting in law to a felony, and without regard to any criminal proceedings that may or may not be had in relation to the homicide. [Id.]

Art. 4675. [4698-9-4700] **Institution of suit.**—The action shall be for the sole and exclusive benefit of and may be brought by the surviving husband, wife, children and parents of the person whose death has been caused, or by either of them for the benefit of all. If none of said parties commence such action within three calendar months after the death of the deceased, the executor or administrator of the deceased shall commence and prosecute the action unless requested by all of such parties not to prosecute the same. The amount recovered shall not be liable for the debts of the deceased. [Id.]

Art. 4676. [4703] **Executor, etc., made party, when.**—If the defendant die pending the suit, or if the person or persons against whom such suit might have been instituted, if alive, die before the suit is instituted, his or their executors or administrators may be made a party or parties defendant, and the suit instituted and prosecuted to judgment as though such defendant or person or persons had continued to live. The judgment in such case, if rendered in favor of the plaintiff, shall be, to be paid in due course of administration. [Acts 1925, p. 298.]

Art. 4677. [4704] [3027] [2909] **Damages apportioned.**—The jury may give such damages as they think proportionate to the injury resulting from such death. The amount so recovered shall be divided among the persons entitled to the benefit of the action, or such of them as shall then be alive, in such shares as the jury shall find by their verdict. [Id.]

Art. 4678. **Death in foreign State.**—Whenever the death or personal injury of a citizen of this State or of the United States or of any foreign country having equal treaty rights with the United States on behalf of its citizens, has been or may be caused by the wrongful act, neglect or default of another in any foreign State or country for which a right to maintain an action and recover damages thereof is given by the statute or law of such foreign State or country, such right of action may be enforced in the courts of this State within the time prescribed for the commencement of such actions by the statutes of this State. The law of the forum shall control in the prosecution and maintenance of such action in the courts of this State in all matters pertaining to the procedure. [Acts 1913, p. 338; Acts 1917, p. 365.]

TITLE 78.

INSURANCE.

| Chapter | Page | Chapter | Page |
|---|------|--|------|
| 1 Commissioner of Insurance | 1284 | 10 State Insurance Commission | 1354 |
| 2 Incorporation of Insurance Companies | 1291 | 11 Fire and Marine Companies | 1369 |
| 3 Life, Health and Accident Insurance | 1294 | 12 Fire, Lightning, Hail and Storm Companies | 1375 |
| 4 Texas Securities and Gross Receipts Tax | 1313 | 13 Mutual Hail Insurance | 1379 |
| 5 Assessment or Natural Premium Companies | 1320 | 14 Printers Fire and Storm Insurance | 1382 |
| 6 Mutual Assessment Accident Companies | 1321 | 15 Insurance Against Thievery | 1382 |
| 7 Mutual Life Insurance Companies | 1326 | 16 Surety and Trust Companies | 1384 |
| 8 Fraternal Benefit Societies | 1331 | 17 Employers Liability Insurance Companies | 1392 |
| 9 Mutual Insurance Companies | 1350 | 18 General Casualty Companies | 1394 |
| | | 19 Lloyd's Plan | 1401 |
| | | 20 Indemnity Contracts | 1404 |
| | | 21 General Provisions | 1407 |

CHAPTER ONE.

COMMISSIONER OF INSURANCE.

| Article | Page | Article | Page |
|--------------------------------------|------|--|------|
| Appointment | 4679 | To calculate reinsurance reserve | 4689 |
| Clerks | 4680 | To examine companies | 4690 |
| Ineligibility of certain persons | 4681 | In case of examination | 4691 |
| Duties of Commissioner | 4682 | Transfer of securities by Commissioner | 4692 |
| May change form of annual statement | 4683 | Duty of State Treasurer | 4693 |
| When parties refuse to testify | 4684 | Free access to records | 4694 |
| Officers shall execute service | 4685 | Instruments and copies evidence | 4695 |
| Shall issue certificate of authority | 4686 | To make inquiries of company | 4696 |
| Revocation of certificate | 4687 | Annual statement to Legislature | 4697 |
| Co-operative Savings Companies | 4698 | Co-operative savings companies | 4698 |

Art. 4679. [4485-6-8] **Appointment.**—With the consent of the Senate, the Governor shall biennially appoint a Commissioner of Insurance for a term of two years. The term "Commissioner" as used in this title, shall mean the Commissioner of Insurance of the State of Texas. Before entering upon the duties of his office, he shall give a good bond to the State of Texas in the sum of five thousand dollars, to be approved by the Governor, and conditioned for the faithful discharge of the duties of his office. [Acts 1876, p. 219; Vol. 8, G. L., p. 1055; Acts 3rd C. S. 1923, p. 178.]

Art. 4680. [4489-90] **Clerks.**—The Commissioner may appoint a chief clerk and such other clerks as the work of his office may require. All clerks shall be removable at the will of the Commissioner. The chief clerk shall possess all the power and perform all the duties attached by law to the office of Commissioner during the necessary absence of the Commissioner, or his inability to act from any cause. The Commissioner shall be responsible for the acts of his chief clerk, who shall, before entering upon the duties of his position, take the oath required of the Commissioner; he may also be required by the Commissioner to enter into bond with security, payable to said Commissioner, for the faithful performance of the duties of his position. [Id.]

Art. 4681. [4492] [2915] [2818] **Ineligibility of certain**

persons.—No person who is a director, officer or agent of, or directly or indirectly interested in any insurance company, except as insured, shall be a Commissioner or Clerk.

Art. 4682. [4493] [3050] **Duties of Commissioner.**—In addition to the other duties required of the Commissioner, he shall perform duties as follows:

1. Shall execute the laws.—See that all laws respecting insurance and insurance companies are faithfully executed.

2. File articles of incorporation and other papers.—File and preserve in his office all acts or articles of incorporation of insurance companies and all other papers required by law to be deposited with him, and, upon application of any party interested therein, to furnish certified copies thereof upon payment of the fees prescribed by law.

3. Calculate net value of policies.—He shall, as soon as practicable in each year, calculate or cause to be calculated in his office by an officer or employe of his department, the net value on the thirty-first day of December of the previous year of all the policies in force on that day in each life or health insurance company doing business in the State, upon the basis and in the manner prescribed by law.

4. See that net value of policies are on hand.—Having determined the net value of all the policies in force, he shall see that the company has in safe securities of the class and character required by the laws of this State the amount of said net value of all its policies, after all its debts and claims against it and at least one hundred thousand dollars of surplus to policy holders have been provided for.

5. May accept valuation of other States.—He may accept the valuation made by the insurance commissioner of the State under whose authority a life insurance company was organized, when such valuation has been properly made on sound and recognized principles, as a legal basis as above. The company shall furnish to him a certificate of the insurance commissioner of such States, setting forth the value calculated on the data designated above of all the policies in force in the company on the previous thirty-first day of December, and stating that, after all other debts of the company and claims against it at that time, and one hundred thousand dollars surplus to policy holders, were provided for, the company had, in safe securities of the character required by the laws of this State, an amount equal to the net value of all its policies in force, and that said company is entitled to do business in its own State.

6. That company furnishes certificate.—Every life insurance company doing business in this State during the year for which the statement is made that fails promptly to furnish the certificate aforesaid shall be required to make full detailed lists of policies and securities to the Commissioner, and shall be liable for all charges and expenses consequent upon such failure.

7. Shall calculate reserve on fire insurance.—For every company doing fire insurance business in this State, he shall calculate

the reinsurance reserve for unexpired fire risks by taking fifty per cent of the premiums received on all unexpired risks that have less than one year to run, and a pro rata of all premiums received on risks that have more than one year to run. When the reinsurance reserve, calculated as above, is less than forty per cent of all the premiums received during the year, the reinsurance reserve in this case shall be the whole of the premiums received on all of its unexpired risks. For every company transacting any kind of insurance business in this State, for which no basis is prescribed by law, he shall calculate the reinsurance reserve upon the same basis prescribed in this article as to companies transacting fire insurance business.

8. Shall charge premiums.—In marine and inland insurance, he shall charge all the premiums received on unexpired risks as a reinsurance reserve.

9. When company's capital is impaired.—Having charged against a company other than life, the reinsurance reserve, as prescribed by the laws of this state, and adding thereto all other debts and claims against the company, he shall, in case he finds the capital stock of the company impaired to the extent of twenty per cent, give notice to the company to make good its whole capital stock within sixty days, and, if this is not done, he shall require the company to cease to do business within this State, and shall thereupon, in case the company is organized under authority of the State, immediately institute legal proceedings to determine what further shall be done in the case.

10. Shall publish results of investigation.—The Commissioner shall publish the result of his examination of the affairs of any company whenever he deems it for the interest of the public.

11. Shall suspend or revoke certificate.—He shall suspend the entire business of any company of this State, and the business within this State of any other company, during its non-compliance with any provision of the laws relative to insurance, or when its business is being fraudulently conducted, by suspending or revoking the certificate granted by him. He shall give notice thereof to the Insurance Commissioner or other similar officer of every state, and shall publish notice thereof. He shall give such company at least ten days notice in writing of his intention to suspend its right to do business or revoke the certificate of authority granted by him, stating specifically the reason why he intends such action.

12. Report to Attorney General.—He shall report promptly and in detail to the Attorney General any violation of law relative to insurance companies or the business of insurance.

13. Shall furnish blanks.—He shall furnish to the companies required to report to him the necessary blank forms for the statements required.

14. Shall keep records.—He shall preserve in a permanent form a full record of his proceedings and a concise statement of the condition of each company or agency visited or examined.

15. Give certified copies.—At the request of any person, and on the payment of the legal fee, he shall give certified copies of any record or papers in his office, when he deems it not prejudicial to public interest, and shall give such other certificates as are provided for by law.

16. Report to Governor.—He shall report annually to the Governor the names and compensations of his clerks, the receipts and expenses of his department for the year, his official acts, the condition of companies doing business in this State, and such other information as will exhibit the affairs of said department.

17. Send copies of reports to.—He shall send a copy of such annual report to the Insurance Commissioner or other similar officer of every state and to each company doing business in the State.

18. Report laws to other States.—On request, he shall communicate to the Insurance Commissioner or other similar officer of any other State, in which the substantial provisions of the law of this State relative to insurance have been, or shall be, enacted, any facts which by law it is his duty to ascertain respecting the companies of this State doing business within such other State.

19. See that no company does business.—He shall see that no company is permitted to transact the business of life insurance in this State whose charter authorizes it to do a fire, marine, lightning, tornado or inland insurance business, and that no company authorized to do a life or health insurance business in this State be permitted to take fire, marine or inland risks.

20. Admit mutual companies.—He shall admit into this State mutual insurance companies organized under the laws of other states and who have two hundred thousand dollars assets in excess of liabilities engaged in cyclone, tornado, hail and storm insurance. [Acts 1909, p. 211, Sec. 59.]

Art. 4683. [4494] **May change form of annual statement.**—The Commissioner may, from time to time make such changes in the forms of the annual statements required of insurance companies of any kind, as shall seem to him best adapted to elicit a true exhibit of their condition and methods of transacting business. Such form shall elicit only such information as shall pertain to the business of the company. [Id. Sec. 60.]

Art. 4684. [4495] **When parties refuse to testify.**—If any person refuses to appear and testify or to give information authorized by this chapter to be demanded by the Commissioner, such Commissioner may file his sworn application with any district judge or district court within this State, where said witness is summoned to appear; and said judge shall summon said witness and require answers to such questions. [Id. Sec. 63.]

Art. 4685. [4496] **Officers shall execute service.**—Peace officers shall execute process directed to them by the Commissioner and make return thereof to him, as in the case of process issued from any court. [Id. Sec. 64.]

Art. 4686. [4497] **Shall issue certificate of authority.**—Should the Commissioner be satisfied that any company applying for a certificate of authority has in all respects fully complied with the law, and that, if a stock company, its capital stock has been fully paid up, that it has the required amount of capital or surplus to policy holders, it shall be his duty to issue to such company a certificate of authority under his seal, authorizing such company to transact insurance business, naming therein the particular kind of insurance, for the period of not less than three months nor extending beyond the last day of February next following the date of such certificate. [Id. Sec. 40.]

Art. 4687. [4497] **Revocation of certificate.**—If any such insurance company organized under the laws of any State or country, after having obtained a certificate of authority from the Commissioner or other officer authorized to issue such permit to do business in this State, shall bring in any Federal court any suit or action against any citizen of this State, or shall remove any suit or action heretofore or hereafter commenced in any court of this State, to which it is a party, to any Federal court, the Commissioner shall forthwith revoke and recall the certificate of authority of such insurance company to transact business in this State. No renewal of authority shall be granted to such insurance company to do business in this State for a period of three years after such revocation; and such insurance company shall be prohibited from transacting any business in this State until again duly authorized by law. [Id. sec. 40.]

Art. 4688. [4498] **To compute reserve liability.**—The Commissioner, as soon as practicable in each year, shall compute the reserve liability on the thirty-first day of December of the preceding year of every company organized under the laws of this State, or authorized to transact business in this State, which has outstanding policies of insurance on the lives of citizens of this State in accordance with the following rules:

1. The net value on the first day of December of the preceding year of all outstanding policies of life insurance in the company issued prior to the first day of January, 1910, shall be computed according to the terms of said policies on the basis of the American Experience Table of Mortality, and four and one-half per cent interest per annum.

2. The net value on the last day of December, of the preceding year, of all policies of life insurance issued after the thirty-first day of December, 1909, upon the basis of the Actuary's or Combined Experience Table of Mortality, with four per cent interest per annum. The policies of any such life insurance company thereafter issued upon the reserve basis of an interest rate lower than four per cent shall be computed upon the basis of the American Experience Table of Mortality with interest at such lower rate per annum.

3. In every case in which the actual premium charged for an

insurance is less than the net premium for such insurance computed according to its respective tables of mortality and rate of interest aforesaid, the company shall also be charged with the value of annuity, the amount of which shall equal the difference between the premium charged and that required by the rules above stated, and the term of which in years shall equal the number of future annual payments due on the insurance at the date of the valuation. [Id. Sec. 15.]

Art. 4689. [4499] **To calculate reinsurance reserve.**—On the thirty-first day of December of each and every year, or as soon thereafter as may be practicable, the Commissioner shall have calculated in his office the reinsurance reserve for all unexpired risks of all insurance companies organized under the laws of this State, or transacting business in this State, transacting any kind of insurance other than life, fire, marine, inland, lightning or tornado insurance, by taking fifty per cent of the gross premiums on all unexpired risks that have less than one year to run and a pro rata of all premiums received on risks that have more than one year to run. [Id. Sec. 53.]

Art. 4690. [4500] **To examine companies.**—The Commissioner shall, at the end of each two years, or oftener if he deems necessary, in person or by one or more examiners commissioned in writing, visit each company organized under the laws of this State, and examine its financial condition and its ability to meet its liabilities. He shall have free access to all the books and papers of the company or agents thereof relating to the business and affairs of such company, and shall have power to summon and examine under oath the officers, agents and employees of such company and any other person within the State relative to the affairs of such insurance company. He may revoke or modify any certificate of authority issued by him when any conditions or requirements prescribed by law for granting it no longer exist. He shall give such company at least ten days written notice of his intention to revoke or modify such certificate of authority issued by him, stating specifically the reasons why he intends to revoke or modify such certificate. The expense of every such examination shall be paid by the company so examined. The Commissioner shall not make any charge for services except for traveling or other actual expenses and shall furnish the company with an itemized statement of such expense. [Id. Sec. 41.]

Art. 4691. [4501] **In case of examination.**—The Commissioner, for the purpose of examination authorized by law, has power either in person or by one or more examiners by him commissioned in writing:

1. To require free access to all books and papers within this State of any insurance companies, or the agents thereof, doing business within this State.
2. To summon and examine any person within this State,

under oath, which he or any examiner may administer, relative to the affairs and conditions of any insurance company.

3. To visit at its principal office, wherever situated, any insurance company doing business in this State, for the purpose of investigating its affairs and conditions, and shall revoke the certificate of authority of any such company in this State refusing to permit such examination. The reasonable expenses of all such examinations shall be paid by the company examined.

4. He may revoke or modify any certificate of authority issued by him when any conditions prescribed by law for granting it no longer exist.

5. He shall also have power to institute suits and prosecutions, either by the Attorney General or such other attorneys as the Attorney General may designate, for any violation of the law of this State relating to insurance. No action shall be brought or maintained by any person other than the Commissioner for closing up the affairs or to enjoin, restrain or interfere with the prosecution of the business of any such insurance company organized under the laws of this State. [Id. Sec. 66.]

Art. 4692. [4502] [3054] **Transfer of securities by Commissioner.**—No transfer by the Commissioner of securities of any kind, in any way held by him in his official capacity, shall be valid unless countersigned by the State Treasurer. [Acts 1876, p. 224, Vol. 8, G. L. p. 1060.]

Art. 4693. [4503] [3055] **Duty of State Treasurer.**—It is the duty of the State Treasurer:

1. To countersign any such transfer presented to him by the Commissioner.

2. To keep a record of all transfers, stating the name of the transferee, unless transferred in blank, and a description of the security.

3. Upon countersigning, to advise by mail the company concerned, the particulars of the transaction.

4. In his annual report to the legislature, to state the transfers and the amount thereof, countersigned by him. [Id.]

Art. 4694. [4504] [3056] **Free access to records.**—To verify the correctness of records, the Commissioner shall be entitled to free access to the treasurer's records, required by the preceding article, and the Treasurer shall be entitled to free access to the books and other documents of the insurance department relating to securities held by the Commissioner. [Id. Sec. 14.]

Art. 4695. [4505] [3057] **Instruments and copies evidence.**—Every instrument executed by the Commissioner of Insurance of this or any other State, in which the substantial provisions of the laws of this State relating to insurance have been or shall be enacted pursuant to authority conferred by law, and authenticated by his seal of office, shall be received as evidence; and copies of papers and records in his office certified by him, and so authenticated, shall be received as evidence with the same effect as the originals. [Id. p. 223, Sec. 11.]

Art. 4696. [4506] [3058] **To make inquiries of company.**

—The Commissioner is authorized to address any inquiries to any insurance company in relation to its business and condition, or any matter connected with its transactions which he may deem necessary for the public good or for a proper discharge of his duties. It shall be the duty of the addressee to promptly answer such inquiries in writing. [Act Feb. 17, 1875, p. 39, Vol. 8, G. L. p. 411.]

Art. 4697. [4507] [3059] **Annual statement to legislature.**

—The Commissioner shall cause the information contained in the annual statements of companies to be arranged in tabular form and prepare the same for printing in a single document and submit the same to the legislature as a portion of his regular report to that body. [Id. p. 43, Sec. 28.]

Art. 4698. **Co-operative Savings Companies.**—All assets arising from the business of the liquidation of Co-operative Savings and Contract Loan Companies created under the provisions of Chapter Five of the General Laws of Texas passed at the First Called Session of the Thirty-fourth Legislature and Chapter Forty-five of the General Laws passed at the Fourth Called Session of the Thirty-fifth Legislature, shall remain under the supervision and control of the Insurance Commissioner. Such corporations shall continue in existence until June 14, 1933, within which time the officers of such respective corporations shall liquidate the same, but such corporations, from and after June 14, 1923, shall not sell any further contracts or receive further payments on any contract heretofore sold. [Acts 1923, p. 336.]

CHAPTER TWO.

INCORPORATION OF INSURANCE COMPANIES.

| | Article | Article |
|-------------------------------------|---------|---|
| Formation of company | 4699 | Directors |
| Articles of incorporation | 4700 | Special meeting to elect directors..... |
| Certificate of authority | 4701 | Quorum of stockholders |
| Oath as to capital | 4702 | Directors shall choose officers |
| Certificate of examiner | 4703 | May ordain by-laws |
| Shares of stock | 4704 | Business records |
| Items of capital stock | 4705 | Shall fill vacancies; quorum |
| Investment of surplus money..... | 4706 | Governed by other laws..... |
| Re-investment of capital stock..... | 4707 | |

Art. 4699. [4705] [3028] [2910] **Formation of company.**

—Any number of persons desiring to form a company for the purpose of transacting insurance business shall adopt and sign articles of incorporation, and submit the same to the Commissioner who in turn shall submit the same to the Attorney General. If said articles shall be found by the Attorney General to be in accordance with the law of this State, and of the United States, he shall attach thereto his certificate to that effect, whereupon such articles shall be deposited with the Commissioner of Insurance.

Art. 4700. [4706] [3029] [2911] **Articles of incorporation.**
—Such articles of incorporation shall contain:

1. The name of the company; and the name selected shall not be so similar to that of any other insurance company as to be likely to mislead the public.

2. The locality of the principal business office of such company.

3. The kind of insurance business in which the company proposes to engage.

4. The amount of its capital stock, which shall in no case be less than one hundred thousand dollars.

Art. 4701. [4707] [3030] [2912] **Certificate of authority.**—When the said articles of incorporation have been deposited with the Commissioner, and the law in all other respects has been complied with by the company, the Commissioner shall make or cause an examination to be made by some competent and disinterested person appointed by him for that purpose; and if it shall be found that the capital stock of the company, to the amount required by law, has been paid in, and is possessed by it, in money, or in such stocks, notes, bonds or mortgages, as are required by law, and that the same is the bona fide property of such company, and that such company has in all respects complied with the law relating to insurance, then the Commissioner shall issue to such company a certificate of authority to commence business as proposed in their articles of incorporation. [Act Feb. 17, 1875, p. 33; G. L. Vol. 8, p. 405.]

Art. 4702. [4708] [3031] [2913] **Oath as to capital.**—The incorporators or officers of any such company shall be required to certify under oath to the Commissioner that the capital exhibited to the person making the examination is the bona fide property of such company. The certificate shall be filed and recorded in the office of the Commissioner. [Id.]

Art. 4703. [4709] [3032] [2914] **Certificate of examiner.**—If the examination be made by one other than the Commissioner, the finding shall be certified under the oath of the examiner. Such finding and certificate shall be filed and recorded in the office of the Commissioner. [Id.]

Art. 4704. [4710] [3033] [2915] **Shares of stock.**—The stock of any such company organized under the laws of this State shall be divided into shares of one hundred dollars each.

Art. 4705. [4711] [3034] [2916] **Items of capital stock.**—The capital stock of any such company shall consist:

1. In lawful money of the United States; or
2. In the bonds of this State or any county or incorporated town or city thereof, or the stock of any national bank; or
3. In first mortgages upon unincumbered real estate in this State, the title to which is valid, and the market value of which is double the amount loaned thereon, exclusive of buildings, unless such buildings are insured in some responsible company and the policy or policies transferred to the company taking such mortgage. [Acts 1889, p. 11; G. L. Vol. 9, p. 1039.]

Art. 4706. [4712] [3035] [2917] **Investment of surplus money.**—The surplus money of any such company over and above its paid up capital stock may be invested in, or loaned upon the pledge of public stocks or bonds of the United States,

or any of the States, or stocks, bonds, or other evidence of indebtedness of any solvent dividend paying corporations, or in bills of exchange or other commercial notes or bills, except its own stock. The current market value of such stocks, bonds, notes, bills, or other evidences of indebtedness, shall be at all times during the continuance of such loans at least twenty per cent more than the sum loaned thereon. [Acts 1875, p. 33; G. L. Vol. 8, p. 405.]

Art. 4707. [4713] [3036] [2918] **Re-investment of capital Stock.**—Any such company may exchange and re-invest its capital stock in like securities, as occasion may require. [Id.]

Art. 4708. [4714-15-16] **Directors.**—The affairs of any such company organized under the laws of this State shall be managed by not more than thirteen nor fewer than seven directors, all of whom shall be stockholders in the company. Within thirty days after the subscription books of the company have been filed, a majority of the stockholders shall hold a meeting for the election of directors, each share entitling the holder thereof to one vote. The directors then in office shall continue in office until their successors have been duly chosen and have accepted the trust. The annual meeting for the election of directors of any such company shall be held during January, as the by-laws of the company may direct. [Id.]

Art. 4709. [4717] [3040] [2922] **Special meeting to elect directors.**—If from any cause the stockholders should fail to elect directors at an annual meeting, they may hold a special meeting for that purpose, by giving thirty days notice thereof in some newspaper in general circulation in the county in which the principal office of the company is located. The directors chosen at such special meeting shall continue in office until their successors are duly elected and have accepted. [Id.]

Art. 4710. [4718] [3041] [2923] **Quorum of stockholders.**—No meeting of stockholders shall elect directors or transact such other business of the company, unless there shall be present, in person or by proxy, a majority in value of the stockholders equal to two-thirds of the stock of such company. [Id.]

Art. 4711. [4719] [3042] [2924] **Directors shall choose officers.**—The directors shall choose by ballot from their own number a president and such other officers as the by-laws require, who shall perform such duties, receive such compensation and give such security as the by-laws may require. [Id.]

Art. 4712. [4720] [3043] [2925] **May ordain by-laws.**—The directors may establish such by-laws and regulations, not inconsistent with law, as shall appear to them necessary for regulating and conducting the business of the company. [Id.]

Art. 4713. [4721] [3044] [2926] **Business records.**—The directors shall keep a full and correct record of their transactions, to be open during business hours to the inspection of stockholders and others interested therein. [Id.]

Art. 4714. [4722] [3045] [2927] **Shall fill vacancies; quorum.**—The directors shall fill any vacancy which occurs in the

board or in any office of such company. A majority of the board shall be a quorum for the transaction of business.

Art. 4715. [4723] [3046] [2928] **Governed by other laws.**—The laws governing corporations in general shall apply to and govern insurance companies incorporated in this State in so far as the same are not inconsistent with any provision of this title.

CHAPTER THREE.

LIFE, HEALTH AND ACCIDENT INSURANCE.

| Article | Article | | |
|--|---------|---------------------------------------|------|
| Terms defined | 4716 | What deposits may include..... | 4743 |
| Who may incorporate | 4717 | Extra hazardous policies | 4744 |
| Charter and organization | 4718 | No commissions paid officers..... | 4745 |
| Amendment of charter | 4719 | Co-operative companies..... | 4746 |
| Examination by Commissioner..... | 4720 | To deposit funds in name of com- | |
| Shall file annual statement..... | 4721 | pany | 4747 |
| Renewal certificate | 4722 | Impairment of capital stock | 4748 |
| Copy of certificate for agents..... | 4723 | Form of policies to be filed..... | 4749 |
| To sue and be sued | 4724 | Commissioner to approve policy..... | 4750 |
| May invest in what securities..... | 4725 | Must have certificate of author- | |
| May hold real estate | 4726 | ity | 4751 |
| Director not to do certain things..... | 4727 | Limited capital stock companies..... | 4752 |
| May reinsure | 4728 | Unlawful dividends | 4753 |
| Dividends to be paid from profits..... | 4729 | Taxation of domestic company..... | 4754 |
| Salaries | 4730 | Foreign companies, statement..... | 4755 |
| Disbursements by vouchers | 4731 | Articles of incorporation, filed..... | 4756 |
| Policies shall contain what..... | 4732 | Paid-up capital stock..... | 4757 |
| Policies shall not contain what..... | 4733 | Deposits required | 4758 |
| Policies of foreign companies | 4734 | Alien companies to deposit..... | 4759 |
| Service of process | 4735 | Deposit liable for judgment..... | 4760 |
| Losses shall be paid promptly..... | 4736 | When alien companies need not de- | |
| Certificate null and void, when..... | 4737 | posit | 4761 |
| Limitation of business | 4738 | Assets invested | 4762 |
| Deposit of securities | 4739 | Shall file power of attorney..... | 4763 |
| Deposits for benefit of insured..... | 4740 | Commissioner's duty in accepting | |
| Effect and value of deposits..... | 4741 | service | 4764 |
| Fees for making deposits | 4742 | | |

Art. 4716. [4724] **Terms defined.**—A life insurance company shall be deemed to be a corporation doing business under any charter involving the payment of money or other thing of value, conditioned on the continuance or cessation of human life, or involving an insurance, guaranty, contract or pledge for the payment of endowments or annuities. An accident insurance company shall be deemed to be a corporation doing business under any charter involving the payment of money or other thing of value, conditioned upon the injury, disablement or death of persons resulting from traveling or general accidents by land or water. A health insurance company shall be deemed to be a corporation doing business under any charter involving the payment of any amount of money, or other thing of value; conditioned upon loss by reason of disability due to sickness or ill-health. When consistent with the context and not obviously used in a different sense, the term "company," or "insurance company," as used herein, includes all corporations engaged as principals in the business of life, accident or health insurance. The term "home," or domestic company, as used herein, designates those life, accident or life and accident, health and accident, or life, health and accident insurance companies incorporated and formed in this State. The term "foreign company," means any life, accident or health insurance company organized under the laws of any other state or terri-

tory of the United States or foreign country. The term "home office" of a company means its principal office within the State or country in which it is incorporated and formed. The "insured" or "policy holder" is the person on whose life a policy of insurance is effected. The "beneficiary" is the person to whom a policy of insurance effected is payable. By the term, "net assets" is meant the funds of the company available for the payment of its obligations in this State, including uncollected premiums not more than three months past due and deferred premiums on policies actually in force, after deducting from such funds all unpaid losses and claims, and claims for losses, and all other debts, exclusive of capital stock. The "profits" of a company are that portion of its funds not required for the payment of losses and expenses, nor set apart for any other purpose required by law. [Acts 1909, p. 192, Sec. 1.]

Art. 4717. [4725] **Who may incorporate.**—Any three or more citizens of this State, may associate themselves for the purpose of forming a life insurance company, or accident insurance company, or life and accident, health and accident, or life, health and accident insurance company. No such company shall transact more than one of the foregoing classes of business except in separate and distinct departments. In order to form such a company, the corporators shall sign and acknowledge its articles of incorporation and file the same in the office of the Commissioner. Such articles shall specify:

1. The name and place of residence of each of the incorporators.
2. The name of the proposed company, which shall contain the words, "Insurance Company" as a part thereof.
3. The location of its home office.
4. The kind or kinds of insurance business it proposes to transact.
5. The amount of its capital stock, not less than \$100,000, all of which capital stock must be subscribed and fully paid up and in the hands of the corporators before said articles of incorporation are filed.
6. The period of time it is to exist, which shall not exceed five hundred years.
7. The number of shares of such capital stock.
8. Such other provisions not inconsistent with the law as the corporators may deem proper to insert therein. [Id. Sec. 2.]

Art. 4718. [4726] **Charter and organization.**—When such articles of incorporation are filed with the Commissioner, together with an affidavit made by two or more of its incorporators that all the stock has been subscribed in good faith and fully paid for, together with a charter fee of twenty dollars, it shall be the duty of the Commissioner to submit such articles of incorporation to the Attorney General for examination; and if he approves the same as conforming with the law, he shall so certify and deliver such articles of incorporation, together with

his certificate of approval attached thereto, to the Commissioner, who shall, upon receipt thereof, record the same in a book kept for that purpose; and upon receipt of a fee of one dollar, he shall furnish a certified copy of the same to the incorporators, upon which they shall be a body politic and corporate, and may proceed to complete the organization of the company, for which purpose they shall forthwith call a meeting of the stockholders, who shall adopt by-laws for the government of the company, and elect a board of directors not less than five, composed of stockholders; which board shall have full control and management of the affairs of the corporation, subject to the by-laws thereof as adopted or amended from time to time by the stockholders or directors, and to the laws of this State. The board of directors so elected shall serve until the second Tuesday in March thereafter, on which date annually thereafter, there shall be held a meeting of the stockholders at the home office, and a board of directors elected for the ensuing year. At all meetings of the stockholders, each stockholder shall be entitled to one vote for each share of stock fully paid up appearing in his name on the books of the company, which vote may be given in person or by written proxy. The majority of the paid up capital stock at any meeting of the stockholders shall be a quorum. [Id. Sec. 3.]

Art. 4719. [4727] **Amendment of charter.**—At any regular or called meeting of the stockholders, they may by resolution, provide for any lawful amendment to the charter or articles of incorporation; and such amendment, accompanied by a copy of such resolution duly certified by the president and secretary of the company, shall be filed and recorded in the same manner as the original charter, and shall thereupon become effective. Stockholders representing a majority of the capital stock of any such company may in such manner also increase or reduce the amount of its capital stock. The capital stock shall in no case, be reduced to less than one hundred thousand dollars fully paid up. A statement of any such increase or reduction shall be signed and acknowledged by two officers of the company and filed and recorded along with the certified copy of the resolution of the stockholders provided therefor in the same manner as the charter or amendment thereto. For any such increase or reduction, the company may require the return of the original certificates as other evidence of stock in exchange for new certificates issued in lieu thereof. The shares of stock of such company shall be transferable on its books, in accordance with law and the by-laws of the company, by the owner in person or his authorized agent. Every person becoming a stockholder by such transfer shall succeed to all rights of the former holder of the stock transferred, by reason of such ownership. [Id. Sec. 3.]

Art. 4720. [4728] **Examination by Commissioner.**—When the first meeting of the stockholders shall be held and the officers of the company elected, the president or secretary shall

notify the Commissioner; and he shall thereupon immediately make, or cause to be made, at the expense of the company, a full and thorough examination thereof. If he finds that all of the capital stock of the company, amounting to not less than one hundred thousand dollars, has been fully paid up and is in the custody of the officers, either in cash or securities of the class in which such companies are authorized by this chapter to invest or loan their funds, he shall issue to such company a certificate of authority to transact such kind or kinds of insurance business within this State as such officers may apply for and as may be authorized by its charter; which certificate shall expire on the last day of February next after the date of its issuance. Before such certificate is issued, not less than two officers of such company shall execute and file with the Commissioner a sworn schedule of all the assets of the company exhibited to him upon such examination, showing the value thereof, together with a sworn statement that the same are bona fide, the unconditional and unencumbered property of the company and are worth the amounts stated in such schedule. No original or first certificate of authority shall be granted, except in conformity herewith, regardless of the date of filing of the articles of incorporation with the Commissioner. [Id. Sec. 4.]

Art. 4721. [4729] **Shall file annual statement.**—Each life insurance company, or accident insurance company, or life and accident, health and accident, or life health and accident insurance company, organized under the laws of this State, shall, after the first day of January of each year and before the first day of March following, and before the renewal of its certificate of authority to transact business, prepare, under oath of two of its officers, and deposit in the office of the Commissioner, a statement, accompanied with the fee for filing annual statements of ten dollars, showing the condition of the company on the thirty-first day of December the next preceding, which shall include a statement in detail showing the character of its assets and liabilities on that date, the amount and character of business transacted, moneys received and how expended during the year, and the number and amount of its policies in force on that date in Texas, and the total amount of its policies in force. [Id. Sec. 5.]

Art. 4722. [4830] **Renewal certificate.**—Whenever any such company, transacting insurance business in this State, shall have filed its annual statement in accordance with the preceding article, showing a condition which entitles it to transact business in this State in accordance with the provisions of this chapter, the Commissioner shall, upon a receipt of a fee of one dollar, issue a renewal certificate of authority to such company, which shall expire on the last day of February of the subsequent year. [Id. Sec. 6.]

Art. 4723. [4731] **Copy of certificate for agents.**—Any such company organized under the laws of this State, having received authority from the Commissioner to transact business

in this State, shall receive from such Commissioner, upon written request therefor, a certified copy of its certificate of authority for each of its agents in this State. [Id. Sec. 7.]

Art. 4724. [4732] **To sue and be sued.**—Actions may be maintained by a company organized under the laws of this State against any of its policyholders, stockholders, or other person for any cause relating to the business of such company. Suits may also be prosecuted and maintained by any policyholder or his heirs or his legal representatives against the company for losses which accrue on any policy. No action shall be brought or maintained by any person other than the Commissioner for the enjoining, restraining or interfering with the prosecution of the business of the company. [Id. Sec. 8.]

Art. 4725. [4734] **May invest in what securities.**—A life insurance company organized under the laws of this State may invest in or loan upon the following securities, viz:

1. It may invest any of its funds or accumulations in the bonds of the United States or of any State, county, or city of the United States, or the bonds of any independent or common school district, or first mortgage bonds of any independent or common school district, or first mortgage bonds of any dividend paying railroad or electrical railway company duly incorporated under the laws of the United States, or any State thereof.

2. It may loan any of its funds and accumulations, taking as security therefor such collateral as under the previous subdivision it may invest in, and upon first liens upon real estate, the title to which is valid and the value of which is double the amount loaned thereon. If any part of such value is in buildings, such buildings shall be insured against loss by fire for at least fifty per cent of the value thereof, with loss clause payable to such company. It may also make loans upon the security of or purchase of its own policies. No loan on any public policy shall exceed the reserve value thereof. No investment or loan, except policy loans, shall be made by any such insurance company, unless the same shall first have been authorized by the board of directors, or by a committee charged with the duty of supervising such investments or loans. No such company shall subscribe to, or participate in, any underwriting of the purchase or sale of securities or property, or enter into any such transaction for such purpose, or sell on account of such company jointly with any other person, firm or corporation; nor shall any such company enter into any agreement to withhold from sale any of its property; but the disposition of its property shall be at all times within the control of its board of directors. [Id. Sec. 10.]

Art. 4726. [4735] **May hold real estate.**—Every such insurance company may secure, hold and convey real property only for the following purposes and in the following manner:

1. One building site and office building for its accommodation in the transaction of its business and for lease and rental.

2. Such as have been acquired in good faith by way of security for loans previously contracted or for moneys due.

3. Such as have been conveyed to it in the satisfaction of debts previously contracted in the course of its dealings.

4. Such as have been purchased at sales under judgment or decrees of court, or mortgage or other liens held by such companies.

All such real property specified in sub-divisions 2, 3, and 4, of this article which shall not be necessary for its accommodation in the convenient transaction of its business, shall be sold and disposed of within five years after the company shall have acquired title to the same, or within five years after the same shall have ceased to be necessary for the accommodation of its business. It shall not hold such property for a longer period, unless it shall procure a certificate from the Commissioner that its interests will suffer materially by the forced sale thereof; in which event the time for the sale may be extended to such time as the Commissioner shall direct in such certificate. [Id. Sec. 11.]

Art. 4727. [4736] **Director not to do certain things.**—No director or officer of any insurance company transacting business in or organized under the laws of this State, shall receive any money or valuable thing for negotiating, procuring, recommending or aiding in any purchase or sale by such company of any property, or any loan from such company, nor be pecuniarily interested, either as principal, co-principal, agent or beneficiary in any such purchase, sale or loan. Nothing in this article shall prevent a life insurance corporation from making a loan upon a policy held therein, by the borrower, not in excess of the reserve value thereof. [Id. Sec. 12.]

Art. 4728. [4737] **May reinsure.**—Any life insurance company organized under the laws of this State may reinsure in any insurance company authorized to transact business in this State, any risk or part of a risk which it may assume. No such company shall have the power to so reinsure its entire outstanding business until the contract therefor shall be submitted to the Commissioner, and be by him approved, as protecting fully the interests of all the policy holders. [Id. Sec. 13.]

Art. 4729. [4738] **Dividends to be paid from profits.**—No life insurance company organized under the laws of this State shall declare or pay any dividends to its policy holders, except from the profits made by such company. This shall not prohibit the issuance of policies guaranteeing a definite payment or reduction in premiums, not exceeding the expense loading on said premiums. Where said reduction exceeds said expense loading, the proper reserve therefor must be held by the company to provide for the deficiency so arising in the net premium, but this shall not apply to payments to holders of special or board contracts heretofore issued. No such life insurance company shall declare or pay any dividends to its stockholders, except from the profits made by said company, not including surplus arising from the sale of stock. [Id. Sec. 14.]

Art. 4730. [4739] **Salaries.**—No domestic life insurance company shall pay any salary, compensation or emolument to any officer, trustee, or director thereof, nor any salary, compensation or emolument amounting in any year to more than five thousand dollars to any person, firm or corporation, unless such payment be first authorized by a vote of the board of directors of such company. The limitation as to time contained herein shall not be construed as preventing a life insurance company from entering into contracts with its agents for the payment of renewal commissions. No such company shall grant any pension to any officer, director or trustee thereof, or to any member of his family after his death. [Id. Sec. 20.]

Art. 4731. [4740] **Disbursements by vouchers.**—No domestic life insurance company shall make any disbursement of one hundred dollars or more, unless the same be evidenced by a voucher signed by, or on behalf of, the person, firm or corporation receiving the money and correctly describing the consideration for the payment. If the expenditure be for both services and disbursements, the voucher shall set forth the service rendered and statement of the disbursement made. If the expenditure be in connection with any matter pending before any legislature or public body, or before any department or officer of any State or government, the voucher shall correctly describe, in addition, the nature of the matter and of the interest of such company therein. When such voucher cannot be obtained, the expenditure shall be evidenced by a paid check or an affidavit describing the character and object of the expenditure and stating the reason for not obtaining such voucher. [Id. Sec. 21.]

Art. 4732. [4741] **Policies shall contain what.**—No policy of life insurance shall be issued or delivered in this State, or be issued by a life insurance company organized under the laws of this State, unless the same shall contain provisions substantially as follows:

1. That all premiums shall be payable in advance either at the home office of the company or to an agent of the company upon delivery of a receipt signed by one or more of the officers who are designated in the policy.

2. For a grace of at least one month for the payment of every premium after the first, which may be subject to an interest charge, during which month the insurance shall continue in force, which may stipulate that if the insured shall die during the period of grace, the overdue premium will be deducted in any settlement under the policy.

3. That the policy, or policy and application, shall constitute the entire contract between the parties and shall be incontestable not later than two years from its date, except for non-payment of premiums; and which provision may or may not, at the option of the company, contain an exception for violations of the conditions of the policy relating to naval and military services in time of war.

4. That all statements made by the insured shall, in the absence of fraud be deemed representations and not warranties.

5. That if the age of the insured has been understated, the amount payable under the policy shall be such as the premium paid would have purchased at the correct age.

6. That after three full years premiums have been paid, the company at any time while the policy is in force, will advance upon proper assignment of the policy and upon the sole security thereof at a specified rate of interest a sum equal to, or at the option of the owner of the policy less than, the legal reserve at the end of the current policy year on the policy and on any dividend addition thereto, less than a sum not more than two and one-half per cent of the amount insured by the policy, and of any dividend additions thereto; and that the company may deduct from such loan value any existing indebtedness on the policy and any unpaid balance of the premium for the current policy year, and may collect interest in advance on the loan to the end of the current policy year, which provision may also provide that such loans may be deferred for not exceeding six months after application therefor is made. It shall also be stipulated in the policy that failure to repay any such advance, or to pay interest, shall not void the policy until the total indebtedness thereon to the company shall equal or exceed the loan value. No condition other than as herein provided shall be exacted as a prerequisite to any such advance. This provision shall not be required in term insurances, nor in pure endowments issued or granted as original policies, or in exchange for lapsed or surrendered policies. No provision herein shall compel any company to loan on any policy an amount greater than ninety-seven and one-half per centum of the face value thereof, including net dividend additions thereto.

7. A provision which, in event of default in premium payments, after premiums shall have been paid for three full years, shall secure to the owner of the policy a stipulated form of insurance, the net value of which shall be at least equal to the reserve at the date of default on the policy, and on any dividend additions thereto, specifying the mortality table and rate of interest adopted for computing such reserve, less a sum not more than two and one-half per cent of the amount insured by the policy and of any existing dividend additions thereto, and less any existing indebtedness to the company on the policy. Such provision shall stipulate that the policy may be surrendered to the company at its home office within one month from date of default for a specified cash value at least equal to the sum which would otherwise be available for the purchase of insurance, as aforesaid, and may stipulate that the company may defer payment for not more than six months after the application therefor is made. This provision shall not be required in term insurances.

8. A table showing in figures the loan values, and the options available under the policies each year, upon default in

premium payments during the first twenty years of the policy or the period during which premiums are payable, beginning with the year in which such values and options become available.

9. That if, in event of default in premium payments, the value of the policy shall be applied to the purchase of other insurances; and if such insurance shall be in force and the original policy shall not have been surrendered to the company and canceled, the policy may be reinstated within three years from such default upon evidence of insurability satisfactory to the company and payments of arrears of premiums with interest.

10. That when a policy shall become a claim by the death of the insured, settlement shall be made upon receipt of or not later than two months after due proof of death and the right of the claimant to the proceeds.

11. A table showing the amounts of installments in which the policy may provide its proceeds may be payable.

Any foregoing provision not applicable to single premium policies, shall, to that extent, not be incorporated therein. [Id.]

Art. 4733 [4742] **Policies shall not contain what.**—No policy of life insurance shall be issued or delivered in this State, or be issued by a life insurance company incorporated under the laws of this State, if it contains any of the following provisions:

1. A provision limiting the time within which any action at law or in equity may be commenced to less than two years after the cause of action shall accrue.

2. A provision by which the policy shall purport to be issued or to take effect more than six months before the original application for the insurance was made, if thereby the insured would rate at any age younger than his age at date when the application was made, according to his age at nearest birthday.

3. A provision for any mode of settlement at maturity of less value than the amounts insured on the face of the policy, plus dividend additions, if any, less any indebtedness to the company on the policy, and less any premium that may, by the terms of the policy, be deducted. Any company may issue a policy promising a benefit less than the full benefit in case of the death of the insured by his own hand while sane or insane, or by following stated hazardous occupations. This provision shall not apply to purely accident and health policies. No foregoing provision relating to policy forms shall apply to policies issued in lieu of, or in exchange for, any other policies issued before July 10, 1909. [Id. Sec. 23.]

Art. 4734. [4743] **Policies of foreign companies.**—The policies of a life insurance company not organized under the laws of this State may contain any provision which the law of the State, territory, district or country under which the company is organized, prescribes shall be in such policies when issued in this State; and the policies of a life insurance company or-

ganized under the laws of this State may, when issued or delivered in any other State, territory, district or country, contain any provision required by the laws of the State, territory, district or country in which the same are issued, anything in this chapter to the contrary notwithstanding. [Id. Sec. 24.]

Art. 4735 [4745] **Service of process.**—Process in any civil suit against any domestic life insurance company, or accident insurance company, or life and accident, health and accident, or life, health and accident insurance company, may be served only on the president, or any active vice president, or secretary, or general counsel residing at the city of the home office of the company, or by leaving a copy of same at the home office of such company during business hours. [Id. Sec. 34.]

Art. 4736. [4746] **Losses shall be paid promptly.**—In all cases where a loss occurs and the life insurance company, or accident insurance company, or life and accident, health and accident, or life, health and accident insurance company liable therefor shall fail to pay the same within thirty days after demand therefor, such company shall be liable to pay the holder of such policy, in addition to the amount of the loss, twelve per cent damages on the amount of such loss together with reasonable attorney fees for the prosecution and collection of such loss. [Id. Sec. 35.]

Art. 4737. [4747] **Certificate null and void, when.**—If any life insurance company, accident insurance company, life and accident, health and accident, or life, health and accident insurance company fails to pay off and satisfy any execution that may lawfully issue on any final judgment against said company within thirty days after the officer holding such execution has demanded payment thereof from any officer or attorney of record of such company, in this State, or out of it, such officer shall immediately certify such demand and failure to the Commissioner; and thereupon the Commissioner shall forthwith declare null and void the certificate of authority of such company; and such company shall be prohibited from transacting any business in this State until such execution shall be fully satisfied and discharged, and until such commissioner shall renew his certificate of authority to such company. [Id. Sec. 36.]

Art. 4738. [4748] **Limitation of business.**—It shall be unlawful for any life insurance company, accident insurance company, life and accident, health and accident, and life, health and accident insurance company to take any kind of risks or issue any policies of insurance, except those of life, accident or health; nor shall the business of life, accident or health insurance in this State be in any wise conducted or transacted by any company which in this or any other State or country, is engaged or concerned in the business of marine, fire, or inland insurance. [Id. Sec. 37.]

Art. 4739. [4749] **Deposit of securities.**—Any life insur-

ance company, accident insurance company, life and accident, health and accident, or life, health and accident insurance company, organized under the laws of this State, may at its option, deposit with the State Treasurer securities equal to the amount of its capital stock, and may, at its option, withdraw the same or any part thereof, first having deposited in the treasury in lieu thereof other securities equal in value to those withdrawn. Any such securities, before being so originally deposited or substituted, shall be approved by the Commissioner. When any such deposit is made, the Treasurer shall execute to the company making the deposit a receipt therefor, giving such description to such securities as will identify the same; and such company shall have the right to advertise such fact, or print a copy of the treasurer's receipt on the policies it may issue; and the proper officers or agents of each insurance company making such deposit shall be permitted, at all reasonable times, to examine such securities and to detach coupons therefrom and to collect interest thereon, under such reasonable rules and regulations as may be prescribed by the Treasurer, and the Commissioner. Such deposit when made by any company shall thereafter be maintained as long as said company shall have outstanding any liability to its policy holders. For the purpose of State, county, and municipal taxation, the situs of all personal property belonging to such companies shall be at the home office of such company. [Id. Sec. 38.]

Art. 4740. [4750] **Deposits for benefit of insured.**—Any life insurance company now or which may hereafter be incorporated under the laws of this State may deposit with the Commissioner for the common benefit of all the holders of its policies and annuity bonds, securities of the kinds in which, by the laws of this State, it is permitted to invest or loan its funds, equal to the legal reserve on all its outstanding policies in force, which securities shall be held by said Commissioner in trust for the purpose and objects herein specified. Any such company may deposit lawful money of the United States in lieu of the securities above referred to, or any portion thereof, and may also, for the purposes of such deposit, convey to said Commissioner in trust the real estate in which any portion of its said reserve may be lawfully invested. In such case, said Commissioner shall hold the title thereto in trust until other securities in lieu thereof shall be deposited with him, whereupon he shall reconvey the same to such company. Said Commissioner may cause any such securities or real estate to be appraised and valued prior to their being deposited with, or conveyed to, him in trust as aforesaid, the reasonable expense of such appraisal or valuation to be paid by the company. [Acts 2nd C. S. 1909, p. 448.]

Art. 4741. [4751] **Effect and value of deposits.**—After making the deposit mentioned above, no company shall thereafter issue a policy of insurance or endowment or annuity bond, except policies of industrial insurance, unless it shall have upon

its face a certificate substantially in the following words: "This policy is registered, and approved securities equal in value to the legal reserve hereon are held in trust by the Commissioner of Insurance of the State of Texas", which certificate shall be signed by such Commissioner and attested by his seal. All policies and bonds of each kind and class issued and the forms thereof filed in the office of said Commissioner shall have printed thereon some appropriate designating letter or figure, combination of letters or figures or terms identifying the particular form of contract, together with the year of adoption of such form. Whenever any change or modification is made in the form of contracts, policy or bond, the designating letters, figures or terms and the year of adoption thereon shall be correspondingly changed. The Commissioner shall prepare and keep such registers thereof as will enable him to compute their value at any time. Upon written proof attested by the president or vice president and secretary of the company which shall have issued such policies or annuity bonds that any of them have been commuted or terminated, the Commissioner shall commute or cancel them upon his register. Until such proof is furnished all registered contracts shall be considered in force for the purposes of this chapter. The net value of every policy or annuity bond, according to the standard prescribed by the laws of this State for the valuation of policies of life insurance companies, when the first premium shall have been paid thereon, less the amount of such liens as the company may have against it (not exceeding such value), shall be entered opposite the record of said policy or annuity bond in the register aforesaid at the time such record is made. On the first day of each year, or within sixty days thereafter, the Commissioner shall cause the policies and annuity bonds of each company accepting the terms of this chapter to be carefully valued; and the actual value thereof at the time fixed for such valuation, less such liens as the company may have against it, not exceeding such value, shall be entered upon the register opposite the record of such policy or bond, and the Commissioner shall furnish a certificate of the aggregate of such value to the company. The Commissioner shall cancel mutilated or surrendered policies and annuity bonds issued by any such company, and register other like policies or bonds issued in lieu thereof. Each company, which shall have made the deposit herein provided for, shall make additional deposits from time to time, in amounts not less than five thousand dollars, and of such securities as are permitted by this chapter to be deposited, so that the market value of the securities deposited shall always be equal to the net value of the policies and annuity bonds issued by said company, less such liens as the company may have against them, not exceeding such net value. So long as any company shall maintain its deposits as herein prescribed at an amount equal to, or in excess of, the net value of its policies and annuity bonds as aforesaid, it shall be the duty of said Commissioner to sign and affix his seal to the certificates before mentioned on

every policy and annuity bond presented to him for that purpose by any company so depositing. The Commissioner shall keep a careful record of the securities deposited by each company, showing by item the amount and market value thereof. If at any time it shall appear therefrom that the value of the securities held on deposit is less than the actual value of the policies and annuity bonds issued by such company and then in force, it shall be unlawful for the Commissioner to execute the certificate on any additional policies or annuity bonds of such company until it shall have made good the deficit. Any company depositing under the provisions of this chapter may increase its deposits at any time by making additional deposits of not less than five thousand dollars of such securities as are authorized by this chapter. Any such company whose deposits exceed the net value of all policies and annuity bonds it has in force less such liens (not exceeding such net value) as the company may hold against them, may withdraw such excess; and it may withdraw any of such securities at any time by depositing others of equal value and of the character authorized by this chapter in their stead; and it may collect the interest coupons, rents and other income on the securities deposited as the same accrue.

The securities deposited under this chapter by each company shall be placed and kept by the Commissioner in some secure safe-deposit, fire-proof box or vault in the city or town in or near which the home office of the company is located. The officers of the company shall have access to such securities for the purpose of detaching interest coupons and crediting payment and exchanging securities as above provided, under such reasonable rules and regulations as the Commissioner may establish. [Id. Sec. 2.]

Art. 4742. [4752] **Fees for making deposits.**—Every company making deposit under the provisions of this chapter shall pay to the Commissioner for each certificate placed on registered policies or annuity bonds issued by the company, after the original or first deposit is made hereunder, a fee of twenty-five cents; and the fee so received shall be disposed of by said Commissioner as follows:

1. The payment of the annual rent or hire of the safety deposit fireproof box above provided.

2. Payment for the services of a competent and reliable representative of said Commissioner, to be appointed by him, who shall have direct charge of the securities and safety box containing the same, and through whom, and under whose supervision, the insurance company may have access to its securities for the purposes above provided. The sum paid such representative shall not exceed sixty dollars per annum for each company.

3. The balance of such fees shall be paid to the State Treasurer to the credit of the general fund. [Id. Sec. 3.]

Art. 4743. [4753] **What deposits may include.**—Any life insurance company organized under the laws of this State and making the deposit provided for by this chapter, may include, as

a part thereof, securities representing its capital stock, and any deposits of its securities heretofore or hereafter made in compliance with the laws of this State representing its capital stock, and shall only be required to deposit in addition thereto the remainder of its total reserve on outstanding policies and annuity bonds after deducting therefrom the amount of its capital stock securities so deposited. Deposits of securities made hereunder to the value of the reserve on all outstanding policies and annuity bonds shall be added to, and maintained from time to time as the reserve values increase, by the company issuing such contracts, or by any company which may reinsure or assume them; and such securities shall be held by the Commissioner and his successors in office in trust for the benefit of such policies and annuity bonds so long as the same shall remain in force. No company making the deposit provided for herein shall reinsure its outstanding business, or the whole of any one or more of its risks, except in or with a company or companies incorporated and organized under the laws of this State, or a company having permission to do business in this State. [Id. Secs. 4 and 5.]

Art. 4744. [4754] **Extra hazardous policies.**—If any life insurance company doing business under the laws of this State has written or assumed risks that are sub-standard or extra hazardous and has charged therefor more than its published rates of premium, the Commissioner shall in valuing such policies compute and charge such extra reserves thereon as is warranted by reason of the extra hazard assumed and the extra premium charged. [Id. Sec. 6.]

Art. 4745. [4755] **No commissions paid officers.**—No life insurance company transacting business in this State shall pay, or contract to pay, directly or indirectly, to its president, vice president, secretary, treasurer, actuary, medical director or other physician charged with the duty of examining risks or applications for insurance or to any officer of the company other than an agent or solicitor, any commission or other compensation contingent upon the writing or procuring of any policy of insurance in such company, or procuring an application therefor by any person whomsoever, or contingent upon the payment of any renewal premium, or upon the assumption of any life insurance risk by such company. Should any company violate any provision of this article, it shall be the duty of the Commissioner of Insurance to revoke its certificate of authority to transact business in this State. [Id. Sec. 7.]

Art. 4746. [4756] **Co-operative companies.**—The provisions of the six preceding articles shall likewise apply to and govern co-operative life insurance companies organized under the laws of this State. [Id. Sec. 8.]

Art. 4747. [4757] **To deposit funds in name of company.**—Any director, member of a committee, or officer, or any clerk of a home company, who is charged with the duty of handling or investing its funds, shall not deposit or invest such funds, except in the corporate name of such company; shall not borrow the

funds of such company; shall not be interested in any way in any loan, pledge, security, or property of such company, except as stockholder; shall not take or receive to his own use any fee, brokerage, commission, gift or other consideration for, or on account of, a loan made by or on behalf of such company. [Act 1909, p. 192; Sec. 39.]

Art. 4748. [4758] **Impairment of capital stock.**—Any such insurance company transacting business within this State, whose capital stock shall become impaired to the extent of thirty-three and one-third per cent thereof, computing its liabilities according to the terms of this chapter, shall make good such impairment within sixty days, by reduction of its capital stock, (provided such capital stock shall in no case be less than one hundred thousand dollars), or otherwise; and failing to make good such impairment within said time shall forfeit its right to write new business in this State until said impairment shall have been made good. The Commissioner may apply to any court of competent jurisdiction for the appointment of a receiver to wind up the affairs of such company when its capital stock shall become impaired to the extent of fifty per cent thereof, computing its policy liabilities according to the American experience table of mortality and four and one-half per cent interest. No company shall write new business in Texas when its net surplus to policy holders is less than one hundred thousand dollars. [Id. Sec. 43.]

Art. 4749. [4759] **Form of policies to be filed.**—Life insurance companies shall, within five days after the issuance of, and the placing upon the market, any form of policies of life insurance, file a copy of such form of policy with the Insurance Department. [Id. Sec. 44.]

Art. 4750. [4760] **Commissioner to approve policy.**—No insurance company transacting business in this State shall hereafter be permitted to issue or sell any policy of industrial life insurance, or any policy of accident or health insurance, until the form thereof has been submitted to the Commissioner. If the Commissioner shall approve the form of such policy as complying with the laws of this State, the same may thereafter be issued and sold. If he shall disapprove the same, any such company may institute a proceeding in any court of competent jurisdiction to review his action thereon. [Id. Sec. 45.]

Art. 4751. [4761] **Must have certificate of authority.**—No foreign or domestic insurance company shall transact any insurance business in this State, other than the lending of money, unless it shall first procure from the Commissioner a certificate of authority, stating that the laws of this State have been fully complied with by it, and authorizing it to do business in this State. Such certificate of authority shall expire on the last day of February in each year, and shall be renewed annually so long as the company shall continue to comply with the laws of the State, such renewals to be granted upon the same terms and considerations as the original certificate. [Id. Sec. 46.]

Art. 4752. [4762] **Limited capital stock companies.**—Com-

panies may be incorporated in the manner prescribed by this chapter for the incorporation of life, accident and health insurance companies generally, which shall have power only to transact business within this State, and to write insurance only on the weekly or monthly premiums plan, and to issue no policy promising to pay more than one thousand dollars in the event of death of the insured from natural causes, nor more than two thousand dollars in the event of death of any person from accidental causes, which may issue, combined or separately, life, accident or health insurance policies with not less than an actual paid up capital of twenty-five thousand dollars. All such companies shall be subject to all the laws regulating life insurance companies in this State not inconsistent with the provisions of this article. Such companies shall not be permitted to invest their assets in other than Texas securities as defined by the laws of this State regulating the investments of life insurance companies. [Id. Sec. 56.]

Art. 4753. [4763] **Unlawful dividends.**—It shall not be lawful for any insurance company organized under the laws of this State to make any dividend, except from surplus profits arising from its business. In estimating such profits, there shall be reserved therefrom the lawful reserve on all unexpired risks and also the amount of all unpaid losses, whether adjusted or unadjusted, and all other debts due and payable, or to become due and payable, by the company. Any dividends made contrary to any provision of this article shall subject the company making them to a forfeiture of its charter; and the Commissioner shall forthwith revoke its certificate of authority. He shall give such company at least ten days notice in writing of his intention to revoke such certificate, stating specifically the reasons why he intends to revoke same. [Id. Sec. 61.]

Art. 4754. [4764] **Taxation of domestic company.**—Insurance companies incorporated under the laws of this State shall hereafter be required to render for State, county and municipal taxation all of their real estate as other real estate is rendered. All personal property of such insurance companies shall be valued as other property is valued for assessment in this State in the following manner: From the total valuation of its assets shall be deducted the reserve being the amount of the debts of insurance companies by reason of their outstanding policies in gross, and from the remainder shall be deducted the assessed value of all real estate owned by the company and the remainder shall be the assessed taxable value of its personal property. Home insurance companies shall not be required to pay any occupation or gross receipt tax. [Id. Sec. 25.]

Art. 4755. [4765] **Foreign companies, statement.**—Any life insurance company, or accident insurance company, or life and accident, health and accident, or life, health and accident insurance company, incorporated under the laws of any other State, territory or country, desiring to transact the business of such insurance in this State, shall furnish said Commissioner

with a written or printed statement under oath of the president or vice president, or treasurer and secretary of such company, which statement shall show:

1. The name and locality of the company.
2. The amount of its capital stock.
3. The amount of its capital stock paid up.
4. The assets of the company, including: first, the amount of cash on hand and in the hands of other persons, naming such persons and their residence; second, real estate unincumbered, where situated and its value; third, the bonds owned by the company and how they are secured, with the rate of interest thereon; fourth, debts due the company secured by mortgage, describing the property mortgaged and its market value; fifth, debts otherwise secured, stating how secured; sixth, debts for premiums; seventh, all other moneys and securities.
5. Amount of liabilities to the company, stating the name of the person or corporation to whom liable.
6. Losses adjusted and due.
7. Losses adjusted and not due.
8. Losses adjusted.
9. Losses in suspense and for what cause.
10. All other claims against the company, describing the same.

The Commissioner may require any additional fact to be shown by such annual statement. Each such company shall be required to file a similar statement not later than March 1 of each year. [Act 1909, p. 192, Sec. 26.]

Art. 4756. [4766] Articles of incorporation, filed.—Such foreign life insurance company, or accident insurance company, or life and accident, health and accident, or life, health and accident insurance company shall accompany such statement with a certified copy of its acts or articles of incorporation, and all amendments thereto, and a copy of its by-laws, together with the name and residence of each of its officers and directors. The same shall be certified under the hand of the president or secretary of such company. [Id. Sec. 27.]

Art. 4757. [4767] Paid up capital stock.—No such foreign life insurance company, accident insurance company, or life and accident, health and accident, or life, health and accident insurance company, shall transact any business of insurance in this State, unless such company is possessed of at least one hundred thousand dollars of actual paid up cash money capital invested in such securities as provided under the laws of the State, territory or country of its creation. No mutual life insurance or accident insurance company, or life and accident, health and accident, or life, health and accident insurance company operating on the old line or legal reserve basis, shall transact any business of insurance in this State, unless such company is possessed of at least one hundred thousand dollars of net surplus assets

invested in securities provided for under the laws of the State territory or country of its creation. [Id. Sec. 28.]

Art. 4758. [4768] **Deposits required.**—Whenever the existing or future laws of any other State or territory of the United States, or of any other country, shall require of life insurance companies, accident insurance companies, or life and accident, health and accident, or life, health and accident insurance companies, incorporated by this State, any deposit of securities in such other State, territory or country before transacting insurance business therein, then, and in every such case, all insurance companies of such State shall, before doing any insurance business in this State, be required to make the same deposit of securities with the Treasurer of this State. [Id. Sec. 29.]

Art. 4759. [4769] **Alien companies to deposit.**—No foreign life insurance company or accident insurance company, or life and accident, health and accident, or life, health and accident insurance company, incorporated by or organized under the laws of any foreign government, shall transact business in this State, unless it shall first deposit and keep deposited with the Treasurer of this State, for the benefit of the policy holders of such company, citizens or residents of the United States, bonds or securities of the United States or the State of Texas to the amount of one hundred thousand dollars. [Id. Sec. 30.]

Art. 4760. [4770] **Deposit liable for judgment.**—The deposit required by the preceding article shall be held liable to pay the judgments of policy holders in such company, and may be so decreed by the court adjudicating the same. [Id. Sec. 30.]

Art. 4761. [4771] **When alien companies need not deposit.**—If the deposit required by Article 4759 has been made in any State of the United States, under the laws of such State, in such manner as to secure equally all the policy holders of such company who are citizens and residents of the United States, then no deposits shall be required in this State; but a certificate of such deposit under the hand and seal of the officer of such other State with whom the same has been made shall be filed with the Commissioner. [Id. Sec. 32.]

Art. 4762. [4772] **Assets invested.**—The assets of any company not organized under the laws of this State shall be invested in securities or property of the same classes permitted by the laws of this State as to home companies or by other laws of this State in other securities approved by the Commissioner as being of substantially the same grade. [Id. Sec. 57.]

Art. 4763. [4773] **Shall file power of attorney.**—Each life insurance company engaged in doing or desiring to do business in this State shall file with the Commissioner an irrevocable power of attorney, duly executed, constituting and appointing the Commissioner and his successors in office, or any officer or board which may hereafter be clothed with the powers and duties now devolving upon said Commissioner, its duly authorized

agent and attorney in fact for the purpose of accepting service for it or being served with citation in any suit brought against it in any court of this State, by any person, or by or to or for the use of the State of Texas, and consenting that the service of any civil process upon him as its attorney for such purpose in any suit or proceeding shall be taken and held to be valid, waiving all claim and right to object to such service or to any error by reason of such service; and such appointment, agency and power of attorney shall, by its terms and recitals, provide that it shall continue and remain in force and effect so long as such company continues to do business in this State or to collect premiums of insurance from citizens of this State, and so long as it shall have outstanding policies in this State, and until all claims of every character held by the citizens of this State, or by the State of Texas, against such company, shall have been settled. Said power of attorney shall be signed by the president or a vice president and the secretary of such company, whose signature shall be attested by the seal of the company; and said officer signing the same shall acknowledge its execution before an officer authorized by the laws of this State to take acknowledgments. The said power of attorney shall be embodied in, and approved by, a resolution of the board of directors of such company, and a copy of such resolution, duly certified to by the proper officers of said company, shall be filed with the said power of attorney in the office of the Commissioner, and shall be recorded by him in a book kept for that purpose, there to remain a permanent record of said department. [Act 1909, p. 240, Sec. 12.]

Art. 4764. [4774] Commissioner's duty in accepting service.—Whenever the Commissioner shall accept service or be served with citation in any suit pending against any life insurance company in this State, he shall immediately enclose the copy of the citation served upon him, or a substantial copy thereof, in a letter properly addressed to the general manager or general agent of the company against whom such service is had, if it shall have a general manager or general agent within this State, and if not, then to the home office of the company, and shall forward the same by registered mail, postage prepaid. No judgment by default shall be taken in any such cause until after the expiration of at least ten days after the general agent or general manager of such company, or the company at its home office, as the case may be, shall have received such copy of such citation; and the presumption shall obtain, until rebutted, that such notice was received by such agent or company in due course of mail after being deposited in the mail at Austin. [Id. Sec. 13.]

CHAPTER FOUR.

TEXAS SECURITIES AND GROSS RECEIPTS TAX.

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| | Article | | Article |
| Investment in Texas securities..... | 4765 | Companies renewing business..... | 4773 |
| "Texas securities"..... | 4766 | Failure to renew certificate..... | 4774 |
| Investments, how made..... | 4767 | Commissioner may revoke certificate..... | 4775 |
| Report showing amount of re- serve..... | 4768 | Failure to report or invest..... | 4776 |
| Report showing gross receipts..... | 4769 | Deposit by domestic company..... | 4777 |
| Taxes to be paid before certificate is issued..... | 4770 | Not to apply to certain companies..... | 4778 |
| Taxes imposed exclusive..... | 4771 | Not to apply to fraternal soci- eties..... | 4779 |
| Law deemed accepted..... | 4772 | Companies desiring to loan money..... | 4780 |

Art. 4765. [4775] **Investment in Texas securities.**—Each life insurance company now engaged, or that may hereafter engage in transacting the business of life insurance in this State, shall, as a condition of its right to transact such business in this State, invest and keep invested in Texas securities, and in Texas real estate as hereinafter provided, a sum of money equal to at least seventy-five per cent of the aggregate amount of the legal reserve required by the laws of the State of its domicile, to be maintained on account of its policies of insurance in force written upon the lives of the citizens of this State, which reserve is hereafter denominated as its "Texas Reserves." And each such company, securing a certificate of authority to do business in this State, shall be deemed to have accepted such certificate subject to all the conditions and requirements of this chapter. [Acts 1909, p. 240.]

Art. 4766. [4776] **"Texas securities."**—The term "Texas securities," as used in this chapter, shall be held to include all bonds issued under and by virtue of the Federal Farm Loan Act approved July 17, 1916, when such bonds are issued against and secured by promissory notes or other obligations, the payment of which is secured by mortgage, deed of trust or other valid lien upon unencumbered real estate situated in this State; bonds of the State of Texas, or of any county, city, town, school district, or other municipality or subdivision, which is now or may hereafter be constituted or organized and authorized to issue bonds under the constitution and laws of this State, promissory notes and other obligations, the payment of which is secured by a mortgage, deed of trust or other valid lien upon unincumbered real estate situated in this State, the title to which real estate is valid and the market value of which is double the amount loaned thereon, exclusive of buildings, unless such buildings are insured and kept insured in some company authorized to transact business in this State, and the policy or policies transferred to the company taking such mortgage or lien; the first mortgage bonds of any solvent corporation incorporated under the laws of this State and doing business in this State, which has not in five years next preceding the date of the investment by such company in such mortgage bonds, defaulted for more than three months in the payment of interest upon its bonds or indebtedness, the market value of which bonds is equal to the amount invested therein; and loans made to policy

holders on the sole security of the reserve values of their policies. The investments required by this chapter may be made by the purchase of not more than one building site, and in the erection thereon of not more than one office building, or in the purchase at its reasonable market value of such office building already constructed and the ground upon which the same is located, in any city of the State of more than four thousand inhabitants. All real estate owned by life insurance companies in this State, on December 31, 1909, and all thereafter acquired under the provisions of this chapter, or by foreclosure of a lien thereon, shall be treated, to the extent of its reasonable market value, as a part of the investments required by this chapter. And "Texas Securities" shall be held to include every character of investment authorized by the terms of this article. [Id. Acts 1917, p. 122.]

Art. 4767. [4777] **Investments, how made.**—The investments required by this chapter shall be made as follows:

1. Each life insurance company which had a certificate of authority to transact business in this State April 2, 1909, the total amount of whose investments in Texas securities as of December 31, 1908, was equal to or exceeded seventy-five per cent of the amount of its Texas reserves as of that date, shall have so invested not later than January 31, in each year, a sum of money equal to seventy-five per cent of the amount of its Texas reserves as of the preceding December 31.

2. Each life insurance company which had a certificate of authority to transact business in this State on April 2, 1909, the amount of whose investments in Texas securities as of December 31, 1908, was less than seventy-five per cent of the amount of its Texas reserves as of said date, shall have so invested, not later than January 31 in each year, a sum at least equal to seventy-five per cent of the amount by which its Texas reserves as of December 31 preceding exceeded the amount of its Texas reserves as of December 31, 1908, added to the amount of its total investments in Texas securities as of said date; and each such company, shall in addition, have so invested not later than January 31, 1910, a sum at least equal to ten per cent of the amount by which seventy-five per cent of its Texas reserves as of December 31, 1908, exceeded the amount of its investments in Texas securities as of said date, and annually thereafter it shall have invested, not later than January 31, an additional ten per cent of the amount of such excess, until the total amount of its investments in Texas securities shall at least equal seventy-five per cent of its Texas reserves.

3. Each life insurance company not having a certificate of authority to do business in this State on April 2, 1909, or that may thereafter discontinue writing new business under such certificate, shall, if it again obtain a certificate of authority to transact business in this State, be required to have invested in Texas securities annually as above provided, a sum equal to seventy-five per cent of its Texas reserves. If on December

31 preceding the issuance of such certificate of authority, the amount of its investments in Texas securities was less than seventy-five per cent of the amount of its Texas reserves, it shall be required to have so invested annually as above provided, a sum equal to seventy-five per cent of the increase of its Texas reserves since December 31, last preceding the issuance of its certificate of authority, added to the amount of its total investment in Texas securities as of said date; and, in addition, it shall, not later than January 31 in each year after the issuance of its certificate of authority, have so invested ten per cent of the amount by which seventy-five per cent of its Texas reserves as of December 31 preceding the date of said certificate exceeded the amount of its total investments in Texas securities as of that date, and shall have invested annually thereafter, not later than January 31, an additional ten per cent of such excess, until the total amount of its investments in Texas securities shall at least equal seventy-five per cent of the amount of its Texas reserves. The proportionate amount of the Texas reserves required by this section to be invested in Texas securities as of any date shall thereafter be maintained. Such investment shall not be required to be made by any life insurance company after it has ceased to do the business of life insurance or to write policies of life insurance in this State. [Acts 1909, p. 240.]

Art. 4768. [4778] Report showing amount of reserve.—Each life insurance company doing business in this State shall, not later than ten days after January 31 of each year, file with the Commissioner on a blank prepared and furnished by him for that purpose, a report showing the entire amount of the reserve on its entire business in force in this State on December 31, preceding, and an itemized schedule of its investments in Texas securities, which report shall be sworn to by either the president or a vice president and the secretary of such company. Such report shall contain such other information as may be required by the Commissioner to determine whether or not such company has continuously and in good faith complied with this law; and for that purpose the Commissioner may, whenever he shall deem it proper, require such special or supplemental reports as he may deem necessary. [Id.]

Art. 4769. [4779] Report showing gross receipts.—Each life insurance company not organized under the laws of this State, transacting business in this State, shall annually, on or before the first day of March, make a report to the Commissioner, which report shall be sworn to by either the president or vice president and secretary or treasurer of such company, which shall show the gross amount of premiums collected during the year ending on December 31, preceding, from citizens of this State, upon policies of insurance. Each such company shall pay annually an occupation tax equal to three per cent of such gross premium receipts. When the report of the investment in Texas securities, as defined by law, of any such companies as of December 31, of any year, shall show that it has

invested on said date as much as thirty per cent of its total Texas reserves, as defined by law, in promissory notes or other obligations secured by mortgage, deed of trust, or other lien on Texas real estate, the rate of occupation tax shall be reduced to two and six-tenths per cent; and, when such report shall show that such company has so invested on said date as much as sixty per cent of its total Texas reserve, the rate of such occupation tax shall be reduced to two and three-tenths per cent; and when such report shall show that such company has so invested, on said date, as much as seventy-five per cent of its total Texas reserve, the rate of such occupation tax shall be reduced to two per cent. All such companies shall in any event make the investments in Texas securities in proportion to the amount of Texas reserves as required by law. Such occupation taxes shall be for and on account of the business transacted within this State during the calendar year in which such premiums were collected, or for that portion thereof during which the company shall have transacted business in this State. [Acts 1st C. S. 1909, p. 264.]

Art. 4770. [4780] **Taxes to be paid before certificate is issued.**—Upon the receipt of sworn statements showing the gross premium receipts of such company, the Commissioner of Insurance shall certify to the State Treasurer the amount of taxes due by such company for the preceding year, which taxes shall be paid to the State Treasurer for the use of the State, by such company. Upon his receipt of such certificate, and the payment of such tax, the Treasurer shall execute a receipt therefor, which receipt shall be evidence of the payment of such taxes. No such life insurance company shall receive a certificate of authority to do business in this State until such taxes are paid. If, upon the examination of any company, or in any other manner, the Commissioner of Insurance shall be informed that the gross premium receipts of any year exceed in amount those shown by the report thereof, theretofore made as above provided, it shall be the duty of such Commissioner to file with the State Treasurer a supplemental certificate showing the additional amount of taxes due by such company, which shall be paid by such company upon notice thereof. The State Treasurer if, within fifteen days after the receipt by him of any certificate or supplemental certificate provided for by this article, the taxes due as shown thereby have not been paid, shall report the facts to the Attorney General, who shall immediately institute suit in the proper court in Travis County to recover such taxes. [Id.]

Art. 4771. [4781] **Taxes imposed exclusive.**—No occupation tax other than herein imposed shall be levied by the State or any county, city or town, upon any life insurance company herein subject to the occupation tax in proportion to its gross premium receipts, or its agents. The occupation tax imposed by this law shall be the sole occupation tax which any company doing business in this State under the provision of this chapter shall be required to pay. [Acts 1909, p. 240.]

Art. 4772. [4782] **Law deemed accepted.**—Each life insurance company not organized under the laws of this State, hereafter granted a certificate of authority to transact business in this State, shall be deemed to have accepted such certificate and to transact such business hereunder subject to the conditions and requirements that, after it shall cease to transact new business in this State under a certificate of authority, and so long as it shall continue to collect renewal premiums from citizens of this State, it shall be subject to the payment of the same occupation tax in proportion to its gross premiums during any year, from citizens of this State, as is or may be imposed by law on such companies transacting new business within this State, under certificates of authority during such year. The rate of such tax to be so paid by any such company shall never exceed the rate imposed by this chapter upon insurance companies transacting business in this State. Each such company shall make the same reports of its gross premium receipts for each such year and within the same period as is or may be required of such companies holding certificates of authority and shall at all times be subject to examination by the Commissioner of Insurance or some one selected by him for that purpose, in the same way and to the same extent as is or may be required of companies transacting new business under certificates of authority in this State, the expenses of such examination to be paid by the company examined. The respective duties of the Commissioner in certifying to the amount of such taxes and of the State Treasurer and Attorney General in their collection shall be the same as are or may be prescribed respecting taxes due from companies authorized to transact new business within this State. [Id.]

Art. 4773. [4783] **Companies renewing business.**—Any life insurance company which has heretofore been, may now be, or may hereafter be, engaged in writing policies of insurance upon the lives of citizens of this State, which has heretofore ceased, or may hereafter cease writing such policies, and which does not now or may not hereafter have a certificate of authority to transact the business of life insurance in this State, but which has continued or may continue to collect renewal or other premiums upon such policies, shall, before it may again obtain a certificate of authority to transact the business of life insurance in this State, report under oath to the Commissioner the gross amount of premiums so collected from citizens of this State upon policies of insurance during each calendar year since the end of the period covered by the last preceding report by such company of gross premium receipts upon which it paid an occupation tax, and shall pay to the State a sum equal to the percentage of its gross premium receipts for each such year that was required by law to be paid as occupation taxes by companies doing business in this State, during such year or years; and, upon the payment of such sum and securing a certificate of authority to do business in this State, the penalties provided for the failure to

pay such taxes and make such report in the past shall be remitted. [Id.]

Art. 4774. [4784] **Failure to renew certificate.**—Any company which shall fail to renew its certificate of authority or continue to write new business in this State, shall, nevertheless, have the right to maintain agents in Texas for the purpose of collecting renewal premiums on outstanding business written by it under certificate of authority, and also for the purpose of making investments as provided by this chapter. [Id.]

Art. 4775. [4785] **Commissioner may revoke certificate.**—If any life insurance company, while holding a certificate of authority to transact business in this State, shall fail or refuse to comply with any of the provisions or requirements of this chapter, the Commissioner upon ascertaining such fact, shall notify such company by actual notice in writing delivered to an executive officer of such company, of his intention to revoke its certificate of authority to transact business in this State at the expiration of thirty days after the mailing of such registered letter, or the date upon which such actual notice is served. If such provisions or requirements are not fully complied with upon the expiration of said thirty days, it shall be the duty of said Commissioner to revoke the certificate of authority of such company. In case of such revocation, such company shall not be entitled to receive another certificate of authority for a period of one year, and until it shall have fully and in good faith complied with all such provisions and requirements of this chapter. Any company feeling itself aggrieved by the action of the Commissioner in revoking its certificate of authority to do business in this State may bring suit against him in Travis County to annul and vacate the order revoking such certificate. [Id.]

Art. 4776. [4786] **Failure to report or invest.**—If any company shall intentionally fail or refuse to make the investments required by this chapter, or make any report required by this chapter, or to make any special report requested by the Commissioner under authority of this chapter, or generally to comply with any provision or requirements of this chapter, while holding a certificate of authority to transact business in this State, or after it shall cease to write new business or cease to hold such certificate, such failure or refusal shall subject such company, in addition to the penalty provided in the preceding article, in cases to which said article may be applicable, to the payment of a penalty of twenty-five dollars per day for each day that such company shall remain in default after the Commissioner shall notify such company of such default, in the manner provided in the preceding article, to be recovered in a suit that may be brought by the Attorney General in behalf of the State in the District Court of Travis County. In any suit brought to recover such penalty, there shall be a prima facie presumption subject to rebuttal, that any default that may have occurred was intentional; that the notice required by this chap-

ter was given, and the burden of proof shall be on the defendant company to prove that the investments required by this chapter were made as herein required whenever the question of whether or not such investments were thus made is in issue. [Id.]

Art. 4777. [4787] **Deposit by domestic company.**—Any life insurance company, organized under the laws of this State, may, at its option, deposit with the Treasurer of this State, securities in which its capital stock is invested, or securities equal in amount to its capital stock, of the class in which the law of this State permits insurance companies to invest their capital stock, and may, at its option, withdraw the same or any part thereof, first having deposited with the Treasurer, in lieu thereof, other securities of like class and equal amount and value to those withdrawn. Any such securities, before being so originally deposited or substituted, shall be approved by the Commissioner; and, when any such deposit is made, the Treasurer shall execute to the company making such deposit a receipt therefor, giving such description of said stock or securities as will identify the same, and stating that the same are held on deposit as the capital stock investments of such company; and such company shall have the right to advertise such fact or print a copy of the Treasurer's receipt on the policies it may issue; and the proper officer or agent of each insurance company making such deposit shall be permitted at all reasonable times to examine such securities and to detach coupons therefrom, and to collect interest thereon, under such reasonable rules and regulations as may be prescribed by the Treasurer and the Commissioner. The deposit herein provided for, when made by any company, shall thereafter be maintained so long as said company shall have outstanding any liability to its policy holders in this State. [Id.]

Art. 4778. [4788] **Not to apply to certain companies.**—The provisions of this chapter requiring investments in Texas securities shall not apply to any life insurance company, the total amount of whose Texas reserves does not exceed five thousand dollars, or to any such company doing only a reinsurance business in this State, but all other provisions of this chapter shall apply to such companies. [Id.]

Art. 4779. [4789] **Not to apply to fraternal societies.**—Nothing in this chapter shall be held to apply to fraternal benefit societies as defined by the laws of this State. [Id.]

Art. 4780. [4790] **Companies desiring to loan money.**—Any life insurance company not desiring to engage in the business of writing life insurance in this State, but desiring to loan its funds in this State, may obtain a permit to do so by complying with the laws of this State relating to foreign corporations engaged in loaning money in this State, without being required to secure a certificate of authority to write life insurance in this State. [Id.]

CHAPTER FIVE.

ASSESSMENT OR NATURAL PREMIUM COMPANIES

Art. 4781. [4791] **Foreign assessment companies.**—Companies or associations organized under the laws of any other State of the United States, carrying on the business of life or casualty insurance on the assessment or natural premium plan, having cash assets of a sum not less than one hundred thousand dollars, invested as required by the laws of this State regulating other insurance companies, shall be licensed by the Commissioner to do business in this State, and be subject only to the provisions of this chapter. Such company or association shall first file with said Commissioner a certified copy of its charter, a written agreement appointing said Commissioner and his successor in office, to be its attorney, upon whom all lawful process in any action or proceeding against it may be served; a certificate under oath of its president and secretary that it is paying, and for the twelve months next preceding has paid, the maximum amount named in its policies or certificates in full; a statement under oath of its president and secretary of its business for the year ending on the thirty-first day of December preceding; a certified copy of its constitution and by-laws, and a copy of its policy and application; a certificate from the proper authority in its home State that said company or association is lawfully entitled to do business therein, and has at least one hundred thousand dollars surplus assets subject to its indebtedness. The Commissioner shall issue a license to any company or association complying with the provisions of this chapter. Every such company or association shall annually thereafter before such license is renewed, file with said Commissioner on or before the first day of March, a statement under oath of its president and secretary, or like officers, of its business for the year ending December 31 preceding. [Acts 1889, p. 98; G. L. Vol. 9, p. 1126.]

Art. 4782. [4792] **Fees.**—Every such company or association shall pay to the Commissioner, for the use of the State, the following fees: For filing copy of its charter, twenty-five dollars; for filing statement preliminary to its admission, twenty dollars; for license to company or association, one dollar. [Id.]

Art. 4783. [4793] **Exceptions.**—The provisions of this chapter shall in no wise apply to mutual benefit organizations doing business in this State through lodges or councils, such as the Knights of Honor, or kindred organizations. [Id.]

CHAPTER SIX.

MUTUAL ASSESSMENT ACCIDENT COMPANIES.

| | Article | | Article |
|--|---------|---------------------------------|---------|
| Incorporation of | 4784 | Examination | 4792 |
| Charter | 4785 | Statement to be filed | 4793 |
| Application | 4786 | Membership fund | 4794 |
| Ready for business, when | 4787 | Notices of assessment | 4795 |
| "Mutual assessment company" | 4788 | May change beneficiary | 4796 |
| Powers of company | 4789 | Policy shall specify what | 4797 |
| Notice of by-laws | 4790 | Forfeiture of charter | 4798 |
| Books and papers subject to inspection | 4791 | Sick benefits | 4799 |

Art. 4784. [4794] **Incorporation of.**—Any number of persons, not less than five, may organize a corporation for the purpose of transacting the business of accident insurance, upon the co-operate or mutual assessment plan, without capital stock, by complying with the provisions of this chapter. All such persons shall be bona fide citizens and residents of the State of Texas. [Acts 1903, p. 174.]

Art. 4785. [4795] **Charter.**—Such persons must sign and acknowledge a written charter setting forth:

1. The name of such corporation.
2. The number of its directors, and the names and residences of those who are to act as such for the first year.
3. The location of its principal office, which must be within this State.
4. It shall state that said corporation shall have no capital stock, and shall give the purpose for which same is organized, and the plan upon which it proposes to do business, by stating that its said business shall be conducted upon the assessment plan, without lodges.

5. The term for which it is to exist, which shall not be for more than fifty years. [Id.]

Art. 4786. [4796] **Application.**—Said charter shall be presented to the Attorney General, accompanied by affidavits of all said incorporators, showing that they are bona fide citizens of this State, by bona fide applications for insurance in said company from not less than two hundred applicants, for not less than one hundred thousand dollars insurance, by an affidavit by one of its incorporators showing that each of said applicants has deposited with applicant at least eighty cents on each one thousand dollars insurance so applied for by him, and by a certificate of some solvent bank showing that all such advance funds are deposited therein to be turned over to the treasurer of such corporation when organized. The Attorney General shall examine all said instruments. If he finds the same are in conformity with this chapter, he shall give his approval and file the same with the Commissioner. [Id.]

Art. 4787. [4797] **Ready for business, when.**—When said charter has been filed with the Commissioner, with the approval of the Attorney General, accompanied by a filing fee of twenty dollars, the Commissioner shall record the said charter and certificate of the Attorney General in a book kept for that purpose, and shall, upon the receipt of fee for certifying copy of charter

of one dollar, furnish a certified copy of such charter and certificate of the Attorney General to the incorporators, and shall return to said incorporators all such applications for membership, also a certificate that such charter has been filed and recorded in his office, and that said company is duly incorporated under the laws of this State, and authorized to transact the business set forth in its charter, stating same. Upon filing and recording said charter, said association shall become a body politic and corporate, with the right to transact its said business in this State and elsewhere, according to the provisions of this chapter, to hold property and to alienate same, to contract, sue and be sued under its corporate name, and by that name shall have succession, and may by its board of directors make by-laws not inconsistent with law, and shall carry on its business subject to the provisions of this chapter. [Id. Sec. 3a.]

Art. 4788. [4798] **“Mutual assessment company.”**—Any corporation which issues any certificate, policy or other evidence of interest to its members, whereby, upon his death or total disability, any money is to be paid by such corporation to such member, or beneficiary designated by him, which money is derived from voluntary contributions or from admission fees, dues and assessments, or any of them, collected, or to be collected, from the members thereof, and interest and accretions upon, and wherein the paying of such money is conditioned upon the same being realized in the manner aforesaid, and wherein the money so realized is applied to the uses and purposes of said corporation and the expense of the management and prosecution of its business, and which has no subordinate lodges or similar bodies, shall be held to be engaged in the business of mutual assessment accident insurance as contemplated by this chapter, and shall be subject only to the provisions of this chapter. [Id. Sec. 4.]

Art. 4789. [4799] **Powers of company.**—Such corporations shall issue no certificate of stock, shall declare no dividends, shall pay no profits; and the salaries of all officers shall be designated in its by-laws. Such by-laws shall provide for annual members' meetings, in which each member shall be entitled to vote, only in person, the amount of insurance held. [Id. Sec. 5.]

Art. 4790. [4800] **Notice of by-laws.**—Every such corporation must, before the adoption of any by-laws or amendments thereto, cause the same to be mailed to each member and director of such association, together with notice of the time and place when the same will be considered at least ten days before the time for such meeting. The provisions of this article shall not apply to by-laws adopted within sixty days after the incorporation of such company. [Id. Sec. 6.]

Art. 4791. [4801] **Books and papers subject to inspection.**—All books and papers of such corporation shall, at all reasonable times be open for examination by members and their representatives. [Id. Sec. 7.]

Art. 4792. [4802] **Examination.**—The Commissioner shall

annually or as often as he deems it necessary, in person or by one or more examiners, commissioned in writing, visit each such corporation and examine its financial condition and its ability to meet its liabilities. He shall have free access to all books and papers of the corporation, or agents thereof, and shall have power to examine under oath the officers, agents and employees of such corporation. He may revoke or modify any certificate of authority issued by him, when any conditions prescribed by law for granting it no longer exist. The expense of every such examination shall be paid by the corporation so examined. [Id. Sec. 7a.]

Art. 4793. [4803] **Statement to be filed.**—Every such corporation shall, on the first day of January of each year, or within sixty days thereafter, make and file with the Commissioner a report of its affairs and operations during the year ending on the thirty-first day of December immediately preceding. Such report shall be upon blank forms to be provided by such Commissioner, and shall be verified by the oath of the secretary of such corporation, and shall contain answers to the following questions:

1. Number of certificates or policies issued or members admitted during the year.
2. Amount of indemnity affected thereby.
3. Number of death losses.
4. Number of death losses paid.
5. Number of other losses.
6. Number of other losses paid.
7. The amount received from each assessment in each class.
8. Total amount paid for losses.
9. Number of death claims for which assessments have been made.
10. Number of death claims compromised or resisted, and brief statement of reasons.
11. Number of other claims for which assessment has been made.
12. Number of other claims compromised or resisted, and brief statement of the reasons.
13. Does company charge annual dues, and, if so, how much?
14. Total amount received and the disposition thereof.
15. Does the company use moneys received for payment of claims to pay expense of the company in whole or in part, and, if so, state the amount so used.
16. Give total amount of salaries paid officers, and name of each salaried officer and the amount paid him.
17. Does the company guarantee fixed amount to be paid, regardless of amounts realized from assessments, dues, admissions, fees, etc.
18. If so, state the amount guaranteed and the security therefor.
19. Has the company a reserve fund?

20. If so, how is it created and for what purpose, the amount thereof and in what form and how invested?

21. Has the company more than one class of members?

22. If so, how many and what, and give amount of indemnity in each.

23. Give number of members in each class.

24. State when the company was organized.

25. Number of policies or memberships lapsed during the year.

26. Number of policies of each class at beginning and at the end of the year.

27. All assets applicable to payment of insurance, other than reserve fund, and how invested.

28. Amount received from all sources for payment of losses, and the disposition thereof; and, in case such corporation fails or refuses to make such report in full within said time, its charter and franchise shall be forfeited. The following fees shall be paid annually: Filing annual statement, ten dollars; certificate of authority to corporation, one dollar; each certified copy thereof, one dollar. [Id. Sec. 8.]

Art. 4794. [4804] **Membership fund.**—Each certificate of membership, policy or other contract of insurance issued by such company shall bear on its face in red letters the following words: “The payment of the benefit herein provided for is conditioned upon its being collected by this company from assessments and other sources as provided in its by-laws.” Nothing in this chapter shall be construed to prevent the creation of a reserve fund by any such organization, which fund, or its accretions, or both, are to be used only for the payment of losses or benefits, as provided in the by-laws of such corporation. Such corporation may charge a membership or admission fee of not exceeding three dollars upon each policy issued, the proceeds of which may be placed in the expense fund, and at least sixty per cent of all amounts realized from any other sources shall be used only for the payment of losses or benefits as they occur, or the balance thereof remaining after paying such losses or benefits transferred to such reserve fund. Such membership fee may also apply as a payment or credit upon the initial assessment or premium, if the by-laws of the corporation so provide. [Acts 1905, p. 311, Acts 1915, p. 255.]

Art. 4795. [4805] **Notices of assessment.**—Each notice of assessments made by such corporation upon its members, or any of them, shall truly state the cause and purpose of such assessment, amount paid on the last claim paid, the cause of disability or death, the name of the member for whose death or disability such payment was made, the maximum face value of the certificate or policy, and, in case of disability, the maximum amount provided for in such policy or certificate for such disability, and, if not paid in full, the reason therefor. [Act 1903, p. 174.]

Art. 4796. [4806] **May change beneficiary.**—Any member

of such corporation shall have the right at any time, with the consent of such corporation, to change the beneficiary in his policy or certificate, without requiring the consent of such beneficiary; and such corporation shall give consent under such regulations as may be prescribed in its by-laws. [Id. Sec. 11.]

Art. 4797. [4807] **Policy shall specify what.**—Every policy or certificate issued by any such corporation shall specify the sum of money which it promises to pay upon the contingency insured against, and the number of days after the receipt of satisfactory proof of the happening of such contingency at which such payment shall be made. Upon the happening of such contingency, such corporation shall be liable for the payment of such amount in full at the time so specified, subject to such legal defenses as it may have against same. If the sum realized by it from assessments made in accordance with its by-laws to meet such payment, together with such other sums as its by-laws may provide shall be used for that purpose, shall be insufficient to pay such sum in full, for which it is so liable, then the payment of the full amount so realized shall discharge such corporation from all liability, by reason of the happening of such contingency, and in that event, such corporation shall be liable only for the amount so actually realized. [Id. Sec. 12.]

Art. 4798. [4808] **Forfeiture of charter.**—If any corporation not incorporated under this chapter shall engage in any branch of mutual assessment accident insurance, as herein defined, or if any corporation organized under the provisions of this chapter shall transact business in any manner except as herein authorized, such corporation shall, in either event, be subject to the forfeiture of its charter and franchises; and the Attorney General of this State shall immediately institute suit to forfeit its charter and dissolve it. [Id. Sec. 13.]

Art. 4799. **Sick benefits.**—Any corporation now existing or hereafter organized under the provisions of this chapter for the purpose of transacting the business of a mutual assessment accident insurance company shall have and is hereby vested with the authority under its corporate powers to engage in the business, on the assessment plan, as defined in this chapter, of insuring against disability resulting from sickness or disease, and to pay to the beneficiaries of its deceased members a funeral benefit which shall not exceed the sum of one hundred dollars in event of death of any member resulting from sickness or disease. In enforcing compliance with the requirements of the third article of this chapter, applications for insurance against disability or death resulting from sickness or disease shall not be taken into consideration. [Acts 1915, p. 255.]

CHAPTER SEVEN.

MUTUAL LIFE INSURANCE COMPANIES.

| | Article | | Article |
|---|---------|---------------------------------------|---------|
| Incorporation | 4800 | Contingency reserve | 4810 |
| Certificate of authority | 4801 | Surplus and dividends | 4811 |
| Directors | 4802 | Policies | 4812 |
| Annual meeting of policy-holders | 4803 | Unlawful deductions from policy | 4813 |
| Bonds of officers | 4804 | Table of guaranteed values | 4814 |
| Annual statement renewal certifi- cate | 4805 | Incurring debts | 4815 |
| Annual examination | 4806 | Advances to company | 4816 |
| Agents and commissions | 4807 | Liabilities | 4817 |
| Annual valuation of policies | 4808 | Investment of funds | 4818 |
| Net premiums | 4809 | Other laws to govern | 4819 |

Art. 4800. [4809] **Incorporation.**—Nine or more persons, residents of this State, may form a mutual life insurance company for the purpose of insuring the lives of individuals on the mutual, level premium, legal reserve plan, subject to the provisions of this chapter, by executing and acknowledging articles of incorporation for that purpose. Such articles of incorporation shall set forth:

1. The name and residence of each incorporator.
2. The name of the proposed company, which shall contain the words, "Mutual Life Insurance Company," as a part thereof.
3. The location of the principal office from which the business of the company is to be transacted.
4. The number of directors and the name and residence of each one who is to serve until the first regular election of directors. [Acts 1921, p. 148.]

Art. 4801. **Certificate of authority.**—If the Attorney General approves such articles of incorporation, he shall so certify thereon in writing, and return them to the Commissioner, who shall file the same in his office and issue to the company a certificate of authority to which shall be attached a certified copy of the articles of incorporation authorizing such company to receive applications for insurance as provided in this chapter, to collect premiums thereon and to issue receipts therefor. Such certificate shall expressly state that such company is not authorized to issue policies of insurance or transact any business other than that specifically authorized therein until it has received bona fide applications for insurance on the lives of at least two hundred individuals for not less than five hundred dollars each, aggregating at least two hundred thousand dollars of insurance on which the aggregate net premiums shall be at least equal to the largest net risk assumed on any one life, which applications have been approved by a competent physician and on which the first annual premiums at adequate rates have been paid to the company, nor until these facts shall have been fully shown to the Commissioner and he shall have issued to the company a certificate of authority to transact business as a mutual life insurance company. If this showing is not made within six months after the date upon which such articles of incorporation are filed with the Commissioner, it shall be his duty to

cancel the certificate of authority of such company to receive applications for insurance, and to notify each incorporator of such action. When the Commissioner shall be notified that any such company has complied with all the provisions of this and the preceding article, he shall make, or cause to be made, at the expense of such company, an examination thereof; and if he shall find that the law has been fully complied with, it shall be his duty to issue to it a certificate of authority to transact the business of a mutual life insurance company, in accordance with the terms of this chapter. [Id.]

Art. 4802. [4810] **Directors.**—The business of a mutual life insurance company shall be controlled and directed by a board of directors consisting of not less than five nor more than twenty-five members, who shall be elected annually as provided in this chapter. The directors who are to serve until the first annual election shall be named in the charter, and they shall hold office until their successors shall be elected and qualified, or until they shall be removed for improper practices. The board of directors shall elect the officers of the company, which shall be a president, and such number of vice-presidents as their by-laws may provide; a secretary, a treasurer, a medical director and such other officers as the by-laws may provide for; and shall fix the compensation of all such officers. The duties of all officers shall be prescribed by the by-laws. The by-laws governing the company until the date of its first annual meeting shall be adopted by the board of directors at their first meeting after the certificate of authority shall be issued authorizing the company to transact the business of a mutual life insurance company. [Id.]

Art. 4803. **Annual meeting of policy-holders.**—There shall be an annual meeting of all the policy-holders of each mutual life insurance company at the home office of such company or at such other place as may be properly announced to the policy-holders, on the second Tuesday in March after it shall have received a certificate of authority to transact the business of life insurance, and annually thereafter, at which the directors shall be elected for the succeeding year, and at which by-laws for the government of the company, not inconsistent with the provisions of this chapter or with the laws of this State may be adopted, and at which the existing by-laws may be repealed or amended. At such annual meeting, each policy-holder shall be entitled to one vote for each five hundred dollars of insurance held by him. Any policy-holder may execute his proxy authorizing and entitling the holder to exercise his voting powers, unless such proxy shall be revoked previous to such annual meeting. [Id.]

Art. 4804. **Bonds of officers.**—The president, secretary and treasurer shall each give bond for the protection of the policy-holders in amount and with securities to be approved by the Commissioner, conditioned for the faithful performance of their respective duties. [Id.]

Art. 4805. **Annual statement; renewal certificate.**—Such mutual life insurance companies shall file their annual statements with the Commissioner, and receive from him their certificates of authority to transact the business of life insurance. [Id.]

Art. 4806. **Annual examination.**—The Commissioner shall have made, once in each calendar year, a thorough examination of the affairs of each such mutual life insurance company, the report of which examination shall be made to such Commissioner under oath. The Commissioner, if he approves the report of such examination, shall furnish the company with certificate of approval. The expense of such examination shall be borne by the company examined. [Id.]

Art. 4807. **Agents and commissions.**—Any such mutual life insurance company which has received authority from the Commissioner to transact business in this State shall receive from such Commissioner, upon written request therefor, a certificate of authority for each of its agents in this State. Contracts between such companies and such agents shall not provide for commissions or other compensation to such agents in excess of the expense loading in the premiums of policies issued upon the applications procured by such agents, collected therefor, and paid to the company in cash. [Id.]

Art. 4808. **Annual valuation of policies.**—The Commissioner shall annually make valuations of all outstanding policies of mutual life insurance companies as of December 31 of each year, in accordance with the one year preliminary term method based upon the American Experience Table of Mortality and three and one-half per cent interest per annum, assuming an average risk exposure of six months on all new policies issued within each calendar year. [Id.]

Art. 4809. **Net premiums.**—The net premiums upon all policies issued by any such company shall be computed in accordance with the provisions of the preceding article, the net premiums on all new policies issued to be obtained by deducting from the total premium paid the amount of the preliminary term premium as above provided and allowing the remainder of the first annual premium as expense loading; no portion of such net premium collected upon any such policy shall ever be used or applied for the payment of any expenses of the company of any kind or character, or for any other purpose than the payment of death losses, surrender values, or lawful dividends to policyholders, loans on policies, or for the purposes of such investments of the company as are prescribed in the laws of this State. [Id.]

Art. 4810. **Contingency reserve.**—Every such company may maintain and set aside, before declaring any dividends to policyholders, in addition to an amount equal to the net value of all its policies, computed as required by this chapter, a contingency reserve not exceeding the following respective percentages of said net values, to wit: When said net values are less than one hundred thousand dollars, twenty per cent thereof, or the sum of ten

thousand dollars, whichever is the greater; the percentage thereof measuring the contingency reserve shall decrease one-half of one per cent for each one hundred thousand dollars of said net values up to one million dollars, and thereafter, one-half of one per cent for each additional one million dollars of said net values; provided, that as the said net values of said policies increase, and as the maximum percentage measuring the contingency reserve decreases, such company may maintain the contingency reserve already accumulated hereunder, although for the time being it may exceed the maximum percentage herein prescribed, but may not add to the contingency reserve when the addition will bring it beyond the maximum percentage. [Id.]

Art. 4811. **Surplus and dividends.**—Each such company shall make an annual accounting and apportionment of divisible surplus to each policy-holder, beginning not later than the end of the second policy year on all policies issued; and each such policy-holder shall be entitled to and credited with or paid, such portion of the entire divisible surplus as has been contributed thereto by his policy. Upon the thirty-first day of December of each year, or as soon thereafter as may be practicable, each such company shall truly ascertain the surplus earned by it during such year; and after setting aside from such surplus the contingency reserve provided for in this chapter, it shall apportion to each of its policies upon which all premiums due and payable for at least one year have been paid, the proportion of the remainder of such surplus which has been contributed by each such policy, and shall immediately submit a detailed report of such apportionment under oath of its president or secretary to the Commissioner. If such Commissioner shall find such apportionment to be equitable and just to the policy-holders and in accordance with the provisions of this chapter, he shall approve the same, and it shall become effective. If he shall not approve such apportionment, he shall make such changes therein as he shall deem equitable and just and necessary to make the same comply with the provisions of this chapter, and shall certify such changes to such company, whereupon such apportionment as changed by the Commissioner shall become effective. Each dividend declared as aforesaid shall be paid in cash, or in the equivalent of its cash value in any option stated in the policy and selected by the policy-holder, notice of which selection by the policy-holder shall be given to the company in writing. [Id.]

Art. 4812. **Policies.**—Mutual life insurance companies are authorized to transact business throughout this State and in other States to which they may be admitted; they shall issue no policies except upon the participating plan with dividends payable annually as provided in this chapter; the forms of all policies issued by any such company shall be approved by the Commissioner, and all such policies shall have plainly printed on both the face and the reverse sides thereof the words, "The form of this policy is approved by the Commissioner of Insurance of the State of Texas," and the Commissioner shall revoke the certifi-

cate of authority of any such company which shall issue any policy except upon such form so approved. No such company shall issue any policy or policies by which, after deducting reinsurance, if any, it shall be bound for more than five thousand dollars upon any one life at any time when the total amount of its insurance in force is less than ten million dollars. [Id.]

Art. 4813. [4819] **Unlawful deductions from policy.**—Each policy issued by such company shall provide, in the event that premiums are payable other than annually, that no deduction shall be made from the amount due on any policy in the event that the death of the policy-holder shall occur prior to the due date of any premium less than annual. [Id.]

Art. 4814. **Table of guaranteed values.**—Each policy issued by such company shall contain a table of guaranteed values, which shall become non-forfeitable not later than upon the payment of the third full annual premium; such tables of values shall be drawn in accordance with the law governing life and accident insurance companies. [Id.]

Art. 4815. **Incurring debts.**—No mutual life insurance company shall have the power except as provided in this chapter, to borrow money for any purpose other than the payment of death losses. No such company shall have the power to incur any debt on any account except under policies issued by it or for money borrowed to pay death losses, for which any portion of its assets over and above that which may represent or be derived from the expense loading of the premiums collected by it, shall, in any event be subject to execution upon a judgment therefor. [Id.]

Art. 4816. **Advances to company.**—Any officer, director, or policy-holder of a mutual life insurance company, or any other person, may advance to such company any sum of money for the purpose of promoting or conserving its business, or to enable it to comply with any requirement of the law; and such money, together with such interest thereon as may have been agreed upon, not exceeding ten per cent per annum, shall be payable only out of the surplus remaining after providing for all reserves and other liabilities, and shall not otherwise be a liability or claim against the company or any of its assets. No commission or promotion expenses shall be paid in connection with the advance of any such money to the company, and the amount of such advance shall be reported in each annual statement. [Id.]

Art. 4817. **Liabilities.**—At any time when the liabilities of any such company, computing its reserve liability upon the American Experience Table of Mortality and three and one-half per cent per annum interest, shall be in excess of its assets, the company shall cease the issuance of new policies until the impairment in its reserve shall be made good. Whenever the liabilities of any such company, computing its reserve liability upon the American Experience Table of Mortality and four and one-half per cent interest per annum, exceeds its assets, the Com-

missioner may request the Attorney General to file suit in the name of the State in the district court of the county in which such company is located for the appointment of a receiver to terminate and liquidate the affairs of the company, and such action may be maintained. In any such action, such district court, or judge thereof, in vacation, shall have the power, if in his opinion the interests of the policy-holders of the company require it, to enter an order for the reinsurance of all outstanding risks of such company in some other life insurance company authorized to do business in this State upon such terms and conditions as may be approved by the Commissioner, and by such court, or the judge thereof, in vacation; and such court or judge may for that purpose direct the conveyance of the entire assets of any such company, or any portion thereof, to such re-insuring company in consideration of such re-insurance. [Id.]

Art. 4818. [4811] **Investment of funds.**—Mutual life insurance companies shall invest their funds in accordance with the provisions of the third chapter of this title, concerning investments of life insurance companies in this State; all moneys of mutual life insurance companies, coming into the hands of any officer thereof, when not invested as prescribed, shall be deposited in the name of such company in some bank which is subject to either State or national regulation and supervision, and which has been approved by the Commissioner as a depository therefor. [Id.]

Art. 4819. **Other laws to govern.**—The provisions of chapter 3 of this title when not in conflict with the articles of this chapter, shall apply to and govern mutual life insurance companies organized under the provisions of this chapter. [Id.]

CHAPTER EIGHT

FRATERNAL BENEFIT SOCIETIES.

| Article | Article | | |
|---|---------|---|-------|
| "Fraternal benefit society"..... | 4820 | Admission of foreign society..... | 4842 |
| "Lodge system"..... | 4821 | Service of process..... | 4843 |
| "Representative form of govern- ment"..... | 4822 | Place of meeting..... | 4844 |
| Exemptions..... | 4823 | No personal liability..... | 4845 |
| Benefits..... | 4824 | Waiving provisions of law..... | 4846 |
| Benefits upon life of child..... | 4825 | Benefit not attachable..... | 4847 |
| Certificates as to child..... | 4826 | Constitution and laws..... | 4848 |
| Reserve and rights of child..... | 4827 | Annual reports..... | 4849 |
| Statement as to children..... | 4828 | Provisions to insure security..... | 4850 |
| Specified payments..... | 4829 | Accumulation basis..... | 4851 |
| Child membership..... | 4830 | Examination of domestic socie- ties..... | 4852 |
| Beneficiaries..... | 4831 | Application for receiver, etc..... | 4853 |
| Organizations as beneficiary..... | 4832 | Examination of foreign societies..... | 4854 |
| Qualifications for membership..... | 4833 | No adverse publications..... | 4855 |
| Certificate..... | 4834 | Revocation of license..... | 4856 |
| Funds..... | 4835 | Examination of certain societies..... | 4857 |
| Investments..... | 4836 | Taxation..... | 4858 |
| Distribution of funds..... | 4837 | Exceptions..... | 4859 |
| Organization..... | 4838 | Bond required..... | 4859a |
| Powers retained—amendments..... | 4839 | Amount of bond..... | 4859b |
| Mergers and transfers..... | 4840 | Penalty for failure to give bond..... | 4859c |
| Annual license..... | 4841 | Bond payable to the president..... | 4859d |

Art. 4820. **"Fraternal benefit society."**—Any corporation, society, order or voluntary association, without capital stock, organized and carried on solely for the mutual benefit of its members and their beneficiaries, and not for profit, and having a lodge

system with ritualistic form of work and representative form of government, and which shall make provision for the payment of benefits in accordance with Article 4824 is hereby declared to be a fraternal benefit society. [Acts 1913, p. 220.]

Art. 4821. "**Lodge system.**"—Any society having a supreme governing or legislative body and subordinate lodges or branches by whatever name known, into which members shall be elected initiated and admitted in accordance with the Constitution, laws, rules, regulations and prescribed ritualistic ceremonies, which subordinate lodges or branches shall be required by the laws of such society to hold regular or stated meetings at least once in each month, shall be deemed to be operating on the lodge system. [Id.]

Art. 4822. "**Representative form of government.**"—Any such society shall be deemed to have a representative form of government when it shall provide in its Constitution and laws for a supreme legislative or governing body, composed of representatives, elected either by the members or by delegates elected, directly or indirectly by the members, together with such other members as may be prescribed by its Constitution and laws; provided that elective members shall constitute a majority in number and have not less than two-thirds of the votes, nor less than the votes required to amend its Constitution and laws. The meetings of the supreme or governing body, and the election of officers, representatives or delegates, shall be held as often as once in four years. The members, officers, representatives or delegates of a fraternal benefit society shall not vote by proxy. [Id.]

Art. 4823. "**Exemptions.**"—Except as herein provided, such societies shall be governed by this law, and shall be exempt from all provisions of the insurance laws of this State, not only in governmental relations with the State, but for every other purpose. No law hereafter enacted shall apply to them, unless they be expressly designated therein. [Id.]

Art. 4824. "**Benefits.**"—Every society transacting business under this law shall provide for the payment of death benefits and may provide for the payment of benefits in case of temporary or permanent physical disability, either as the result of disease, accident or old age. The period of life at which the payment of benefits for disability on account of old age shall commence shall not be under seventy years. Such society may provide for monuments or tombstones to the memory of its deceased members, and for the payment of funeral benefits. Such society shall have the power to give a member, when permanently disabled or on attaining the age of seventy, all or such portion of the face value of his certificate as its laws may provide. Nothing in this law shall be so construed as to prevent the issuing of benefit certificates for a term of years less than the whole of life which are payable upon the death or disability of the member occurring within the term for which the benefit certificates may be issued. Such society shall, upon written appli-

cation of the member, have the power to accept a part of the periodical contributions in cash, and charge the remainder, not exceeding one-half of the periodical contribution, against the certificate, with interest payable or compounded annually at a rate not lower than four per cent per annum. This privilege shall not be granted except to societies which have readjusted or may hereafter readjust their rates of contribution, and to contracts affected by such readjustment. Any society which shall show by the annual valuation hereinafter provided for that it is accumulating and maintaining the reserve not lower than the usual reserve computed by the American Experience Table and five per cent interest may grant to its members extended and paid-up protection, or such withdrawal equities as its Constitution and laws may provide. Such grants shall in no case exceed in value the portion of the reserve to the credit of such members to whom they are made. [Id.]

Art. 4825. **Benefits upon life of child.**—Any fraternal benefit society authorized to do business in this State and operating on the lodge plan, may provide in its constitution and by-laws, in addition to other benefits provided for therein, for the payment of death or annuity benefits upon the lives of children between the ages of two and eighteen years at next birthday, for whose support and maintenance a member of such society is responsible. Any such society may at its option organize and operate branches for such children and membership in local lodges and initiation therein shall not be required of such children, nor shall they have any voice in the management of the society. The total benefits payable as above provided shall in no case exceed the following amounts at ages at next birthday at time of death, respectively as follows:

| Between the ages of | Amount | Between the ages of | Amount |
|------------------------|--------|------------------------|----------|
| 2 and 3 | \$ 34 | 8 and 9 | \$200.00 |
| 3 and 4 | 40 | 9 and 10 | 240.00 |
| 4 and 5 | 48 | 10 and 11 | 300.00 |
| 5 and 6 | 58 | 11 and 12 | 380.00 |
| 6 and 7 | 140 | 12 and 13 | 460.00 |
| 7 and 8 | 160 | 13 and 16 | 520.00 |
| | | 16 and 18 | 600.00 |

[Acts 1917, p. 430.]

Art. 4826. **Certificates as to child.**—No benefit certificates as to any child shall take effect until after medical examination or inspection by a licensed medical practitioner, in accordance with the laws of the society, nor shall any such benefits certificate be issued unless the society shall simultaneously put in force or have in force at time of issue of said certificate at least five hundred such certificates, on each of which at least one assessment has been paid, nor where the number of lives represented by like certificate falls below five hundred. The death benefit contributions to be made upon such certificate shall be

based upon the "Standard Industrial Mortality Table" or the "English Life Number Six" and a rate of interest not greater than 4 per cent per annum, or upon a higher standard. Contributions may be waived or returns may be made from any surplus held in excess of reserve and other liabilities, as provided in the by-laws. Extra contributions shall be made if the reserves hereafter provided for become impaired. [Id.]

Art. 4827. **Reserve and rights of child.**—Any society entering into such insurance agreement shall maintain on all such contracts the reserve required by the standard of mortality and interest adopted by the society for computing contributions, as provided in the preceding article, and the funds representing the benefit contributions and all accretions thereon shall be kept as separate and distinct funds, independent of the other funds of the society, and shall not be liable for nor used for the payment of the debts and obligations of the society other than the benefits herein authorized. A society may provide that when a child reaches the minimum age for initiation into membership in such society, any benefit certificate issued hereunder may be surrendered for cancellation and exchanged for any other form of certificate issued by the society, provided that such surrender will not reduce the number of lives insured in the branch below five hundred, and upon the issuance of such new certificate any reserve upon the original certificate herein provided for shall be transferred to credit of the new certificate. Neither the person who originally made application for benefits on account of such child, nor the beneficiary named in such original certificate, nor the person who paid the contribution, shall have any vested right in such new certificate, the free nomination of a beneficiary under the new certificate being left to the child so admitted to benefit membership. [Id.]

Art. 4828. **Statement as to children.**—An entirely separate financial statement of the business transactions and of assets and liabilities arising therefrom shall be made in its annual report to the Commissioner of Insurance by any society availing itself of the provisions hereof. The separation of assets, funds and liabilities required hereby shall not be terminated, rescinded or modified, nor shall the funds be diverted for any use other than as specified in the preceding article as long as any certificates issued hereunder remain in force, and this requirement shall be recognized and enforced in any liquidation, reinsurance, merger, or other change in the condition of the status of the society. [Id.]

Art. 4829. **Specified payments.**—Any society shall have the right to provide in its laws and the certificate issued hereunder for specified payments on account of the expense or general fund, which payments shall or shall not be mingled with the general fund of the society as its constitution and by-laws may provide. [Id.]

Art. 4830. **Child membership.**—In the event of the termina-

tion of membership in the society by the person responsible for the support of any child, on whose account a certificate may have been issued, as provided herein, the certificate may be continued for the benefit of the estate of the child, provided, the contributions are continued, or for the benefit of any other person responsible for the support and maintenance of such child, who shall assume the payment of the required contributions. [Id.]

Art. 4831. **Beneficiaries.**—The payment of death benefits shall be confined to wife, husband, relative by blood to the fourth degree, children by legal adoption, mother-in-law, son-in-law, daughter-in-law, step-father, step-mother, step-children, father-in-law or to a person or persons dependent upon the member. If after the issuance of the original certificate the member shall become dependent upon an incorporated charitable institution, he shall have the privilege, with the consent of the society, to make such institution his beneficiary. Within the above restrictions each member shall have the right to designate his beneficiary, and from time to time have the same changed in accordance with the laws, rules or regulations of the society, and no beneficiary shall have or obtain any vested interest in the said benefit until the same has become due and payable upon the death of the said member. If a member shall die without designating a beneficiary, or if at the death of the member the beneficiary designated is dead or has no insurable interest in the life of the member, the benefits payable under the certificate shall not be forfeited but shall be paid to the persons named in this article, but in such order as the by-laws of the society shall prescribe; and if such society shall fail to prescribe the order of payment, then the same shall be payable to the persons named in this article and in the order first named. [Acts 1923, p. 116.]

Art. 4832. **Organizations as beneficiary.**—Fraternal benefit societies, heretofore or hereafter incorporated by the State of Texas or licensed to do business therein, shall be authorized to provide in their constitutions, by-laws or fundamental laws for the issuance of benefit certificates to their members, wherein any association, society or corporation, organized and operated for religious, eleemosynary or educational purposes may be named as beneficiary. [Acts 1917, p. 372.]

Art. 4833. **Qualifications for membership.**—Any society may admit to beneficial membership any person not less than sixteen and not more than sixty years of age, who has been examined by a legally qualified physician, and whose examination has been supervised and approved in accordance with the laws of the society. Any beneficiary member of such society who shall apply for a certificate providing for disability benefits need not be required to pass an additional medical examination therefor. Nothing herein shall prevent such society from accepting general or social members. [Acts 1913, p. 220.]

Art. 4834. **Certificate.**—Every certificate issued by any

such society shall specify the amount of benefit provided thereby, and shall provide that the certificate, the charter or articles of incorporation or, if a voluntary association, the articles of association, the constitution and laws of the society, and the application for membership and medical examination, signed by the applicant, and all amendments to each thereof, shall constitute the agreement between the society and the member, and copies of the same, certified by the secretary of the society, or corresponding officer, shall be received in evidence of the terms and conditions thereof. Any changes, additions or amendments to said charter or articles of incorporation, or articles of association, or constitution or laws duly made or enacted subsequent to the issuance of the benefit certificates shall bind the member and his beneficiaries, and shall govern and control the agreement in all respects the same as though such changes, additions or amendments had been made prior to and were in force at the time of the application for membership. [Id.]

Art. 4835. **Funds.**—Any society may create, maintain, invest, disburse and apply an emergency surplus or other similar fund in accordance with its laws. Unless otherwise provided in the contract, such funds shall be held, invested and disbursed for the use and benefit of the society, and no member or beneficiary shall have or acquire individual rights therein or become entitled to any apportionment of the surrender of any part thereof, except as provided in the fifth article of this chapter. The funds from which benefits shall be paid and the funds from which the expenses of the society shall be defrayed shall be derived from periodical or other payments by the members of the society and accretions of said funds. No society, domestic or foreign, shall hereafter be incorporated or admitted to transact business in this State which does not provide for stated periodical contributions sufficient to provide for meeting the mortuary obligations contracted, when valued upon the basis of the National Fraternal Congress Table of Mortality as adopted by the National Fraternal Congress, August 23, 1899, or any higher standard, with interest assumption not more than four per cent per annum, nor write or accept members for temporary or permanent disability benefits except upon tables based upon reliable experience, with an interest assumption not higher than four per cent per annum. Deferred payments or installments of claims shall be considered as fixed liabilities on the happenings of the contingency upon which such payments or installments are thereafter to be paid. Such liability shall be the present value of such future payments or installments upon the rate of interest and mortality assumed by the society for valuation, and every society shall maintain a fund sufficient to meet such liability regardless of proposed future collections to meet any such liabilities. [Id.]

Art. 4836. **Investments.**—Every society shall invest its funds only in securities permitted by the laws of this State for the investment of the assets of life insurance companies. Any

foreign society permitted or seeking to do business in this State which invests funds in accordance with the laws of the State in which it is incorporated shall be held to meet the requirements of this law for the investment of funds. In case the Constitution and by-laws of the Grand Lodge or governing body of any such association provides that all or any part of the beneficiary or mortuary or insurance fund of such association that is paid in by or collected from the members of such subordinate or local lodge may be retained in the custody of and controlled and managed by such subordinate or local lodge, and designate what officer of such subordinate or local lodge shall have the custody and control of such fund and authorize such local officers to loan or invest the same, and such local officer shall have executed and filed, and shall from time to time when required by the Commissioner, file with such Commissioner such bond or other written instrument to be prescribed and approved in terms and amount by such Commissioner as will indemnify such fund against waste, depletion or loss through loans, investment or otherwise, then such fund so secured shall be exempt from the provisions of this chapter. [Id.]

Art. 4837. Distribution of funds.—Every provision of the laws of the society for payment by members of such society, in whatever form made, shall distinctly state the purpose of the same and the proportion thereof which may be used for expenses. No part of the money collected for mortuary or disability purposes or the net accretions of either or any of said funds shall be used for expenses. [Id.]

Art. 4838. Organization.—Seven or more persons, citizens of the United States, and a majority of whom are citizens of this State, who desire to form a fraternal benefit society, as defined by this law, may make and sign, giving their addresses, and acknowledge before some officer competent to take acknowledgment of deeds, articles of incorporation, in which shall be stated:

1. The proposed corporate name of the society, which shall not so closely resemble the name of any society or insurance company already transacting business in this State as to mislead the public or to lead to confusion.
2. The purpose for which it is formed, which shall not include more liberal powers than are granted by this law. Any lawful, social, intellectual, educational, charitable, benevolent, moral or religious advantages may be set forth among the purposes of the society, and the mode in which its corporate powers are to be exercised.
3. The names, residences and official titles of all the officers, trustees, directors or other persons who are to have and exercise the general control and management of the affairs and funds of the society for the first year or until the ensuing election at which all such officers shall be elected by the supreme legislative or governing body, which election shall be held not

later than one year from the date of the issuance of the permanent certificate.

4. Such articles of incorporation and duly certified copies of the Constitution and laws, rules and regulations, and copies of all proposed forms of benefit certificates, applications therefor and circulars to be issued by such society, and a bond in the sum of five thousand dollars, with sureties approved by the Commissioner, conditioned upon the return of the advance payments, as provided in this article, to applicants, if the organization is not completed within one year, shall be filed with such Commissioner, who may require such further information as he deems necessary, and if the purposes of the society conform to the requirements of this law, and all provisions of law have been complied with, said Commissioner shall so certify and retain and record or file the articles of incorporation, and furnish the incorporators a preliminary certificate authorizing said society to solicit members as hereinafter provided.

Upon receipt of said certificate from the Commissioner, said society may solicit members for the purpose of completing its organization and shall collect from each applicant the amount of not less than one regular monthly payment, in accordance with its Table of Rates as provided by its Constitution and laws, and shall issue to each such applicant a receipt for the amount so collected. No such society shall incur any liability other than for such advanced payments, nor issue any benefit certificate nor pay or allow, or offer or promise to pay or allow, to any person any death or disability benefit until actual bona fide applications for death benefit certificates have been secured upon at least five hundred lives for at least one thousand dollars each, and all such applicants for death benefits shall have been regularly examined by legally qualified practicing physicians, and certificates of such examination have been duly filed and approved by the chief medical examiner of such society; nor until there shall be established ten subordinate lodges or branches into which said five hundred applicants have been initiated; nor until there has been submitted to said Commissioner, under oath of the president and secretary or corresponding officers of such society, a list of such applicants, giving their names, addresses, date examined, date approved, date initiated, name and number of the subordinate branch of which each applicant is a member, amount of benefits to be granted, rate of stated periodical contributions, which shall be sufficient to provide for meeting the mortuary obligation, contracted, when valued for death benefits upon the basis of the National Fraternal Congress Table of Mortality, as adopted by the National Fraternal Congress, August 23, 1899, or any higher standard, at the option of the society, and for disability benefits by tables based upon reliable experience and for combined death and permanent total disability benefits by tables based upon reliable experience, with an interest assumption not higher than four per

cent per annum; nor until it shall be shown to the Commissioner by the sworn statement of the treasurer or corresponding officer of such society, that at least five hundred applicants have each paid in cash at least one regular monthly payment as herein provided per one thousand dollars of indemnity to be effected, which payments in the aggregate shall amount to at least twenty-five hundred dollars; all of which shall be credited to the mortuary or disability fund on account of such applicants and no part of which may be used for expenses.

Said advanced payments shall, during the period of organization, be held in trust, and if the organization is not completed within one year as hereinafter provided, returned to said applicants.

The Commissioner may make such examination and require such further information as he may deem advisable; and upon presentation of satisfactory evidence that the society has complied with all the provisions of law, he shall issue to such society a certificate to that effect. Such certificate shall be prima facie evidence of the existence of such society at the date of such certificate. The Commissioner shall cause a record of such certificate to be made and a certified copy of such record may be given in evidence with like effect as the original certificate.

No preliminary certificate granted under the provisions of this article shall be valid after one year from its date, or after such further period, not exceeding one year, as may be authorized by the Commissioner upon cause shown; unless the five hundred applicants herein required have been secured and the organization has been completed as herein provided; and the articles of incorporation and all proceedings thereunder shall become null and void in one year from the date of said preliminary certificate, or at the expiration of said extended period, unless such society has completed its organization and commenced business as herein provided. When any domestic society shall have discontinued business for the period of one year, or has less than four hundred members, its charter shall become null and void. (Every such society shall have the power to make a Constitution and by-laws for the government of the society, the admission of its members, the management of its affairs and the fixing and readjusting of the rates of contribution of its members from time to time; and it shall have the power to change, alter, add to, or amend such Constitution and by-laws and shall have such other powers as are necessary and incidental to carrying into effect its object and purposes.) [Id.]

Art. 4839. **Powers retained—amendments.**—Any society now engaged in transacting business in this State may exercise all of the rights conferred hereby, and all of the rights, powers and privileges now exercised or possessed by it under its charter or articles of incorporation not inconsistent with this chapter, if incorporated; or if it be a voluntary association, it may incorporate hereunder. But no society already organized shall

be required to reincorporate hereunder, and any such society may amend its articles of incorporation from time to time in the manner provided therein or in its Constitution and laws, and all such amendments shall be filed with the Commissioner and shall become operative upon such filing, unless a later time be provided in such amendments or in its articles of incorporation, Constitution or laws. [Id.]

Art. 4840. **Mergers and transfers.**—No domestic society shall merge with or accept the transfer of the membership or funds of any other society unless such merger or transfer is evidenced by a contract in writing, setting out in full the terms and conditions of such merger or transfer, and filed with the Commissioner, together with a sworn statement of the financial condition of each of said societies by its president and secretary, or corresponding officers, and a certificate of such officers, duly verified under oath of said officers of each of the contracting societies, that such a merger or transfer has been approved by a vote of two-thirds of the members of the supreme legislative or governing body of each of said societies.

Upon the submission of said contract, financial statements and certificates, said Commissioner shall examine the same, and if he shall find such statements to be correct and the said contract to be in conformity with the provisions of this article, and that such merger or transfer is just and equitable to the members of each of said societies, he shall approve said merger or transfer, issue his certificate to that effect, and thereupon the said contract or merger or transfer shall be of full force and effect. In case such contract is not approved, the fact of its submission and its contents shall not be disclosed by said Commissioner. [Id.]

Art. 4841. **Annual license.**—Societies which are now authorized to transact business in this State may continue such business until the first day of April next succeeding the passage of this law, and the authority of such societies may thereafter be renewed annually; but in all cases to terminate on the first day of the succeeding April. The license shall continue in full force and effect until the new license be issued or specifically refused. For each such license or renewal the society shall pay the Commissioner ten dollars. A duly certified copy or duplicate of such license shall be prima facie evidence that the licensee is a fraternal benefit society within the meaning of this chapter. [Id.]

Art. 4842. **Admission of foreign society.**—No foreign society now transacting business, organized prior to the passage of this law, which is not now authorized to transact business in this State, shall transact any business herein without a license from the Commissioner of Insurance. Any such society shall be entitled to a license to transact business within this State upon filing with said Commissioner a duly certified copy of its charter or articles of association; a copy of its Constitution and

laws, certified by its secretary or corresponding officer; a power of attorney to said Commissioner as hereinafter provided; a statement of its business under oath of its president and secretary or corresponding officers in the form required by said Commissioner, duly verified by an examination made by the supervising insurance official of its home State or other State satisfactory to the Commissioner; a certificate from the proper official in its home State, province or country that the society is legally organized; a copy of its contract, which must show that benefits are provided for by periodical or other payments by persons holding similar contracts; and upon furnishing the Commissioner such other information as he may deem necessary to a proper exhibit of its business and plan of working, and upon showing that its assets are invested in accordance with the laws of the State, territory, district, province or country where it is organized, he shall issue a license to such society to do business in this State until the first day of the succeeding April, and such license shall, upon compliance with the provisions of this law, be renewed annually, but in all cases to terminate on the first day of the succeeding April. The license shall continue in full force and effect until the new license be issued or specifically refused. Any foreign society desiring admission to this State shall have the qualifications required of domestic societies organized under this law and have its assets invested as required by the laws of the State, territory, district, country or province where it is organized. For each such license or renewal the society shall pay the Commissioner of Insurance ten dollars. When said Commissioner refuses to license any society or revokes its authority to do business in this State, he shall reduce his decision to writing and file the same in his office, and shall furnish a copy thereof, together with a statement of his reasons, to the officers of the society, upon request, and the action of said Commissioner shall be reviewable by proper proceedings in any court of competent jurisdiction within the State. Nothing in this or the preceding article shall be construed as preventing any such society from continuing in good faith all contracts made in this State during the time such society was legally authorized to transact business herein. [Id.]

Art. 4843. Service of process.—Every society, whether domestic or foreign, hereafter applying for admission, shall before being licensed, appoint in writing the Commissioner and his successors in office to be its true and lawful attorney upon whom all legal process in any action or proceeding against it shall be served, and in such writing shall agree that any lawful process against it which is served upon such attorney shall be of the same legal force and validity as if served upon the society and that the authority shall continue in force so long as any liability remains outstanding in this State.

Copies of such appointment certified by said Commissioner shall be deemed sufficient evidence thereof and shall be admitted

in evidence with the same force and effect as the original thereof might be admitted. Service shall only be made upon such attorney, must be made in duplicate upon said Commissioner or, in his absence, upon the person in charge of his office, and shall be deemed sufficient service upon such society. No such service shall be valid or binding against any such society when it is required thereunder to file its answer, pleading or defense in less than thirty days from the date of mailing the copy of such service to such society. When legal process against any such society is served upon said Commissioner he shall forthwith forward by registered mail, one of the duplicate copies prepaid and directed to its secretary or corresponding officer. Legal process shall not be served upon any such society except in the manner provided herein. [Id.]

Art. 4844. **Place of meeting.**—Each domestic society shall have its principal office in this State, but may provide that the meetings of its legislative or governing body may be held in any State, district, province or territory wherein such society has subordinate branches. All business transacted at such meetings shall be as valid in all respects as if such meetings were held in this State. [Id.]

Art. 4845. **No personal liability.**—Officers and members of the supreme, grand or any subordinate body of any such incorporated society shall not be individually liable for the payment of any disability or death benefit provided for in the laws and agreements of such society. The same shall be payable only out of the funds of such society and in the manner provided by its laws. [Id.]

Art. 4846. **Waiving provisions of law.**—The Constitution and laws of the society may provide that no subordinate body nor any of its subordinate officers or members shall have the power or authority to waive any provision of the laws and Constitution of the society, and the same shall be binding on the society and each and every member thereof and on all beneficiaries of members. All grand lodges, by whatever name known, whether incorporated or not, holding charters from any supreme governing body, which were conducting business in this State upon the passage of this law as a fraternal beneficiary association, upon what is known as the separate jurisdiction plan, shall be treated as single State organizations, and all reports required by the provisions of this charter shall be made and furnished by the officers of such supreme State governing body and shall embrace and contain the transactions, liabilities and assets of such State Organization. [Id.]

Art. 4847. **Benefit not attachable.**—No money or other benefit, charity or relief or aid to be paid, provided or rendered by any such society shall be liable to attachment, garnishment, or other process, or be seized, taken or appropriated or applied by any legal or equitable process or operation of law to pay any debt or liability of a member or beneficiary or any other per-

son who may have a right thereunder, either before or after payment. [Id.]

Art. 4848. **Constitution and laws.**—Every society transacting business under this law shall file with the Commissioner a duly certified copy of all amendments of, or additions to its Constitution and laws within ninety days after the enactment of the same. Printed copies of the Constitution and laws, as amended, changed, or added to, certified by the secretary or corresponding officer of the society, shall be prima facie evidence of the legal adoption thereof. [Id.]

Art. 4849. **Annual reports.**—Every society transacting business in this State shall annually, on or before the first day of March, file with the Commissioner in such form as he may require, a statement under oath of its president and secretary or corresponding officers, of its condition and standing on the thirty-first day of December next preceding, and its transactions for the year ending on that date, and shall furnish such other information as said Commissioner may deem necessary to a proper exhibit of its business and plan of working. The Commissioner may at other times require any further statement he may deem necessary to be made relating to such society. In addition to such annual report, each society shall annually report to said Commissioner a valuation of its certificates in force on December 31st last preceding, excluding those issued within the year for which the report is filed, in cases where the contribution for the first year in whole or in part are used for current mortality and expenses. Such report of valuation shall show as contingent liabilities the present mid-year value of the promised benefits provided in the constitution and laws of such society, under the certificates subject to valuation; and as contingent assets the present mid-year value of the future net contributions provided in the Constitution and laws as the same are in practice actually collected. At the option of any society, in lieu of the above, the valuation may show the net value of the certificates subject to valuation hereinbefore provided, and said net value, when computed in case of monthly contributions, may be the mean of the terminal values for the end of the preceding and of the current insurance years. Such valuation shall be certified by a competent accountant or actuary, or, at the request and expense of the society, verified by the actuary of the Department of Insurance of the home State of the society, and shall be filed with the Commissioner within ninety days after the submission of the last preceding annual report. The legal minimum standard of valuation for all certificates, except for disability benefits, shall be the National Fraternal Congress Table of Mortality as adopted by the National Congress, August 23, 1899; or, at the option of the society, any higher table; or, at its option, it may use a table based upon the society's own experience of at least twenty years, and covering not less than one hundred thousand lives with interest assumption not more

than four per centum per annum. Each such valuation report shall set forth clearly and fully the mortality and interest basis and the method of valuation. Any society providing for disability benefits shall keep the net contributions for such benefits in a fund separate and apart from all other benefit and expense funds and the valuation of all other business of the society; provided, that where a combined contribution table is used by a society for both death and permanent total disability benefits, the valuation shall be according to tables of reliable experiences, and in such cases a separation of the funds shall not be required. The valuation herein provided for shall not be considered or regarded as a test of the financial solvency of the society, but each society shall be held to be legally solvent so long as the funds in its possession are equal to or in excess of its matured liabilities. A report of such valuation and an explanation of the facts concerning the condition of the society thereby disclosed, shall be printed and mailed to each beneficiary member of the society not later than June 1st, of each year; or, in lieu thereof, such report of valuation and showing of the society's condition as thereby disclosed may be published in the society's official paper and the issue containing the same mailed to each beneficiary member of the society. The laws of such society shall provide that if the stated periodical contributions of the members are insufficient to pay all matured death and disability claims in full, and to provide for the creation and maintenance of the funds required by its laws additional, increased or extra rates of contribution shall be collected from the members to meet such deficiency; and such laws may provide that, upon the written application or consent of the member, his certificate may be charged with its proportion of any deficiency disclosed by valuation, with interest not exceeding five per centum per annum. [Id.]

Art. 4850. Provisions to insure security.—If the valuation of the certificates, as hereinbefore provided, on December 31st, 1917, shall show that the present value of future net contributions, together with the admitted assets, is less than the present value of the promised benefits and accrued liabilities, such society shall thereafter maintain said financial condition at each succeeding triennial valuation as to the degree of deficiency as shown in the valuation as of December 31, 1917. If at any succeeding triennial valuation such society does not show at least the same condition, the Commissioner shall direct that it thereafter comply with the requirements herein specified. If the next succeeding triennial valuation after the receipt of such notice shall show that the society has failed to maintain the condition required herein, said Commissioner may, in the absence of good cause shown for such failure, institute proceedings for the dissolution of such society, or in the case of a foreign society, its license may be cancelled in the manner provided in this chapter. Any such society, shown by any triennial valuation, subsequent

to December 31, 1917, not to have maintained the condition herein required, shall, within two years thereafter, make such improvement as to show a percentage of deficiency not greater than as of December 31, 1917, or thereafter, as to all new members admitted, be subject so far as stated rates of contributions are concerned, to the provisions of this chapter applicable to the organization of new societies. The net mortality or beneficiary contributions and funds of new members shall be kept separate and apart from the other funds of the society. If such required improvement is not shown by the succeeding triennial valuation, then the said new members may be placed in a separate class and their certificates valued as an independent society in respect of contributions and funds. [Id.]

Art. 4851. **Accumulation basis.**—In lieu of the requirements of the two preceding articles, any society accepting in its laws the provisions of this article may value its certificates on a basis herein designated, "accumulation basis," by crediting each member with the net amount contributed for each year and with interest at approximately the next rate earned and by charging him with his share of the losses for each year, herein designated "cost of insurance," and carrying the balance, if any, to his credit. The charge for the cost of insurance may be according to the actual experience of the society applied to a table of mortality recognized by the law of this State, and shall take into consideration the amount at risk during each year, which shall be the amount payable at death less the credit to the member. Except as specifically provided in its articles or laws or contracts no charge shall be carried forward from the first valuation hereunder against any member for any past share of losses exceeding the contributions and credit. If, after the first valuation, any member's share of losses for any year exceeds his credit, including the contribution for the year, the contribution shall be increased to cover his share of the losses. Any such excess share of losses chargeable to any member may be paid out of a fund or contribution especially created or required for such purpose. Any member may transfer to any plan adopted by the society with net rates on which tabular reserves are maintained and on such transfer shall be entitled to make such application of his credit as provided in the laws of the society. Certificates issued, rerated or adjusted on a basis providing for adequate rates with adequate reserves to mature such certificates upon assumption for mortality and interest recognized by the law of this State shall be valued on such basis, herein designated the "Tabular Basis." If on the first valuation under this article a deficiency in reserve shall be shown for any such certificate, the same shall be valued on the accumulation basis.

Whenever in any society having members upon the tabular basis and upon the accumulation basis, the total of all costs of insurance provided for any year shall be insufficient to meet the actual death and disability losses for the year, the deficiency shall be met for the year from the available funds after setting

aside all credits in the reserve or from increased contributions or by an increase in the number of assessments applied to the society, as a whole or to classes of members as may be specified in its laws. Savings from a lower amount of death losses may be returned in like manner as may be specified in its laws. If the laws of the society so provide, the assets representing the reserves of any separate class of members may be carried separately for such class as if in an independent society. The required reserve accumulation of such class so set apart shall not thereafter be mingled with the assets of other classes of the society.

A table showing the credits to individual members for each age and year of entry and showing opposite each credit the tabular reserve required on the whole life, or other plan of insurance, specified in the contract, according to assumptions for mortality and interest recognized by the law of this State and adopted by the society, shall be filed by the society with each annual report, and also be furnished to each member before July 1st of each year.

In lieu of the aforesaid statement there may be furnished to each member within the same time a statement giving the credit for such member and giving the tabular reserve and level rate required for a transfer carrying out the plan of insurance specified in the contract. No table or statement need be made or furnished where the reserves are maintained on the tabular basis. For this purpose individual bookkeeping accounts for each member shall not be required and all calculation may be made by the actuarial methods.

Nothing herein shall prevent the maintenance of such surplus over and above the credits on the accumulation basis, and the reserves on the tabular basis pursuant to its laws; nor be construed as giving to the individual member any right or claim to any such reserve or credit other than in manner as expressed in the contract and its laws; nor as making any such reserve or credits a liability in determining the legal solvency of the society. [Id.]

Art. 4852. Examination of domestic societies.—The Commissioner or any person he may appoint, shall have the power of visitation and examination into the affairs of any domestic society. He may employ assistants for the purpose of such examination, and he, or any person he may appoint, shall have free access to all the books, papers and documents that relate to the business of the society, and may summon and qualify as witnesses under oath and examine its officers, agents and employes or other person in relation to the affairs, transactions and conditions of the society. The expense of such examination shall be paid by the society examined, upon statement furnished by the Commissioner, and the examination shall be made at least once in three years. Whenever after examination the Commissioner is satisfied that any domestic society has failed to comply with any provisions of this chapter, or is exceeding its powers,

or is not carrying out its contracts in good faith, or is transacting business fraudulently; or whenever any domestic society, after the existence of one year or more, shall have a membership of less than four hundred, or shall determine to discontinue business, said Commissioner may present the facts relating thereto to the Attorney General, who shall, if he deem the circumstances warrant, commence an action in quo warranto in a court of competent jurisdiction, and if it shall then appear upon the trial that such society should be closed, said society shall be enjoined from carrying on any further business and some person shall be appointed receiver of such society and shall proceed at once to take possession of the books, papers, moneys and other assets of the society, and shall forthwith, under the direction of the court, proceed to close the affairs of the society, and to distribute its funds to those entitled thereto. No such proceedings shall be commenced by the Attorney General against any such society until after notice has been duly served on the chief executive officers of the society and a reasonable opportunity given to it, on a date named in said notice, to show cause why such proceeding should not be commenced. [Id.]

Art. 4853. **Application for receiver, etc.**—No application for injunction against or proceedings for the dissolution of or the appointment of a receiver for any such domestic society or branch thereof shall be entertained by any court in the State unless the same is made by the Attorney General. [Id.]

Art. 4854. **Examination of foreign societies.**—The Commissioner, or any person whom he may appoint, may examine any foreign society transacting or applying for admission to transact business in this State. The said Commissioner may employ assistants, and he, or any person he may appoint, shall have free access to all the books, papers and documents that relate to the business of the society, and may summon and qualify as witnesses under oath and examine its officers, agents and employees and other persons in relation to the affairs, transactions and conditions of the society. He may, in his discretion, accept in lieu of such examination the examination of the Insurance Department of the State, territory, district, province or country where such society is organized. The actual expense of examiners making such examination shall be paid by the society, upon statements furnished by the Commissioner. If any such society or its officers refuse to permit such examination or to comply with the provisions of the law relative thereto, the authority of such society to write new business in this State shall be suspended, or license refused, until satisfactory evidence is furnished the Commissioner relating to the condition and affairs of the society, and during such suspension the society shall not write any new business in this State. [Id.]

Art. 4855. **No adverse publications.**—Pending, during, or after an examination or investigation of any such society, either domestic or foreign, the Commissioner shall make public no financial statement, report or finding, nor shall he permit to be-

come public any financial statement, report or finding affecting the status, standing or rights of any such society until a copy thereof shall have been served upon such society, at its home office, nor until such society has been afforded a reasonable opportunity to answer any such financial statement or report of finding, and to make such showing in connection therewith as it may desire. [Id.]

Art. 4856. **Revocation of license.**—When the Commissioner on investigation is satisfied that any foreign society transacting business under this law has exceeded its powers, or has failed to comply with any provision of this chapter, or is conducting business fraudulently, or is not carrying out its contracts in good faith, he shall notify the society of his findings, and state in writing the grounds of his dissatisfaction, and after reasonable notice require said society, on a date named, to show cause why its license should not be revoked. If, on the date named in said notice, such objections have not been removed to the satisfaction of said Commissioner, or the society does not present good and sufficient reason why its authority to transact business in this State should not at that time be revoked, he may revoke the authority of the society to continue business in this State. All decisions and findings of said Commissioner made under the provisions of this article may be reviewed by proper proceedings in any court of competent jurisdiction. [Id.]

Art. 4857. **Examination of certain societies.**—Nothing in this chapter shall be construed to affect or apply to grand or subordinate lodges of Masons, Odd Fellows or Knights of Pythias (exclusive of the insurance department of the supreme lodge Knights of Pythias) and the Junior Order of the United American Mechanics (exclusive of their beneficiary degree or insurance branch) or societies which limit their membership to any one hazardous occupation nor to similar societies which do not issue insurance certificates nor to an association of local lodges of a society now doing business in this State which provides death benefits not exceeding five hundred dollars to any one person or disability benefits not exceeding three hundred dollars in any one year to pay one person or both, nor to any contracts of reinsurance business on such plan in this State nor to domestic societies which limit their membership to the employees of a particular city or town, designated firm, business house or corporation, nor to domestic lodges, orders or associations of a purely religious, charitable and benevolent description which do not provide for a death benefit of more than one hundred dollars or for disability benefits of more than one hundred and fifty dollars to any person in one year. The Commissioner may require from any society such information as will enable him to determine whether such society is exempt from the provisions of this law.

Any fraternal benefit society heretofore organized and incorporated and operating within the definition set forth in the first three articles of this chapter, providing for the benefits

in case of death or disability resulting solely from accidents, but which does not obligate itself to pay death or sick benefits, may be licensed under the provisions of this law and shall have all the privileges and shall be subject to all the provisions and regulations of this law, except that the provisions of this law requiring medical examinations, valuations of benefit certificates and that the certificates shall specify the amount of benefits, shall not apply to such society. [Id.]

Art. 4858. **Taxation.**—Every fraternal benefit society organized or licensed under this chapter is hereby declared to be a charitable and benevolent institution, and all of its funds and property shall be exempt from all and every State, county, district, municipal and school tax, other than taxes on real estate and office equipment, when same is used for other than lodge purposes. [Id.]

Art. 4859. **Exceptions.**—The provisions of this chapter shall not apply to incorporated or unincorporated mutual relief or benefit, or burial associations, operating upon the assessment plan, whose business is confined to not more than one county in the State of Texas, or to a territory in two or more adjacent counties included within a radius of not more than fifty miles surrounding the city or town in which its principal office is to be located, which is designated in its charter and which at no time shall have a membership exceeding 2000 members in any one class or group, which are hereby denominated local mutual aid associations; provided that such associations are in no manner directly or indirectly connected, federated or associated with any such association and do not directly or indirectly contribute to the expense or support of any other such association, or to the officers, promoters, or managers thereof; and, provided, that no person or officer shall receive from said association any payment on account of organization or other expenses or salaries who is not a bona fide resident of the county or area in which such association is domiciled. The association above mentioned shall annually, on or before March 1, file a statement with the Commissioner of Insurance which shall be signed and sworn to by the president, secretary and treasurer, or the officer holding position corresponding thereto. Such a statement shall show whether the association has, during the preceding year, done any business outside of the county or area in which it is domiciled, and shall state whether the association has, during the preceding year, done any business outside of the county or area in which it is domiciled, and shall state whether or not said association is associated, federated or directly or indirectly connected with any other, and shall show what, if anything, has been contributed during the preceding year by said association, or the members, to any person or officer, or director thereof for salaries, commissions or promotion expenses, and the name and residence of the party or parties receiving the same. The Commissioner of Insurance may, at his option, and it shall be his duty, if not satisfied with said statement, to demand other and additional statements and examine the books, papers, and records of said association,

either himself or by some other suitable person authorized by him. Should it appear to the Commissioner of Insurance that any such local mutual aid association is not carrying on business as set forth in this article, and is not entitled to the exemption therein set forth, such association shall be subject to and comply with all provisions of this chapter as a fraternal beneficiary association. Every such local association claiming to be entitled to the benefit of the exemption created by this article shall plainly state upon its certificates, applications and all advertising matter, in a conspicuous manner, that said association is a local mutual aid association or same shall be deemed subject to all provisions of this chapter concerning fraternal beneficiary associations.

Art. 4859a. **Bond required.**—The Commissioner of Insurance shall require the Secretary or other person having charge of the funds of every Local Mutual Aid Association doing business in this State to give bond in an amount not less than \$1000.00 and \$1.00 in addition thereto for each member over 1000 with some surety company having a permit to do business in this State or a sufficient personal surety bond.

Art. 4859b. **Amount of Bond.**—The secretary or other person having charge of the funds of every Local Mutual Aid Association which is now doing business in Texas or which may hereafter be organized shall be required to furnish either a surety company bond or a personal surety bond to be approved by the president of such Local Mutual Aid Association which bond shall at no time be less than \$1000.00 and which at all times shall be for an amount not less than \$1.00 for each member in good standing in said Local Mutual Aid Association.

Art. 4859c. **Penalty for failure to give bond.**—Every person organizing a Local Mutual Aid Association who shall fail to execute the bond required herein shall be deemed guilty of a misdemeanor and punished by a fine of not less than \$100.00 or more than \$500.00 or by imprisonment of not less than thirty days or more than six months or both such fine and imprisonment.

Art. 4859d. **Bond payable to the president.**—Every such Local Mutual Aid Association shall have a president who shall be the presiding officer thereof and to whom the bond provided herein shall be payable for the use and benefit of the members. [Id. p. 672.]

CHAPTER NINE.

MUTUAL INSURANCE COMPANIES.

| Article | Article |
|--------------------------------------|---------|
| Who may incorporate | 4860 |
| Articles of incorporation | 4861 |
| Name of company | 4862 |
| Certificate of incorporation | 4863 |
| Powers and by-laws | 4864 |
| Kinds of insurance | 4865 |
| Conditions to obtain license | 4866 |
| Corporations may contract with | 4867 |
| Votes of members | 4868 |
| Provisions of policy | 4869 |
| May advance money | 4870 |
| Reserves | 4871 |
| Foreign mutual company | 4872 |
| Subject to general laws | 4873 |
| Re-insurance | 4874 |
| Taxes and fees | 4875 |

Art. 4860. **Who may incorporate.**—Any number of persons, not less than twenty, a majority of whom shall be bona fide resi-

dents of this State, by complying with the provisions of this chapter, may become, together with others who may hereafter be associated with them or their successors, a body corporate for the purpose of carrying on the business of mutual insurance as herein provided. [Acts 1923, p. 392.]

Art. 4861. Articles of incorporation.—Any person proposing to form any such company shall subscribe and acknowledge articles of incorporation specifying:

1. The location of its principal, or home office, which shall be within this State.

2. The names and addresses of those composing the board of directors in which the management shall be vested until the first meeting of the members.

3. The names and places of residence of the incorporators. [Id.]

Art. 4862. Name of company.—No name shall be adopted by such company which does not contain the word "mutual" or which is so similar to any name already in use by any such existing corporation, company, or association, organized or doing business in the United States, as to be misleading. [Id.]

Art. 4863. Certificate of incorporation.—If such articles are prepared in accordance with this law, the Commissioner shall approve and file the same in his office and issue a certificate of incorporation to the company, which shall constitute their authority to commence business and issue policies as hereinafter provided. Such articles of incorporation may be amended in the manner provided for other corporations, or as may be provided in said certificate. [Id.]

Art. 4864. Powers and by-laws.—The company shall have legal existence from and after the date of issuance of said certificate and shall have such powers as are necessary or incident to the transaction of its business. The board of directors named in such articles may thereupon adopt by-laws, accept applications for insurance, and proceed to transact the business of such company. No insurance shall be put into force until the company has been licensed to transact insurance as provided by this chapter. The by-laws and any change or addition to the by-laws or any amendments thereto shall first be submitted to and be approved by the Commissioner before such changes or amendments shall be adopted by any company. [Id.]

Art. 4865. Kinds of insurance.—Any company organized under any provision of this chapter is empowered and authorized to write such kinds of insurance as may now or hereafter be written in Texas by Stock Fire Insurance Companies. [Id.]

Art. 4866. Conditions to obtain license.—No company organized under this chapter shall issue policies or transact any business of insurance unless it shall comply with the conditions following, nor until the Commissioner has, by formal license, authorized it to do so, which license he shall not issue until the corporation has complied with the following conditions:

1. It shall hold bona fide applications for insurance upon

which it shall issue simultaneously or it shall have in force, at least twenty policies to at least twenty members for the same kind of insurance upon not less than two hundred separate risks, each within the maximum single risk described herein.

2. The "maximum single risk" shall not exceed twenty per cent of the admitted assets or three times the average risk, or one per cent of the insurance in force, whichever is the greater, any reinsurance taking effect simultaneously with the policy being deducted in determining such maximum single risk.

3. It shall have collected a premium upon each application the total of which premiums shall be held in cash or securities in which insurance companies are under Texas law authorized to invest and the total net assets shall be equal in case of fire insurance to not less than twice the maximum single risk assumed subject to one fire, or to one loss, nor less than ten thousand dollars, which amount shall be maintained and upon failure to do so, the company shall cease writing new business and immediately report such condition to the Commissioner. [Id.]

Art. 4867. **Corporations may contract with.**—Any public or private corporation, board or association in this State or elsewhere may make applications, enter into agreements for and hold policies in any such mutual insurance company. Any officer, stockholder, trustee, or legal representative of any such corporation, board, association, or estate may be recognized as acting for or on its behalf for the purpose of such membership, but shall not be personally liable upon such contract of insurance by reason of so acting. The right of any corporation organized under the laws of this State to participate as a member of any such mutual insurance company is hereby declared to be incidental to the purpose for which such corporation is organized and as much granted as the rights and powers expressly conferred. [Id.]

Art. 4868. **Votes of members.**—Each member of the company shall be entitled to one vote, or to a number of votes based upon the insurance in force, the number of policies held, or the amount of premiums paid, as the by-laws may provide. [Id.]

Art. 4869. **Provisions of policy.**—The policies shall provide for a premium or premium deposit payable in cash and except as herein provided, for a contingent premium at least equal to the premium or premium deposit. Such company may issue a policy without a contingent premium while it has a surplus equal to the capital required of a domestic stock insurance company transacting the same kind of insurance, and in no event shall the holder of any such policy be liable for a greater amount than the premium or premium deposit expressed in the policy. If at any time the admitted assets are less than the unearned premium, reserve and other liabilities, the company shall immediately collect upon policies with a contingent premium a sufficient proportionate part thereof to restore such assets. No member shall be liable for any part of such contingent premium in

excess of the amount demanded within one year after the termination of the policy. The Commissioner may, by written order, direct that proceedings to restore such assets be deferred during the time fixed in such order. [Id.]

Art. 4870. **May advance money.**—Any director, officer or member of such company, or any other person, may advance to such company, any money necessary for the purpose of its business or to enable it to comply with any requirements of the law and such money and interest thereon as may have been agreed upon, not exceeding seven per cent per annum shall be payable only out of the surplus remaining after providing for all reserve and other liabilities and shall not otherwise be a liability or claim against the company, or any of its assets. No commission or promotion expenses shall be paid in connection with the advance of any such money to the company. The amount of such advance shall be reported in each annual statement. [Id.]

Art. 4871. **Reserves.**—Such company shall maintain unearned premium and other reserves separately for each kind of insurance, upon the same basis as that required of domestic stock insurance companies transacting the same kind of insurance. [Id.]

Art. 4872. **Foreign mutual company.**—Any such mutual insurance company organized outside of this State and authorized to transact the business of insurance on the mutual plan in any State, district or territory shall be admitted and licensed to transact the kinds of insurance authorized by its charter or articles to the extent and with the powers and privileges specified in this law when it shall be solvent under this law and shall have complied with the following requirements:

1. Filed with the Commissioner a copy of its by-laws certified to by its secretary.

2. Filed with the Commissioner a certified copy of its charter or articles.

3. Appointed the Commissioner its agent for the service of process in any action, suit or proceedings in any court of this State, which authority shall continue as long as any liability shall remain outstanding in this State.

4. Filed a financial statement under oath, in such form as the Commissioner may require, and have complied with other provisions of law applicable to the filing of papers and furnishing information by stock companies on application for authority to transact the same kinds of insurance. [Id.]

Art. 4873. **Subject to general laws.**—Each such mutual insurance company, whether organized within or without this State, shall be subject except as otherwise provided by law to all general provisions of law applicable to stock insurance companies transacting the same kinds of insurance which relate to annual reports and renewal of licenses, investments, valued policies, policy forms, reciprocal or retaliatory laws, insolvency and liquidation, publication of defamatory statements, and shall make its annual report in such form and submit to such exami-

nations and furnish such information as may be required by the Commissioner. As far as practicable such examinations of mutual insurance companies organized outside of this State shall be made in co-operation with the insurance departments of other States. The forms of annual report shall be such as are in general use throughout the United States. Nothing in this chapter shall be construed to mean that any company or association incorporated or organized hereunder shall be exempt from the provisions of the General Laws of this State, heretofore or hereafter enacted governing the incorporation, organization, regulation and operation of companies or organizations writing insurance in this State. [Id.]

Art. 4874. **Re-insurance.**—Any such mutual insurance company organized or admitted to transact insurance in this State may by policy, treaty or other agreement cede to, or accept from any insurance company or insurer re-insurance upon the whole or any part of any risk which reinsurance shall be without contingent liability or participation or membership unless the contract provides otherwise, and shall not be effected with any company or insurer disapproved therefor by written order of the Commissioner filed in his office. [Id.]

Art. 4875. **Taxes and fees.**—Each such company, whether within or without this State shall be subject to such taxes and fees as are now provided by law for such mutual companies. The tax shall be paid upon the gross premiums received for direct insurance upon property, or risks located in this State, deducting amounts paid for re-insurance, premiums upon policies not taken, premiums returned on cancelled policies and any refund or return made to the policy-holders other than for losses. [Id.]

CHAPTER TEN.

STATE INSURANCE COMMISSION.

| Article | Article |
|-------------------------------------|------------------------------------|
| Appointment of Commission | Acting Fire Marshal..... |
| Secretary and Fire Marshal | Result of investigation |
| Commission shall fix rates..... | To cancel authority |
| Maximum rate fixed | Revocation of certificate |
| No company exempt | Tax on premiums |
| Statements and books | Exceptions |
| Schedule and report | Compensation of Commission |
| Analysis of rate | Additional compensation |
| Change or limit of rate | Tax on gross premiums |
| Petition for change | Workmen's compensation rates |
| Reducing hazard | To provide standard forms |
| Revising rates | To assemble data |
| Uniform policies | May require statements |
| Standard forms | Experience rating |
| Lien on insured property | Hearing before Commission |
| Co-insurance clauses | Uniform policy |
| Complaints of rates or orders | Adequate reserves |
| Hearing of protests | Commission to make rules |
| Rebating or discrimination | Scope of law |
| Not retroactive | Definitions |
| Duty of Fire Marshal | Cancellation of license |
| Authority of Fire Marshal..... | |

Art. 4876. **Appointment of Commission.**—The "State Insurance Commission" shall be composed of the Commissioner of Insurance, who shall be chairman thereof, and two commissioners who shall be appointed by the Governor by and with

the consent of the senate, subject to removal as provided by law for the removal of State officers. An appointive member shall be appointed biennially for a term of two years ending February 1st. [Acts 1913, p. 195.]

Art. 4877. Secretary and Fire Marshal.—One of the appointed members thereof shall be selected by the Commission as its secretary, who shall perform the duties which shall appertain to that position, and whose official title shall be "Secretary of the State Insurance Commission;" the other appointed member thereof shall be selected by said Commission as Fire Marshal of the State Insurance Commission, and his official title shall be "Fire Marshal of the State Insurance Commission." The members so selected as Secretary and Fire Marshal shall receive no compensation for filling their respective positions, other than their salaries as members of the State Insurance Commission, and shall perform the duties of those respective positions at the will of the Commission, but their expenses incurred in performing the duties of these positions shall be paid as provided in this law. [Id.]

Art. 4878. Commission shall fix rates.—The State Insurance Commission shall have the sole and exclusive power and authority and it shall be its duty to prescribe, fix, determine and promulgate the rates of premiums to be charged and collected by fire insurance companies transacting business in this State. Said Commission shall also have authority to alter or amend any and all such rates of premiums so fixed and determined and adopted by it, and to raise or lower the same, or any part thereof, as herein provided. Said Commission shall have authority to employ clerical help, inspectors, experts and other assistants, and to incur such other expenses as may be necessary in carrying out the provisions of this law. Such expenses, including the salaries of the members of the Commission, shall not exceed in the aggregate, for any fiscal year, the sum of one hundred and thirty thousand dollars. Said Commission shall ascertain as soon as practicable the annual fire loss in this State; obtain, make and maintain a record thereof and collect such data with respect thereto as will enable said Commission to classify the fire losses of this State, the causes thereof, and the amount of premiums collected therefor for each class of risks and the amount paid thereon, in such manner as will aid in determining equitable insurance rates, methods of reducing such fire losses and reducing the insurance rates of the State, or sub-divisions of the State. [Acts 1917, p. 136.]

Art. 4879. Maximum rate fixed.—A maximum rate of premiums to be charged or collected by all companies transacting in this State the business of fire insurance, as herein defined, shall be exclusively fixed and determined and promulgated by the State Insurance Commission, and no such fire insurance company shall charge or collect any premium or other compensation for or on account of any policy or contract of fire insurance

as herein defined in excess of the maximum rate as herein provided for, but may write insurance at a less rate than the maximum rate as herein provided for. When insurance is written for less than the maximum rate, such lesser rate shall be applicable to all risks of the same character situated in the same community. [Acts 1913, p. 195.]

Art. 4880. **No company exempt.**—Every fire insurance company, every marine insurance company, every fire and marine insurance company, every fire and tornado insurance company, and each and every insurance company of every kind and name issuing a contract or policy of insurance, or contracts or policies of insurance against loss by fire on property within this State, whether such property be fixed or movable, stationary or in transit, or whether such property is consigned or billed for shipment within or beyond the boundary of this State or to some foreign country, whether such company is organized under the laws of this State or under the laws of any other State, territory or possession of the United States, or foreign country, or by authority of the Federal government, now holding a certificate of authority to transact business in this State, shall be deemed to have accepted such certificate and to transact business thereunder, upon condition that it consents to the terms and provisions of this chapter and that it agrees to transact business in this State, subject thereto; it being intended that every contract or policy of insurance against the hazard of fire shall be issued in accordance with the terms and provisions of this chapter, and the company issuing the same governed thereby, regardless of the kind and character of such property and whether the same is fixed or movable, stationary or in transit, including the shore end of all marine risks insured against loss by fire. [Id.]

Art. 4881. **Statements and books.**—Said Commission is authorized and empowered to require sworn statements for any period of time from any insurance company affected by this law, and from any of its directors, officers, representatives, general agents, State agents, special agents and local agents of the rates and premiums collected for fire insurance on each class of risks, on all property in this State and of the causes of fire, if such be known, if they are in possession of such data, and information, or can obtain it at a reasonable expense; and said Commission is empowered to require such statements showing all necessary facts and information to enable said Commission to make, amend and maintain the general basis schedules provided for in this law and the rules and regulations for applying same and to determine reasonable and proper maximum specific rates and to determine and assist in the enforcement of the provisions of this law. The said Commission shall also have the right, at its discretion, either personally, or by some one duly authorized by it, to visit the office whether general, local or otherwise, of any insurance company doing business in this State, and the

home office of said company outside of this State, if there be such, and the office of any officers, directors, general agents, State agents, local agents or representatives of such company, and there require such company, its officers, agents or representatives to produce for inspection by said Commission or any of its duly authorized representatives all books, records and papers of such company or such agents and representatives; and the said Commission or its duly authorized agents or representatives shall have the right to examine such books and papers and make or cause to be made copies thereof; and shall have the right to take testimony under oath with reference thereto, and to compel the attendance of witnesses for such purpose. Said Commission shall be further empowered to require the fire insurance companies transacting business in this State or any of them, to furnish said Commission with any and all data which may be in their possession, either jointly or severally, including maps, tariffs, inspection reports and any and all data affecting fire insurance risks in this State, or in any portion thereof and said Commission shall be empowered to require any two or more of said companies, or any joint agent or representative of them, to turn over any and all such data in their possession, or any part thereof, to said Commission for its use in carrying out the provisions of this law. [Id.]

Art. 4882. **Schedule and report.**—The rates of premium fixed by said Commission in pursuance of the provision of this law shall be at all times reasonable and the schedules thereof made and promulgated by said Commission shall be in such form as will in the judgment of the Commission, most clearly and in detail disclose the rate so fixed and determined by said Commission to be charged and collected for policies of fire insurance. Said Commission may employ and use any facts obtainable from and concerning fire insurance companies transacting business in this State, showing their expense and charges for fire insurance premiums for any period or periods said Commission may deem advisable, which in their opinion will enable them to devise and fix and determine reasonable rates of premium for fire insurance. The said Commission in making and publishing schedules of the rates fixed and determined by it shall show all charges, credits, terms, privileges and conditions which in any wise affect such rates, and copies of all such schedules shall be furnished by said Commission to any and all companies affected by this law applying therefor, and the same shall be furnished to any citizens of this State applying therefor, upon the payment of the actual cost thereof. No rate or rates fixed or determined by the Commission shall take effect until it shall have entered an order or orders fixing and determining same, and shall give notice thereof to all fire insurance companies affected by this law, authorized to transact business in the State. The State Insurance Commission, and any inspector or other agent or employee thereof, who shall inspect any risk for the purpose

of enabling the Commission to fix and determine the reasonable rate to be charged thereon, shall furnish to the owner of such risk at the date of such inspection, a copy of the inspection report, showing all defects that may operate as charges to increase the insurance rate. [Id.]

Art. 4883. **Analysis of rate.**—When a policy of fire insurance shall be issued by any company transacting the business of fire insurance in this State, such company shall furnish the policyholder with a written or printed analysis of the rate or premium charged for such policy, showing the items of charge and credit which determine the rate, unless such policyholder has theretofore been furnished with such analysis of such rate. All schedules of rates promulgated by said Commission shall be open to the public, and every local agent of such fire insurance company shall have and exhibit to the public copies of such schedules covering all risks upon which he is authorized to write insurance. [Id.]

Art. 4884. **Change or limit of rate.**—Said Commission shall have full power and authority to alter, amend, modify or change any rate fixed and determined by it on thirty days' notice, or to prescribe that any such rate or rates shall be in effect for a limited time, and said Commission shall also have full power and authority to prescribe reasonable rules whereby in cases where no rate of premium shall have been fixed and determined by the Commission, for certain risks or classes of risks, policies may be written thereon at rates to be determined by the company. Such company or companies shall immediately report to said Commission such risk so written, and the rates collected therefor, and such rates shall always be subject to review by the Commission. [Id.]

Art. 4885. **Petition for change.**—Any such fire insurance company shall have the right at any time to petition the Commission for an order changing or modifying any rate or rates fixed and determined by the Commission, and the Commission shall consider such petition in the manner provided in this law and enter such order thereon as it may deem just and equitable. [Id.]

Art. 4886. **Reducing hazard.**—The Commission shall have full authority and power to give each city, town, village or locality credit for each and every hazard they may reduce or entirely remove, and also for all added fire fighting equipment, increased police protection, or any other equipment or improvement that has a tendency to reduce the fire hazard of any such city, town, village or locality, and also to give credit for a good fire record made by any city, town, village or locality. Said Commission shall also have the power and authority to compel any company to give any or all policyholders credit for any and all hazards that said policyholder or holders may reduce or remove. Said credit shall be in proportion to such reduction or removal of such hazard and said company or companies shall

return to such policyholder or holders such proportional part of the unearned premium charged for such hazard that may be reduced or removed. [Id.]

Art. 4887. **Revising rates.**—The Commission shall have authority after having given reasonable notice, not exceeding thirty days, of its intention to do so, to alter, amend or revise any rates of premium fixed and determined by it in any schedules of such rates promulgated by it, and to give reasonable notice of such alteration, amendment or revision to the public, or to any company or companies affected thereby. Such altered, amended or revised rates shall be the rates thereafter to be charged and collected by all fire insurance companies affected by this law. No policy in force prior to the taking effect of such changes or amendments shall be affected thereby, unless there shall be a change in the hazard of the risk, necessitating a change in the rate applicable to such risk, in which event such policy shall be subject to the new rates. [Id.]

Art. 4888. **Uniform policies.**—The Commission shall make, promulgate and establish uniform policies of insurance applicable to the various risks of this State, copies of which uniform policies shall be furnished each company now or hereafter doing business in this State. After such uniform policies shall have been established and promulgated and furnished the respective companies doing business in this State, such companies shall, within sixty days after the receipt of such forms of policies, adopt and use said form or forms and no other; also all companies which may commence business in this State after the adoption and promulgation of such forms of policies, shall adopt and use the same and no other forms of policies. [Id.]

Art. 4889. **Standard forms.**—The Commission shall prescribe all standard forms, clauses and endorsements used on or in connection with insurance policies. All other forms, clauses and endorsements placed upon insurance policies shall be placed thereon subject to the approval of the Commission. The Commission shall have authority in its discretion to change, alter or amend such form or forms of policy or policies, and such clauses and endorsements used in connection therewith, upon giving notice. [Id.]

Art. 4890. **Lien on insured property.**—Any provision in any policy of insurance issued by any company subject to the provisions of this law to the effect that if said property is encumbered by a lien of any character or shall after the issuance of such policy become encumbered by a lien of any character then such encumbrance shall render such policy void shall be of no force and effect. Any such provision within or placed upon any such policy shall be null and void. [Id.]

Art. 4891. **Co-insurance clauses.**—No company subject to the provisions of this law may issue any policy or contract of insurance covering property in this State, which shall contain any clause or provision requiring the assured to take out or

maintain a larger amount of insurance than that expressed in such policy, nor in any way providing that the assured shall be liable as a co-insurer with the company issuing the policy for any part of the loss or damage which may be caused by fire to the property described in such policy, and any such clause or provision shall be null and void, and of no effect. The co-insurance clauses and provisions may be inserted in policies written upon cotton, grain or other products in process of marketing, shipping, storing or manufacture. [Id.]

Art. 4892. **Complaints of rates or orders.**—Any citizen or number of citizens of this State or any policyholder or policyholders, or any insurance company affected by this law, or any Board of Trade, Chamber of Commerce, or other civic organization, or the civil authorities of any town, city, or village, shall have the right to file a petition with the State Insurance Commission, setting forth any cause of complaint that they may have as to any order made by this Commission, or any rate fixed and determined by the Commission, and they shall have the right to offer evidence in support of the allegations of such petition by witnesses, or by depositions, or by affidavits; upon the filing of such petition, the party complained of, if other than the Commission, shall be notified by the Commission of the filing of such petition and a copy thereof furnished the party or parties, company or companies, of whom complaint is made, and the said petition shall be set down for a hearing at a time not exceeding thirty days after the filing of such petition and the Commission shall hear and determine said petition; but it shall not be necessary for the petitioners or any one of them to be present to present the cause to the Commission, but they shall consider the testimony of all witnesses, whether such witnesses testify in person or by depositions, or by affidavits, and if it be found that the complaint made in such petition is a just one, then the matter complained of shall be corrected or required to be corrected by said Commission. [Id.]

Art. 4893. **Hearing of protests.**—The Commission shall give the public and all insurance companies to be affected by its orders or decisions, reasonable notice thereof, not exceeding thirty days, and an opportunity to appear and be heard with respect to the same; which notice to the public shall be published in one or more daily papers of the State, and such notice to any insurance company to be affected thereby shall be mailed addressed to the State or general agent of such company, if such address be known to the Commission, or if not known, then such letter shall be addressed to some local agent of such company, or if the address of a local agent be unknown to the Commission, then by publication in one or more of the daily papers of the State, and the Commission shall hear all protests or complaints from any insurance company or any citizen or any city, or town, or village or any commercial or civic organization as to the inadequacy or unreasonableness of any rates fixed by it or approved by it,

or as to the inadequacy or unreasonableness of any general basis schedules promulgated by it or the injustice of any order or decision by it, and if any insurance company, or other person, or commercial or civic organization, or any city, town or village, which shall be interested in any such order or decision, shall be dissatisfied with any regulation, schedule or rate adopted by such Commission, such company or person, commercial or civic organization, city, town or village shall have the right, within thirty days after the making of such regulation or order, or rate, or schedule or within thirty days after the hearing above provided for, to bring an action against said Commission in the district court of Travis county to have such regulation or order or schedule or rate vacated or modified; and shall set forth in a petition therefor the principal grounds of objection to any or all of such regulations, schedules, rates or orders. In any such suit the issue shall be formed and the controversy tried and determined as in other civil cases. The court may set aside and vacate or annul any or all or any part of any regulation, schedule, order or rate promulgated or adopted by said Commission, which shall be found by the court to be unreasonable, unjust, excessive or inadequate, without disturbing others. No injunction, interlocutory order or decree suspending or restraining directly or indirectly the enforcement of any schedule, rate, order or regulation of said Commission shall be granted. In such suit, the court, by interlocutory order, may authorize the writing and acceptance of fire insurance policies at any rate which in the judgment of the court is fair and reasonable, during the pending of such suit, upon condition that the party to such suit in whose favor the said interlocutory order of said court may be, shall execute and file with the Commissioner of Insurance a good and sufficient bond to be first approved by said court, conditioned that the party giving said bond will abide the final judgment of said court and will pay to the Commissioner of Insurance whatever difference in the rate of insurance, it may be finally determined to exist between the rates as fixed by the State Insurance Commission complained of in such suit, and the rate finally determined to be fair and reasonable by the court in said suit, and the said Commissioner of Insurance, when he receives such difference in money, shall transmit the same to the parties entitled thereto.

Whenever any action shall be brought by any company under any provision of this article within said period of thirty days, no penalties nor forfeitures shall attach or accrue on account of the failure of the plaintiff to comply with the orders, schedules, rates or regulations sought to be vacated in such action until the final determination of the same.

Either party to any such action, if dissatisfied with the judgment or decree of said court, may appeal therefrom as in other civil cases. No action shall be brought in any court of the United States to set aside any orders, rates, schedules or regula-

tions made by said Commission under the provisions of this law until all of the remedies provided herein shall have been exhausted by the party complaining. [Id.]

Art. 4894. **Rebating or discrimination.**—No company shall engage or participate in the insuring or re-insuring of any property in this State against loss or damage by fire except in compliance with the terms and provisions of this law; nor shall any such company knowingly write insurance at any lesser rate than the rates herein provided for, and it shall be unlawful for any company so to do, unless it shall thereafter file an analysis of same with the Commission, and it shall be unlawful for any company, or its officers, directors, general agents, State agents, special agents, local agents, or its representatives, to grant or contract for any special favor or advantages in the dividends or other profits to come thereon, or in commissions in the dividends or other profits to accrue thereon, or in commissions or division of commission, or any position or any valuable consideration or any inducement not specified in the policy contract of insurance; nor shall such company give, sell or purchase, offer to give, sell or purchase, directly or indirectly as an inducement to insure or in connection therewith, any stocks, bonds or other securities of any insurance company or other corporation, partnership or individual, or any dividends or profits accrued or to accrue thereon, or anything of value whatsoever, not specified in the policy. Nothing in this chapter shall be construed to prohibit a company from sharing its profits with its policyholders, if such agreement as to profit-sharing shall be placed on or in the face of the policy, and such profit-sharing shall be uniform and shall not discriminate between individuals or between classes. No part of the profit shall be paid until the expiration of the policy. Any company, or any of its officers, directors, general agents, State agents, special agents, local agents or its representatives, doing any of the acts in this article prohibited, shall be deemed guilty of unjust discrimination. If any agent or company shall issue a policy without authority, and any policyholder holding such policy shall sustain a loss or damage thereunder, said company or companies shall be liable to the policyholder thereunder, in the same manner and to the same extent as if said company had been authorized to issue said policies, although the company issued said policy in violation of the provisions of this chapter. But this shall not be construed to give any company the right to issue any contract or policy of insurance other than as provided in this chapter. [Id.]

Art. 4895. **Not retroactive.**—The provisions of this law shall not deal with the collection of premiums, but each company shall be permitted to make such rules and regulations as it may deem just between the company, its agents, and its policyholders; and no bona fide extension of credit shall be construed as a discrimination, or in violation of the provisions of this chapter. All policies heretofore issued which provide that said poli-

cies shall be void for non-payment of premiums at a certain specified time, shall be and the same are in full force and effect, provided, that the company or any of its agents have accepted the premium on said policies after the expiration of the dates named in said provisions fixing the date of payment.

Art. 4896. Duty of Fire Marshal.—The State Fire Marshal, at the discretion of the board, and upon the request of the mayor of any city or village, or the chief of a fire department of any city or village, or any fire marshal where a fire occurs within such city or village, or of a county or a district judge, or of a sheriff or county attorney of any county where a fire occurs within the district or county of the officers making such request, or of any fire insurance company, or its general, State or special agent, interested in a loss, or of a policyholder sustaining a loss, or upon the direction of the Insurance Commission shall forthwith investigate at the place of such fire before loss can be paid, the origin, cause and circumstances of any fire occurring within this State, whereby property has been destroyed or damaged, and shall ascertain if possible whether the same was the result of any accident, carelessness or design, and shall make a written report thereof to the Commission. The State Fire Marshal shall have the power to administer oaths, take testimony, compel the attendance of witnesses and the production of documents. When, in his opinion, further investigation is necessary, he shall take or cause to be taken the testimony on oath of all persons supposed to be cognizant of any facts, or to have knowledge in relation to the matter under investigation, and shall cause the same to be reduced to writing, and if he shall be of the opinion that there is evidence sufficient to charge any person with arson, or with attempt to commit arson, or of conspiracy to defraud or criminal conduct in connection with such, he shall arrest or cause to be arrested such person, and shall furnish to the proper prosecuting attorney all evidence secured, together with the names of witnesses and all information obtained by him, including a copy of all material testimony taken in the case, and it shall be the duty of the State Fire Marshal to assist in the prosecution of all such complaints filed by him. All investigations held by or under the direction of the State Fire Marshal may, in his discretion, be private and persons other than those required to be present may be excluded from the place where such investigation is held, and the witnesses may be kept separate from each other and not allowed to communicate with such others until they have been examined; and all testimony taken in an investigation under the provisions of this law may, at the election of the State Fire Marshal, be withheld from the public. [Acts 1917, p. 137.]

Art. 4897. Authority of Fire Marshal.—The State Fire Marshal is hereby authorized to enter at any time any buildings or premises where fire occurred or is in progress, or any place contiguous thereto, for the purpose of investigating the cause,

origin and circumstances of such fire. The State Fire Marshal, upon complaint of any person, shall, at all reasonable hours, for the purpose of examination, enter into and upon all buildings and premises within this State, and it shall be his duty to enter upon and make or cause to be entered upon and made, at any time, a thorough examination of mercantile, manufacturing and public buildings, and all places of public amusement, or where public gatherings are held, together with the premises belonging thereto. Whenever he shall find any building or other structure which for want of repair or by reason of age or dilapidated condition, or which for any cause is liable to fire, and which is so situated as to endanger other buildings or property, or is so occupied that fire would endanger persons or property therein, and whenever he shall find an improper or dangerous arrangement of stoves, ranges, furnaces or other heating appliances of any kind whatsoever, including chimneys, flues and pipes with which the same may be connected, or dangerous arrangement or lighting systems or devices, or dangerous storage of explosives, compounds, petroleum, gasoline, kerosene, dangerous chemicals, vegetable products, ashes, combustible, inflammable and refuse materials, or other conditions which may be dangerous in character, or liable to cause or promote fire, or create conditions dangerous to firemen or occupants, he shall order the same to be removed or remedied, and such order shall be forthwith complied with by the occupant or owner of such building or premises, and the State Fire Marshal is hereby authorized, when necessary, to apply to a court of competent jurisdiction for the necessary writs or orders to enforce the provisions of this article and in such case he shall not be required to give bond. [Id.]

Art. 4898. **Acting Fire Marshal.**—If for any reason the State Fire Marshal is unable to make any required investigation in person, he may designate the fire marshal of such city or town or some other suitable person to act for him; and such person so designated shall have the same authority as is herein given the State Fire Marshal with reference to the particular matter to be investigated by him, and shall receive such compensation for his services as the State Insurance Commission may allow. If the investigation of a fire is made at the request of an insurance company, or at the request of a policyholder sustaining loss, or at the request of the mayor, town clerk or chief of the fire department of any city, village or town in which the fire occurred, then the expenses of the Fire Marshal, clerical expenses, witnesses and officers fees incident and necessary to such investigation shall be paid by such insurance company, or such policyholder of such city or town as the case may be, otherwise the expenses of such investigation are to be paid as part of the expenses of the State Insurance Commission. The party or parties, company or companies, requesting such investigation, shall before such investigation is commenced deposit with the State Insurance Commission, an amount of money in the judg-

ment of said Commission sufficient to defray the expenses of said Fire Marshal in conducting such investigation. [Acts 1913, p. 198.]

Art. 4899. Result of investigation.—No action taken by the State Fire Marshal shall affect the rights of any policyholder or any company in respect to a loss by reason of any fire so investigated; nor shall the result of any such investigation be given in evidence upon the trial of any civil action upon such policy, nor shall any statement made by any insurance company, its officers, agents or adjusters, nor by any policy holder, or any one representing him, made with reference to the origin, cause or supposed origin or cause of a fire to the Fire Marshal or to any one acting for him, or under his direction, be admitted in evidence or made the basis for any civil action for damages. [Id.]

Art. 4900. To cancel authority.—If any insurance company affected by the provisions of this law shall violate any provision of this chapter, the Commissioner shall, by and with the consent of the Attorney General, cancel its certificate of authority to transact business in this State. [Id.]

Art. 4901. Revocation of certificate.—The Commissioner of Insurance, upon ascertaining that any insurance company or officer, agent or representative thereof, has violated any provision of this chapter, may, at his discretion, and with the consent and approval of the Attorney General, revoke the certificate of authority of such company, officer, agent or representative; but such revocation of any certificate shall in no manner affect the liability of such company, officer, agent or representative to the infliction of any other penalty provided by law. Any action, decision or determination of the Commissioner and the Attorney General in such cases shall be subject to the review of the courts of this State as herein provided. [Id.]

Art. 4902. Tax on premiums.—The State of Texas shall assess and collect an additional one and one-fourth per cent of the gross fire insurance premiums of all fire insurance companies doing business in this State, according to the reports made to the Commissioner as required by law; and said taxes when collected shall be placed in a separate fund with the State Treasurer to be expended during the current year, or so much thereof as may be necessary in carrying out the provisions of this chapter. Such expenditures, including the salaries of the members of the Commission, shall not exceed in the aggregate the sum of two hundred and twelve thousand five hundred dollars per annum; and should there be an unexpended balance at the end of any year, the State Insurance Commission shall reduce the assessment for the succeeding year so that the amount produced and paid into the State Treasury, together with said unexpended balance in the Treasury, will not exceed the amount appropriated for the current year, to pay all necessary expenses of maintaining the Commission, which funds shall be paid out upon requisi-

tion made out and filed by a majority of the Commission, when the Comptroller shall issue warrants therefor. [Acts 3rd C. S. 1920, p. 105.]

Art. 4903. Exceptions.—This law shall not apply to purely mutual or to purely profit-sharing fire insurance companies incorporated or unincorporated under the laws of this State, and carried on by the members thereof solely for the protection of their property and not for profit; nor to purely co-operative inter-insurance and reciprocal exchange carried on by the members thereof solely for the protection of their property and not for profit. [Id.]

Art. 4904. Compensation of Commission.—The necessary compensation of experts, clerical force, and other persons employed by said Commission, and all necessary traveling expenses, and such other expenses as may be necessary, incurred in carrying out the provisions of this chapter, shall be paid by warrants drawn by the Comptroller upon the State Treasurer upon the order of said Commission. The total amount of all salaries and said other expenses shall not exceed the sum produced by the assessment on the gross premiums of all fire insurance companies doing business in this State. [Acts 1917, p. 136.]

Art. 4905. Additional compensation.—The necessary compensation of experts, the clerical force and other persons employed by the Commission to carry out the purposes of the succeeding articles of this chapter, and all necessary traveling expenses and such other expenses as may be necessarily incurred in carrying out such provisions, shall be paid as provided in the preceding article. [Acts 1923, p. 408.]

Art. 4906. Tax on gross premiums.—To defray the expense of carrying out the provisions of the succeeding articles of this chapter, there shall be annually assessed and collected by the State of Texas from each company and association writing workmen's compensation insurance in this State, in addition to all other taxes now imposed or which may hereafter be imposed by law, a tax of three-fifths of one per cent of the gross premiums collected by such company or association during the preceding year, under workmen's compensation insurance policies written by said companies and associations covering risks in this State, according to the reports made to the Commissioner as required by law. Said taxes when collected shall be placed in a separate fund with the State Treasurer to be expended during the current year in carrying out such provisions. Such expenditures, including the salaries of the members of the Commission, hereunder, shall not exceed in the aggregate the sum assessed and collected from said companies and associations; and, should there be an unexpended balance at the end of any year, it shall be transferred by the State Treasurer to the credit of the general revenue of this State. [Id.]

Art. 4907. Workmen's compensation rates.—The said Commission shall make, establish and promulgate all classifications

of hazards and rates of premium respectively applicable to each, contemplated and provided for by Chapter 18 of this title. Said commission shall publish all rates promulgated by it as affecting compensation insurance in this State, and said rates, or any change therein, shall be published fifteen days before they become effective and in force. [Id.]

Art. 4908. **To prescribe standard forms.**—The Commission shall prescribe standard policy forms to be used by all companies or associations writing workmen's compensation insurance in this State. No company or association authorized to write workmen's compensation insurance in this State shall, except as hereinafter provided for, use any classifications of hazards, rates of premium, or policy forms other than those made, established and promulgated and prescribed by the Commission. [Id.]

Art. 4909. **To assemble data.**—The Commission shall assemble all necessary data for its use in establishing classifications of hazards and making and promulgating premium rates. [Id.]

Art. 4910. **May require statements.**—The Commission may require sworn statements from any insurance company or association affected by this law showing the payroll reported to it and incurred losses by classifications and such other information which in the judgment of the Commission may be necessary in determining proper classifications, rates and forms. The Commission shall prescribe the necessary forms for such statements and reports, having due regard to the methods and forms in use in other States for similar purpose in order that uniformity of statistics may not be disturbed. [Id.]

Art. 4911. **Experience rating.**—The Commission shall determine hazards by classes and fix such rates of premium applicable to the payroll in each of such classes as shall be adequate to the risks to which they apply and consistent with the maintenance of solvency and the creation of adequate reserves and a reasonable surplus, and for such purpose may adopt a system of schedule and experience rating in such manner as to take account of the peculiar hazard of each individual risk, provided such rate shall be fair and reasonable and not confiscatory as to any class of insurance carriers authorized by law to write workmen's compensation insurance in this State. To insure the adequacy and reasonableness of rates, the Commission shall take into consideration an experience gathered from a territory sufficiently broad to include the varying conditions of the industries in which the classifications are involved, and over a period sufficiently long to insure that the rates determined therefrom shall be just, reasonable, and adequate rates. The Commission shall exchange information and experience data with the rate-making bodies of other States and shall consult any national organization or association now or hereafter existing for the purpose of assembling data for the making of compensation insurance rate. [Id.]

Art. 4912. **Hearing before Commission.**—Any policyholder, insurance company, or association shall have the right to a hearing before the Commission on any grievance occasioned by the promulgation of any classification, rate or policy form by the Commission; such hearing to be held in conformity with rules to be prescribed by the Commission. No hearing shall suspend the operation of any classification, rate or policy form unless the Commission shall so order. [Id.]

Art. 4913. **Uniform policy.**—The Commission shall prescribe a uniform policy for workmen's compensation insurance and no company or association shall thereafter use any other form in writing workmen's compensation insurance in this State, provided that any company or association may use any form of endorsement appropriate to its plan of operation, if such endorsement shall be first submitted to and approved by the Commission, and any contract or agreement not written into the application and policy shall be void and of no effect and in violation of the provisions of this chapter, and shall be sufficient cause for revocation of license to write workmen's compensation insurance within this State. [Id.]

Art. 4914. **Adequate reserves.**—Nothing in this chapter shall be construed to prohibit the operation hereunder of any stock company, mutual company, reciprocal or inter-insurance exchange, or Lloyd's association, to prohibit any stock company, mutual company, reciprocal, or inter-insurance exchange or Lloyd's association, issuing participating policies, provided no dividend to subscribers under the Workmen's Compensation Act shall take effect until the same has been approved by the Commission. No such dividend shall be approved until adequate reserve has been provided, said reserves to be computed on the same basis for all classes of companies or associations operating under this chapter, as prescribed under the insurance laws of the State of Texas. [Id.]

Art. 4915. **Commission to make rules.**—The Commission is hereby empowered to make and enforce all such reasonable rules and regulations not inconsistent with the provisions of this law as are necessary to carry out its provisions. [Id.]

Art. 4916. **Scope of law.**—No provision of the Act creating the State Insurance Commission, with regard to the fixing and promulgation of rates for fire insurance or the prescribing of fire insurance policies and forms shall be applicable to the fixing of compensation insurance classifications or the making of compensation insurance rates or the prescribing of compensation insurance policy forms; but the provisions of this Act shall be construed and applied independently of any other law or laws, or parts of laws, having to do with the matter of insurance rates and forms or of fixing the duties of the State Insurance Commission. [Id.]

Art. 4917. **Definitions.**—The words "Company" and "Association" used in this Act mean the Texas Employers Insurance

Association, or any stock company, or any mutual company, or any reciprocal, or any inter-insurance exchange, or Lloyd's association authorized to write Workmen's Compensation Insurance in this State. [Id.]

Art. 4918. **Cancellation of license.**—The Commissioner shall cancel the license of any insurance company or association of persons to transact workmen's compensation insurance business in this State upon a second conviction of any officer or representative of such company or association for a violation of any provision of this chapter relating to such business. [Id.]

CHAPTER ELEVEN.

FIRE AND MARINE COMPANIES.

| | | | |
|------------------------------------|--------------|---------------------------------------|--------------|
| What may be insured..... | Article 4919 | May deposit securities | Article 4926 |
| Reduction of capital stock..... | 4920 | Annual statement | 4927 |
| Capital stock to be made good..... | 4921 | Details of annual statement..... | 4928 |
| Stockholder failing to pay..... | 4922 | Policy a liquidated demand..... | 4929 |
| New stock | 4923 | Breach by insured | 4930 |
| Holding real estate | 4924 | Interest of mortgagee or trustee..... | 4931 |
| Shall file bond | 4925 | Re-insurance | 4932 |

Art. 4919. [4862] **What may be insured.**—It shall be lawful for any insurance company doing business in this State under the proper certificate of authority, except a life or health insurance company, to insure houses, buildings and all other kinds of property against loss or damage by fire; to take all kinds of insurance on goods, merchandise, or other property in the course of transportation, whether on land or water, or any vessel afloat, wherever the same may be; to lend money on bottomry or respondentia; to cause itself to be insured against any loss or risk it may have incurred in the course of its business and upon the interest which it may have in any property by means of any loan or loans which it may have on bottomry or respondentia; and generally to do and perform all other matters and things proper to promote these objects; insure automobiles or other motor vehicles, whether stationery or being operated under their own power, against all or any of the risks of fire, lightning, wind storms, hail storms, tornadoes, cyclones, explosions, transportation by land or water, theft and collisions, upon filing with the Commissioner notification of their purpose to do so. [Acts 1875, p. 34; G. L., Vol. 8, p. 406; Acts 1913, p. 209.]

Art. 4920. [4865] [3077] **Reduction of capital stock.**—Whenever the joint stock of any fire, fire and marine, or marine insurance company of this State becomes impaired, the Commissioner may, in his discretion, permit the said company to reduce its capital stock and par value of its shares in proportion to the extent of impairment. In fixing such reduced capital, no sum exceeding twenty-five thousand dollars shall be deducted from the assets and property on hand, which shall be retained as surplus assets. No part of such assets and property shall be distributed to the stockholders, nor shall the capital stock of a company in any case be reduced to an amount less than one

hundred thousand dollars. [Acts 1876, p. 222; G. L., Vol. 8, p. 1058.]

Art. 4921. [4864] [3078] **Capital stock to be made good.**—Any fire, marine or inland insurance company having received notice from the Commissioner to make good its whole capital stock within sixty days shall forthwith call upon its stockholders for such amounts as shall make its capital equal to the amount fixed by the charter of such company. [Id.]

Art. 4922. [4865] [3079] **Stockholder failing to pay.**—If any stockholder of such company shall neglect or refuse to pay the amount so called for, after notice personally given, or by advertisement for such time and in such manner as said Commissioner shall approve, it shall be lawful for said company to require the return of the original certificate of stock held by such stockholder, and in lieu thereof to issue a new certificate for such number of shares as such defaulting stockholders may be entitled to in the proportion that the ascertained value of the funds of said company may be found to bear to the original capital of said company; the value of such shares for which new certificates are issued shall be ascertained under the direction of said Commissioner, and the company shall pay for the fractional parts of shares. [Id.]

Art. 4923. [4866] [3080] **New Stock.**—It shall be lawful for such company to create new stock and dispose of the same and to issue new certificates therefor, to any amount sufficient to make up the original capital of the company. [Id.]

Art. 4924. [4869] [3076] **Holding real estate.**—No fire, marine or inland insurance company organized under the laws of this State shall purchase or hold any real estate, except—

1. Such as shall be requisite for its convenient accommodation in the transaction of its business.

2. Such as shall have been mortgaged to it in good faith by way of security for loans previously contracted or for money due.

3. Such as shall have been conveyed to it in satisfaction of debts previously contracted in the legitimate business of the company or for money due.

4. Such as shall have been purchased at sales under judgments, decrees or mortgages obtained or made for such debts.

All lands purchased or held in violation of this article shall be forfeited to the State. [Id.]

Art. 4925. [4870] **Shall file bond.**—Every fire insurance company, not organized under the laws of this State, applying for a certificate of authority to transact any kind of insurance in this State, shall, before obtaining such certificate, file with the Commissioner a bond, with good and sufficient surety or sureties, to be approved by and to be payable to the Commissioner and his successors in office, in a sum equal to twenty-five per cent of its premiums collected from citizens or upon property in this State during the preceding calendar year, as shown by its annual report for such year. The bond in no case shall be

less than ten thousand nor more than fifty thousand dollars, conditioned that said company will pay all its lawful obligations to citizens of this State. Such bonds shall be subject to successive suits by citizens of this State so long as any part of the same shall not be exhausted, and the same shall be kept in force unimpaired until all claims of such citizens arising out of obligations of said company have been fully satisfied. Such bonds shall provide that in the event the company shall become insolvent or cease to transact business in this State at any time when it has outstanding policies of insurance in favor of citizens of this State, or upon property in this State, the Commissioner shall have power, after having given ten days notice to the officers of such company, or any receiver in charge of its property and affairs, to contract with any other insurance company transacting business in this State for the assumption and reinsurance by it of all the insurance risks outstanding in this State of such company which is insolvent, or which has ceased to transact business in this State, which contract shall also provide for the assumption by such reinsurance company of all outstanding and unsatisfied lawful claims then outstanding against such company which has become insolvent, or ceased to transact business in this State. In the event of the Commissioner making any such contract, and if the same shall be approved as reasonable by the Attorney General and the Governor of this State, the reinsuring company shall be entitled to recover from the makers of such bond the amount of the premium or compensation so agreed upon for such reinsurance. Any company desiring to do so may, at its option, in lieu of giving the bond required by this article, deposit securities of any kind in which it may lawfully invest its funds with the State Treasurer upon such terms and conditions as will in all respects afford the same protection and indemnity as herein provided for to be afforded by said bond. [Acts 1909, p. 182.]

Art. 4926. [4871] **May deposit securities.**—Every fire insurance company, not organized under the laws of this State, hereafter issuing or causing or authorizing to be issued, any policy of insurance other than life insurance, shall first have filed with the Commissioner during the calendar year in which such policy may issue, or authorize or cause to be issued, a bond of good and sufficient sureties to be approved by such Commissioner in a sum of not less than ten thousand dollars, conditioned for the payment of all lawful obligations to citizens of this State arising out of any policies or contracts issued by such fire insurance company; which such bonds shall be subject to successive suits by citizens of this State so long as any part of the same shall not be adjusted, and so long as there remains outstanding any such obligations or contracts of such fire insurance company. This article shall not apply to any person, firm or corporation, or association, doing an inter-insurance, co-operative or reciprocal business. [Id.]

Art. 4927. [4872] [3083] **Annual statement.**—The presi-

dent or vice-president and secretary of each fire, marine or inland insurance company doing business in this State, annually, on the first day of each year, or within sixty days thereafter, shall prepare under oath and deposit with the Commissioner a full, true and complete statement of the condition of such company on the last day of the month of December preceding. [Act Feb. 17, 1875, p. 37; G. L., Vol. 8, p. 409.]

Art. 4928. [4873] [3084] **Details of annual statement.**—Such annual statement shall exhibit the following items and facts:

1. The name of the company and where located.
2. The names and residence of the officers.
3. The amount of the capital stock of the company.
4. The amount of capital stock paid up.
5. The property or assets held by the company, viz: The real estate owned by such company, its location, description and value as near as may be, and if said company be one organized under the laws of this State, shall accompany such statement with an abstract of the title to the same; the amount of cash on hand and deposited in banks to the credit of the company, and in what bank or banks the same is deposited; the amount of cash in the hands of agents, naming such agents; the amount of cash in course of transmission; the amount of loans secured by first mortgages on real estate, with the rate of interest thereon, specifying the location of such real estate, its value and the name of the mortgagor; the amount of all bonds and other loans, with the rate of interest thereon and how secured; the amount due the company in which judgments have been obtained, describing such judgments; the amount of stock of this State, of the United States, of any incorporated city of this State, and of any other stock owned by the company, describing the same and specifying the amount and number of shares, and the par and market value of each kind of stock; the amount of stock held by such company as collateral security for loans, with amount loaned on each kind of stock, its par and market value; the amount of interest actually due to the company and unpaid; all other securities, their description and value.
6. The liabilities of such company, specifying the losses adjusted and due; losses adjusted and not due; losses unadjusted; losses in suspense and the cause thereof; losses resisted and in litigation; dividends, either in scrip or cash, specifying the amount of each declared but not due; dividends declared and due; the amount required to reinsure all outstanding risks on the basis of forty per cent of the premium on all unexpired fire risks and one hundred per cent of the premium on all unexpired marine and inland transportation risks; the amount due banks or other creditors, naming such banks or other creditors and the amount due to each; the amount of money borrowed by the company, of whom borrowed, the rate of interest thereon and

how secured; all other claims against the company, describing the same.

7. The income of the company during the preceding year, stating the amount received for premiums, specifying separately fire, marine and inland transportation premiums, deducting reinsurance; the amount received for interest, and from all other sources.

8. The expenditures during the preceding year, specifying the amount of losses paid during said term, stating how much of the same accrued prior, and how much subsequent, to the date of the preceding statement, and the amount at which losses were estimated in such preceding statement; the amount paid for dividends; the amount paid for return premiums, commissions, salaries, expenses, and other charges of officers, agents, clerks and other employes; the amount paid for local, state, national, internal revenue and other taxes and duties; the amount paid for all other expenses such as fees, printing, stationery, rents, furniture, etc.

9. The largest amount insured in any one risk, naming the risk.

10. The amount of risks written during the preceding year.

11. The amount of risks in force having less than one year to run.

12. The amount of risks in force having more than one and not over three years to run.

13. The amount of risks having more than three years to run.

14. Whether or not dividends are declared on premiums received for risks not terminated. [Id.]

Art. 4929. [4874] [3089] **Policy a liquidated demand.**—A fire insurance policy, in case of a total loss by fire of property insured, shall be held and considered to be a liquidated demand against the company for the full amount of such policy. The provisions of this article shall not apply to personal property. [Acts 1879, p. 83.]

Art. 4930. **Breach by insured.**—No breach or violation of the insured of any of the warranties, conditions or provisions of any fire insurance company, contract of insurance or application therefor, upon personal property, shall render void the policy or contract, or constitute a defense to a suit for loss thereon, unless such breach or violation contributed to bring about the destruction of property. [Acts 1913, p. 194.]

Art. 4931. **Interest of mortgagee or trustee.**—The interest of a mortgagee or trustee under any fire insurance contract hereafter issued covering any property situated in this State shall not be invalidated by any act of neglect of the mortgagee or owner of said described property or the happening of any condition beyond his control, and any stipulation in any contract in conflict herewith shall be null and void. [Acts 1919, p. 20.]

Art. 4932. [4875] [3075] **Re-insurance.**—1. No fire, fire and marine, marine or inland insurance company doing business in this State shall expose itself to any one risk, except when insuring cotton in bales, and grain, to an amount exceeding ten per cent of its paid up capital stock, unless the excess shall be insured by such company in some other solvent insurance company legally authorized to do business in this State.

2. Every fire, fire and marine, marine or inland insurance company doing business in this State may re-insure the whole or any part of any policy obligation in any other insurance company legally authorized to do business in this State. The Commissioner shall require every year from every insurance company doing business in this State a certificate sworn to before an officer in this State to the effect that no part of the business written by such company in this State has been re-insured in whole or in part by any company, corporation, association or society not authorized to do business in this State. Every insurance company doing business shall also furnish the Commissioner with a list of re-insurances during the year in authorized companies, showing the name, amount and premium effected in each company.

3. Any insurance company authorized to transact the business of fire, fire and marine, marine and inland insurance in this State failing to comply with any provisions of this article, shall forfeit its authority to do business for a period of one year. The Commissioner shall investigate any complaint as to such violation and upon satisfactory proof that any company authorized to transact the business of fire, fire and marine, marine or inland insurance in this State has violated any provision of this article, the Commissioner shall revoke the certificate of authority of the offending company.

4. The Commissioner upon payment of license fee of twenty-five dollars, may issue to an agent who is regularly commissioned to represent one or more fire, fire and marine insurance companies authorized to do business in this State, a certificate of authority to place excess lines of insurance in companies not authorized to do business in this State, provided the party desiring such excess insurance shall first file with the Commissioner an affidavit that he has exhausted all the insurance obtainable from companies duly authorized to do business in the State.

5. Before receiving license provided for in section 4 of this article, the party applying for same shall file with the Commissioner a bond in the sum of one thousand dollars, payable to the Governor for the faithful observance of the provisions of this article. Said bond to be approved by the Commissioner, and to be for the benefit of the State of Texas.

6. Every agent so licensed shall report, under oath, to the Commissioner within thirty days from the first day of January and July of each year, the amount of gross premiums received by him for such excess insurance, and shall pay the Commissioner a tax of five per cent thereon. The agent procuring a li-

cense as provided in this article shall keep a separate record of all transactions herein provided open at all times to the inspection of the Commissioner, or his legally appointed representative. In default of the payment of any sum which may be due the State under this article, the Commissioner may sue for the same. [Act Feb. 17, 1875, p. 34; G. L., Vol. 8, p. 406; Acts 1905, p. 112.]

CHAPTER TWELVE.

FIRE, LIGHTNING, HAIL AND STORM COMPANIES.

| | Article | | Article |
|---------------------------------|---------|---------------------------------|---------|
| May incorporate | 4933 | Expenses of company | 4942 |
| Requisites of application | 4934 | Reserve and dividend | 4943 |
| Requisites of charter | 4935 | Discretionary examination | 4944 |
| Examination | 4936 | Revocation of license | 4945 |
| Statement of condition | 4937 | Other laws to govern | 4946 |
| Rights of insured | 4938 | Penalty | 4947 |
| Liability of insured | 4939 | Foreign mutual companies | 4948 |
| By-laws | 4940 | Filing fees and taxes | 4949 |
| Investment of funds | 4941 | | |

Art. 4933. **May incorporate.**—Any number of persons, not less than seven, who shall be resident citizens of this State, may form and incorporate a company for the purpose of mutual insurance against loss or damage by fire, lightning, hail and storms, and for all or either of such purposes. Each company incorporated under the provisions of this chapter shall embody the word “mutual” in its title, which shall appear upon the first page of every policy, and renewal receipt. [Acts 1913, p. 54.]

Art. 4934. **Requisites of application.**—When such number of persons desire to organize such mutual insurance company, they shall apply to the Commissioner for permission to solicit insurance on the mutual plan, which application shall contain:

1. The name of the company, and the name selected shall not be so similar to that of any other insurance company as to be likely to mislead the public.
2. The locality of the principal business office of such company.
3. The kind of insurance business the company proposes to engage in.
4. The names and places of residence of not less than seven persons making such application.
5. An affidavit of at least one of said applicants, correctly stating the names and residence of such applicants.

Upon receipt of such application, together with a fee of one dollar for filing it, the Commissioner shall at once file it and issue a permit authorizing said applicant to solicit insurance on the mutual plan, in accordance with the terms of the application, but not to issue policies of insurance. [Id.]

Art. 4935. **Requisites of charter.**—No such company shall be granted a charter, or be authorized to issue policies of insurance, until insurance upon not less than one hundred separate risks, the total amount of which insurance shall not be less than one hundred thousand dollars, has been applied for and entered on the books of said company, and until an amount equal to not less than fifty per cent of the first premiums for

such insurance has been paid in cash to such company, a premium note being taken for the balance, if any, and such premiums must aggregate not less than twice the maximum liability to be incurred on any one risk. No policy of insurance shall be written, or liability, as an insurer, be incurred by said company, until a statement subscribed and sworn to by the president and secretary of said company, stating that the above provisions have been complied with, has been filed with the Commissioner, together with certified copies of the company's proposed charter, and by-laws.

The charter or articles of association of said company shall be signed and acknowledged by at least four of the original applicants for said permit, and shall contain:

1. The purpose for which it is formed.
2. The place or places where its business is to be transacted.
3. The term for which it is to exist.
4. The number of its directors, or trustees, and the names and residences of those who are elected for the first year.

When said applicants have complied with the above requirements, and have filed the necessary copies of their charter and by-laws with the Commissioner, and have paid the fees and taxes required by the laws of the State to be paid, the Commissioner shall record said charter and furnish said company with a certified copy thereof, and shall issue to said company a certificate of authority showing it has complied with the laws of this State, and authorizing it to do business until the last day of the following February. [Id.]

Art. 4936. **Examination.**—Each mutual fire, lightning, and storm insurance company incorporated in this State shall be under the supervision of the Commissioner, who shall make or cause to be made, an examination of the affairs of each mutual insurance company, at the company's expense, at least once in every two years and at such other times as he deems proper. He shall thoroughly inspect books, accounts and records of the company, and if upon such inspection the affairs of such company are found to be in a sound condition and the company thus solvent and able to fulfill its obligations, he shall issue to the company a certificate showing the result of such examination. If upon examination he is of opinion that the mutual insurance company is insolvent or has exceeded its powers, or has failed to comply with any provision of law governing it, he may suspend the company's permit and shall give such company written notice of that objected to, and failing such being remedied within thirty days, he shall report the same to the Attorney General, who shall at once bring suit to forfeit the charter of such company. [Id.]

Art. 4937. **Statement of condition.**—Each mutual insurance company transacting business in the State shall, before the month of March in each year, file in the office of the Commissioner a statement showing the exact condition of affairs of the company upon the 31st day of December preceding, such state-

ment being in conformity with such forms as the Commissioner may furnish. [Id.]

Art. 4938. **Rights of insured.**—Each person to whom a policy of insurance has been issued by a mutual company incorporated in this State shall be a member of such company so long as his policy remains in force and shall be entitled to one vote at the meetings of the members of such companies, and shall further be entitled to his equitable share of all benefits derived from being a member of such company. [Id.]

Art. 4939. **Liability of insured.**—The by-laws of such companies shall provide that every member, in addition to his annual premium paid in cash, or in cash and premium notes, shall be liable for a sum equal to another annual premium, or it may provide, a sum equal to three or five annual premiums, such additional liability being assessable at the discretion of the Commissioner or the company's board of directors, for the members proportionate share of losses and expenses should the company's funds become impaired. [Id.]

Art. 4940. **By-laws.**—The by-laws of such companies shall specifically provide for the rules and regulations of its government, providing for the collection of adequate premiums or assessments, either all in cash or part cash and part by note, such premiums being based upon the greater or less risk attached to the property insured, and they shall state clearly and plainly the extent of each member's liability to other members, shall provide for the accumulation of a surplus fund to which shall be added not less than ten per cent of the annual saving, being made by the company, shall provide for the bonding of the company's officers and shall name such other provisions and safeguards as may be deemed proper and not contrary to the laws of the state, and a notice in heavy type shall be printed on each policy calling to the attention of the insured that the by-laws are a part of his contract with the company. [Id.]

Art. 4941. **Investment of funds.**—Funds of mutual companies may be invested in United States bonds, Texas State bonds, county or city bonds of this State, if such bonds are issued by authority of law and interest upon them has never been defaulted, or in first mortgages on improved real estate within the State where the first mortgage does not exceed fifty per cent of the value of the land and improvements thereon. [Id.]

Art. 4942. **Expenses of company.**—The expenses of such companies must not exceed an amount equal to thirty-five per cent of the annual premiums, and a statement must be made annually to the Commissioner by the president or secretary of the company that they are being so limited. [Id.]

Art. 4943. **Reserve and dividend.**—In determining the solvency of any such mutual company and in determining the profit or saving to be distributed among members, forty per cent of the actual cash premiums paid on policies in force for one year and a pro rata of all premiums received on risks that have more than one year to run shall be deemed to be a sufficient

reserve under the said policies and no dividends to members shall be paid out of this reserve. [Id.]

Art. 4944. **Discretionary examination.**—If at any time the admitted assets of any such company shall come to be less than the largest single risk for which the company is liable, then the president and the secretary of the company shall at once notify the Commissioner, and he may make an examination into the company's affairs if he deems it best. [Id.]

Art. 4945. **Revocation of license.**—If, upon examination of the company's affairs, it appears that the largest single risk for which the company is liable exceeds the admitted assets of the company, the Commissioner shall immediately suspend or revoke the license of the company until the assets of the company are increased by assessment or otherwise, sufficiently to meet the requirements. The company shall have thirty days within which to meet this requirement, and if within that time it fails to do so the Commissioner shall refer the matter to the Attorney General, with instructions to institute proper legal proceeding to forfeit the charter of said company. [Id.]

Art. 4946. **Other laws to govern.**—Each mutual company organized for any purpose mentioned in this chapter shall be amenable to, and subject to, the provisions of all laws of this State governing stock fire insurance companies, in so far as they are applicable to mutual companies, and not in conflict with any provision of this chapter. [Id.]

Art. 4947. **Penalty.**—Any mutual company that shall wilfully violate, or fail to comply with any provision of this chapter shall be subject to, and liable to pay, a penalty of not less than five nor more than one hundred dollars for each violation thereof. Such penalty may be collected and recovered by suit brought in the name of the State of Texas. For any violation or failure to comply with any provision of this chapter, the Commissioner may suspend a company's permit, or license, and while suspended, such company shall be prohibited from writing or renewing any insurance policies. [Id.]

Art. 4948. **Foreign mutual companies.**—Mutual companies incorporated under the laws of any other State, or foreign government for any or all of the purposes specified in the first article of this chapter, and duly licensed to transact business in such other States or governments, and that have not less than one hundred thousand dollars assets in excess of liabilities, shall, when they have complied with the requirements and restrictions of this chapter, as far as applicable to them, be admitted to do business in this State, and the Commissioner shall issue to any such company, so complying, a permit authorizing such company to do business in this State until the last day of the following February. [Id.]

Art. 4949. **Filing fees and taxes.**—Each mutual company operating under this chapter shall pay to the Commissioner, for obtaining a charter, a fee of twenty dollars, and for each license granted, or renewal thereof, a fee of one dollar, and for filing

each annual statement a fee of ten dollars annually on the 31st day of each December, and when the Commissioner has certified to the State Treasurer the correct amount to be paid, every mutual company operating under this chapter shall pay to said Treasurer one-half of one per cent of all of the net premiums, or assessments, received by it during the year, and no other tax shall be required of such mutual company, or companies, their officers and agents, except such fees as shall be paid to the Commissioner as required by law. [Id.]

CHAPTER THIRTEEN.

MUTUAL HAIL INSURANCE.

| | | | |
|---------------------------------|--------------|--------------------------|--------------|
| Authority to incorporate | Article 4950 | Policies on crops | Article 4955 |
| Permit to solicit business..... | 4951 | Premiums and funds | 4956 |
| License to solicit..... | 4952 | Fixing rates | 4957 |
| Application for charter | 4953 | Annual report | 4958 |
| Directors and officers | 4954 | Fees | 4959 |

Art. 4950. **Authority to incorporate.**—Private corporations may be created without a capital stock within this State by the voluntary association of seven or more persons, resident citizens of this State who collectively own not less than one thousand acres of growing crops of all kinds for the purpose of mutual insurance against loss or damage by hail. Each company incorporated under the provisions of this chapter shall embody the word “mutual” in its title. [Acts 1913, p. 40.]

Art. 4951. **Permit to solicit business.**—When any number of persons not less than seven desire to organize a mutual hail insurance company, they shall make application to the Commissioner for permission to solicit business under the mutual plan, stating that said company is to be organized for the insurance of growing crops against loss or damage by hail. Upon receipt of said application the Commissioner shall issue said applicants a permit to solicit insurance against loss or damage by hail on the mutual plan in accordance with the terms of the application, but not to issue policies of insurance. Said mutual company shall take from each applicant an obligation specifying the property to be insured, and the amount to be paid as the first assessment, evidenced by a promissory note for such sum and payable on or before the 31st day of the succeeding December, and upon the State granting to said company a charter authorizing it to do business in this State. [Id.]

Art. 4952. **License to solicit.**—When applications have been secured for insurance with such company from at least two hundred applicants residing in not less than twenty-five different counties of this State, the first assessment or premium on which applications shall amount to at least ten thousand dollars, for which notes of solvent parties founded on actual bona fida applications for insurance payable upon the granting of the charter by the State to said mutual hail insurance company, which premium notes shall be a lien on the crop insured,

or otherwise secured and which notes and applications shall be submitted to the Commissioner. If he finds the applications and notes to be genuine and secured by liens on growing crops or otherwise secured, he shall upon the payment of the fee of twenty-five dollars, certify the fact that he has examined and approved said application and notes to such company, and permit said company to incorporate and issue to it a charter. Said Commissioner upon the payment of the fees required by law, shall issue to said mutual hail insurance company a license to solicit and transact business and issue policies against loss or damage by hail. Each person making application for insurance in such company prior to the granting of a charter to such company and signing a non-negotiable promissory note shall be liable upon the note upon the granting of a charter by the State. If payment is refused, suit may be brought on the same. [Id.]

Art. 4953. **Application for charter.**—The application for charter shall state the purpose for which it is formed, the term for which it is to exist, the number, name, and residence of its directors for the first year and shall be subscribed and acknowledged by seven or more of the applicants. [Id.]

Art. 4954. **Directors and officers.**—Upon the issuance of a charter to such mutual hail insurance company, the persons making application for such charter shall constitute a board of directors for the first year which shall consist of not less than seven persons all of whom shall be residents of this State. The officers of such company shall be such as may be provided by the by-laws, and the treasurer or the secretary and treasurer, if such offices should be combined in one, shall execute a bond in the sum of ten thousand dollars payable to the Commissioner and his successors in office conditioned for the faithful performance of his duties and that he will account for all moneys, notes or other assets that may come into his hands. [Id.]

Art. 4955. **Policies on crops.**—Mutual hail insurance companies organized under the provisions of this chapter may issue policies on growing crops of all kinds against loss or damage by hail only. Any person desiring insurance in such company shall make application on blanks furnished by the company and shall pay the full amount of the premium in cash or secured notes. No contract shall be made providing for payment of any obligation by the insured or for suit on any such obligation of the insured, except those given by the charter members referred to in the preceding article in any county other than in which the insured has his domicile. In case the whole amount of the premium collected by such company for any one year shall be insufficient to pay all losses occurring during said year, after paying the necessary expenses for said year, the persons insured by such company shall receive their proportionate share of the sum realized from said premiums after deducting the expenses therefrom in full satisfaction of their losses. No member shall be liable to the company or to any

other person for more than the premium, which shall be paid by him or secured to be paid by him in making his application for insurance. [Id.]

Art. 4956. **Premiums and funds.**—All companies incorporated under this Act shall set aside sixty per cent of all premiums collected as a policy holder's fund for the payment of losses which fund shall be used for no other purpose, and the remainder of the gross premiums collected shall be used if needed, for paying the expenses of said company, and if not needed for such purpose such remainder not so used shall be added to the policy holder's fund at the end of the current year, and if, at the end of such current year the total of said policy holder's fund has not been appropriated or necessary in the payment of losses to policy holders, then such amount of said fund so remaining may be invested in first mortgage notes on lands in this State, said investment not exceeding fifty per cent of the value of said lands, or in bonds of this State, or in county, city, town or school district bonds of this State which have been approved by the Attorney General, which funds or securities shall be deposited in trust for said policy holders with any bank approved by the Commissioner as a reserve fund, which fund may be used for the payment of policy holders, if necessary, in case of excessive and unprecedented losses. Such company may collect and receive the interest and dividends thereon to be used in defraying the expenses and paying the losses of said company. [Id.]

Art. 4957. **Fixing rates.**—The board of directors of such company shall fix the rates to be charged for such insurance, and may fix at their discretion different rates for different sections of the State based upon the frequency of hail storms in such sections. [Id.]

Art. 4958. **Annual report.**—Every such corporation shall on or before January first, or within thirty days thereafter, each year make and file with the Commissioner a report upon forms to be furnished by such Commissioner which report shall be verified by the oath of the secretary of such corporation showing the number of policies issued for the preceding year, the number and amount of losses paid, the gross amount received from premiums, the amount of expenses paid, and the amount set aside or invested during the year as a reserve fund, if any. The books, records and documents of such corporation shall be subject to the inspection and examination of the Attorney General or the Commissioner. [Id.]

Art. 4959. **Fees.**—The following fees shall be paid by companies organized under this law:

In addition to the application fee and charter fee, an annual franchise tax of fifty dollars; and for filing annual statement, five dollars, certificate of authority to corporation, one dollar. No other fees shall be paid by said companies. [Id.]

CHAPTER FOURTEEN.

PRINTERS FIRE AND STORM INSURANCE.

Art. 4960. [4919] **How incorporated.**—Private corporations may be created within this State by the voluntary association of three or more persons for the organization of printers mutual fire and storm insurance association without an authorized or subscribed capital stock, for the purpose of insuring against loss by fire or storm only such property as may be owned and operated for the purpose of publishing daily, weekly or other periodical newspapers, or such as may be incident thereto or conducting job printing offices. [Acts 1905, p. 225.]

Art. 4961. [4920] **Certificate to do business.**—Before beginning operations, such company must obtain from the Commissioner a certificate of authority such as is issued to mutual fire and tornado insurance companies doing business in this State, first making a showing to the Commissioner that the company has fully complied with all the requirements of law applicable to such mutual fire and tornado insurance companies. No officers of such associations shall be required to give a bond, except the treasurers thereof, who shall annually file a bond with good securities and in amount to be approved by the Commissioner. [Act 1909, p. 219.]

Art. 4962. [4921] **Report and fee.**—All such associations, which transact business in only one county, shall report annually, on or before the last day of February, to the Commissioner on blanks prepared by him, and pay five dollars to the Commissioner as a fee for filing the same. Such associations shall not be required to pay the annual franchise tax collected of other corporations under the laws of this State. [Id.]

CHAPTER FIFTEEN.

INSURANCE AGAINST THIEVERY.

| | | | |
|------------------------------------|---------|-------------------------------------|---------|
| | Article | | Article |
| Companies entitled to license..... | 4963 | Policy holders | 4966 |
| Conditions | 4964 | Commissioner agent for service..... | 4967 |
| Duty of company | 4965 | Statement and license | 4968 |

Art. 4963. [4922] **Companies entitled to license.**—Any insurance company organized and incorporated on the mutual plan, under the laws of this State, for the purpose of insuring against loss or damage resulting from burglary and robbery, or any attempt thereat, and securing against the loss of money and securities in course of transportation when shipped by registered mail, shall be authorized, admitted and licensed to do business in this State, as provided in this chapter. [Acts 1899, p. 107, Sec. 1.]

Art. 4964. [4923] **Conditions.**—Before any such company shall be authorized to transact business in this State, except to solicit and receive applications for insurance and portions of premiums thereon, as provided in this chapter, it shall have in force five hundred or more policies on which the premiums shall

have been paid in cash, or shall be evidenced by the written contracts of the policy holders, on which not less than one-fifth of the amount shall have been paid in cash, and the cash and contracts for premiums shall amount in the aggregate to a sum of not less than one hundred thousand dollars. The premium contracts so held shall constitute a part of the assets of the company. [Id. Sec. 2.]

Art. 4965. [4924] **Duty of company.**—Every such company, association or partnership shall also file a certified copy of its charter, articles of incorporation or deed of settlement, together with a statement under the oath of the president or vice-president and secretary of the company, for which he or they may act, stating the name of the company and place where located, a detailed statement of its assets, showing the number of policy holders, aggregate amount of premium contracts, the amount of cash on hand, in bank or in the hands of agents, the amount of real estate and how the same is encumbered by mortgage, the number of shares of stock of every kind owned by the company, the par and market value of the same, amount loaned on bond and mortgage, the amount loaned on other securities, stating the kind and amount loaned on each, and the estimated value of the whole amount of such securities, and other assets or property of the company, also stating the indebtedness of the company, the amount of losses adjusted and unpaid, the amount incurred and in process of adjustment, the amount resisted by the company as illegal and fraudulent, and all other claims existing against the company; and for a company organized under the laws of any other State, a copy of the last annual report, if any, made under any law of such State. No agent shall be allowed to transact business for any such company whose reinsurance reserve, as required in this chapter is impaired to the extent of twenty per cent thereof, while such deficiency shall continue. No agent shall act for any company referred to in this chapter directly or indirectly, in taking risks or transacting the business of insurance against burglary and robbery, or the insuring of the safe shipping of money and securities by registered mail in this State, without procuring from the Commissioner a certificate of authority stating that such company has complied with all the requirements of this chapter which apply to such companies, and as to companies organized under the laws of any other State, there shall be added the name of the attorney appointed to act for the company. Any company organized, admitted and licensed to transact business in this State under this chapter shall confine its line of business to that stated in Article 4963, and shall confine its business in this State to, and shall not issue any policy or policies to any person, firm or corporation in this State other than banks, bankers, loan companies and county treasurers. Every such company shall set aside a reinsurance reserve of fifty per cent of its premiums, whether collected in cash or represented by the obligations of the policy holders as written in its policies. [Id. Secs. 3 and 4.]

Art. 4966. [4925] **Policy holders.**—Policy holders of any company organized and admitted to transact business in this State under this chapter shall be held liable to pay the membership fee and premium on their insurance as paid, or contracted to be paid, at the time the policy is taken out, and shall not be held liable for any further or other assessments or claims on the part of the company or its policy holders. The membership fees and premiums agreed upon may be collected in cash at the time the policy is issued or evidenced by a written obligation of the policy holder as may be agreed upon by the company and the policy holder. Such payment or obligation shall be the limit of the liability of the policy holder to the company for premium on their insurance. [Id. Sec. 5.]

Art. 4967. [4926] **Commissioner agent for service.**—It shall not be lawful for any insurance company, association or partnership incorporated by, or organized under, the laws of any other State of the United States for any of the purposes specified in this chapter, directly or indirectly, to take risks or transact any business of insurance in this State by any agent in this State until it shall first appoint an attorney in this State, who shall be the Commissioner, on whom process of law can be served, and file in the office of the Commissioner a written instrument duly signed and sealed, certifying such appointment. Any process issued by any court of record in this State, and served upon such attorney by the proper officer of the county in which such attorney may reside or be found, shall be deemed sufficient service of the process upon said company. Service of process upon such company may also be made in any other manner provided by law. [Id. Sec. 6.]

Art. 4968. [4927] **Statement and license.**—The statement and evidences of new membership, assets, and investments required by this chapter shall be renewed from year to year in such manner and form as may be required by said Commissioner with an additional statement of the amount of premiums received in this State during the preceding year, so long as such agency continues. The Commissioner, if satisfied that the membership, assets, securities and investments remain secure, shall furnish a renewal of the certificate. [Id.]

CHAPTER SIXTEEN.

SURETY AND TRUST COMPANIES.

1. FIDELITY, GUARANTY AND SURETY COMPANIES.

| | Article | | Article |
|---------------------------------------|---------|--------------------------------------|---------|
| To act as surety..... | 4969 | Defaulting company; claims paid..... | 4976 |
| Bond of surety company..... | 4970 | Who are agents..... | 4977 |
| Requirements to be complied with..... | 4971 | Penalty..... | 4978 |
| Certificate to issue..... | 4972 | Cancellation of bond..... | 4979 |
| Certificate to be surrendered..... | 4973 | Authority revoked, when..... | 4980 |
| May withdraw from bond..... | 4974 | Charged with public use..... | 4981 |
| Venue of suit on bond..... | 4975 | | |

Art. 4969. [4928] **To act as surety.**—Private corporations may be created to act as trustee, assignee, executor, administra-

tor, guardian and receiver, when designated by any person, corporation or court to do so; to do a general fiduciary and depository business; to act as surety and guarantor of the fidelity of employees, trustees, executors, administrators, guardians or others appointed to, or assuming the performance of any trust, public or private, under appointment of any court or tribunal, or under contract between private individuals or corporations; also upon any bond or bonds that may be required to be filed in any judiciary proceedings; also to guarantee any contract or undertaking between individuals, or between private corporations, or between individuals or private corporations and the State and municipal corporations or counties or between corporations and individuals; to act as executor and testamentary guardian when designated by such decedents; or to act as administrator or guardian when appointed by any court having jurisdiction; also on any bond or bonds that may be required of any State official, district official, county official or official of any school district or of any municipality, provided that the commissioners courts of each county shall have the right to reject any or all official bonds made by surety companies and in their discretion may require any or all officials to make their official bonds by personal sureties. Any such bond may be accepted and approved by the officer charged by law with the duty of accepting and approving the same without being signed by other securities than such corporation. When any such bond shall exceed fifty thousand dollars in penal sum, the officer charged by law with the duty of approving and accepting such bond, may require that such bond be signed by two or more surety companies, or by one surety company and two or more good and sufficient personal sureties, in the discretion of the principal or official of whom the bond is required, and any statute or law to the contrary, or requiring any such bond to be signed by two or more good and sufficient sureties, shall be governed and controlled by the provisions of this article. Each corporation, making or offering to make any bond under this article, shall publish in some newspaper of general circulation in the county where such company is organized or has its principal office on the first day of February of each year, a statement of its condition on the previous thirty-first day of December, showing under oath its assets and liabilities. A copy of said statement shall be filed with the Commissioner before the 1st day of March of the year following, and a fee of twenty-five dollars be paid to that office for filing the same, and an examination of its affairs may be made at any time by said Commissioner at the expense of the company. Said corporation organized under the provisions of this article shall have a paid up capital stock of not less than \$100,000.00 and shall keep on deposit with the State Treasurer money, bonds or other securities in an amount not less than \$50,000.00. Said securities shall be approved by the Commissioner and this amount shall be kept intact at all times. All foreign

corporations transacting the business of a guaranty and fidelity company in this State shall file with the Commissioner an affidavit showing that such foreign company has on deposit with the State Treasurer of its home state \$100,000.00 or more, in money, bonds or other securities for the protection of its policy-holders. [Acts 1897, p. 128; 1903, p. 197; 1913, p. 123.]

Art. 4970. [4929] **Bond of surety company.**—Whenever any bond, undertaking, recognizance or other obligation is, by law or the charter, ordinances, rules and regulations of a municipality, board, body, organization, court, judge or public officer, required or permitted to be made, given, tendered or filed, and whenever the performance of any act, duty or obligation, or the refraining from any act, is required or permitted to be guaranteed, such bond, undertaking, obligation, recognizance or guarantee may be executed by a surety company, qualified as hereinafter provided; and such execution by such company of such bond, undertaking, obligation, recognizance or guarantee shall be in all respects a full and complete compliance with every law, charter, rule or regulation that such bond, undertaking, obligation, recognizance or guarantee shall be executed by one surety or by one or more sureties, or that such sureties shall be residents, or householders, or freeholders, or either, or both, or possess any other qualification and all courts, judges, heads of departments, boards, bodies, municipalities, and public officers of every character shall accept and treat such bond, undertaking, obligation, recognizance or guarantee when so executed by such company, as conforming to, and fully and completely complying with, every requirement of every such law, charter, ordinance, rule or regulation. Any suit on any bond issued under this and the preceding article shall be brought at the place as provided for in this chapter, and if the corporation issuing the bond sued on has no agent in the county where said bond was issued then the Commissioner is made, by consent of the said company, its agent on whom service of process may be held. [Id.]

Art. 4971. [4930] **Requirements to be complied with.**—Such company to be qualified to so act as surety or guarantor, must comply with the requirements of every law of this State applicable to such company doing business therein; must be authorized under the laws of the State where incorporated, and under its charter, to become surety upon such bond, undertaking, obligation, recognizance or guarantee; must have a fully paid up and safely unimpaired capital of at least one hundred thousand dollars; must have good available assets exceeding its liabilities, which liabilities for the purpose of this subdivision shall be taken to be its capital stock, its outstanding debts and a premium reserve at the rate of fifty per cent of the current annual premiums on each outstanding bond, undertaking, recognizance and obligation of like character in force; must file with the Commissioner, a certified copy of its certificate of incorporation, a written application to be authorized to do business under this sub-

division and also, with such application, and in each year thereafter, a statement verified under oath made up to December 31, preceding, stating the amount of its paid up cash capital, particularizing each item of investment, the amount of premiums upon existing bonds, undertakings, recognizances and obligations of like character in force upon which it is surety; the amount of liability for unearned portion thereof estimated at the rate of fifty per cent of the current annual premiums on each such bond, undertaking, recognizance and obligation in force, stating also the amount of its outstanding debts of all kinds, and such further facts as may be by the laws of this State required of such company in transacting business therein. If such company be organized under the laws of any other state it must also have on deposit with a State officer of one of the states of the United States, not less than one hundred thousand dollars in good securities, deposited with and held by such officer for the benefit of the holders of all obligations wheresoever incurred; must also appoint an attorney in this State upon whom process of law can be served, which appointment shall continue until revoked or another attorney substituted, and must file with the Commissioner written evidence of such appointment, which shall state the residence and office of such attorney; and such service of process may also be made upon the Commissioner, by virtue of his office, and shall be as effective as if made upon said attorney; and must, also, have on deposit with the Treasurer of this State at least fifty thousand dollars in good securities worth at par and market value, at least that sum, of the value of which securities the Commissioner shall judge, held for the benefit of the holders of all the obligations of such company wheresoever incurred; said securities so deposited with said Treasurer to remain with him in trust to answer any default of said company as surety upon any such bond, undertaking, recognizance or other obligation established by final judgment in whatsoever court and wheresoever rendered upon which execution may lawfully be issued against said company; said Treasurer and his successors in office being hereby directed to so receive and hereafter retain such deposit under this law in trust for the purposes hereof; such company, however, at all times to have the right to collect the interest, dividends and profits upon such securities, and, from time to time, to withdraw such securities, or portions thereof, substituting therefor others of equally good character and value, to the satisfaction of said Treasurer; and such securities and substitutes therefor shall be, at all times, exempt from and not subject to levy under writ or process of attachment; and shall not be sold under any process against such company until after thirty days notice to said company, specifying the time, place, and manner of such sale, and the process under which and purposes for which it is to be made, accompanied by a copy of such process. Whenever any such company, domestic or foreign, has been engaged in this State in the busi-

ness contemplated by this law, has made a deposit in this state, in trust or otherwise, of securities, to answer any default of such company upon any such bond, undertaking, recognizance, guaranty or stipulation, such securities so deposited shall be by the trustee or custodian thereof transferred and delivered to the State Treasurer in trust for the same purposes and subject to all the rights and equities of all parties interested, and to the terms and provisions of this law; and thereupon, such deposit shall remain in trust under and subject to the terms and provisions of this law. Whenever such deposit has been made with a trustee by order of any court or other authority, it shall be the duty of the court or other authority, by order or otherwise, to direct such transfer to said Treasurer; and in case such deposit is less than the sum of fifty thousand dollars, then said company must deposit with said Treasurer securities sufficient to increase said deposit to the sum of fifty thousand dollars as required by this subdivision. Domestic corporations chartered for the purpose of doing business under this subdivision within this State alone shall be required to deposit securities as hereinbefore provided for to the amount of twenty-five thousand dollars. [Acts 1897, p. 244; Acts 1st C. S. 1921 p. 4.]

Art. 4972. [4931] **Certificate to issue.**—The Commissioner upon due proof by any such company of its possessing the qualifications in this subdivision specified, shall issue to such company a certificate setting forth that such company has qualified, and is authorized for the ensuing year to do business under this subdivision, which said certificate shall be evidence of such qualification of such company, and of its authorization to become and to be accepted as sole surety on all bonds, undertakings, recognizances and obligations required or permitted by law or the charter, ordinance, rules or regulations of any municipality, board, body, organization or public officer, and the solvency or credit of such company for all purposes, and its sufficiency as such surety. [Acts 1897, p. 244.]

Art. 4973. [4932] **Certificate to be surrendered.**—Any such company, domestic or foreign, may at any time surrender to the Commissioner its said certificate of qualification, and shall thereupon cease to engage in said business of suretyship; and such company shall thereupon be entitled to the release and return of its said deposit as aforesaid in manner following: Said company shall file with said Commissioner a statement in writing, under oath, giving the date, name and amount of all its then existing obligations of suretyship in this State, briefly stating the facts of each case to said commissioner, who after examination of the facts, shall require said company to file with the State Treasurer a bond payable to the State, in a sum equal to the whole amount of its liability in this State, under its contracts, conditioned for the faithful performance and fulfillment of all its outstanding obligations, or it may, at its option, reinsure its risks in some surety company authorized to do business in this

State, or cancel all bonds on which it is liable, and return a pro rata of the premium received thereon, whenever such cancellation and return can be done without impairing its obligation to third parties. [Id. Sec. 4.]

Art. 4974. [4933] May withdraw from bond.—Any surety company may withdraw from the bond of any trustee, guardian, assignee, receiver, executor, administrator or other fiduciary, in like manner and by like proceeding as is now provided by law in the case of individual sureties. [Id. Sec. 5.]

Art. 4975. [4934] Venue of suit on bond.—If any suit shall be instituted upon any bond or obligation of any surety company, the proper court of the county wherein said bond is filed shall have jurisdiction of said cause. Service therein shall be made, either upon the attorney for said company, by this subdivision required to be appointed, or upon the Commissioner; and such service shall be to all intents valid and effectual as service upon said company. Such guaranty, fidelity and surety companies shall be deemed resident of the counties wherever they may do business, and the doing or performing any business in any county shall be deemed an acceptance of the provisions of this subdivision. [Id. Sec. 6.]

Art. 4976. [4935] Defaulting company; claims paid.—Should any company of the character mentioned in this subdivision fail or refuse to pay any loss by it whatsoever incurred within sixty days after its liability thereupon shall have been finally determined by the judgment of any court of competent jurisdiction wheresoever rendered, then upon satisfactory proof to the Treasurer of this State of such liability and of its non-payment, said Treasurer shall, out of the deposits so made with him, as by this subdivision provided, pay said loss and when he shall have done so he shall at once certify to the Commissioner the fact of such default on the part of said company; whereupon said Commissioner shall forthwith cancel and annul the certificate of authority of such company to do business in this State. Such payment shall not operate to release the company from payment of any balance which it still may owe after such payment by the Treasurer of this State has been made. [Id. Acts 1st C. S. 1921, p. 5.]

Art. 4977. [4936] Who are agents.—Any person who solicits business for or on behalf of such corporation, or makes or transmits, for any person other than himself, any application for guaranty or security, or who advertises or otherwise gives notice that he will receive or transmit same, or who shall receive or transmit same, or who shall receive or deliver a contract of guaranty or security, or who shall examine or investigate the character of any applicant for guaranty or security other than himself, or who shall refer any applicant for guaranty or security to such corporation, whether any of said acts shall be done at the instance and request, or by the employment of such corporation or other corporation or person, or any

person who shall issue indemnifying bonds or contracts, whose solvency and compliance with his said bonds or obligations is guaranteed, directly or indirectly, by any corporation, shall be held to be the agent of such corporation so far as relates to all the liabilities and penalties prescribed by this subdivision. [Acts 1897, p. 244, Sec. 8.]

Art. 4978. [4937] **Penalty.**—Any person, association of persons, or corporations, who shall accept any corporation created for the purposes, or either of them, mentioned in the first article of this subdivision without such corporation having previously complied with the provisions and requirements of this subdivision and having received from the Commissioner of Insurance the certificate of authority provided for in this subdivision shall forfeit as a penalty the sum of five hundred dollars to be recovered by suit in the name of the State. [Id. Sec. 9.]

Art. 4979. [4938] **Cancellation of bond.**—When any corporation shall cancel a bond of guaranty or indemnity, or shall notify the employer of the person whose fidelity is guaranteed that said corporation will no longer guarantee or be security for the fidelity of said person, or when said corporation has once guaranteed the fidelity of any person, or acted as security therefor, and on application refuses to do so again, it shall furnish to such person a full statement in writing of the facts on which the action of the corporation is based, and if such action be based in whole or in part on information, all such information. Any such corporation failing or refusing to furnish any such written statement within thirty days after a request therefor, shall be liable to such person injured in the sum of five hundred dollars, in addition to all other damages caused thereby. [Id. Sec. 10.]

Art. 4980. [4939] **Authority revoked, when.**—If any such corporation shall fail or refuse to comply with the provisions of this subdivision, the Commissioner shall revoke its certificate of authority. [Id. Sec. 11.]

Art. 4981. [4940] **Charged with public use.**—Corporations created for the purposes mentioned in Article 4969 are hereby declared to be charged with a public use. [Id. Sec. 12.]

2. TRUST COMPANIES.

| | | | |
|------------------------|--------------|---------------------------|--------------|
| Powers | Article 4982 | Other trust powers | Article 4985 |
| Requirements | 4983 | Statutes applicable | 4986 |
| Authority to act | 4984 | | |

Art. 4982. [540-44] **Powers.**—Any person or association of persons, any State banking corporation or any other domestic corporation, or any corporation organized under the laws of any other State, provided such foreign corporation complies with the laws of this State relating to insurance other than life, may exercise the following powers by complying with the provisions of this subdivision:

1. Qualify as guardian, curator, executor, administrator, assignee, receiver, trustee by appointment of any court or under

will, or depositary of money in court, without giving bond as such.

2. Become sole guarantor or surety in or upon any bond required to be given under the laws of this State, any other statute to the contrary notwithstanding. [Acts 1st C. S. 1905, p. 513.]

Art. 4983. [540-41-43] **Requirements.**—Those included in the provisions of this subdivision shall:

1. Deposit with the State Treasurer fifty thousand dollars consisting of cash, treasury notes of the United States, or government, State, county, municipal or other bonds, notes, or debentures, secured by first mortgages or deeds of trust, or mortgages or deeds of trust on unencumbered real estate in Texas worth at least double the amount loaned thereon, or such other first class securities as the Commissioner may approve. Said bonds or securities shall not be received or held at a rate above par, but if their market value is less than par they shall not be held above their actual market value. The State Treasurer shall require any such depositor to replace any securities so deposited on which the interest shall not be paid within six months after maturity, by other securities equal in amount to those removed, upon which the interest has not been defaulted. The funds so deposited shall be primarily liable for the obligations of the depositor in any capacity herein authorized, and shall not be liable for any other debt or obligation of the depositor until all such trust liabilities have been discharged.

2. Satisfy the Commissioner of its solvency. The Commissioner shall issue any such depositor, when satisfied it is solvent and has made the required deposit, a certificate showing such facts.

3. Maintain a premium reserve of the amount required to reinsure all outstanding risks, to be determined by taking fifty per cent of the premiums of all unexpired risks that have less than one year to run, and a pro rata of all gross premiums on risks that have more than one year to run.

4. File with the Commissioner, within sixty days after the first day of each January, a report sworn to by its president and secretary or by two of its principal officers, as to the surety and bond business done by the same during the preceding year.

5. Pay taxes on its surety and bond business as required of other surety companies. [Id.]

Art. 4984. [540] **Authority to act.**—Whenever any such depositor shall exhibit said certificate to the court, judge, clerk or other officer making the appointment herein authorized, or whose duty it is to approve any bond, such court or officer may appoint such depositor to such office or trust, or permit it to become surety on such bond. [Id.]

Art. 4985. [545] **Other trust powers.**—Those complying with the provisions of this law shall not exercise any other powers conferred by law upon State banking and trust companies, except those herein authorized, unless such depositor shall have,

at the time of making such deposit, a paid up capital or surplus of at least one hundred thousand dollars in addition to said deposit. [Id.]

Art. 4986. [542] **Statutes applicable.**—All articles of the statutes so far as the same are applicable and not inconsistent with the provisions of law governing banks and banking corporations shall apply to all companies doing business hereunder. [Id.]

CHAPTER SEVENTEEN.

EMPLOYERS LIABILITY INSURANCE COMPANIES.

Art. 4987. [4941] **Calculation and report of reserve.**—Every insurance company which has for ten years or more undertaken to insure persons, firms or corporations against loss or damage on account of the bodily injury or death by accident of any person, for which loss or damage said persons, firms or corporations are respectively responsible, shall, on or before the first day of October in each year, render to the Commissioner of Insurance a statement in writing of its business transacted in the United States, which shall show separately for each of the five calendar years constituting the first half of the period of ten years next preceding the thirty-first day of December of the year in which the statement is made:

1. The number of persons reported injured under all its forms of liability policies, whether such injuries were reported to the home office of the company or to any of its representatives, and whether such injury resulted in loss to the company or not.

2. The amount that, on or before the thirty-first day of August of the year in which the statement is made, had been paid on account or in consequence of all injuries so reported, including therein all payments on suits arising from such injuries.

3. The number of suits or actions under such policies on account of injuries reported which have been settled, either by payments or compromise.

4. The amount paid in settlement of such suits or actions on or before the thirty-first day of August of the year when the statement is made, including therein all payments made on account or in consequence of injuries from which the suits arose, whether prior to or later than the date when the suits were brought. Every such company shall, in its financial statements hereafter made in this State, use the experience so ascertained for computing its outstanding losses under all its forms of liability policies, irrespective of the date when the policies were issued. The average cost per suit of settling such cases, as computed by the data required in this article, shall be multiplied by the number of suits or actions pending on account of injuries reported prior to eighteen months previous to the date on which the condition of the company is to be ascertained and shown, which suits or actions are being defended for or on

account of a holder of any such policy, also the average cost on account of each injured person, determined as aforesaid from the company's experience, shall be multiplied by the number of injuries reported within the eighteen months prior to making the statement of the company's condition, whether such injuries were reported to the home office of the company or to any of its representatives. From the sum of these two products so ascertained there shall be deducted the amount of all payments made on account or in consequence of said injuries reported within eighteen months, this amount so deducted to be taken as of the date at which the said statement is made. The sum remaining after making this deduction shall be charged as the liability of the company on account of outstanding losses. Any admitted company issuing liability contracts, which, by reason of its limited experience in liability underwriting, cannot furnish the information required by this article shall, nevertheless, until it is able to comply with said requirements, be charged with a liability for outstanding losses upon all kinds of its liability policies an amount not less than the amount resulting from the following process:

The number of suits or actions pending on account of injuries reported prior to eighteen months previous to the date of making up the statement, whether such injuries were reported to the home office of the company or to any of its representatives, which are being defended on account of the holder of any policy, shall be multiplied by the average cost per suit as shown by the average experience of all other admitted liability companies ascertained from the data required by this article, also the number of injuries reported under said policies at any time within eighteen months of making up the statement, whether reported to the home office of the company or to any of its representatives, and whether such injuries resulted in loss to the company or not, shall be multiplied by the average cost for each injured person as shown by the average of said experience of all other admitted liability companies, ascertained from the data required by this article. From the sum of these two products there shall be deducted the amount of all payments made on account of or in consequence of said injuries reported within eighteen months, this amount to be taken as of the date at which the statement is made. A sum not less than the amount remaining after this deduction shall be charged as a liability for outstanding losses to the liability companies covered by the provisions of this paragraph. The average costs for suits and for injured persons required by this paragraph shall, on or before the first day of December of each year, be furnished by the Commissioner to every such company which has not had an experience of ten years in liability underwriting. Besides the reserve provided for in this article, each such company shall be charged as a liability with all unpaid losses of which the company received notice on or before December 31,

and all other debts and liabilities. If the capital stock of any such company, computing its liabilities in accordance with the provisions of this article shall be at any time impaired to the extent of twenty per cent thereof, the Commissioner shall give notice to the company to make good its whole capital stock within sixty days; and, if this is not done, he shall require the company to cease to do business within this State, and shall thereupon, in case the company is organized under the authority of this State, immediately institute legal proceedings to wind up the affairs of such company. [Acts 1909, p. 193.]

Art. 4988. [4942] **Certificates from other States.**—The Commissioner, in calculating the reserve liability of any such company, may accept the certificate of the officer of any other State charged with the duty of supervising such company as to any such company organized under the laws of such State; provided, such certificate shows that such liability has been computed in accordance with the provisions of Article 4987.

CHAPTER EIGHTEEN.

GENERAL CASUALTY COMPANIES.

| | Article | | Article |
|---------------------------------|---------|-------------------------------|---------|
| May incorporate | 4989 | Increase of capital..... | 5001 |
| Articles of incorporation | 4990 | Dividends | 5002 |
| Organization | 4991 | Interest on deposits | 5003 |
| Officers and records..... | 4992 | Penalty | 5004 |
| Capital and deposits..... | 4993 | Suits for penalties..... | 5005 |
| Powers | 4994 | Investment of funds..... | 5006 |
| Annual statement | 4995 | Real estate | 5007 |
| Additional information | 4996 | Sale of real estate..... | 5008 |
| Failure of duty | 4997 | Certificate of authority..... | 5009 |
| Examination | 4998 | Fees | 5010 |
| Revoking certificate..... | 4999 | Service of process | 5011 |
| Change of securities..... | 5000 | Decrease of stock..... | 5012 |

Art. 4989. **May incorporate.**—Any three or more persons, a majority of whom are residents of this State, may associate in accordance with the provisions of this chapter and form an incorporated company for any one or more of the following purposes:

1. To insure any person against bodily injury, disablement or death resulting from accident and against disablement resulting from disease.

2. To insure against loss or damage resulting from accident to or injury sustained by an employe or other person for which accident or injury the assured is liable.

3. To insure against loss or damage by burglary, theft or house breaking.

4. To insure glass against breakage.

5. To insure against loss from injury to person or property which results accidentally from steam boilers, elevators, electrical devices, engines and all machinery and appliances used in connection therewith or operated thereby; and to insure boilers, elevators, electrical devices, engines, machinery and appliances.

6. To insure against loss or damage by water to any goods or premises arising from the breakage or leakage of sprinklers and water pipes.

7. To insure against loss resulting from accidental damage to automobiles or caused accidentally by automobiles.

8. To insure against loss or damages resulting from accident to or injury suffered by any person for which loss and damage the insured is liable; excepting employers liability insurance as authorized under subdivision 2 of this article.

9. To insure persons, associations or corporations against loss or damage by reason of giving or extending of credit.

10. To insure against loss or damage on account of circumstances upon, or defects in the title to, real estate, and against loss by reason of the non-payment of the principal or interest of bonds, mortgages or other evidences of indebtedness.

11. To write marine insurance in which may be included the hazards and perils incident to war.

12. To insure against any other casualty or insurance risk specified in the articles of incorporation which may be lawfully made the subject of insurance, and the formation of a corporation for issuing against which is not otherwise provided for by this law, excepting fire and life insurance. [Acts 1911, p. 237; Acts 4th C. S. 1918, p. 33.]

Art. 4990. Articles of incorporation.—Such persons shall associate themselves together by written articles of incorporation for the purpose of forming an accident or casualty insurance company, which articles shall specify the general object of the company, and the proposed duration of the same. [Acts 1911, p. 237.]

Art. 4991. Organization.—When such articles of incorporation are filed with the Commissioner, together with an affidavit made by two or more of its incorporators, that all the stock has been subscribed in good faith and fully paid for, together with a charter fee of twenty dollars, the Commissioner shall record the same in a book kept for that purpose, and upon receipt of a fee of one dollar he shall furnish a certified copy of the same to the corporators, upon which they shall be a body politic and corporate, and may proceed to complete the organization of the company, for which purpose they shall forthwith call a meeting of the stockholders who shall adopt by-laws for the government of the company and elect a board of directors composed of stockholders, which board shall have full control and management of the affairs of the corporation, subject to the by-laws thereof as adopted or amended from time to time by the stockholders or directors, and to the laws of this State. [Id.]

Art. 4992. Officers and records.—The subscribers to said articles of incorporation shall choose from their number a President, a Secretary, a Treasurer and such number of directors not less than three who shall continue in office for the period of one year from the date of filing articles of incorporation, and until their successors shall be duly chosen and qualified. They shall open books for the subscriptions of stock in the company at such times and places as they shall deem convenient and

proper, and shall keep them open until the full amount specified in the certificate is subscribed. [Id.]

Art. 4993. **Capital and deposits.**—Only companies organized and doing business under the provisions of this chapter shall be subject to its provisions. Such company shall have not less than one hundred thousand dollars of capital stock subscribed, paid in in cash, with an additional fifty thousand dollars of capital stock subscribed and fully paid in in cash for every kind of insurance more than one which it is authorized to transact. Such companies with two hundred thousand dollars of capital stock subscribed and fully paid in in cash shall be authorized to transact all and every kind of insurance specified in the first article of this chapter; all of which said capital stock shall be paid up or invested in bonds of the United States, or of this State, or of any county or municipality of this State or in bonds or first liens upon unencumbered real estate in this State or in any other State in which such company may previously have been duly licensed to conduct an insurance business. In either instance such real estate shall be worth at least twice the amount loaned thereon. The value of such real estate shall be determined by a sworn valuation made by two freeholders of the county where the real estate is located. If buildings are considered as part of the value of such real estate they must be insured for the benefit of the mortgage. Upon such company furnishing evidence satisfactory to the Commissioner that the capital stock as herein prescribed has been all subscribed and paid up in cash in good faith, and that such capital stock has been invested as herein prescribed, and upon the deposit of the sum of fifty thousand dollars of such securities or in cash with the State Treasurer, then said Commissioner shall issue to said company a certificate authorizing it to do business. No part of the capital paid in shall be loaned to any officer of said company. In the event any such company shall be required by the law of any other State, country or province as a requirement prior to doing an insurance business therein to deposit with the duly appointed officer of such other State, country or province or with the State Treasurer of this State, any securities or cash in excess of the said deposit of fifty thousand dollars hereinbefore mentioned, such company, at its discretion, may deposit with the State Treasurer securities of the character authorized by this law, or cash sufficient to enable it to meet such requirements. The State Treasurer is hereby authorized and directed to receive such deposit and to hold it exclusively for the protection of all policy holders of the company. Any deposits so made to meet the requirements of any other State, country or province shall not be withdrawn by the company except upon filing with the Commissioner evidence satisfactory to him that the company has withdrawn from business, and has no unsecured liabilities outstanding in any such other State, country or province by

which such additional deposit was required, and upon the filing of such evidence the company may withdraw such additional deposit at any time. [Id.]

Art. 4994. Powers.—A corporation organized or doing business under the provisions of this law shall, by the name adopted by such corporation, in law, be capable of suing or being sued, and may make or enforce contracts in relation to the business of such corporation; may have and use a common seal, and in the name of the corporation or by a trustee chosen by the board of directors, shall in law, be capable of taking, purchasing, holding and disposing of real and personal property for carrying into effect the purposes of their organization; and may by their board of directors, trustees, or managers, make by-laws and amendments thereto not inconsistent with the laws or the Constitution of this State or of the United States, which by-laws shall define the manner of electing directors, trustees or managers and officers of such corporation, together with the qualifications and duties of the same, and fixing the term of office. [Id.]

Art. 4995. Annual statement.—The president, vice president and secretary or a majority of directors or trustees of such company organized under the provisions of this law shall annually, on the first day of January or within sixty days thereafter, prepare and deposit in the office of the Commissioner a verified statement of the condition of such company on the 31st day of December of the preceding year, showing:

1. Name and where located, (a) names of officers, (b) the amount of capital stock, (c) the amount of capital stock paid in.
2. Assets, (a) the value of real estate owned by said company, (b) the amount of cash on hand, (c) the amount of cash deposited in bank or trust company, (d) the amount of bonds of the United States, and all other bonds, giving names and amounts with par and market values of each kind, (e) the amount of loans secured by first mortgage on real estate, (f) the amount of all other bonds, loans and how secured, with rate of interest, (g) the amount of notes given for unpaid stock and how secured, (h) the amount of interest due and unpaid, (i) all other credits or assets.
3. Liabilities, (a) the amount of losses due and unpaid, (b) the amount of claims for losses unadjusted, (c) the amount of claims for losses resisted.
4. Income during the year, (a) the amount of fees received during the year, (b) the amount of interest received from all sources, (c) the amount of receipts from all other sources.
5. Expenditures during the year, (a) the amount paid for losses, (b) the amount of dividends paid to stockholders, (c) the amount of commissions and salaries paid to agents, (d) the amount paid to officers for salaries, (e) the amount paid for taxes, (f) the amount of all other payments or expenditures.
6. Miscellaneous, (a) the amount paid in fees during the

year, (b) the amount paid for losses during the year, (c) the whole amount of insurance issued and in force on the 31st day of December of the previous year. [Id.]

Art. 4996. **Additional information.**—The Commissioner is authorized to amend the form of statement and to exact such additional information as he may think necessary in order that a full exhibit of the standing of such companies may be shown. [Id.]

Art. 4997. **Failure of duty.**—Upon the failure of any company to make such deposit or to file the statement in time, the Commissioner shall notify such company to issue no new insurance until the law is complied with, and it shall be unlawful for any such company to thereafter issue any policy of insurance until such requirements shall be complied with. [Id.]

Art. 4998. **Examination.**—The Commissioner may at any time make or authorize any suitable person to make a personal examination of the books, papers and securities of any such company. For the purpose of securing a full and true exhibit of its affairs, he or the person selected by him shall have power to examine under oath any officer of said company relative to its business management. [Id.]

Art. 4999. **Revoking certificate.**—If the Commissioner shall at any time from the report of examination determine that the company has not complied with any provision of this law, he shall revoke its certificate of authority to do business in this State, and shall refer the facts to the Attorney General, who shall proceed to ask the proper court to appoint a receiver for said company, who shall, under the direction of the court, wind up the affairs of said company. In no other way can the Commissioner or any other person restrain or interfere with the prosecution of business of any company doing business under the provisions of this law, except in actions by judgment creditor or in proceedings supplementary to execution. [Id.]

Art. 5000. **Change of securities.**—Such companies shall have the right at any time to change their securities on deposit with the State Treasurer by substituting for those withdrawn a like amount in other securities of the character provided for in this law. [Id.]

Art. 5001. **Increase of capital.**—Any such company may increase its capital stock at any time after the intention to so increase the capital stock shall have been ratified by a two-thirds vote of the stockholders, and after notice of the purpose to so increase the capital stock has been given by publication in some newspaper of general circulation for four consecutive weeks. No increase of capital stock in less amount than fifty thousand dollars is hereby authorized. [Id.]

Art. 5002. **Dividends.**—The directors of any such company shall not make any dividends except from the surplus profit arising from their business. No dividends shall be declared except at the close of the year. [Id.]

Art. 5003. **Interest on deposits.**—The State Treasurer shall permit companies having securities on deposit with him under the provisions of this law to collect the interest as the same may become due, and shall deliver to such companies respectively the coupons or other evidences of interest pertaining to such deposits. Upon failure of any company to deposit additional security as called for by the Commissioner, or pending any proceedings to close up or enjoin it, the State Treasurer shall collect the interest as it becomes due and hold the same as additional security in his hands belonging to such company. [Id.]

Art. 5004. **Penalty.**—Any company organized or doing business under this law without a certificate as provided for in this chapter shall forfeit one hundred dollars for every day it continues to write new business in this State without such certificate. [Id.]

Art. 5005. **Suits for penalties.**—Suits to recover any penalty provided for in this law shall be instituted in the name of the State of Texas, by the Attorney General or by a district or county attorney under his direction, either in the county where the principal office is situated, or in Travis County. Such penalties, when recovered, shall be paid into the State Treasury for the use of the school fund. [Id.]

Art. 5006. **Investment of funds.**—No company organized under the provisions of this chapter shall invest its funds over and above its paid up capital stock in any other manner than as follows:

(a) In bonds of the United States or of any of the states of the United States which are at or above par. (b) In bonds or first liens on unencumbered real estate in this State or in any other state, country or province in which such company may be duly licensed to conduct an insurance business, and provided in each instance such real estate shall be worth at least twice the amount loaned thereon. The value of such real estate shall be determined by a valuation made under oath by two freeholders of the county where the real estate is located, and if buildings are considered as a part of the value of such real estate they must be insured for the benefit of the mortgages. (c) In bonds or other interest-bearing evidence of indebtedness of any county, incorporated city, town or school or sanitary district in this or any other state in which said company may be duly licensed to conduct an insurance business, if such evidences of indebtedness are issued by authority of law and if interest upon them has never been defaulted. (d) In the stocks or bonds or other evidences of indebtedness of any solvent dividend-paying corporation incorporated under the laws of this State, or of the United States or of any state, country or province in which such company may be duly licensed to conduct an insurance business. (e) In loans upon the pledge of any mortgage, stock or bonds, or other evidence of indebtedness, acceptable as investments under the terms of this law if the current value of such mortgage

stock, bond or other evidence of indebtedness is at least twenty-five per cent more than the amount loaned thereon. [Id.]

Art. 5007. Real estate.—No such company shall be permitted to purchase, hold or convey real estate, except for the purpose and in the manner herein set forth:

1. For the erection and maintenance of buildings at least ample and adequate for the transaction of its own business.

2. Such as shall have been mortgaged to it in good faith for money due.

3. Such as shall have been conveyed to it in the satisfaction of debts previously contracted in the course of its dealings and which must be taken in by the company on account of the debt secured by such mortgage.

4. Such as shall have been purchased at sales upon judgments, decrees or mortgages obtained or made for such debts. No company incorporated as aforesaid shall purchase, hold or convey real estate in any other cases or for any other purpose. [Id.]

Art. 5008. Sale of real estate.—All real estate so acquired, except as is occupied by buildings used in whole or in part for the accommodation of such companies in the transaction of its business, shall, except as hereinafter provided, be sold and disposed of within ten years after such company shall have acquired title to the same. No such company shall have such real estate for a longer period than that above mentioned, unless the said company shall procure a certificate from the Commissioner that the interests of the company will suffer materially by a forced sale of such real estate, in which event the time for the sale may be extended to such time as the Commissioner shall direct in said certificate. [Id.]

Art. 5009. Certificate of authority.—The Commissioner upon due proof by a company organized under the provisions of this law, of its possessing the qualifications required, shall issue a certificate setting forth that it has qualified and is authorized for the ensuing year to do business under the law, which certificate or a copy thereof shall be evidence of such qualifications and of the company's authority to transact business authorized by this law, and of its solvency and credits. [Id.]

Art. 5010. Fees.—The Commissioner shall charge for filing the preliminary statement and for filing the annual statement required by this chapter, a fee of ten dollars. [Id.]

Art. 5011. Service of process.—Process in any civil suit against any casualty company organized under the laws of this State may be served only on the president, or any active vice president or secretary, or general counsel residing at the city of the home office of the company, or by leaving a copy of same at the home office of such company, during business hours. [Id.]

Art. 5012. Decrease of stock.—Any such company may decrease its capital stock at any time after the intention to so de-

crease the capital stock shall have been ratified by a majority vote of the stockholders, and after notice of such purpose has been published in some newspaper of general circulation for a period of four consecutive weeks. [Id.]

CHAPTER NINETEEN.

LLOYD'S PLAN.

| | | | |
|-------------------------------|---------|--------------------------------------|---------|
| | Article | | Article |
| "Underwriters" defined | 5013 | Liability of substitutes | 5019 |
| "Attorneys" defined | 5014 | Assuming risk | 5020 |
| Application for license | 5015 | Action on policy | 5021 |
| License | 5016 | Revoking or suspending license | 5022 |
| Assets | 5017 | This law exclusive | 5023 |
| Examination of affairs | 5018 | | |

Art. 5013. "Underwriters" defined.—Individuals, partnerships or associations of individuals, hereby designated "underwriters," are authorized to make any insurance, except life insurance, on the Lloyd's plan, by executing articles of agreement expressing their purpose so to do and complying with the requirements set forth in this chapter. [Acts 1921, p. 238.]

Art. 5014. "Attorneys" defined.—Policies of insurance may be executed by an attorney in fact or other representative, hereby designated "attorney" authorized by and acting for such underwriters under powers of attorney. The principal office of such attorney shall be maintained at such place as may be designated by the underwriters in their articles of agreement. [Id.]

Art. 5015. Application for license.—The attorney shall file with the Commissioner a verified application for license setting forth and accompanied by:

(a) The name of the attorney and the title under which the business is to be conducted, which title shall contain the name Lloyd's and shall not be so similar to any name or title in use in this State as to be likely to confuse or deceive.

(b) The location of the principal office.

(c) The kinds of insurance to be effected, which kinds of insurance may be as follows:

1. Fire insurance, which term shall be construed to include tornado, hail, crop and floater insurance.

2. Automobile insurance, which term shall be construed to include fire, theft, transportation, property damage, collision, liability and tornado insurance.

3. Liability insurance.

4. Marine insurance.

5. Accident and health insurance.

6. Burglary and plate glass insurance.

7. Fidelity and surety bonds insurance.

8. Any other kinds of insurance, not above specified, the making of which is not otherwise unlawful in this State, except life insurance.

(d) A copy of each form of policy or contract by which such insurance is to be effected.

(e) A copy of the form of power of attorney by virtue of which the attorney is to act for and bind the several underwriters and a copy of the articles of agreement entered into between the underwriters themselves and the attorney.

(f) The names and addresses of all underwriters, whose number shall not be less than ten.

(g) A financial statement showing in detail the assets and liabilities accumulated and incurred and the income and disbursements received and made by the attorney for the underwriters.

(h) An instrument executed by each and all of the underwriters specially empowering the attorney to accept service of process for each underwriter in any action on any policy or contract of insurance, and an instrument from the attorney to such Commissioner delegating the attorney's powers in this respect to such Commissioner. [Id.]

Art. 5016. **License.**—Upon compliance with the requirements of this chapter and upon a showing of assets as provided in the succeeding article, the Commissioner shall, upon payment of a fee of ten dollars, issue a license to any attorney applying therefor specifying the kind or kinds of insurance which he is authorized to make and containing the name of the attorney, the location of his principal office, and the title under which such business is to be conducted. Such license shall continue in force until surrendered by the attorney or revoked or suspended by the Commissioner as authorized by this chapter. [Id.]

Art. 5017. **Assets.**—No attorney shall be licensed for the underwriters at a Lloyd's under this chapter unless the net assets, including the guarantee fund provided for in the articles of agreement, held by the attorney, committee of underwriters, trustee or other officer, as provided for in the articles of agreement, shall be at least forty thousand dollars in cash or convertible securities; nor shall any attorney be licensed for the underwriters at a Lloyd's to transact more than two kinds of insurance as defined in the third article of this chapter, unless the net assets as above defined and held shall be as much as ten thousand dollars additional for each additional kind of insurance designated in the application for license; provided that if the underwriters have net assets as above described in an amount equal to one hundred thousand dollars, they may write any kind of insurance that may be lawfully written in this State except life insurance. If the Commissioner finds upon any examination of a Lloyd's that the net assets as above defined are less than the amount required, the impairment shall be made good within thirty days from the service of a requisition for that purpose by such Commissioner upon the attorney for the underwriters. If any such attorney or other person shall make any advancement to make good any such impairment, the claim for the same against the assets of the underwriters shall be deferred to claims for losses under policies or contracts of insurance. [Id.]

Art. 5018. Examination of affairs.—The Commissioner may make examinations of the books and affairs of any attorney for underwriters at a Lloyd's, the expense of any such examination to be borne by the underwriters, and the attorney and his deputies shall facilitate such examinations and furnish all information which the Commissioner may reasonably demand. Such Commissioner may revoke or suspend the license of any attorney in case of breach of any of the conditions imposed by this chapter and upon reasonable notice in writing to the attorney so that he may appear and show cause why such license should not be revoked or suspended. [Id.]

Art. 5019. Liability of substitutes.—Additional or substituted underwriters shall be bound in the same manner and to the same extent as original subscribers to the articles of agreement and power of attorney on file with the Commissioner; and the acts of the duly appointed deputy or substitute attorney of any attorney licensed under this chapter in accepting powers of attorney from underwriters and in making and issuing policies and contracts of insurance and in doing any additional acts incident thereto shall be deemed authorized by the license issued to the original attorney. [Id.]

Art. 5020. Assuming risk.—No attorney for underwriters at a Lloyd's shall assume any one insurance risk exceeding one-fifth of the amount of the net assets of the underwriters as defined in this chapter and the additional liability assumed by the individual underwriters in the articles of agreement and in the policies or contracts of insurance, unless such excess shall be promptly reinsured. [Id.]

Art. 5021. Action on policy.—Action on any policy or contract of insurance made by the attorney for the underwriters may be brought against the attorney or against the attorney and the underwriters or any of them. In such action, summons and process shall be served on the Commissioner or on the attorney in fact and when so served shall have the same force and effect as if served on the attorney and on each underwriter personally. A judgment in any such action against the attorney or against any of the underwriters shall be binding upon and be a judgment against each and all of the underwriters as their several liabilities may appear in the contract of insurance in which the action is brought.

Any such summons or other process shall be served in duplicate, and the Commissioner shall forthwith by registered mail send one copy thereof to the attorney for the underwriters at the principal office designated in the application for license or latest amendment thereof. The party commencing any action against the underwriters at a Lloyd's and securing service of process in this manner shall at the time of such service pay to such Commissioner for the use of the Department a fee of two dollars, which he shall be entitled to collect as taxable costs in the action if he shall prevail. [Id.]

Art. 5022. Revoking or suspending license.—All such under-

writers, their attorneys, agents and representatives transacting the business of insurance in this State on the Lloyd's plan shall be governed and regulated by the provisions of this chapter and upon violation of any provision hereof the Commissioner may revoke or suspend any license or certificate of authority issued under the provisions of this chapter. [Id.]

Art. 5023. **This law exclusive.**—Except as herein provided no other insurance law of this State shall apply to insurance on the Lloyd's plan unless it is specifically so provided in such other law that the same shall be applicable. [Id.]

CHAPTER TWENTY.

INDEMNITY CONTRACTS.

| | | | |
|----------------------------------|--------------|------------------------------------|--------------|
| May exchange contracts..... | Article 5024 | Reserve | Article 5029 |
| Attorney for subscribers | 5025 | Financial report | 5030 |
| Declaration of subscribers | 5026 | Any corporation may exchange | 5031 |
| Service of process | 5027 | Certificate of authority | 5032 |
| Statement of indemnity | 5028 | When insurance law applies | 5033 |

Art. 5024. **May exchange contracts.**—Individuals, partnerships and corporations of this State hereby designated subscribers are hereby authorized to exchange reciprocal or inter-insurance contracts with each other, or with individuals, partnerships and corporations of other States and countries, providing indemnity among themselves from any loss which may be insured against under other provisions of the laws, excepting life insurance. [Acts 1915, p. 269.]

Art. 5025. **Attorney for subscribers.**—Such contracts may be executed by a duly appointed attorney in fact duly authorized and acting for such subscribers. The office or offices of such attorney may be maintained at such place or places as may be designated by the subscribers in the power of attorney. [Id.]

Art. 5026. **Declaration of subscribers.**—Such subscribers, so contracting among themselves, shall, through their attorney, file with the Commissioner a declaration verified by the oath of such attorney setting forth:

1. The name or the title of the office at which subscribers propose to exchange such indemnity contracts. Said name or title shall not be so similar to any other name or title previously adopted by a similar organization, or by any insurance corporation or association, as in the opinion of such Commissioner is calculated to confuse or deceive. The office or offices through which such indemnity contracts shall be exchanged shall be classified as reciprocal or inter-insurance exchanges.

2. The kind or kinds of insurance to be effected or exchanged.

3. A copy of the form of policy, contract or agreement under or by which such insurance is to be effected or exchanged.

4. A copy of the form of power of attorney or authority of such attorney under which such insurance is to be effected or exchanged.

5. The location of the office or offices from which such contracts or agreements are to be issued .

6. That applications have been made for indemnity upon at least seventy-five separate risks, aggregating not less than one-half million dollars as represented by executed contracts or bona fide applications to become concurrently effective, or in case of liability or compensation insurance, covering a total payroll of not less than two thousand employes.

7. That there is on deposit with some State or National bank as a depository for the payment of losses not less than the sum of ten thousand dollars. [Id.]

Art. 5027. Service of process.—Concurrently with the filing of such declaration, the attorney shall file with the Commissioner of Insurance an instrument in writing, executed by him for said subscribers, conditioned that, upon the issuance of certificates of authority hereinafter provided for, service or process may be had upon such Commissioner in all suits in this State arising out of such policies, contracts or agreements, which service shall be valid and binding upon all subscribers exchanging at any time reciprocal or inter-insurance contracts through such attorney. Three copies of such process shall be served, and the Commissioner shall file one copy, forward one copy to said attorney, and return one copy with his admission of service. [Id.]

Art. 5028. Statement of indemnity.—Such attorney shall file with the Commissioner a statement under the oath of such attorney showing the maximum amount of indemnity upon any single risk, and such attorney shall, whenever and as often as the same shall be required, file with such Commissioner a statement verified by his oath to the effect that he has examined the commercial rating of such subscribers as shown by the reference book of a commercial agency having at least one hundred thousand subscribers, and that from such examination or from other information in his possession it appears that no subscriber has assumed on any single risk an amount greater than 10 per cent of the net worth of such subscriber. [Id.]

Art. 5029. Reserve.—There shall at all times be maintained as a reserve a sum in cash or convertible securities equal to one-half of the aggregate net annual deposits collected and credited to the accounts of the subscribers on policies having one year or less to run and pro-rata on those for longer periods. For the purpose of said reserve, net annual deposits shall mean the advance payments of subscribers after deducting therefrom the amounts specifically provided in the subscribers' agreements for expenses and reinsurance. Said sum shall at no time be less than ten thousand dollars, and if at any time one-half of the aggregate deposits so collected and credited shall not equal that amount, then the subscribers, or their attorney for them, shall make up any deficiency. [Id.]

Art. 5030. Financial report.—Such attorney shall make an annual report to the Commissioner for each calendar year,

which report shall be made on or before March 1st, for the previous calendar year ending December 31, showing the financial condition of affairs at the office where such contracts are issued is in accordance with the standard of solvency provided for herein, and shall furnish such additional information and reports as may be required to show the total premiums or deposits collected, the total losses paid, the total amounts returned to subscribers, and the amounts retained for expenses. Such attorney shall not be required to furnish the name and address of any subscriber. The business affairs and assets of said reciprocal or inter-insurances exchanges, as shown at the office of the attorney thereof, shall be subject to examination by such Commissioner. [Id.]

Art. 5031. Any corporation may exchange.—Any corporation now or hereafter organized under the laws of this State shall, in addition to the rights, powers and franchises specified in its articles of incorporation, have full power and authority to exchange insurance contracts of the kind and character herein mentioned. The right to exchange such contracts is hereby declared to be incidental to the purposes for which such corporations are organized and as much granted as the rights and powers expressly conferred. [Id.]

Art. 5032. Certificate of authority.—Each attorney by whom or through whom are issued any policies of or contracts for indemnity of the character referred to herein shall procure from the Commissioner annually a certificate of authority, stating that all of the requirements have been complied with, and upon such compliance and the payment of the fees required by this law, the Commissioner shall issue such certificate of authority. Such Commissioner may revoke or suspend any certificate of authority issued hereunder in case of breach of any condition imposed by this law after reasonable written notice has been given said attorney so that he may appear and show cause why action should not be taken. Any attorney who may have procured a certificate of authority hereunder shall renew same annually thereafter. Any certificate of authority shall continue in effect until the new certificate of authority be issued or specifically refused. Such attorney shall pay as a fee for the issuance of the certificate of authority herein provided for the sum of twenty dollars, which shall be in lieu of all license fees and taxes of whatsoever character in this State. [Id.]

Art. 5033. When insurance law applies.—Except as herein provided, no insurance law of this State shall apply to the exchange of such indemnity contracts unless they are specifically mentioned. [Id.]

CHAPTER TWENTY-ONE.

GENERAL PROVISIONS.

| Article | | Article | |
|---------|---|---------|---|
| 5034 | Must publish certificate | 5052 | Misrepresentation of policies |
| 5035 | Publication of notices | 5053 | Discrimination |
| 5036 | Unlawful dividend | 5054 | Texas laws govern policies |
| 5037 | Live stock, etc. | 5055 | Certificate of authority |
| 5038 | Extension of powers | 5056 | Who are agents |
| 5039 | Association of companies | 5057 | Assessment of taxes |
| 5040 | What companies may consolidate | 5058 | Resident agents |
| 5041 | Consolidation | 5059 | Affidavit of company |
| 5042 | Other laws for certain companies | 5060 | Commissions to non-residents |
| 5043 | Misrepresentation by policy holder | 5061 | Commissioner may examine |
| 5044 | Notice of misrepresentation | 5062 | Penalty for violation |
| 5045 | Immaterial misrepresentation | 5063 | Solicitor deemed company's agent |
| 5046 | Misrepresenting loss or death | 5064 | Who may not be agents |
| 5047 | Forfeiture of beneficiary's rights | 5065 | Certificates for agents |
| 5048 | Life insurance beneficiaries | 5066 | Revocation of agent's certificate |
| 5049 | Policies and applications | 5067 | Revocation of certificate of author- ity |
| 5050 | Policies to contain entire contract | 5068 | Foreign insurance corporations |
| 5051 | Level premium policies | | |

Art. 5034. [4943] [3086] **Must publish certificate.**—Every insurance company doing business in this State, whether life, health, fire, marine or inland, shall publish annually, within thirty days after the issuance thereof, a certificate from the Commission that such company has in all respects complied with the laws in relation to insurance.

Art. 5035. [4946] [3082] **Publication of notices.**—Whenever, by any provision of this title, any notice or other matter is required to be published, it shall, unless otherwise provided, be published for three successive weeks in two newspapers printed in this State which have a general circulation in this State.

Art. 5036. [4967-4868-4944] **Unlawful dividend.**—No life, health, fire marine or inland insurance company, organized under the laws of this State, shall make any dividend except from the surplus profits arising from its business. In estimating such profits, there shall be reserved therefrom a sum equal to forty per cent of the amount received as premiums on unexpired fire risks and policies, and one hundred per cent of the premiums received on unexpired life, health, marine or inland transportation risks and policies, which amount so reserved is hereby declared to be unearned premiums. There shall also be reserved the amount of all unpaid losses, whether adjusted or unadjusted; all sums due the company on bonds, mortgages, stocks and book accounts, of which no part of the principal or the interest thereon has been paid during the year preceding such estimate of profits, and upon which suit for foreclosures or collections has not been commenced, or which after judgment has been obtained thereon shall have remained more than two years unsatisfied, and upon which interest shall not have been paid. In case of any such judgment, the interest due or accrued thereon and remaining unpaid shall also be reserved. Any dividend made contrary to the provisions of this article shall subject the company making it to a forfeiture of its charter, and the Commissioner shall forthwith revoke its certificate of authority. [Acts 1875, p. 36; G. L. Vol. 8, p. 408.]

Art. 5037. **Live stock, etc.**—Fire, marine, life and live stock insurance companies may be organized under the provisions of this title. Such live stock insurance companies may be organized with an authorized and paid up capital stock of not less than ten thousand dollars. [Acts 1907, p. 292.]

Art. 5038. [4956] **Extension of powers.**—Corporations may be incorporated under the laws of this State to transact any one or more kinds of insurance business other than life, fire, marine, inland, lightning or tornado insurance business in the same manner, and by complying with the same requirements, as prescribed by law for the incorporation of life insurance companies. No such company shall be incorporated having the power to do a fidelity and surety business or a liability insurance business with a paid up capital stock of less than two hundred thousand dollars. [Acts 1909, p. 192.]

Art. 5039. [4945] [3081] **Association of companies.**—In the event that any number of insurance companies, whether life, health, fire, marine or inland, should associate themselves together for the purpose of issuing or vending policies or joint policies of insurance, such association shall not be permitted to do business in this State until the taxes and fees due from each of said companies shall have been paid and all the conditions of the law fully complied with by each company; and any company failing or refusing to pay such taxes and fees, and to fully comply with the requirements of law, shall be refused permission by the Commissioner to do business in this State.

Art. 5040. **What companies may consolidate.**—Any two or more insurance companies doing a similar line of business which are and have been substantially owned by same controlling stockholders and which have never been companies actually competing with each other, and where all of them have been previously organized under the laws of this State, may unite or consolidate upon compliance with the terms of this law. Such consolidation shall not be effectuated in violation of the anti-trust and anti-monopoly laws of this State. Before any such consolidation shall take place the parties holding at least two-thirds of the capital stock of each of the companies shall vote in favor thereof at a separate meeting of the stockholders of each company called for such purpose. Such meeting may be called in the manner provided in the by-laws of the respective companies or the laws under which such companies are organized, for calling special meetings of stockholders, except that each stockholder shall be notified by mail of the time and place and object of such meeting. [Acts 1919, p. 97.]

Art. 5041. **Consolidation.**—Such companies proposing to consolidate may unite their assets or any part thereof and become incorporated in one body under the name of any one or more of such companies or under any other name that may be agreed upon, and issue stock in such corporation to the stockholders of each of the companies consolidated, the actual value of which

stock in the new company shall bear the same proportion to the actual value of the stock surrendered by such stockholders as the entire assets of the company surrendering such stock bears to the entire assets of the new company, which value shall be agreed upon by the board of directors of each company; provided, that said stockholders (holding two-thirds of the stock) may at the meeting provided for in the preceding article, delegate the valuation of assets to a committee of stockholders appointed by their respective boards of directors; or

2. One company may take over all the assets of the other companies proposing to consolidate and issue stock to their stockholders in the proportion that the value of their stock bears to the entire value of the assets of the company in which they are stockholders, and for this purpose the capital stock of such purchasing company may be increased, as now or may be hereafter provided by law.

3. In case of consolidation under the first option provided in the first subdivision hereof, the Commissioner shall upon proof furnished of compliance with the terms hereof and being satisfied that the proposed consolidation is for the best interests of the policy holders of the respective companies and made in accordance with law, and upon the filing of articles of incorporation and other due proceedings had as required by the laws of this State, issue and deliver a charter to such new company.

4. Such consolidation shall work a dissolution of the companies absorbed, but shall in no wise prejudice the right of any creditor of any such corporation to have payment of his debt out of the assets and property thereof, nor shall any creditor be thereby deprived of, nor prejudiced in any right of action then pending or existing or which may thereafter arise against said company, and service or summons of the proper officers or agents of such new or reorganized corporation shall be deemed sufficient as to all or any of such companies.

5. All policies of insurance outstanding against all such companies shall by reason of such consolidation be assumed by the reorganized company, and they shall carry out the terms of such policy on the part of the insurer and be entitled to all the rights and privileges thereof and the reserves accumulating on such policy prior to such consolidation.

Art. 5042. [4957] **Other laws for certain companies.**—No provision of this chapter shall apply to companies carrying on the business of life or casualty insurance on the assessment or annual premium plan, under the provisions of this title. [Id.]

Art. 5043. [4947] **Misrepresentation by policy holder.**—Any provision in any contract or policy of insurance issued or contracted for in this State, which provides that the answers or statements made in the application for such contract or in the contract of insurance, if untrue or false, shall render the contract or policy void or voidable, shall be of no effect, and shall not constitute any defense to any suit brought upon such

contract, unless it be shown upon the trial thereof that the matter or thing misrepresented was material to the risk or actually contributed to the contingency or event on which said policy became due and payable, and whether it was material and so contributed in any case shall be a question of fact to be determined by the court or jury trying such case. [Acts 1903, p. 94.]

Art. 5044. [4948] **Notice of misrepresentation.**—In all suits brought upon insurance contracts or policies hereafter issued or contracted for in this State, no defense based upon misrepresentations made in the applications for, or in obtaining or securing the said contract, shall be valid, unless the defendant shall show on the trial that, within a reasonable time after discovering the falsity of the representations so made, it gave notice to the assured, if living, or, if dead, to the owners or beneficiaries of said contract, that it refused to be bound by the contract or policy; provided, that ninety days shall be a reasonable time; provided, also, that this article shall not be construed as to render available as a defense any immaterial misrepresentation, nor to in any wise modify or affect Article 5043.

Art. 5045. [4959] **Immaterial misrepresentation.**—No recovery upon any life, accident or health insurance policy shall ever be defeated because of any misrepresentation in the application which is of an immaterial fact and which does not affect the risks assumed. [Acts 1909, p. 192.]

Art. 5046. [4949] **Misrepresenting loss or death.**—Any provision in any contract or policy of insurance issued or contracted for in this State, which provides that the same shall be void or voidable, if any misrepresentations or false statements be made in proofs of loss or of death, as the case may be, shall be of no effect, and shall not constitute any defense to any suit brought upon such contract or policy, unless it be shown upon the trial of such suit that the false statement made in such proofs of loss or death was fraudulently made, and misrepresented a fact material to the question of the liability of the insurance company upon the contract of insurance sued on, and that the insurance company was thereby misled, and caused to waive or lose some valid defense to the policy. [Acts 1903, p. 94.]

Art. 5047. **Forfeiture of beneficiary's rights.**—The interest of a beneficiary in a life insurance policy or contract heretofore or hereafter issued shall be forfeited when the beneficiary is the principal or an accomplice in willfully bringing about the death of the insured. When such is the case, the nearest relative of insured shall receive said insurance. [Acts 1919, p. 21.]

Art. 5048. **Life insurance beneficiaries.**—Any corporation, partnership, joint stock association or any trust estate doing business for profit, may be named beneficiary in any policy of insurance issued by a legal reserve life insurance company on the life of any officer or stockholder of said corporation, joint stock association or trust estate; or any partnership or member

thereof may be the beneficiary in any policy of insurance issued by a legal reserve life insurance company upon the life of any member of said partnership; or any religious, educational, eleemosynary, charitable or benevolent institution or undertaking may be named beneficiary in any policy of life insurance issued by any legal reserve life insurance company upon the life of any individual. The beneficiaries aforementioned shall have an insurable interest for the full face of the policy and shall be entitled to collect same. On all policies of life insurance heretofore issued by legal reserve companies in which any of the aforementioned shall have been designated beneficiaries in the policies, said beneficiaries shall have an insurable interest to the full extent of the face of the policy and be entitled to collect same. [Acts 1921, p. 165.]

Art. 5049. [4951] **Policies and applications.**—Every contract or policy of insurance issued or contracted for in this State shall be accompanied by a written, photographic or printed copy of the application for such insurance policy or contract, as well as a copy of all questions asked and answers given thereto. The provisions of the foregoing articles shall not apply to policies of life insurance in which there is a clause making such policy indisputable after two years or less, provided premiums are duly paid; provided, further, that no defense based upon misrepresentation made in the application for, or in obtaining or securing, any contract of insurance upon the life of any person being or residing in this State shall be valid or enforceable in any suit brought upon such contract two years or more after the date of its issuance, when premiums due on such contract for the said term of two years have been paid to, and received by, the company issuing such contract, without notice to the assured by the company so issuing such contract of its intention to rescind the same on account of misrepresentation so made, unless it shall be shown on the trial that such misrepresentation was material to the risk and intentionally made. [Acts 1903, p. 94.]

Art. 5050. [4953] **Policies to contain entire contract.**—Every policy of insurance issued or delivered within this State by any life insurance company doing business within this State, shall contain the entire contract between the parties, and the application therefor may be made a part thereof. [Acts 1909, p. 192.]

Art. 5051. [4952] **Level premium policies.**—No level premium policy of life insurance shall be issued or sold by any company in this State which provides for more than one year preliminary term insurance. [Id.]

Art. 5052. [4958] **Misrepresentation of policies.**—No life insurance company doing business in this State, and no officer, director or agent thereof, shall issue or circulate, or cause or permit to be issued or circulated, any estimate, illustration, circular or statement of any sort misrepresenting the terms of any policy issued by it, or benefits or advantages to be prom-

ised thereby, or the dividends or share of surplus to be received thereon. [Id.]

Art. 5053. [4954] **Discrimination.**—No insurance company doing business in this State shall make or permit any distinction or discrimination in favor of individuals between the insured of the same class and of equal expectation of life in the amount of, or payment of, premiums or rates charged for policies of life or endowment insurance, or in the dividends or other benefits payable thereon; nor shall any such company or agent thereof make any contract of insurance or agreement as to such contract other than as expressed in the policy issued thereon; nor shall any such company, or any officer, agent, solicitor or representative thereof, pay, allow or give, or offer to pay, allow or give, directly or indirectly, as an inducement to insurance, any rebate of premiums payable on the policy, or any special favor or advantage in the dividends or other benefits to accrue thereon, or any paid employment or contract for service of any kind, or any valuable consideration or inducement whatever not specified in the policy or contract of insurance; or give, sell or purchase, or offer to give, sell or purchase, as an inducement to insurance, or in connection therewith, any stocks, bonds or other securities of any insurance company or other corporation, association or partnership, or any dividends or profits to accrue thereon, or anything of value whatsoever not specified in the policy, or issue any policy containing any special or board contract or similar provision, by the terms of which said policy will share or participate in any special fund derived from a tax or a charge against any portion of the premium on any other policy. Any company or agent violating the provisions of this article shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished as provided in the Penal Code; and the said company shall, as an additional penalty, forfeit its certificate of authority to do business in this State, and the said agent shall, as an additional penalty, forfeit his license to do business in this State for one year. The company shall not be held liable under this article for any act of its agent, unless such act was authorized by its president, one of its vice presidents, its secretary or an assistant secretary, or by its board of directors. [Id.]

Art. 5054. [4950] **Texas laws govern policies.**—Any contract of insurance payable to any citizen or inhabitant of this State by any insurance company or corporation doing business within this State shall be held to be a contract made and entered into under and by virtue of the laws of this State relating to insurance, and governed thereby, notwithstanding such policy or contract of insurance may provide that the contract was executed, and the premiums and policy (in case it becomes a demand) should be payable without this State, or at the home office of the company or corporation issuing the same. [Acts 1903, p. 94.]

Art. 5055. [4960] [3061] [2943] **Certificate of authority.**—It shall not be lawful for any person to act within this State, as agent or otherwise, in soliciting or receiving applications for insurance of any kind whatever, or in any manner to aid in the transaction of the business of any insurance company incorporated in this State or out of it, without first procuring a certificate of authority from the Commissioner.

Art. 5056. [4961] [3093] **Who are agents.**—Any person who solicits insurance on behalf of any insurance company, whether incorporated under the laws of this or any other State or foreign government, or who takes or transmits other than for himself any application for insurance or any policy of insurance to or from such company, or who advertises or otherwise gives notice that he will receive or transmit the same, or who shall receive or deliver a policy of insurance of any such company, or who shall examine or inspect any risk, or receive, or collect, or transmit any premium of insurance, or make or forward any diagram of any building or buildings, or do or perform any other act or thing in the making or consummating of any contract of insurance for or with any such insurance company other than for himself, or who shall examine into, or adjust or aid in adjusting any loss for or on behalf of any such insurance company, whether any of such acts shall be done at the instance or request, or by the employment of such insurance company, or of, or by any broker or other person, shall be held to be the agent of the company for which the act is done, or the risk is taken, as far as relates to all the liabilities, duties, requirements and penalties set forth in this chapter. The provisions of this chapter shall not apply to citizens of this State who arbitrate in the adjustment of losses between the insurers and insured, nor to the adjustment of particular or general average losses of vessels or cargoes by marine adjusters who have paid an occupation tax of two hundred dollars for the year in which the adjustment is made nor to practicing attorneys at law in the State of Texas, acting in the regular transaction of their business as such attorneys at law, and who are not local agents, nor acting as adjusters for any insurance company. Any person who shall do any of the acts mentioned in this article for or on behalf of any insurance company without such company having first complied with the requirements of the laws of this State, shall be personally liable to the holder of any policy of insurance in respect of which such act was done for any loss covered by the same. [Acts 1879, S. S. p. 32.]

Art. 5057. [4962] [3094] **Assessment of taxes.**—Whenever any person shall do or perform within this State any of the acts mentioned in the preceding article for or on behalf of any insurance company therein referred to, such company shall be held to be doing business in this State, and shall be subject to the same taxes, State, county and municipal, as insurance companies that have been legally qualified and admitted to do busi-

ness in this State by agents or otherwise are subject, the same to be assessed and collected as taxes are assessed and collected against such companies; and such persons so doing or performing any of such acts or things shall be personally liable for such taxes. [Id.]

Art. 5058. [4963] **Resident agents.**—Any fire, fire and marine, marine, tornado, rent, accident, casualty, liability, health, elevator, disability, plate glass, burglary, bonding, title, surety, or fidelity insurance company, legally authorized to do business in this State, is hereby prohibited from authorizing or allowing any person, agent, firm or corporation that is a non-resident of the State of Texas to issue, or cause to be issued, to sign or countersign, or to deliver, or cause to be delivered, any policy or policies of insurance on property, person or persons located in this State, except through regularly commissioned and licensed agents of such companies in Texas. This law shall not apply to property owned by the railroad companies or other common carriers. Upon oath made in writing by any person that he can not procure insurance on property through such agents in Texas, it shall be lawful for any insurance company not having an agent in Texas to insure property of any person upon application of said person, upon his filing said oath with the county clerk of the county in which such person resides. [Acts 1903, p. 232.]

Art. 5059. [4964] **Affidavit of company.**—Before a certificate or license to any fire, fire and marine, marine, tornado, rent, accident, casualty, liability, health, elevator, disability, plate glass, burglary, bonding, title, surety or fidelity insurance company is issued authorizing it to transact business in this State, the Commissioner shall require in every case, in addition to the other requirements already made and provided by the law, that each such insurance company shall file with him an affidavit that it has not violated any provision of this law. [Id.]

Art. 5060. [4965] **Commissions to non-residents.**—Any person, agent, firm or corporation licensed by the Commissioner to act as a fire and marine, marine, tornado, rent, accident, casualty, liability, health, elevator, disability, plate glass, burglary, bonding, title, surety or fidelity insurance agent in the State of Texas, is hereby prohibited from paying, directly or indirectly, any commission, brokerage or other valuable consideration on account of any policy or policies covering property, person or persons, in this State, to any person, persons, agent, firm or corporation that is a non-resident of this State, or to any person or persons, agent, firm or corporation not duly licensed by the Commissioner of Insurance of this State as a fire, fire and marine, marine, tornado, rent, accident, casualty, liability, health, elevator, disability, plate glass, burglary, bonding, title, surety or fidelity insurance agent. [Id.]

Art. 5061. [4967] **Commissioner may examine.**—The Commissioner is hereby authorized and it is made his duty, at the

expense of the company investigated, to examine at the head office, located within the United States of America, all books, records and papers of such company and also any officers or employees thereof under oath, as to violations of this law, and he is further empowered to examine person or persons, administer oaths, and send for papers and records, and failure or refusal upon the part of any life, fire and marine, marine, tornado, rent, accident, casualty, liability, health, elevator, disability, plate glass, burglary, bonding, title, surety or fidelity insurance company, person or persons, agent, firm or corporation, licensed to do business in the State of Texas, to appear before the Commissioner when requested to do so, or to produce records and papers, or answer under oath, shall subject such fire, fire and marine, marine, tornado, rent, accident, casualty, liability, health, elevator, disability, plate glass, burglary, bonding, title, surety or fidelity insurance company, person, persons, agent, firm or corporation to the penalties of this law. [Id.]

Art. 5062. [4966] **Penalty for violation.**—Whenever the Commissioner shall have or receive notice or information of any violation of any provision of this law, he shall immediately investigate, or cause to be investigated, such violation, and if a fire, fire and marine, marine, tornado, rent, accident, casualty, liability, health, elevator, disability, plate glass, burglary, bonding, title, surety or fidelity insurance company has violated any of such provisions, he shall immediately revoke its license for not less than three months, nor more than six months for the first offense, and, for each offense thereafter, for not less than one year; and, if any person, agent, firm or corporation licensed by such Commissioner as a fire, fire and marine, marine, tornado, rent, accident, casualty, liability, health, elevator, disability, plate glass, burglary, bonding, title, surety or fidelity insurance agent shall violate or cause to be violated any provision of this law, he shall, for the first offense, have his license revoked for all companies for which he has been licensed, for not less than three months, and for the second offense he shall have his license revoked for all companies for which he is licensed and shall not thereafter be licensed for any company for one year from date of such revocation. [Id.]

Art. 5063. [4968] **Solicitor deemed company's agent.**—Any person who shall solicit an application for insurance upon the life of another shall in any controversy between the assured and his beneficiary and the company issuing any policy upon such application be regarded as the agent of the company, and not the agent of the insured, but such agent shall not have the power to waive, change or alter any of the terms or conditions of the application or policy. [Acts 1909, p. 192.]

Art. 5064. [4969] **Who may not be agents.**—No corporation or stock company shall be licensed or granted a certificate of authority as the agent or representative of any life insurance company in soliciting, selling or in any manner placing life in-

insurance policies or contracts in the State. No life insurance company shall be granted a certificate of authority to transact business in this State, which has or is bound by any valid subsisting contract with any other corporation, by virtue of which such other corporation is entitled to receive, directly or indirectly, any percentage or portion of the premium or other income of such life insurance company for any period. No person shall be granted a certificate of authority as the agent of any life insurance company who enters into any contract with any corporation other than such life insurance company, by virtue of which such other corporation is entitled to receive, directly or indirectly, any compensation earned by him as agent for such life insurance company, or any percentage or portion thereof for any period. [Id.]

Art. 5065. [4970] **Certificates for agents.**—Each such foreign insurance company shall, by resolution of its board of directors, designate some officer or agent who is empowered to appoint or employ its agents or solicitors in this State, and such officer or agent shall promptly notify the Commissioner in writing of the name, title and address of each person so appointed or employed. Upon receipt of this notice, if such person is of good reputation and character, the Commissioner shall issue to him a certificate which shall include a copy of the certificate of authority authorizing the company requesting it to do business in this State, and the name and title of the person to whom the certificate is issued. Such certificate, unless sooner revoked by the Commissioner for cause or canceled at the request of the company employing the holder thereof, shall continue in force until the first day of March next after its issuance, and must be renewed annually. [Id.]

Art. 5066. [4971] **Revocation of agent's certificate.**—Cause for the revocation of the certificate of authority of an agent or solicitor for an insurance company may exist for violation of any of the insurance laws, or if it shall appear to the Commissioner upon due proof, after notice that such agent or solicitor has knowingly deceived or defrauded a policy holder or a person having been solicited for insurance, or that such agent or solicitor has unreasonably failed and neglected to pay over to the company, or its agent entitled thereto, any premium or part thereof, collected by him on any policy of insurance or application therefor. The Commissioner shall publish such revocation in such manner as he deems proper for the protection of the public; and no person whose certificate of authority as agent or solicitor has been revoked shall be entitled to again receive a certificate of authority as such agent or solicitor for any insurance company in this State for a period of one year. [Id.]

Art. 5067. [4508] [3060] **Revocation of certificate of authority.**—Should any insurance company fail or neglect to pay off and discharge any execution, issued upon a valid final judgment against said company, within thirty days after the notice

of the issuance thereof, then in that event the certificate of authority of said company to transact business of insurance shall be revoked, canceled and annulled, and said company shall be prohibited from transacting business of insurance in this State until said execution be satisfied. [Acts 1879, p. 159.]

Art. 5068. [4972] **Foreign insurance corporations.**—The provisions of this title are conditioned upon which foreign insurance corporations shall be permitted to do business within this State, and any such foreign corporation engaged in issuing contracts or policies within this State shall be held to have assented thereto as a condition precedent to its right to engage in such business within this State. [Acts 1903, p. 94.]

TITLE 79.

INTEREST.

| | | | |
|-----------------------------|---------|-------------------------------|---------|
| | Article | | Article |
| Definitions | 5069 | Rate on judgments | 5072 |
| Legal rate applicable | 5070 | Action on usurious rate | 5073 |
| Limit on rate | 5071 | Usury, how pleaded | 5074 |

Art. 5069. [4973-4974-4975] **Definitions.** — “Interest” is the compensation allowed by law or fixed by the parties to a contract for the use or forbearance or detention of money: “legal interest” is that interest which is allowed by law when the parties to a contract have not agreed upon any particular rate of interest; and “conventional interest” is that interest which is agreed upon and fixed by the parties to a written contract, not to exceed ten per cent per annum. “Usury” is interest in excess of the amount allowed by law; all contracts for usury are contrary to public policy and shall be void.

Art. 5070. [4977-4978] **Legal rate applicable.**—When no specified rate of interest is agreed upon by the parties, interest at the rate of six per cent per annum shall be allowed on all written contracts ascertaining the sum payable, from and after the time when the sum is due and payable; and on all open accounts, from the first day of January after the same are made. [Acts 1892, p. 4; G. L. Vol. 10, p. 368.]

Art. 5071. [4979-4980] **Limit on rate.**—The parties to any written contract may agree to and stipulate for any rate of interest not exceeding ten per cent per annum on the amount of the contract; and all written contracts whatsoever, which may in any way, directly or indirectly, provide for a greater rate of interest shall be void and of no effect for the amount or value of the interest only; but the principal sum of money or value of the contract may be received and recovered. [Id.]

Art. 5072. [4981] **Rate on judgments.**—All judgments of the courts of this State shall bear interest at the rate of six per cent per annum from and after the date of the judgment, except where the contract upon which the judgment is founded bears a specified interest greater than six per cent per annum and not exceeding ten per cent per annum, in which case the judgment shall bear the same rate of interest specified in such contract and after the date of such judgment. [Id.]

Art. 5073. [4982] **Action on usurious rate.**—Within two years after the time that a greater rate of interest than ten per cent shall have been received or collected upon any contract, the person paying the same or his legal representative may by an action of debt recover double the amount of such interest from the person, firm or corporation receiving the same. Such action shall be instituted in any court of this State having jurisdiction thereof, in the county of the defendant's residence, or in the county where such usurious interest shall have been received or collected, or where said contract has been entered into, or where

the parties who paid the usurious interest resided when such contract was made. [Acts 1907, p. 277.]

Art. 5074. [4983] **Usury, how pleaded.**—No evidence of usurious interest as a defense shall be received on the trial of any case, unless the same shall be specially pleaded and verified by the affidavit of the party wishing to avail himself of such defense. [Acts 1876, p. 228; G. L. Vol. 10, p. 1064.]

TITLE 80.

INTOXICATING LIQUOR.

| Article | Article | | |
|---|---------|---|------|
| Sale of intoxicating liquor, etc..... | 5075 | Comptroller to furnish form..... | 5095 |
| Liquor more than one per cent..... | 5076 | Pharmacist cited for violation..... | 5096 |
| Exceptions as to intoxicating liquor..... | 5077 | Fixing place of sale-Venue..... | 5097 |
| Exceptions as to other liquor..... | 5078 | Advertising liquor..... | 5098 |
| Not an accomplice witness..... | 5079 | Liquor places to clean up..... | 5099 |
| Possession prima facie evidence..... | 5080 | Recipe or formula..... | 5100 |
| "Intoxicating liquors" defined..... | 5081 | Concealing nature of shipment..... | 5101 |
| Liquors included..... | 5082 | Soliciting or giving information..... | 5102 |
| Lawful use..... | 5083 | Order to carrier to deliver..... | 5103 |
| Permit to sell or make..... | 5084 | Information on shipped container..... | 5104 |
| Bond..... | 5085 | No property right in liquor..... | 5105 |
| No permit for sacramental wine..... | 5086 | To rent or keep for unlawful purpose..... | 5106 |
| Attach label to container..... | 5087 | Nuisance..... | 5107 |
| Record of manufacturer..... | 5088 | May enjoin nuisance..... | 5108 |
| Sale by wholesale druggists..... | 5089 | Penal article..... | 5109 |
| Duty of physician prescribing..... | 5090 | Violating injunction..... | 5110 |
| Physician to obey law..... | 5091 | Witness shall testify..... | 5111 |
| Carrier to secure permit..... | 5092 | Seizure..... | 5112 |
| Delivery by carrier..... | 5093 | "Person" includes corporation..... | 5113 |
| Record of carrier..... | 5094 | Disposition of intoxicating liquors..... | 5114 |

Art. 5075. **Sale of intoxicating liquor, etc.**—It shall be unlawful for any person, directly or indirectly, to possess or receive for the purpose of sale, or to manufacture, sell, barter, exchange, transport, export, deliver, take orders for or furnish spirituous, vinous or malt liquors or medicated bitters capable of producing intoxication, or any other intoxicant whatever, or to possess, receive, manufacture or knowingly sell, barter, exchange, transport, export, deliver, take orders for or furnish any equipment, still, mash, material, supplies, device or other thing for manufacturing, selling, bartering, exchanging, transporting, exporting, delivering, taking orders for, or furnishing any such liquors, intoxicants or beverages. [Act July 30, 1919, Acts 2nd C. S. 1919, p. 229, Act Sept. 3, 1921, Acts 1st C. S. 1921, p. 233, Act May 28, 1923, Acts 2nd C. S. 1923, p. 53.]

Art. 5076. **Liquor more than one per cent.**—It shall be unlawful for any person, directly or indirectly, to possess or receive for the purpose of sale, or to manufacture, sell, barter, exchange, transport, export, deliver, take orders for, or furnish spirituous, vinous or malt liquors or medicated bitters, or any potable liquor, mixture or preparation containing in excess of one per cent of alcohol by volume, or to possess, receive, manufacture, or knowingly sell, barter, exchange, transport, export, deliver, take orders for, or furnish any equipment, still, mash, material, supplies, device, or other thing for manufacturing, selling, bartering, exchanging, transporting, exporting, delivering, taking orders for, or furnishing any such liquors, intoxicants or beverages. [Acts 2nd. C. S. 1919, p. 229, Acts 1st C. S. 1921, p. 233, Acts 2nd. C. S. 1923, p. 54.]

Art. 5077. **Exceptions as to intoxicating liquor.**—It shall not be unlawful for any person to manufacture, sell, barter, exchange, transport, export, deliver, take orders for, furnish, possess or receive for the purpose of sale, barter, exchange, transport, export, or deliver spirituous, vinous, or malt liquors or

medicated bitters for medicinal, mechanical, scientific, or sacramental purposes. [Act Sept. 3, 1921, Acts 1st C. S. 1921, p. 234.]

Art. 5078. **Exceptions as to other liquor.**—The manufacture, sale, barter, exchange, transportation, exporting, taking orders for, furnishing, and possessing of any of the liquors mentioned in this title, if done for medicinal, mechanical, scientific, or sacramental purposes, shall not be punishable under the terms of this title. [Id.]

Art. 5079. **Not an accomplice witness.**—Upon a trial for a violation of any provision of this title, the purchaser, transporter, or possessor of any of the liquors prohibited herein shall not be held in law or in fact to be an accomplice, when a witness in any such trial. [Id.]

Art. 5080. **Possession prima facie evidence.**—Whenever possession or receipt, or possession or receipt for the purpose of sale, is made unlawful by law, proof of possession of mash, or of a still or any device for manufacturing intoxicating liquors, or proof of the possession of more than one quart of intoxicating liquors, shall be prima facie evidence of guilt; but the defendant shall have the right to introduce evidence showing the legality of such possession. [Acts 2nd C. S. 1923, p. 54.]

Art. 5081. **"Intoxicating liquors" defined.**—The words "intoxicating liquors," or "liquors" hereafter used in this title shall be held to include and comprehend all liquors referred to in the first and second articles of this chapter, and the said liquors prohibited by said articles will hereafter be referred to herein for convenience as "intoxicating liquors." [Acts 2nd C. S. 1919, p. 229.]

Art. 5082. **Liquors included.**—The various liquors described in the first two articles of this title shall be construed to include all distilled, malt, spirituous, vinous, fermented or alcoholic liquors and all alcoholic liquids and compounds, whether medicated, proprietary, patented or not, and by whatever name called, which require a federal tax as a beverage, or which contain more alcohol than is necessary to extract the medical properties of the drug contained in such preparation and to hold the medicinal agents in solution and preserve the same. [Acts 2nd C. S. 1919, p. 229.]

Art. 5083. **Lawful use.**—The provisions of this title shall not prohibit the possession of intoxicating liquor for beverage purposes for use by the owner and members of his family, or bona fide guests, in a bona fide residence, if such liquors were purchased and deposited in such residence before this law goes into effect. Nothing in this title shall prohibit the manufacture, transportation, storage, and sale of denatured or pure ethyl alcohol, or denatured rum for use only in the industrial or mechanical arts or for scientific purposes or in chemical laboratories or hospitals, or to prevent the manufacture, transportation, sale and keeping and storing for sale any medical prepa-

rations manufactured in accordance with formulas prescribed by the United States Pharmacopeia or National Formulary or American Institute of Homeopathy, or of alcoholic, patent or proprietary medicines which do not require the payment of the Federal Tax as a beverage and which contain no more alcohol than is necessary to extract the medicinal properties of the drug contained in such preparation, and to hold the medicinal agents in solution, and to preserve the same and which are manufactured and sold for legitimate and lawful purposes and not as beverages, or to prevent the manufacture and sale of bona fide alcohol toilet, or antiseptic preparations and solutions or flavoring extracts which do not require the payment of Federal tax as a beverage and which contain no more alcohol than is necessary for the extraction, solution and preservation of the agents contained therein, and which are manufactured and sold for legitimate and lawful purposes and not as beverages, and upon the outside of the bottle or package of each is printed in English conspicuously and legibly and clearly the quantity by volume of alcohol in such preparation. The manufacturer of flavoring extracts or toilet, medicinal, antiseptic preparations or solutions, patent or proprietary medicines, or preparations permitted to be manufactured by this law shall be permitted to purchase, possess, transport and store alcohol necessary for the manufacture of said article, but not to be sold or given away. Such manufacturer shall secure a permit from the Comptroller and shall make a monthly report to be filed with the Comptroller on or before the 10th day of each month, showing the name and quantity of every such preparation, solution or medicine so manufactured, and the percentage of alcohol contained in each such preparation, solution or medicine. Said manufacturer shall, upon request of the Attorney General, the Comptroller, or the District or County Attorney of the county in which such manufacturer has his place of business, furnish to the officer making such request any information called for by such officer with reference to the manufacture, storage or sale of any such alcoholic preparation, solution or medicine, and any information with reference to the quantities and dates of sale and transportation of any such preparation, solution or medicine to any person or persons designated in such request. Any of the officers herein above named shall have the right at any reasonable time within business hours to examine the books and records and all data in the possession of such manufacturer with reference to the manufacture, storage or sale of such alcoholic preparations. Nothing herein shall prevent the storage in United States bonded warehouses in the custody of a United States collector of internal revenue of all liquors manufactured prior to the taking effect of this law or to prevent the transportation of such liquors for purposes not inhibited by law. [Acts 2nd C. S. 1919, p. 231.]

Art. 5084. **Permit to sell or make.**—Alcohol for non-beverage

purposes and wine for sacramental purposes may be manufactured and sold as follows:

The Comptroller may issue permits to persons, to manufacture and sell equipment for the manufacture of liquor not prohibited herein; to manufacture alcohol and wine; to manufacture alcoholic, patent or proprietary medicine, flavoring extracts and culinary preparations and other nonbeverage alcoholic preparation; to wholesale and retail druggists or pharmacists and to persons permitted to possess alcohol and wine for authorized purposes. Such permits shall not be in conflict with the prohibitions contained herein. [Acts 2nd C. S. 1919, p. 231.]

Art. 5085. **Bond.**—A permit shall not be issued by the Comptroller to any person who has, within two years next preceding the issuing of the same, been adjudged guilty of violating any provision of this Act, or of any permit, or of any law of this State, or of the United States, prohibiting or regulating the liquor traffic; nor shall a permit be issued for the purpose of selling such liquor at retail, unless such sale be made by a pharmacist designated in the permit and duly licensed by the State Board of Pharmacy, nor until a bond shall be given and approved, and the applicant has filed written application therefor setting forth the qualifications and the purposes for which the permit will be used, together with such other information as the Comptroller may require. The bond herein required of a retailer shall be made payable to the Governor of this State at Austin, in Travis County, shall be in the sum of one thousand dollars conditioned for the faithful observance of this Act; the bond shall be upon such form as may be drawn and prescribed by the Attorney General and for any breach of the same, suit may be brought in the District Court of Travis County to recover the entire amount of same as a penalty for such violation of the law and breach of the bond. Said bond, if signed by personal sureties, must be signed by two solvent sureties, or, if by a surety company, then by a surety company authorized to transact business in the State of Texas. The bond shall be subject to the approval of the Comptroller and shall be filed in his office. The Attorney General shall bring all actions for breach of said bond in the name of the State. [Acts 2nd C. S. 1919, p. 231.]

Art. 5086. **No permit for sacramental wine.**—Such permit when issued shall contain date of issue, shall be in writing, signed by the Comptroller, shall name and give the address of the person to whom issued, give location where such liquors, equipment or material is to be manufactured, kept, stored or sold, and fix the maximum quantity of such liquor permitted to be kept or stored and specifically designate and limit the acts permitted, give the name and address of all individuals authorized to do the permitted acts; provided the name and address of the agents, employes and servants of common carriers may be omitted by the Comptroller from such permit, and such permit shall expire on the 31st day of December next succeeding the date of issue thereof. Nothing

herein shall be construed as requiring any priest, rabbi or minister of any religious denomination or sect to have a permit in order to purchase or receive shipments of wine for sacramental purposes; and nothing in this title shall make it unlawful for any priest, rabbi or minister or any religious denomination or sect to purchase, order or receive, wine for sacramental purposes or for any common carrier to ship, transport, carry or deliver same to any priest, rabbi or minister of any religious denomination or sect for sacramental purposes only. Where such shipment or purchase is made a record thereof shall be made and kept and the priest, rabbi or minister making such purchase or shipment shall be identified. Such quantities of wine may be purchased and kept on hand for sacramental purposes as may be necessary for the particular church or religious institution for the use and service of which same is purchased or shipped. [Acts 2nd C. S. 1919, Acts 1919, p. 231.]

Art. 5087. **Attach label to container.**—All persons manufacturing alcohol or wine, or either, shall securely and permanently attach to any container of such liquor as the same is manufactured, and thereafter, persons possessing such liquor in wholesale quantities shall securely keep and maintain thereon, a manufacturer's label, stating name of manufacturer, kind and quantity of liquor contained therein, with a copy of the permit authorizing the manufacture thereof. Every person having in his possession any intoxicating liquor, purchased after this law becomes effective, for permitted purposes, shall have pasted on or permanently attached to the container a copy of the prescription or affidavit as the case may be, upon which authority it was purchased as is provided for in this title. [Acts 2nd C. S. 1919, p. 232.]

Art. 5088. **Record of manufacturer.**—All persons authorized to manufacture alcohol shall keep a separate record of such liquors manufactured or sold, giving date and quantity of such liquor manufactured and sold, the quantity of such liquor on hand, name and address of persons to whom such liquor was sold, the name and address of all agents in any way connected with such manufacture, sale, or purchase, or the keeping, storing, delivering, consigning, and distribution of such liquor, the name and address of all common, or other carriers, receiving, transporting, and delivering said liquor, and a copy of the application on which the purchase or sale of such liquor was made, and a detailed account of the dispositions of such liquor. A copy of such record shall be sent to the Comptroller every third month by the 10th of the month for the quarter preceding. [Acts 2nd C. S. 1919, p. 232.]

Art. 5089. **Sale by wholesale druggists.**—It shall be unlawful for a wholesale druggist to sell alcohol or wine, except in wholesale quantities, to persons having permits to purchase in such quantities. Such wholesale druggist shall keep an accurate record of all sales and label the containers of such liquor, setting

forth the kind of liquor contained therein, by whom manufactured, and the person to whom sold. A copy of such record shall be sent to the Comptroller every third month by the 10th of the month for the quarter preceding. It shall be unlawful for a retail druggist or pharmacist to sell any liquor except alcohol for non-beverage purposes or wine for sacramental purposes. Such druggist or pharmacist shall keep a record giving the name of the doctor issuing the prescriptions containing alcohol, the amount, date of sales, the name and signature of the purchaser, the person making the sale, and a copy of the prescription. [Acts 2nd C. S. 1919, p. 232.]

Art. 5090. Duty of physician prescribing.—Every physician who issues a prescription for ethyl alcohol, or any alcoholic liquor, shall first secure a permit from the Comptroller, except as herein provided, and shall keep a record alphabetically arranged in a separate book provided by the Comptroller, which shall show: Date, amount, to whom issued, directions for use (stating the amount and frequency of dose), and the druggist to whom addressed. Such physician shall send a copy of such record to the Comptroller not later than the fifth day of the month for the quarter preceding. [Acts 2nd C. S. 1919, p. 233.]

Art. 5091. Physician to obey law.—A physician who issues prescriptions must be in active practice, in good standing with his profession, not addicted to the use of any narcotic drug, and have a permit as provided herein for issuing prescriptions. Such physician before issuing any prescriptions must make a careful personal, physical examination of the person to whom the alcohol is prescribed, and in no case issue such prescription to any person whom he has reason to believe will use alcohol for beverage purposes, nor prescribe more than a pint of alcohol to any person at a time. Nor shall such prescriptions be filled at any pharmacy or drugstore in which the physician has any financial interest. For any shift or device by which intoxicating liquors may be improperly prescribed, or for any violation of this article, in addition to the penalty prescribed, for the first offense under this title, the Comptroller may suspend the permit of such physician to issue prescriptions for alcohol for a period of one year, and for the second offense, in addition to the punishment prescribed herein, the permit of such physician shall be deemed revoked forthwith. The revocation of such permit, if revoked by the court, shall be sent to the authority granting the permit and shall act as a ban to the granting of any further permit to such physician to issue prescriptions. [Act 2nd C. S. 1919, p. 233.]

Art. 5092. Carrier to secure permit.—Every railroad company, express company, or other common carrier that transports any liquor shall secure first a permit from the Comptroller and keep correctly at the place of receipt for shipment, in type-writing or in a clear and legible hand, that the same may be easily read, a permanent alphabetically arranged record of the receipt of such liquors and the name and post-office address,

street address, or other description of domicile of the consignor and consignee, and the place of delivery. Nothing herein shall be construed to authorize the transportation of liquor for other than permitted purposes. [Acts 2nd C. S. 1919, p. 233.]

Art. 5093. Delivery by carrier.—Common carriers may deliver liquor to persons who have permits to manufacture or possess the same in wholesale quantities, upon the presentation of a verified copy of the permits from the Comptroller, and affidavit to the carrier that such liquor will not be used in violation of the law; and the common carrier may also receive for shipment, and ship and deliver, liquor to persons for the uses permitted herein when affidavit is presented to the carrier that such liquor will not be used in violation of the law. The copy of the record hereinbefore mentioned shall be sent by the transportation company to the Comptroller of the State where the delivery was made, not later than the 10th day of the month for the quarter next preceding. [Acts 2nd C. S. 1919, p. 233.]

Art. 5094. Record of carrier.—The record to be kept by the transportation company at the place of delivery shall show: Name of consignor, consignee, kind of liquor and quantity; the number of permit from the Comptroller; and the signature of the consignee. The affidavits of the consignee to be attached to the above record shall be as follows:

State of _____ }
 County of _____ } ss

_____ being duly sworn, deposes and says, that my address is _____ (or other definite description, giving street number or hotel); I am not a minor, nor of intemperate habits. I am the owner of a package in the office of a common carrier, to-wit: _____ It contains (giving amount and kind of liquor) _____ which I have ordered in writing the _____ day of _____ upon the authority of permit No. _____; that the purpose for which I ordered such liquor is _____; that I have not received from any carrier or any person, nor have I had in my control at any place or places, more than _____ (amount) of alcohol or wine within the last three days preceding this date, and I do not have liquor on hand except _____; that I will not use any of such liquor nor allow anyone else to use such liquor for beverage purposes or for purposes other than herein stated.

Sworn to and subscribed in my presence _____ day of _____, 19____.

The agent of the common carrier is hereby authorized to administer the oath to the foregoing consignee, who, if not personally known to the agent, shall first be identified before the delivery of the liquor to him. The names and addresses of the person identifying the consignee shall be included in the record.

The affidavit shall be made in the form prescribed, in a permanent record, and if such permanent record has not been furnished the carrier by the Comptroller, after application for the same, then the affidavit of the consignee shall be pasted or permanently attached at the bottom of the record mentioned therein and a copy attached permanently to the container of such liquor. If such container is inclosed in a package with other material, then such copy shall be attached to it or pasted on it when it is taken from such package and before the liquor is so delivered. [Acts 2nd C. S. 1919, p. 234.]

Art. 5095. Comptroller to furnish form.—The Comptroller shall have printed forms of records, affidavits, and prescriptions, as provided herein, and shall furnish the same at cost to only such persons as are authorized by law to sell, transport, purchase, manufacture or use alcohol. The affidavits or prescriptions to be filed with the druggist shall be printed in book form, numbering such affidavit with a consecutive serial number from one to one hundred. Each book shall be given a number, and a stub in each book shall carry the same number as the affidavit or prescription, showing the copy of the record of such sale. The book containing such stub shall be returned to the Comptroller when the affidavits or prescriptions are used, or not later than six months from the date that such book or affidavits and prescriptions were delivered to such druggist or physician. All unused, mutilated, or defaced blanks shall be returned with the book. No druggist or physician shall make such sale or issue such prescriptions, except on blanks herein provided. The form of such record shall be prescribed by the Comptroller. The Comptroller shall charge a fee of five dollars for each and every character of permit issued by him under this title. [Acts 2nd C. S. 1919, p. 235.]

Art. 5096. Pharmacist cited for violation.—If at any time there shall be filed with the Comptroller a complaint under oath setting forth that any pharmacist, who has a permit to sell alcohol for medical, mechanical, or scientific purposes, or wine for sacramental purposes, is not in good faith conforming to the provisions of this chapter, or is guilty of violating this law, the Comptroller or his agent shall immediately issue an order citing such pharmacist to appear at a place in the State where he resides before the Comptroller, on a day named not more than thirty days, nor fewer than fifteen days, from the issuing of such order, at which time the question of the cancellation of such permit shall be heard. If it be found that such pharmacist is guilty of violating any provision of this law, such permit shall be revoked and no permit shall be granted to such person, firm, or corporation for two years thereafter. [Acts 2nd C. S. 1919, p. 235.]

Art. 5097. Fixing place of sale—Venue.—In case of a sale where a shipment or delivery of such intoxicating liquor is made by a common or other carrier the sale or delivery thereof shall

be deemed to be made in the county wherein the delivery is made by such carrier to the consignee, his agent, or employees. A prosecution for such sale or delivery may likewise be had in the county wherein the sale is made or from which the shipment is made, or in any county through which the shipment is made. [Acts 2nd C. S. 1919, p. 235.]

Art. 5098. Advertising liquor.—It shall be unlawful to advertise anywhere, on land or water, by any means or method, intoxicating liquors, or to advertise the manufacture, method of manufacture, sale, keeping for sale or furnishing of the same, or where, how, from whom and at what price the same may be obtained. The manufacturer of alcohol or wine and wholesale druggists having a permit under this chapter shall be allowed to send price lists to those to whom they are permitted to sell alcohol or wine under this law; it shall also be unlawful to permit any sign or billboard containing such prohibited advertisement to remain upon one's premises or to circulate any prohibited price list, order blank or other matter designed to induce or secure orders for such intoxicating liquors. The officers charged with the enforcement of this law are authorized to remove, paint over or otherwise obliterate any such advertisement from any sign, billboard, or other place when it comes to his notice, and shall do so upon the demand of any citizen who has first requested the person in charge of such advertisement, or the owner of the property on which it is located to remove the same and such person fails to remove such advertisement as required by law. Any advertisement or notice containing the picture of a brewery, distillery, bottle, keg, barrel, or box or other receptacle represented as containing intoxicating liquors, or designed to serve as an advertisement thereof, shall be within the inhibition of this article. It shall be unlawful for any newspaper or periodical to print in its columns statement concerning the manufacture or distribution of alcoholic liquors directly or indirectly, for which the said newspaper or periodical receives compensation of any kind, without printing at the beginning and at the close of said statement in type of the same size used in the body of the said article the following statement: "Printed as paid advertising." [Acts 2nd C. S. 1919, p. 235.]

Art. 5099. Liquor places to clean up.—Every person except licensed pharmacists, wholesale druggists, manufacturing chemists, or hospitals or other places provided for herein to legally possess liquor, shall remove, or cause to be removed, all intoxicating liquors in his possession for prohibited purposes, and failure to do so shall be evidence that such liquor is kept therein for the purpose of being sold, bartered, exchanged, given away, furnished or otherwise disposed of in violation of the provisions of this title. All screens, stained glass, or other obstructions which prevent a clear view of the interior of any room or place where intoxicating liquors were sold as a beverage within one year before this Act becomes operative shall be

removed or changed so as to give a permanent unobstructed view of the interior of said room or place, if beverages of any kind are sold therein. [Acts 2nd C. S. 1919, p. 236.]

Art. 5100. **Recipe or formula.**—It shall be unlawful to advertise, sell, deliver or possess any preparation, compound, or table from which intoxicating liquor as a beverage is made, or any formula, directions, or recipes for making intoxicating liquors for beverage purposes. [Acts 2nd C. S. 1919, p. 236.]

Art. 5101. **Concealing nature of shipment.**—No person shall use or induce any railroad company, express company, or any other carrier, or any servant or employe thereof, or any person or persons, to carry transport, or ship any package or receptacle containing liquors without notifying the carrier, its servant or agent, or any person who carries the same, of the true nature and character of the shipment. But failure to notify such carrier shall not be a defense for illegal transportation. [Id.]

Art. 5102. **Soliciting or giving information.**—No person shall solicit, or receive from any person for the purpose of forwarding for the person from whom received, any orders for intoxicating liquors from any person, or give any information how such prohibited liquors may be received, or where such liquors are, or send for such liquors, except for the purposes permitted by this title. [Acts 2nd C. S. 1919, p. 237.]

Art. 5103. **Order to carrier to deliver.**—It shall be unlawful to give to any carrier, or any officer, agent or person acting or assuming to act for such carrier, an order requiring the delivery to any person of any liquor or package containing liquors consigned to a person when the purpose of the order is to enable any person not an actual bona fide consignee to obtain such liquors. [Acts 2nd C. S. 1919, p. 237.]

Art. 5104. **Information on shipped container.**—No person shall transport liquor or receive or possess any liquor from a common or other carrier unless there appears on the outside of the package containing such liquors the following information: Name and address of the consignor or seller, name and address of the consignee or persons receiving the liquor; kind and quantity of liquor contained therein and number of permit. Any consignee accepting or receiving any package containing any such liquors upon which appears a false statement, or any person consigning, shipping, transporting, or delivering any such package, knowing that such statement appearing on the outside is false, shall be deemed guilty of violating the provisions of this title. [Acts 2nd C. S. 1919, p. 237.]

Art. 5105. **No property right in liquor.**—No property rights of any kind shall exist in any intoxicating liquors manufactured or sold or kept for sale for beverage purposes in violation of law, and in all such cases the same may be searched for, seized and ordered to be destroyed. [Acts 2nd C. S. 1919, p. 237.]

Art. 5106. **To rent or keep for unlawful purpose.**—No person shall rent to another or keep or be in any way interested in keeping any premises, building, room, boat or place to be used

for the purpose of storing, manufacturing, selling, transporting, receiving or delivering, or bartering or giving away intoxicating liquors in violation of this title, and any one who knowingly does so shall be guilty of violating this law and shall be punished accordingly as provided in the penal article of this title. [Acts 2nd C: S. 1919, p. 238.]

Art. 5107. Nuisance.—Any room, house, building, boat, structure, or place of any kind similar or dissimilar to those named, where intoxicating liquor is kept, possessed, sold, manufactured, bartered or given away, or to be transported to or transported from in violation of law, and all intoxicating liquors and all property kept in and used in maintaining such place are hereby declared to be a common nuisance and any person who maintains or assists in maintaining such common nuisance shall be guilty of violating this law and shall be punished accordingly. [Acts 2nd C. S. 1919, p. 238.]

Art. 5108. May enjoin nuisance.—The Attorney General or County or District Attorney of the county where such nuisance, as defined in the preceding article exists or is kept or maintained, may maintain an action in the name of the State of Texas to abate and perpetually enjoin such nuisance and upon judgment of the court ordering, such nuisance shall be abated, all intoxicating liquor, containers, utensils and instrumentalities used in the maintenance of such nuisance shall be ordered by the court to be destroyed, same shall be destroyed by any officer authorized to execute civil process; the court shall also order that the place where said nuisance is kept or maintained be closed for one year or until the owner, lessee, tenant or occupant thereof shall file bond with sufficient sureties to be approved by the court making the order in the penal sum of \$1,000.00, payable to the State of Texas, at Austin, Texas, and conditioned that intoxicating liquor will not thereafter be manufactured, sold, bartered, stored, transported to or from, or given away in violation of law. In case of the violation of any condition of such bond, the whole sum may be recovered as a penalty in the name and for the State of Texas in the District Courts of Travis County, all suits to be brought by the Attorney General. In all cases where any person has been convicted of a violation of the provisions of this title for acts done in keeping or maintaining the nuisance defined in the preceding article, and such conviction has been final, then a certified copy of such judgment of conviction shall be considered as prima facie evidence of the existence of such nuisance in any action to abate the same. [Acts 2nd C. S. 1919, p. 238.]

Art. 5109. Penal article.—Any corporation violating any provision of this title shall be subject to a penalty in favor of the State of Texas, which shall be recoverable in an action in the name of the State to be brought by the Attorney General in any district court of Travis County or such action may be brought in the district court of any county where the offense is committed, by the Attorney General or by the county or district attorney of

such county with the consent and approval of the Attorney General. In any such action for penalties, the State shall recover the sum of Five Hundred Dollars for any violation of the law, provided that each separate violation of the law shall be considered a separate offense within the terms of this article, or where the offense is of a continuing character, then each day shall be considered a separate infraction of the law, for which the penalty may be recovered. The officers, agents or servants of any corporation against which any such penalty suit may be brought shall not be excused from testifying on the ground that their testimony might incriminate them, but where they are called upon by the State to testify and do testify they shall not be prosecuted for their participation in those acts about which they have testified. [Acts 2nd C. S. 1919, p. 239.]

Art. 5110. Violating injunction.—In addition to all other remedies now provided by law and provided in this Act, the Attorney General is hereby authorized to enjoin the violation of any article of this title, and suit therefor may be maintained in the name of the State of Texas in any District Court in Travis County. The district or county attorney of any county, where in any of the provisions of this Act, are violated, is authorized to institute and maintain, in the district court of any such county, a suit in the name of the State to enjoin and prevent the violation of any article of this title. This remedy by an injunction given in this article shall be cumulative of and in addition to the other provisions of this Act providing penalties or creating and defining crimes and punishments, and may be maintained with or without prosecutions or penalty suits herein otherwise provided for. Any person violating the terms of any injunction issued under the provisions of this article shall be punished for contempt by fine of not less than One Hundred nor more than Five Hundred Dollars, and by imprisonment in jail for not less than thirty days, nor more than six months. [Acts 2nd C. S. 1919, p. 240.]

Art. 5111. Witness shall testify.—No person shall be excused from testifying against persons who have violated any provisions of this title for the reason that such testimony will tend to incriminate him, but no person required to so testify shall be punished for acts disclosed by such testimony. [Id.]

Art. 5112. Seizure.—Any animal, automobile, flying machine, airplane, boat, ship, or other vehicle or instrumentality used for the unlawful transportation or storage of intoxicating liquor as defined in this title is declared to be a public nuisance; and any animal, automobile, flying machine, airplane, boat, ship, or other vehicle or instrumentality used in the presence and view of any peace officer of this State for the unlawful transportation or storage of intoxicating liquors as so defined, or for the commission of any act made unlawful by this Act, shall be seized without warrant by such peace officer, which officer shall within twenty-four hours after such seizure file with the county

clerk a detailed statement of the time when, the place where and the circumstances under which he seized such property, and shall appraise the value thereof. At any time before the trial of the condemnation suit herein provided for, the owner of said property seized or the person in whose possession or under whose control the same was at the time of seizure, may replevy the same by giving bond with two or more good and sufficient sureties, or a solvent guaranty or surety company, chartered or authorized to do business under the laws of this State, to be approved by the officer making the seizure or by his successor in office, payable to the State of Texas in an amount equal to the reasonable market value of the property replevied as fixed by the appraisal of said officer seizing same, conditioned that should said property in said action be condemned as a nuisance, the obligors in such bond will pay to the State of Texas the reasonable cash market value of the property replevied at the time it was seized, and all costs. In the event the property seized is not replevied, same shall be stored in a bonded warehouse, provided that if there is not a bonded warehouse in the county where such property is seized and within reasonable reach of the officer seizing same, then such property shall under the direction of the district judge having jurisdiction of said suit be stored in a safe place and be safely kept in good condition, to abide the final judgment of the proper court with reference thereto, the fees for storage to be taxed as costs in any proceeding for the condemnation or recovery of said property. The county or district attorney shall after the seizure of said property institute suit in a court of competent jurisdiction to condemn the same as a public nuisance, and to have the same destroyed if the same is not valuable or useful for some legitimate purpose, and if valuable or useful for some legitimate purpose to be sold under order of said court, and the proceeds of such sale shall be immediately paid into the State Treasury. In cases where the property is destroyed the county or district attorney shall receive fifteen dollars in each case, and the sheriff or other officer making the seizure and sale shall receive ten dollars, to be paid by the county in which said condemnation suit is tried. [Acts 2nd C. S. 1923, p. 54.]

Art. 5113. **"Person" includes corporation.**—The word "person" as used in this Act shall be held to include both natural persons and corporations. Where the offense is committed by a corporation, the corporation shall be subject to the penalties prescribed in this title. [Acts 2nd C. S. 1919, p. 229.]

Art. 5114. **Disposition of intoxicating liquors.**—In all cases where intoxicating liquors or any personal property used for the purpose of violating any of the intoxicating liquor laws of this State, shall be seized by an officer with or without a search warrant, such officer shall immediately make a written report thereof, which report shall in detail state the name of the officer making the seizure, the place where seized and an inventory of the property, articles or intoxicating liquors so taken into pos-

session. The report shall be in triplicate and signed by the officer seizing, and one witness, if there be a witness present. One copy shall be given to the person from whom the goods are taken, one copy shall be sworn to by the officer who makes the seizure and immediately filed with the county clerk of the county in which the goods are seized, and one copy shall be retained by the officer who makes the seizure. Said officer, if not the sheriff, shall immediately deliver to the sheriff of the county, the goods seized, and take the sheriff's receipt therefor in duplicate. And such sheriff shall retain the intoxicating liquor or personal property so seized and hold the same until the same shall be disposed of by proper orders of the district court of the county in which said property was seized. The duplicate copy of said receipt shall be immediately filed with said county clerk.

"Whenever any intoxicating liquor is adjudged to be destroyed, the district judge may, instead of having the same actually destroyed, order the same to be delivered to the State Board of Control at Austin, Texas, for use for medicinal purposes in the State eleemosynary institutions. When notified that a district judge has so ordered any intoxicating liquor to be so delivered, the Board of Control shall pay the expenses of transporting and delivering the same to said Board of Control.

"All liquors and property so seized shall be preserved for use as evidence in the trial of any action growing out of such seizure and all officers seizing such liquors or property are hereby required to mark the date of the seizure and the name of the person from whom seized. The sheriff shall be liable on his bond for the safe-keeping of all such property so turned over to him under the provisions of this Act." [Acts 1925, p. 346.]

TITLE 81.

JAILS.

Art. 5115. [5108-5111] **Jails provided.**—The commissioners court shall provide safe and suitable jails for their respective counties, and shall cause the same to be kept in good repair. They shall see that the jails of their respective counties are kept in a clean and healthy condition, properly ventilated, and not over-crowded with prisoners, and that they are furnished with clean and comfortable mattresses and blankets sufficient for the comfort of the prisoners. When there is no jail in a county, the sheriff may rent a suitable house and employ guards, the expense to be paid by the proper county. [Act July 22, 1876, p. 52; G. L. Vol. 8, p. 888.]

Art. 5116. [5109] [3133] **Sheriff and jailer.**—Each sheriff is the keeper of the jail of his county. He shall safely keep therein all prisoners committed thereto by lawful authority, subject to the order of the proper court, and shall be responsible for the safe keeping of such prisoners. The sheriff may appoint a jailer to take charge of the jail, and supply the wants of those therein confined; but in all cases the sheriff shall exercise a supervision and control over the jail. [Act May 12, 1846, p. 268; G. L. Vol. 2, p. 1574; Act August 26, 1856, p. 88; G. L. Vol. 4, p. 506.]

Art. 5117. [5112-3] **Marshal may use jail.**—Sheriffs and jailers shall receive into their jails such prisoners as may be delivered or tendered to them by any United States Marshal or his deputy for any district of Texas, and shall safely keep such prisoners until they are demanded by such marshal or his deputy, or are discharged by due course of law. The marshal by whose authority such prisoners are received and kept shall be directly and personally liable to the sheriff or jailer for the jail fees and all other expenses of the keeping of such prisoners, such fees and expenses to be estimated according to the laws regulating the same in other cases. [Id.]

Art. 5118. **Prisoner sent to another jail.**—A county to which a prisoner is sent, for want of a safe jail in the proper county, may by suit recover from the county from which such prisoner was sent a sum not exceeding seventy-five cents per day on account of the expense attending the safekeeping of such prisoner.

TITLE 82.

JUVENILES.

| | Article | | Article |
|---|---------|--------------------------------------|---------|
| Instruction of inmates | 5119 | School for negro boys | 5131 |
| The superintendent | 5120 | Girls' Training School | 5132 |
| Powers and duties of the superintendent | 5121 | Superintendent and officers | 5133 |
| Employment of officers, etc. | 5122 | Rules and regulations | 5134 |
| Religious services | 5123 | Commitment | 5135 |
| Conveying male to school | 5124 | Conveying to school | 5136 |
| Who received | 5125 | Dismissal of inmates | 5137 |
| Promotion and discharge of inmates | 5126 | Detention homes and parental schools | 5138 |
| Escape and apprehension | 5127 | County Juvenile Board | 5139 |
| Limitation of term | 5128 | Powers of Board | 5140 |
| Care of inmates | 5129 | Sessions of Board | 5141 |
| Punishment of inmates | 5130 | Probation officers | 5142 |
| | | Incorrigible boy | 5143 |

Art. 5119. [5224] **Instruction of inmates.**—The Board of Control and the Superintendent of the State Juvenile Training School shall provide for and maintain suitable instruction and training of the inmates of said school. Said instruction shall include common school or agricultural branches, or all as may be deemed desirable by said Board and superintendent. The Board and superintendent shall arrange for each inmate to receive a reasonable amount of instruction in the school of letters and industrial branch each year. Each inmate shall be given definite instruction and training in some useful occupation and shall be given such moral training and discipline as he is capable of receiving. [Acts 1st C. S. 1913, p. 7.]

Art. 5120. [5225] **The superintendent.**—The superintendent shall be a man of high moral character, education and training, and shall have had experience in handling wayward boys. He shall take the official oath and shall give a sufficient bond in the sum of ten thousand dollars payable to the Governor or his successors in office, conditioned for the faithful performance of the duties of his office. Such bond shall be approved by the Secretary of State. [Id.]

Art. 5121. [5226] **Powers and duties of the superintendent.**—The superintendent shall: 1. Keep a register in which he shall enter the name of each inmate, date of reception, previous moral character, habits and education, so far as can be ascertained, his conduct and deportment, educational and vocational advancement while in said school, the discharge, death, escape, commutation of time, parolment and punishment of each person admitted to said school.

2. See that the buildings and premises are kept in good and sanitary order.

3. Cause to be kept the books of the institution fully exhibiting all moneys received and disbursed, the source from which received and purposes for which same is expended. All supplies for the school shall be purchased in the same manner as for other similar institutions. Said books shall give a full record of all products produced on the farm, whether sold or consumed, and shall at all times be open for the inspection of the Board or the Governor.

Art. 5122. [5227] **Employment of officers, etc.**—The superintendent shall employ subordinate officers, teachers and employees necessary to the conduct, administration and maintenance of said institution up to the standards of efficiency and utility essential to accomplish the best results. Any employee who uses tobacco or intoxicating liquor in any form while on duty shall be discharged by the superintendent. The superintendent with the consent of the Board may discharge any employee for cause.

The salaries and compensation of all subordinate officers, teachers and employees shall be fixed by the Board in the form of an itemized account to be sworn to by the superintendent. Such salaries shall not exceed the amounts appropriated for same and shall be paid monthly on the Comptroller's warrants based upon such account. Said account shall contain the name and address of each person and the amount due and for what service. No account for salary shall be presented by said superintendent until the same has been fixed by said Board. [Id.]

Art. 5123. [5228] **Religious services.**—The Board shall provide for religious services at said institution for the benefit of the inmates thereof, and shall employ a chaplain who shall be an ordained minister of the gospel. The superintendent shall require all inmates in said institution who are physically able to attend at least one religious service on each Sunday. Such chaplain shall, under the direction of the superintendent, devote his time to the religious and moral training and education of said inmates, and to visiting sick inmates whenever necessary, and shall receive an annual salary not to exceed seven hundred and twenty dollars. Such chaplain may also be a teacher, such as is provided in the preceding article. [Acts 1911, p. 211.]

Art. 5124. **Conveying male to school.**—The officer conveying any male to any State training school shall be paid by the county in which such child was convicted the actual traveling expenses of such officer and child, and five dollars additional. [Acts 1909, p. 100.]

Art. 5125. [5229] **Who received.**—All male white persons under the age of seventeen years who shall be lawfully committed to the State Juvenile Training School as a delinquent child shall be received as inmates of said training school. [Acts 1909, p. 103, 1st C. S. 1913, p. 10.]

Art. 5126. [5230] **Promotion and discharge of inmates.**—The Board shall establish and maintain in said school a system of grading and promotion on a basis of the moral, intellectual and industrial advancement of the inmates. When the superintendent is satisfied that any inmate has acquired sufficient self-control, moral habits and industrial efficiency, and suitable employment under a responsible, sober and moral person can be found for said inmate, he shall, with the approval of said Board, grant said inmate "leave of probation." To secure homes and employment for inmates and of visiting and supervising them while on probation, a furlough officer shall be employed who shall, when not engaged with his duties as such officer, assist in teach-

ing and in the general work of the school under the direction of the superintendent. When employment has been secured for any inmate he shall be sent out on a furlough with the condition that the person furloughed and his employer shall send a written report at the end of each month thereafter for a period of twelve months to the furlough officer stating the habits and demeanor of said furloughed person. If each report be favorable the superintendent shall recommend to the Governor that a full release be granted such juvenile and that his term of commitment be terminated. If any monthly report shall be deemed unfavorable, or be not sent as herein provided, and the superintendent should become convinced before the expiration of the said twelve months that said furloughed person should be returned to the school for further training or discipline, the said inmate shall in that event forfeit his leave of probation, and shall be returned to school. If his employer shall fail or refuse to return said furloughed person to said school it shall be the duty of the furlough officer or any peace officer, upon notice from the superintendent, to take such furloughed person into custody, under the same conditions as if he were an escaped inmate, and return him to said school in the manner prescribed in the succeeding article. The Governor shall at any time have power to grant a pardon to any inmate of said school. [Id.]

Art. 5127. [5234] **Escape and apprehension.**—If any inmate of said school shall escape therefrom, or if on leave of probation or furlough and is ordered returned and the employer of said furloughed person fails or refuses to return him it shall be the duty of the superintendent of said institution or any officer or employe of same, or any peace officer to apprehend him. Any person may lawfully apprehend such escaped inmate and forthwith deliver him to any peace officer. Any such escaped inmate shall be returned to said school by any furlough, probation or peace officer. The cost of his return shall be paid by the county from which said inmate was committed. [Id.]

Art. 5128. [5231] **Limitation of term.**—Commitments to such school shall be upon the indeterminate sentence plan. No juvenile shall remain or be detained therein or upon parole under the control of the officers of said school after he becomes twenty-one years old. [Id.]

Art. 5129. [5232] [5233] **Care of inmates.**—The superintendent shall divide the inmates into such classes and shall house, feed and train them in such manner as he deems best for the development and advancement of the child. All inmates shall be provided with shelter, wholesome food and suitable clothing, books, means of healthful recreation and other material necessary for their training, at the expense of the State, except as otherwise provided by law. [Id.]

Art. 5130. **Punishment of inmates.**—Corporal punishment in any form shall not be inflicted upon the inmates of said institution except as a last resort to maintain discipline, and then only

in the presence of the superintendent and a resident nurse. At no time shall any inmate be struck more than twenty times, and that only with such instrument and in such manner as will inflict reasonable and moderate punishment, considering the age, size and strength of the culprit and the strength of the person administering such punishment. At no time shall any weapon or instrument of torture be used or any instrument which by its make, coupled with the manner of its use, would be calculated to inflict bodily injury. [Acts 1913, 1st C. S. p. 11.]

Art. 5131. **School for negro boys.**—There shall be maintained at the Ferguson State Farm in Madison County a school for the education and training of delinquent negro boys, to be named and known as The State Training School for Negro Boys, the government of which shall be vested in the Board of Prison Commissioners. Said board shall manage and control said institution in accordance with the laws, rules and regulations now and hereafter governing the State Juvenile Training School, located at Gatesville, as far as the same are applicable and practical. Said Board shall have the same powers in the management of said institution as are by law conferred upon the State Board of Control and the Superintendent of said Juvenile Training School. The same law, rules and regulations providing for the religious services, care and punishment, pardon, limitation of time, promotion and discharge, and escape and apprehension of inmates as provided in this title for the Juvenile Training School, shall apply to and govern as to the inmates of said school for negro boys, as far as applicable. All negro boys under the age of seventeen years who shall be lawfully committed to The State Training School for Negro Boys as a delinquent child shall be received as inmates of said school for negro boys. [Acts 3rd C. S. 1917, p. 57.]

Art. 5132. **Girls' Training School.**—The Girls' Training School for dependent and delinquent girls shall be under the control and management of the State Board of Control which shall provide wholesome and proper quarters and exercise and diversion, and shall make provision for training in all of the useful arts and sciences to which women are adapted, to prepare them for future womanhood and independence, and shall provide instruction in nursing, sanitation and hygiene. [Acts 1913, p. 289.]

Art. 5133. **Superintendent and officers.**—The Board shall employ as superintendent of such school a woman of previous experience and training in a similar institution, who shall have power to appoint and discharge all subordinate officials and teachers for the school. The Board shall fix the salary of the superintendent and all employees. The Board shall have power to remove the superintendent for cause, and the decision of said Board in such matter shall be final. [Id.]

Art. 5134. **Rules and regulations.**—The superintendent with the approval of the Board shall make all necessary rules and regulations for the government of the training school, and shall pro-

vide that the time of the pupils is properly distributed between the school of letters and the industrial and domestic pursuits, according to the needs of the pupil and the facilities at hand. Provision shall be made for giving diplomas or certificates of proficiency for graduates from the nurses training school or any industrial school that may be established by such Board. [Id.]

Art. 5135. **Commitment.**—Whenever any girl between the ages of seven and eighteen years shall be tried or brought before any juvenile court upon indictment or information or before the district court on petition of any person in this State or the Humane Society or any institution of a similar purpose or character, charged with being a dependent or delinquent child as these terms are defined in the statutes of this State, the court may, if in the opinion of the judge, the Girls' Training School is the proper place for her, commit such girl to said Girls' Training School during her minority. No girl shall be committed to the Girls' Training School who is feeble-minded, epileptic or insane. Any girl committed to said Girls' Training School who is afflicted with a venereal, tubercular or other communicable disease shall be assigned to a distinct and separate building of the institution and shall not be allowed to associate with the other wards until cured of said disease or diseases. No girl shall be admitted to the institution until she has been examined by the School physician, and such physician has issued a certificate showing her exact state or condition in reference to said qualifications hereinabove enumerated. [Id.]

Art. 5136. **Conveying to school.**—The court committing any girl to the Girls' Training School, in addition to the commitment, shall annex a carefully prepared transcript of the trial to aid the officials of the institution in better understanding and classifying the girl. The court shall also designate some reputable woman to convey the girl to the institution. The cost of conveying any girl committed to this institution shall be paid by the county from which she is committed, provided that no compensation shall be allowed beyond the actual and necessary expenses of the party conveying and the girl conveyed. [Id.]

Art. 5137. **Dismissal of inmates.**—No girl shall be discharged or paroled until some suitable home has been found for her and only then upon the written recommendation of the superintendent to the Board, or unless she has become married with the consent of the Board and superintendent. The Governor shall have power to issue a pardon or commute the sentence of any inmate. Any girl who is thus paroled from the school shall be under the supervision and guidance of the superintendent who shall require that she write bi-weekly letters to the superintendent or matron of the school for the first six months and monthly letters thereafter. The person under whose care or employ the girl is placed shall write monthly letters to the superintendent or matron of the school for the first six months and semi-annually thereafter.

The Board, superintendent or any employee of said school may

visit the place where the girl is and it shall be the duty of the person having the girl in custody to answer inquiries of said visiting committee concerning the conduct, employment or treatment of said girl. If, in the judgment of the Board, it should be to the best interests of the girl that she be returned to the school, the Board is empowered to have her returned. [Id.]

Art. 5138. Detention homes and parental schools.—All counties in this State may establish detention homes and parental schools for dependent and delinquent juveniles. It shall be lawful for the commissioners court to appropriate from the general fund of the county such sums as may be necessary to establish, equip and maintain such detention homes and parental schools as may be necessary to care for the dependent and delinquent children of the county. In like manner any county in which no such detention home or parental school exists may appropriate such funds as may be necessary to pay for the board and for the proper care and training of its dependent and delinquent juveniles in the detention home or parental school of any county that may agree to receive them and at such rates of board and tuition as shall be agreed upon by the commissioners courts of the counties concerned. When in the opinion of the commissioners court, it is desirable to levy a special tax for establishing and maintaining such detention home or parental school, or for paying the board and tuition of dependent and delinquent children as herein provided the said court may bring the question of levying such special tax to a vote of the qualified voters of the county at a special election held for that purpose, and the said court must submit the said question to the voters when requested to do so by a petition signed by ten per cent of the qualified voters of the county. All elections held under the provisions of this article shall be governed in all respects not herein specified to the contrary by the laws of this State governing elections for the levy of special school taxes. [Acts 1913, p. 218.]

Art. 5139. County Juvenile Board.—In any county having a population of one hundred thousand or over, according to the preceding Federal census, the judges of the several district and criminal district courts of such county, together with the county judge of such county, are hereby constituted a Juvenile Board for such county. The annual salary of each of the judges of the civil and criminal district courts of such county as members of said board shall be \$1,500 in addition to that paid the other district judges of the State, said additional salary to be paid monthly out of the general funds of such county, upon the order of the commissioners court. [Acts 1917, p. 27, Acts 1921, p. 273.]

Art. 5140. Powers of Board.—Such Board shall neither have nor exercise judicial power or function. In the event such Board desires to make inquiry as to whether any child should be adjudged either dependent, neglected or delinquent, it shall have power to direct one of the probation officers of said Board to file complaint against such child in some court of such county having

jurisdiction to hear and determine such complaint. Such board or the members thereof may be present at such hearing, either in person or by one or more of its probation officers, and make such inquiry concerning such child as may be proper under the established rules of procedure in such court. [Id.]

Art. 5141. **Sessions of Board.**—Such Board shall hold meetings in accordance with the rules which it may prescribe, and at intervals of not less than once in three months, and shall keep such records as it desires, and shall hear and consider such facts as may be brought to its attention, under such rules as it may prescribe, concerning the welfare of any child in such county or under the jurisdiction of any of its courts. If such child has been adjudged to be dependent, neglected or delinquent by any court of such county, it may make to the court or person having custody of such child, such recommendation in writing as it may think proper as to the care and custody of such child. [Id.]

Art. 5142. **Probation officers.**—Said Board may appoint not exceeding six discreet persons of good moral character to serve as probation officers during the pleasure of said Board. Such officers shall be paid such salary per month as said Board may recommend and the commissioners court of such county may authorize, not to exceed one hundred dollars per month. Such probation officer shall have authority, and it shall be his duty, to make investigation of all cases referred to him as such by such Board; to be present in court and to represent the interests of the child when the case is heard, and to furnish to the court and such Board such information and assistance as such Board may require, and to take charge of any child before and after the trial, and to perform such other services for the child as may be required by the court or said Board. The county court of each county shall have authority to appoint any number of persons of good moral character to serve as probation officers during the pleasure of said court, said probation officers to receive no compensation from the county treasury except as herein provided. The clerk of the court shall if practicable notify said probation officers when any child is to be brought before the court; it shall be the duty of such probation officer to make investigation of such case; to be present in court to represent the interest of the child when the case is heard; to furnish to such court such information and assistance as the court may require, and to take charge of any child before and after the trial, as the court may direct.

In counties having a population of less than seventy-five thousand, one probation officer may be appointed by the commissioners court when in their opinion such officer is needed, who shall receive a compensation of not to exceed one hundred dollars per month. In counties having a population of not less than thirty-five thousand and not more than seventy-five thousand and containing a city of more than twenty-nine thousand population, one probation officer may be appointed by the commission-

ers court when in their opinion the services of such officer is needed, who shall receive a compensation of not to exceed two hundred dollars per month. Expenses may be allowed such probation officers by the county in a sum not to exceed two hundred dollars a year. The county judge shall select such probation officers from a list of three furnished by a nominating committee composed of three members as follows: The County Superintendent of Public Instruction and the Superintendents or Principals of the two largest independent school districts in such county.

In counties having a population of more than seventy-five thousand, the county judge shall appoint not fewer than two probation officers from lists furnished him by the nominating committee as provided above. The chief probation officer shall receive a salary of not to exceed two hundred dollars per month, and necessary expenses not to exceed two hundred dollars a year. Other probation officers shall receive salaries not to exceed one hundred and twenty-five dollars per month, and all necessary expenses not to exceed two hundred dollars a year.

In the appointment of all probation officers the county judge may upon the nomination of the committee of three select for such office any school attendance officer or officers of the county or of school districts in the county that may be provided for in any compulsory school attendance law as is or may be in force, and the salary and expenses of such joint probation officer or officers and attendance officer or officers shall be paid jointly by the county and school authorities upon any basis of division they may agree upon.

Probation officers receiving a salary or other compensation from the county, are hereby vested with all the power and authority of police or sheriffs to make arrests and perform any other duties ordinarily required of policemen and sheriffs which may be incident to their office. Other probation officers may be vested with like power and authority upon a written certificate from the county judge that they are persons of discretion and good character and that it is the desire of the court to vest them with all the power and authority conferred by law upon probation officers receiving compensation from the county.

Salaries or compensation of paid probation officers shall be fixed by the county commissioners not to exceed the sums herein mentioned, and any bills for expenses not exceeding the sums herein provided for shall be certified by the county judge as being necessary in the performance of the duties of the probation officers. The commissioners court of the county shall provide the necessary funds for the payment of salaries and expenses of the probation officers provided for in this Act. The appointment of said probation officers shall be filed in the office of the clerk of the county court. Probation officers shall take oath to perform their duties, and file it in the office of the county clerk.

Nothing herein shall be held to limit the power of the county

judge to appoint any number of probation officers. Upon a vote of the commissioners court the county judge may appoint as many additional salaried probation officers as the court may direct. As a basis for reckoning the population of any county the preceding federal census shall be used. [Acts 2nd C. S. 1919, p. 130.]

Art. 5143. **Incorrigible boy.**—Any parent or guardian of any incorrigible boy under the age of seventeen years, may present a petition to the judge of the juvenile court of the county of his residence, setting forth under oath the age and habits of any such boy and praying that said boy be committed as a delinquent child. The court shall set the case down for hearing and shall take testimony, and if, in his judgment, the child should be committed, said judge may enter an order committing said child to said institution. The parent or guardian shall pay all necessary expenses of carrying said child to said institution and in addition shall pay at least one quarter in advance, the amount necessary for the maintenance of said child at said institution, as estimated by the superintendent of said institution. Said parent or guardian shall also deposit with the superintendent of said institution an amount sufficient to pay the fare of said child from said institution to its home; and, if said parent or guardian shall fail or refuse to make any subsequent quarterly payment for maintenance, in advance, said commitment shall terminate; and the superintendent of said school shall discharge such boy and return him to his home.

The expense of conveying all boys committed to said school shall be paid by the county from which said commitment is made; and the sheriff, probation, or any peace officer, as the court may direct, shall convey all boys committed to said institution to such Training School as the court and said parents or guardians may agree upon. The court may send the boy to school without escort. [Acts 1913, p. 219.]

TITLE 83.

LABOR.

| Chapter | Page | Chapter | Page |
|---|------|---|------|
| 1 Bureau | 1444 | 8 Child labor | 1454 |
| 2 Labor organizations | 1446 | 9 Protection of workmen on buildings | 1455 |
| 3 Payment of wages | 1447 | 10 Industrial Commission | 1456 |
| 4 Bond to secure wages | 1447 | 11 Stevedores | 1457 |
| 5 Hours of labor | 1449 | 12 Restrictions on labor | 1458 |
| 6 Female employees | 1450 | 13 Employment agents | 1460 |
| 7 Protection of female em- ployees | 1451 | | |

CHAPTER ONE.

BUREAU.

| | Article | | Article |
|-----------------------------------|---------|-------------------------------|---------|
| Appointment of Commissioner | 5144 | May enter factories, etc..... | 5148 |
| Duties of Commissioner | 5145 | To report violations | 5149 |
| Report | 5146 | To take testimony | 5150 |
| Preservation of records | 5147 | Expenses | 5151 |

Art. 5144. [5236] **Appointment of Commissioner.**—A Commissioner of Labor Statistics, whose office shall be in the Capitol building, shall be biennially appointed by the Governor for a term of two years. The Commissioner may be removed for cause by the Governor, record thereof being made in his office. The Commissioner shall give a good bond in the sum of two thousand dollars, to be approved by the Governor, conditioned for the faithful discharge of the duties of his office. [Acts 1909, p. 59.]

Art. 5145. [5235-6-7] **Duties of Commissioner.**—The Bureau of Labor Statistics shall be under the charge and control of the Commissioner of Labor Statistics. The Commissioner shall collect, systematize and present in biennial reports to the Governor, statistical details relating to all departments of labor in Texas, especially as bearing upon the commercial, social, educational, and sanitary conditions of the employees and their families, the means of escape from dangers incident to their employment, the protection of life and health in the factories and other places of employment, the labor of women and children, and the number of hours of labor exacted of them, and, in general, all matters and things which affect or tend to affect the prosperity of the mechanical, manufacturing and productive industries of this State, and of the persons employed therein.

Said Commissioner shall, also, as fully as may be done, collect reliable reports and information from each county, showing the amount and condition of the mechanical, mining and manufacturing interest therein, and all sites offering natural or acquired advantages for the location and operation of any of the different branches of industry. He shall, by correspondence with interested parties in other parts of the United States, or in foreign countries, impart to them such information as may tend to induce the location of manufacturing and producing plants within the State, together with such information as may tend

to increase the employment of labor and the products of such employment in Texas. Except as hereinafter provided he shall safely keep and deliver to his successor all records, papers, documents, correspondence and property pertaining to or coming into his hands by virtue of his office. [Id.]

Art. 5146. [5238] **Report.**—In each biennial report, the Commissioner shall give a full statement of the business of the bureau since the last preceding report, and such information as may be of value to the industrial interests and their employees, showing, among other things, the number of laborers and mechanics employed, the number of apprentices in each trade, with the nativity of such laborers, mechanics and apprentices, the wages earned, the savings from the same, the age and sex of the persons employed, the number and character of accidents, the sanitary conditions of places where persons are employed, the restrictions put upon apprentices when indentured, the proportion of married employees living in rented houses, with the average rental paid, the value of property owned by such employees, and a statement as to the progress made in schools in operation for the instruction of students in mechanic arts, and what systems have been found most practical. Such reports shall not contain more than six hundred printed pages, and the same shall be printed and distributed in such manner as may be provided by law. [Id.]

Art. 5147. [5240] **Preservation of records.**—No report or return made to the bureau under the provisions of this chapter or the Penal Code, and no schedule, record or document gathered or returned by its officers or employees shall be destroyed within two years of the collection or receipt thereof. At the expiration of two years all such reports, returns, schedules, records and documents as shall be considered by the Commissioner to be of no further value, shall be destroyed, if the permission of the Governor therefor be first obtained. [Id.]

Art. 5148. [5241] **May enter factories, etc.**—Upon the written complaint of two or more persons, or upon his failure otherwise to obtain information in accordance with the provisions of this law, the Commissioner shall have the power to enter any factory, mill, workshop, mine, store, business house, public or private work, or other establishment or place where five or more persons are employed at work when the same is open and in operation, for the purpose of gathering facts and statistics such as are contemplated by this chapter, and for the purpose of examining into the methods of protecting employees from danger and the sanitary conditions in and around such building or place, of all of which the said Commissioner shall make and return to the Bureau of Labor Statistics a true and detailed record in writing.

Art. 5149. [5242] **To report violations.**—If the Commissioner shall learn of any violation of the law with respect to the employment of children, or fire escapes, or the safety of employees, or the preservation of health, or in any other way af-

fecting the employes, he shall at once give written notice of the facts to the proper county or district attorney. [Id.]

Art. 5150. [5239] **To take testimony.**—The Commissioner shall have power to issue subpoenas and take testimony in all matters relating to the duties herein required of said Bureau. Such testimony must be taken in the vicinity of the residence or office of the person testifying. [Id.]

Art. 5151. [5243] **Expenses.**—The Commissioner shall be allowed necessary postage, stationery, printing, and other expenses to transact the business of the Bureau, and he and any employe of the Bureau shall be allowed his actual necessary traveling expenses while in the performance of duties required by this chapter, and within the limits of the appropriations made therefor. [Id. Acts 1919, p. 164.]

CHAPTER TWO.

LABOR ORGANIZATIONS.

Art. 5152. [5244] **Right to organize.**—It shall be lawful for any and all persons engaged in any kind of work or labor, manual or mental, or both, to associate themselves together and form trades unions and other organizations for the purpose of protecting themselves in their personal work, personal labor, and personal service in their respective pursuits and employments. [Acts 1899, p. 262.]

Art. 5153. [5245] **Other rights and privileges.**—It shall be lawful for any member or members of such trades union or other organization or association, or any other person, to induce or attempt to induce by peaceable and lawful means, any person to accept any particular employment or to enter or refuse to enter any pursuit or quit or relinquish any particular employment or pursuit in which such person may then be engaged. Such member or members shall not have the right to invade or trespass upon the premises of another without the consent of the owner thereof. [Id.]

Art. 5154. [5246] **Organizations excepted.**—The two preceding articles shall not be held to apply to any combination or combinations, association or associations of capital, or capital and persons, natural or artificial, formed for the purpose of limiting the production or consumption of labor's products, or for any other purpose in restraint of trade. Nothing herein shall be held to interfere with the terms and conditions of private contract with regard to the time of service, or other stipulations between employers and employes, or be construed to repeal, affect or diminish the force and effect of any statute on the subject of trusts, conspiracies against trade, pools and monopolies. [Id.]

CHAPTER THREE

PAYMENT OF WAGES.

Art. 5155. Pay days.—Each manufacturing, mercantile, mining, quarrying, railroad, street railway, canal, oil, steamboat, telegraph, telephone and express company, employing more than ten persons, and each and every water company not operated by a municipal corporation, and each and every wharf company, and every other corporation engaged in any business within this State, which employs more than ten persons, or any person, firm or corporation engaged in or upon any public work for the State or for any county or any municipal corporation thereof, either as a contractor or a sub-contractor, therewith, shall pay each of its employees the wages earned by him or her as often as semi-monthly, and pay to a day not more than sixteen days prior to the day of payment. [Acts 1915, p. 43.]

Art. 5156. If not paid on pay day.—An employee who is absent at the time fixed for payment, or who for any other reason is not paid at that time, shall be paid thereafter on six days' demand. Any employee leaving his or her employment, or discharged therefrom, shall be paid in full on six days' demand. [Id.]

Art. 5157. Penalty for failure to pay.—Every person, partnership or corporation, wilfully failing or refusing to pay the wages of any employee at the time and in the manner provided in this statute shall forfeit to the State of Texas the sum of fifty dollars for each and every such failure or refusal. Suits for penalties accruing under this law shall be brought in any court having jurisdiction of the amount in the county in which the employe should have been paid, or where employed. Such suits shall be instituted at the direction of the Commissioner of Labor Statistics by the Attorney General or under his direction, or by the County or District Attorney for the county or district in which suit is brought. [Id.]

Art. 5158. Attorneys fees.—The attorney bringing any such suit shall be entitled to receive and shall receive as compensation for his service therein ten dollars of the penalty or penalties recovered in such suit, and the fees and compensation so allowed shall be over and above the fees allowed to the county or district attorneys under the General Fee Act. [Id.]

Art. 5159. Duty of Commissioner.—The Commissioner of Labor Statistics shall inquire diligently for violations of this chapter and institute prosecutions and see that the same are carried to final termination and generally to see to the enforcement of the provision hereof. [Id.]

CHAPTER FOUR.

BOND TO SECURE WAGES.

Art. 5160. Bond for wages.—Any person, firm or corporation entering into a formal contract with this State or its counties

or school districts or other subdivisions thereof or any municipality therein for the construction of any public building, or the prosecution and completion of any public work, shall be required, before commencing such work, to execute the usual penal bond, with the additional obligation that such contractor shall promptly make payments to all persons supplying him or them with labor and materials in the prosecution of the work provided for in such contract. Any person, company, or corporation who has furnished labor or materials used in the construction or repair of any public building or public work, and payment for which has not been made, shall have the right to intervene and be made a party to any action instituted by the State or any municipality on the bond of the contractor, and to have their rights and claims adjudicated in such action and judgment rendered thereon, subject, however, to the priority of the claims and judgment of the State or municipality. If the full amount of the liability of the surety on said bond is insufficient to pay the full amount of said claims and demands, then, after paying the full amount due the State or municipality, the remainder shall be distributed pro rata among said intervenors. [Acts 1913, p. 185.]

Art. 5161. Creditor may sue.—If no suit should be brought by the State or municipality within six months from the completion and final settlement of said contract, then the person or persons supplying the contractor with labor and materials shall, upon application therefor, and furnishing affidavit to the State or municipality that labor or materials for the prosecution of such work has been supplied by him or them, and the payment for which has not been made, be furnished with a certified copy of said contract and bond, upon which he or they shall have a right of action for his or their use and benefit, against said contractor and his surety, and to prosecute the same to final judgment and execution. [Id.]

Art. 5162. Time to sue.—When suit is instituted by any creditor on the bond of the contractor, it shall not be commenced until after the complete performance of said contract and final settlement thereof, and shall be commenced within one year after the performance and final settlement of said contract, and not later; provided that if the contractor quits or abandons the contract before its consummation, suit may be instituted by any of such creditors on the bond of the contractor, and shall be commenced within one year after abandonment of said contract and not later. Where suit is so instituted by a creditor or by creditors, only one action shall be brought, and any creditor may file his claim in such action and be made party thereto within one year from the completion of the work under said contractor and not later. [Id.]

Art. 5163. Prorating claims.—If the recovery on the bond should be inadequate to pay the amounts found due to all of said creditors, judgment shall be given to each creditor pro rata

of the amount of the recovery, subject to the provisions in the first article of this chapter giving to the State or municipality the right of priority in the proceeds of such judgment. The sureties on said bond may pay into court, for distribution among said claimants and creditors, the full amount of the sureties' liability, to-wit: the penalty named in the bond, less any amount which said surety may have had to pay to the State or municipality by reason of the execution of said bond, and upon so doing the surety will be relieved from further liability. [Id.]

Art. 5164. Notice of suit.—In all suits instituted under the provisions of this law notice of the pendency of such suits shall be made by publication in some newspaper of general circulation, published in the county or town where the contract is being performed, for at least three successive weeks, the last publication to be at least one week before the trial of such case. [Id.]

CHAPTER FIVE.

HOURS OF LABOR

Art. 5165. Eight hours a day's work.—Eight hours shall constitute a day's work for all laborers, workmen or mechanics who may be employed by or on behalf of the State of Texas, or by or on behalf of any county, municipality, or political subdivision of the State, county or municipality in any one calendar day, where such employment, contract or work is for the purpose of constructing, repairing or improving buildings, bridges, roads, highways, streams, levees, or other work of a similar character, requiring the service of laborers, workmen or mechanics. [Acts 1913, p. 127.]

Art. 5166. Violating eight-hour law.—All contracts made by or on behalf of the State of Texas, or by or on behalf of any county, municipality or other legal or political subdivision of the State, with any corporation, persons or associations of persons for performance of any work, shall be deemed and considered as made upon the basis of eight hours constituting a day's work. The time consumed by the laborer in going to and returning from the place of work shall not be considered as part of the hours of work. It shall be unlawful for any corporation, person, or association of persons having a contract with the State or any political subdivision thereof, to require any such laborers, workmen, mechanics or other persons to work more than eight hours per calendar day in doing such work, except in case of emergency, which may arise in times of war, or in cases where it may become necessary to work more than eight hours per calendar day for the protection of property, human life or the necessity of housing inmates of public institutions in case of fire or destruction by the elements. In such emergencies the laborers, workmen, mechanics or other persons so employed and working to exceed eight hours per calendar day shall be paid on the basis of eight hours constituting a day's work. Not less than the cur-

rent rate of per hour wages for like work in the locality where the work is being performed shall be paid to the laborers, workmen, mechanics or other persons so employed by or on behalf of the State, or for any county, municipality or other legal or political subdivision of the State, county, or municipality, and every contract hereafter made for the performance of work for the State, or for any county, municipality, or other legal or political subdivision of the State, county, or municipality, must comply with the requirements of this chapter. Nothing in the foregoing article shall prevent any person, or any officer, agent, or employee of a person or corporation, or association of persons from making mutually satisfactory contracts as to the hours of labor, at the rates of pay as herein provided. [Acts 1913, p. 127, Acts 1921, p. 229.]

Art. 5167. Hours of patrolmen.—In all incorporated cities and towns however incorporated, having a population of fifty thousand inhabitants or more, according to the preceding Federal census, the patrolmen thereof, or those performing duties ordinarily performed by patrolmen, shall be required to serve on actual duty as patrolmen not longer than eight hours in every twenty-four hours of the day; provided that in case of riot or other emergency, such patrolmen shall perform such duty and for such time as the directing authority of the departments shall require. [Acts 1917, p. 403.]

CHAPTER SIX.

FEMALE EMPLOYEES.

Art. 5168. Hours of work for female employee.—No female shall be employed in any factory, mine, mill, workshop, mechanical or mercantile establishment, hotel, restaurant, rooming house, theater, moving picture show, barber shop, telegraph, telephone or other office, express or transportation company, or any State institution, or any other establishment, institution or enterprise where females are employed, for more than nine hours in any one calendar day, nor more than fifty-four hours in any one calendar week. [Acts 1915, p. 105.]

Art. 5169. Hours of female laundry worker.—No female shall be employed in any laundry for more than fifty-four hours in one calendar week; the hours of such employment to be so arranged as to permit the employment of such female at any time so that she shall not work more than a maximum of eleven hours during the twenty-four hours' period of one day. If such female is employed for more than nine hours in any one day she shall receive pay at the rate of double her regular pay for such time as she is employed for more than nine hours per day. [Id.]

Art. 5170. Hours of cotton goods worker.—No female shall be employed in any factory engaged in the manufacture of cotton, woolen or worsted goods or articles of merchandise manufactured out of cotton goods for more than ten hours in any one

calendar day, nor more than sixty hours in any one calendar week. If such female is employed for more than nine hours in any one day she shall receive pay at the rate of double her regular pay for such time as she may be employed for more than nine hours per day. [Id.]

Art. 5171. Seats for female employees.—Every employer owning or operating any factory, mine, mill, workshop, mechanical or mercantile establishment, laundry, hotel, restaurant or rooming house, theater or moving picture show, barber shop, telegraph or telephone or other office, express or transportation company; the superintendent of any State institution or any other establishment, institution or enterprise where females are employed as provided in the three preceding articles, shall provide and furnish suitable seats, to be used by such employees when not engaged in the active duties of their employment and shall give notice to all such employees by posting in a conspicuous place on the premises of such employment, in letters not less than one inch in height, that all such employees will be permitted to use such seats when not so engaged. [Id.]

Art. 5172. Exceptions.—The four preceding articles shall not apply to stenographers and pharmacists, nor to mercantile establishments, or telegraph or telephone companies in rural districts and in cities or towns or villages of less than 3000 inhabitants as shown by the last preceding Federal census. In cases of extraordinary emergencies, such as great public calamities, or where it becomes necessary for the protection of human life or property, longer hours may be worked, but for such time not less than double time shall be paid such female with her consent. [Id.]

CHAPTER SEVEN.

PROTECTION OF FEMALE EMPLOYEES.

| | | | |
|-------------------------------|--------------|----------------------------------|--------------|
| Temperature and humidity..... | Article 5173 | Toilets | Article 5177 |
| Odors and dust..... | 5174 | Immoral influences | 5178 |
| Cleaning and wet floors..... | 5175 | Order to correct conditions..... | 5179 |
| Exits and hand rails..... | 5176 | Suit to set order aside..... | 5180 |

Art. 5173. Temperature and humidity.—In every factory, mill, workshop, mercantile establishment, laundry, or other establishment, adequate measures shall be taken for securing and maintaining a reasonable, and as far as possible, an equable temperature consistent with a reasonable requirement of the manufacturing process. No unnecessary humidity which would jeopardize the health of employees shall be permitted. In every room, apartment, or building used as a factory, mill, workshop, mercantile establishment, laundry or other place of employment, sufficient air space shall be provided for every employe, and which in the judgment of the Commissioner of Labor Statistics, or of his deputies and inspectors is sufficient for their health and welfare. [Acts 4th C. S. 1918, p. 132.]

Art. 5174. Odors and dust.—All factories, mills, workshops, mercantile establishments, laundries and other establishments

shall be kept free from gas or effluvia arising from any sewer, drain, privy or other nuisance on the premises; all poisonous or noxious gases arising from any process, and all dust which is injurious to the health of persons employed, which is created in the process of manufacturing within the above named establishment, shall be removed as far as practicable by ventilators or exhaust fans or other adequate devices. [Id.]

Art. 5175. Cleaning and wet floors.—All decomposed, fetid or putrescent matter, and all refuse, waste and sweepings of any factory, mill, workshop, mercantile establishment, laundry or other establishment, shall be removed at least once each day and be disposed of in such manner as not to cause a nuisance. All cleaning, sweeping and dusting shall be done as far as possible outside of working hours, but if done during working hours, shall be done in such manner as to avoid so far as possible the raising of dust and noxious odors. In all establishments where any process is carried on which makes the floors wet, the floors shall be constructed and maintained with due regard for the health of the employes, and gratings or dry standing room shall be provided wherever practicable, at points wherever employes are regularly stationed, and adequate means shall be provided for drainage and for preventing leakage or seepage to lower floors. [Id.]

Art. 5176. Exits and hand rails.—All doors used by employes as entrances to, or exits from factories, mills, workshops, mercantile establishments, laundries or other establishments of a height of two stories or over, shall open outward, and shall be so constructed as to be easily and immediately opened from within in case of fire or other emergencies. Proper and substantial hand rails shall be provided on all stairways, and lights shall be kept burning at all main stairs, stair landings and elevator shafts in the absence of sufficient natural light. The provisions of this article shall not apply to any mercantile establishment having seven female employes or less. [Id.]

Art. 5177. Toilets.—Every factory, mill, workshop, mercantile establishment, laundry or other establishment, shall be provided with a sufficient number of water closets, earth closets or privies, and such water closets, earth closets or privies shall be supplied in the proportion of one to every twenty-five male persons, and one to every twenty female persons, and whenever both male and female persons are employed, said water closets, earth closets or privies shall be provided separate and apart for the use of each sex, and such water closets, earth closets, or privies shall be constructed in an approved manner and properly enclosed, and at all times kept in a clean and sanitary condition, and effectively disinfected and ventilated, and shall at all times during operation of such establishment be kept properly lighted.

In case there be more than one shift of not more than eight hours each of employes, the average number of persons in the

establishment at any one time should be used in determining the number of toilets required. [Id.]

Art. 5178. Immoral influences.—It shall be unlawful for the owner, manager, superintendent or other person in control or management of any factory, mill, workshop, mercantile establishment, laundry or other establishment where five or more persons are employed, all or part of whom are females, to permit in such place of employment any influence, practices or conditions calculated to injuriously affect the morals of such female employees. [Id.]

Art. 5179. Order to correct conditions.—The Commissioner of Labor Statistics, or any of his deputies or inspectors, shall have the right to enter any factory, mill, workshop, mercantile establishment, laundry, or other establishment where five or more persons are employed, for the purpose of making inspections and enforcing the provisions of this chapter; and they are hereby empowered, upon finding any violation of this law by reason of unsanitary conditions such as endanger the health of the employees therein employed, or of neglect to remove and prevent fumes and gases or odors injurious to employees, or by reason of the failure or refusal to comply with any requirement of this law, or by reason of the inadequacy or insufficiency of any plan, method, practice or device employed in assumed compliance with any of the requirements of this law, to pass upon and to make a written finding as to the failure or refusal to comply with any requirement of this law, or as to the adequacy or sufficiency of any practice, plan or method used in or about any place mentioned in this law in supposed compliance with any of the requirements of this law, and, thereupon they may issue a written order to the owner, manager, superintendent, or other person in control or management of such place or establishment, for the correction of any condition caused or permitted in or about such place or establishment in violation of any of the requirements of this law, or of any condition, practice, plan, or method used therein or thereabouts in supposed compliance with any requirement of this law, but which are found to be inadequate or insufficient, in any respect, to comply therewith, and shall state in such order how such conditions, practices, plans or methods, in any case, shall be corrected and the time within which the same shall be corrected, a reasonable time being given in such order therefor. One copy of such order shall be delivered to the owner, manager, superintendent or other person in control or management of such place or establishment, and one copy thereof shall be filed in the office of the Bureau of Labor Statistics. Such findings and orders shall be prima facie valid, reasonable and just, and shall be conclusive unless attacked and set aside in the manner provided in the succeeding article. Upon the failure or refusal of the owner, manager, superintendent, or other person in control or management of such place or establishment, to comply with

such order within the time therein specified, unless the same shall have been attacked and suspended or set aside as provided for in the succeeding article, the Commissioner of Labor Statistics or his deputy or inspectors shall have full authority and power to close such place or establishment, or any part of it that may be in such unsanitary or dangerous condition or immoral influences in violation of any requirement of this law or of such order, until such time as such condition, practice or method shall have been corrected. [Id.]

Art. 5180. **Suit to set order aside.**—The owner or owners, manager, superintendent, or other person in control or management, of any place or establishment covered by this law, and directly affected by any finding or order provided for in the preceding article, may, within fifteen days from the date of the delivery to him or them of a copy of any such order as provided for in the preceding article, file a petition setting forth the particular cause or causes of objection to such order and findings in a court of competent jurisdiction against the Commissioner of Labor Statistics. Said action shall have precedence over all other causes of a different nature, except such causes as are provided for in the statutes relating to the Railroad Commission, and shall be tried and determined as other civil causes in said court. If the court be in session at the time such cause of action arises, the suit may be filed during such term and stand ready for trial after ten days' notice. Either party may appeal, but shall not have the right to sue out a writ of error from the trial court. Said appeal shall at once be returnable to the proper appellate court at either of its terms, and shall have precedence in such appellate court over other causes of a different nature, except as above provided for. In any trial under this article the burden shall be upon the plaintiff to show that the findings and order complained of are illegal, unreasonable, or unjust to it or them. [Id.]

CHAPTER EIGHT.

CHILD LABOR.

Art. 5181. **Permit for child to work.**—Upon application being made to the county judge of any county in which any child over the age of twelve (12) years shall reside, the earnings of which child are necessary for the support of itself, its mother when widowed, or in needy circumstances, or invalid father, or of other children younger than the child for whom the permit is sought, the said county judge may upon the sworn statement of such child or its parents or guardian, that the child for whom the permit is sought is over twelve (12) years of age, that the said child has completed the fifth grade in a public school or its equivalent, and that it shall not be employed in or around any mill, factory, workshop, or other place where dangerous machinery is used, nor in any mine, quarry or other place where explosives are used, or where the moral or physical condition of

the child is liable to be injured, and that the earnings of such child are necessary for the support of such invalid parent, widowed mother or mother in needy circumstances, or of younger children, and that such support cannot be obtained in any other manner, and that suitable employment has been obtained for such child, which sworn statement shall be accompanied by the certificate of a licensed physician showing that such child is physically able to perform the work or labor for which the permit is sought, issue a permit for such child to enter such employment. Every person, firm or corporation employing any such child between the ages of twelve (12) years and fifteen (15) years shall post in a conspicuous place where such child is employed, the permit issued by the county judge; provided that no permit shall be issued for a longer period than twelve (12) months, but may be renewed from time to time upon satisfactory evidence being produced that the conditions under which the former permit was issued still exists, and that no physical or moral injury has resulted to such child by reason of its employment. In every case where a permit is sought for any child between the ages of twelve (12) years and fifteen (15) years, the parent, guardian or other person in charge or control of such child shall appear before the county judge in person with such child for whom a permit is sought before such permit shall be issued. There shall be nothing in this Act to prevent the working of school children of any age from June 1 to September 1 of each year except that they shall not be permitted to work in factory, mill, workshop, and the places mentioned in Section 4 of this Act. [Id. page 176.]

CHAPTER NINE.

PROTECTION OF WORKMEN ON BUILDINGS.

Art. 5182. Protection of workmen on buildings.—

1. To prevent workmen from falling.—Any building three or more stories in height, in the course of construction or repair, shall have the joists, beams or girders of each and every floor below the floor level where any work is being done, or about to be done, covered with planking laid close together, said planking to be of not less than one and one-half inches of thickness in buildings that have steel framework, and what is commonly known as one-inch plank in all others where joists are set on two foot centers or less, to protect the workmen engaged in the erection or construction of such buildings from falling through joists, girders, and from falling planks, bricks, rivets, tools or other substances, whereby life and limb are endangered. Where any scaffolding is placed on the outside of any of said buildings, over any public street or alley where persons are in the habit of passing, then said scaffolding shall be so constructed as to prevent any material, tools or other things from falling off and endangering the life of passersby. Such

flooring shall not be removed until the same is replaced by a permanent flooring in such building.

2. To inclose elevators and shafts.—If elevators, elevating machines or hod hoisting apparatus are used within a building in the course of construction, for the purpose of lifting materials to be used in such construction, the contractor or owners, or the agents of the owners, shall cause the shafts or openings in each floor to be inclosed or fenced in on all sides, two sides of which must be at least six feet, and two sides where material is taken off or on shall be protected by automatic safety gates.

3. Duty of general contractors.—The general contractor having charge of the erection and construction of such building shall provide for the flooring as herein required, and make such arrangements as may be necessary with the sub-contractor in order that the provisions of this article may be carried out.

4. Duty of owner.—The owner, or the agent of the owner of such building, shall see that the general contractor or sub-contractors carry out the provisions of this article.

5. Owner to see to flooring.—If the general contractor or sub-contractor of such building fails to provide for the flooring of such buildings as herein provided, then the owner or the agent of the owner of such building shall see that the provisions of this article are carried out. [Acts 1919, p. 281.]

CHAPTER TEN.

INDUSTRIAL COMMISSION.

| | Article | | Article |
|--------------------------------|---------|----------------------------|---------|
| Appointment of members..... | 5183 | Hearing and report..... | 5187 |
| Expenses | 5184 | Hearing to be public..... | 5188 |
| Officers | 5185 | Report to Legislature..... | 5189 |
| Controversies referred to..... | 5186 | Power of Commission..... | 5190 |

Art. 5183. **Appointment of members.**—There is hereby created an Industrial Commission, composed of five members, one to represent employers of labor, one to represent the employes or laborers, and three to represent the general public. The members of this commission shall be appointed biennially by the Governor, to hold office for a term of two years. [Acts 4th C. S. 1920, p. 19.]

Art. 5184. **Expenses.**—The members of this commission shall serve without pay or salary. The actual expenses incurred during hearings had by or before the commission and railway fare and hotel bills incurred by them shall be paid out of appropriations made to the executive office for the payment of rewards and the enforcement of the law, until such time as the Legislature may make appropriations to cover such items.

Art. 5185. **Officers.**—This commission shall elect one of their members as chairman of the commission, to preside at all hearings had under the provisions of this law, with power and authority usually exercised by chairmen in such capacity. The commission shall have authority to employ and pay a stenog-

rapher to act as secretary of such commission. The salary shall be paid out of the fund or funds described in article 5184. [Id.]

Art. 5186. Controversies referred to.—When the Governor becomes convinced or has reason to believe that controversies between employers and employes are of such nature and character as to be of public concern or interest he shall refer, by proclamation, such controversies to the commission here created for hearing and report. [Id.]

Art. 5187. Hearing and report.—The commission, and the members thereof, shall forthwith proceed to the place where the employes in the controversy may be located, or to such other place as may appear best to said commission for the purpose of making investigation and report. The commission shall make investigation and hear testimony concerning the controversy between the employers and employees. After said investigation is completed a full report shall be made to the Governor, covering the facts established by the investigations made and hearing had. Said commission shall make recommendations to the Governor as to what action should be taken in reference to the controversy or the settlement thereof. [Id.]

Art. 5188. Hearing to be public.—All hearings had by this commission shall be open to the public; and the findings and recommendations of the commission shall be furnished to the news agencies and newspapers of the State, to be published by the several papers of this State as news items. [Id.]

Art. 5189. Report to Legislature.—The commission shall also make full report to the Legislature, if in session, and if not in session, then to the succeeding session, setting forth the findings and recommendations, accompanied by a transcript of the testimony taken at the hearings provided for herein. [Id.]

Art. 5190. Power of commission.—The commission shall have power to summon witnesses, to issue subpoenas, to compel attendance of witnesses, to compel production of books and records by witnesses, to punish for contempt, to hold sessions and to take testimony in or out of the State of Texas, and to pay witnesses as paid in felony cases. [Id.]

CHAPTER ELEVEN.

STEVEDORES

Art. 5191. "Contracting stevedore".—A contracting stevedore, within the meaning of this chapter, is any person, firm or association of persons, or corporation that contracts with any ship, agent, owners, masters, managers or captains of vessels, or with any other person or corporation, for the purpose of loading or unloading, or of having loaded or unloaded any vessel, ship or water craft. [Acts 1913, p. 153.]

Art. 5192. Bond.—Each contracting stevedore shall make bond in the sum of five thousand dollars, with two or more good and sufficient sureties, who are residents of this State, or with

any surety company authorized to transact business in this State, payable to the county judge of the county in which such stevedore pursues his occupation and to his successor in office, as trustee for all persons who may become entitled to the benefits of this law; conditioned that said contracting stevedore will promptly on Saturday of each week pay each laborer his wages for labor performed in loading and unloading any such ship, vessel or water craft according to the scale of wages agreed upon, and that all agreements entered into with each of said laborers in respect to the loading and unloading of said water craft, will be faithfully and truly performed. Such bond shall be approved by the county clerk of the county in which said contracting stevedore is pursuing said business or occupation and by him shall be filed and recorded. [Id.]

Art. 5193. **Suits on bond.**—Suits may be maintained upon such bond by any person to whom wages are due and unpaid for such labor as is hereinbefore mentioned. The same may be sued upon until the full amount thereof is exhausted, or suits sufficient to exhaust the bond are pending, and when so exhausted, said contracting stevedore shall make and file a new bond in amount and conditioned as provided for the first. [Id.]

Art. 5194. **License.**—Said contracting stevedore shall, before beginning such business, file written application to such county clerk for a license to pursue the occupation of a contracting stevedore for the county mentioned. On approval of the bond and payment of an occupation tax of five dollars the clerk shall issue a license to pursue said occupation, the license fee to be paid into the general fund of the county. [Id.]

Art. 5195. **Bond and license.**—Such bond shall be made and such license shall be obtained in each county in which said contracting stevedore pursues said occupation. Said contracting stevedore shall be required to execute a new bond and to obtain a new license at the expiration of every year from the issuance of the former license. [Id.]

CHAPTER TWELVE.

RESTRICTIONS ON LABOR

| | | | |
|--------------------------------------|---------|--------------------------------------|---------|
| | Article | | Article |
| Discrimination | 5196 | May examine witnesses | 5202 |
| Discrimination prohibited, etc..... | 5197 | Sworn statement | 5203 |
| Foreign corporations to forfeit per- | | Failure of witness to appear | 5204 |
| mit | 5198 | Immunity of witness | 5205 |
| Liability | 5199 | Statement of cause of discharge..... | 5206 |
| Fees of attorney | 5200 | Detectives | 5207 |
| Prima facie evidence of agency..... | 5201 | | |

Art. 5196. [594] **Discrimination.**—The following shall constitute discrimination against persons seeking employment: Where any corporation, or receiver of same, doing business in this State, or any officer or agent of such corporation or receiver shall discriminate against any person seeking employment on account of his having participated in a strike. [Acts 1907, p. 142, Acts 1909, p. 160.]

Art. 5197. [595] **Discrimination prohibited, etc.**—Any and all discriminations against persons seeking employment as defined in this chapter are hereby prohibited and are declared to be illegal. [Acts 1907, p. 142.]

Art. 5198. [596] **Foreign corporations to forfeit permit.**—Any foreign corporation violating any provision of this chapter is hereby denied the right, and is prohibited from doing any business within this State, and it shall be the duty of the Attorney General to enforce this provision, by injunction or other proceeding in the district court of Travis County, in the name of the State of Texas. [Id.]

Art. 5199. [597] **Liability.**—Each person, company or corporation, who shall in any manner violate any provision of this chapter shall, for each offense committed, forfeit and pay the sum of one thousand dollars, which may be recovered in the name of the State of Texas, in any county where the offense was committed, or where the offender resides, or in Travis County; and it shall be the duty of the Attorney General, or the district or county attorney under the direction of the Attorney General, to sue for the recovery of the same. [Id.]

Art. 5200. [598] **Fees of attorney.**—The fees of the prosecuting attorney for representing the State in proceedings under this chapter shall not be accounted for as fees of office. [Id.]

Art. 5201. [599] **Prima facie evidence of agency.**—In prosecutions for the violation of any provision of this chapter, evidence that any person has acted as the agent of a corporation in the transaction of its business in this State shall be received as prima facie proof that his act in the name, behalf or interest of the corporation of which he was acting as the agent, was the act of the corporation. [Id.]

Art. 5202. [600] **May examine witnesses.**—Upon the application of the Attorney General, or of any district or county attorney, made to any justice of the peace in this State, and stating that he has reason to believe that a witness, who is to be found in the county of which such justice is an officer, knows of a violation of any provision of this chapter, the justice to whom such application is made shall have summoned and examined such witness in relation to such violations. [Id.]

Art. 5203. [601] **Sworn statement.**—Such witness shall be summoned as provided for in criminal cases. He shall be duly sworn, and the justice shall cause the statements of the witness to be reduced to writing and signed and sworn to before him, and such statement shall be delivered to the attorney upon whose application the witness was summoned. [Id.]

Art. 5204. [602] **Failure of witness to appear.**—If the witness summoned as aforesaid fails to appear or to make statements of the facts within his knowledge under oath, or to sign the same after it has been reduced to writing, he shall be guilty of contempt of court and may be fined not exceeding one hundred

dollars, and may be attached and imprisoned in jail until he shall make a full statement of all facts within his knowledge with reference to the matter inquired about. [Id.]

Art. 5205. [603] **Immunity of witness.**—Any person so summoned and examined shall not be liable to prosecution for any violation of any provision of this chapter about which he may testify fully and without reserve. [Id.]

Art. 5206. [604] **Statement of cause of discharge.**— Any written statement of cause of discharge, if true, when made by such agent, company or corporation, shall never be used as the cause for an action for libel, either civil or criminal, against the agent, company or corporation so furnishing same. [Id.]

Art. 5207. [2475-2476] **Detectives.**—Any person, corporation, or firm who shall employ any armed force of detectives, or other persons not residents of this State, in the State of Texas, shall be liable to pay to the State as a penalty not less than twenty-five nor more than one thousand dollars, to be recovered before any court of competent jurisdiction in this State. Nothing herein shall be construed to deprive any person, firm or corporation of the right of self-defense, or defense of the property of said person, firm, or corporation by such lawful means as may be necessary to such defense. [Acts 1893, p. 159; G. L., Vol. 10, p. 589.]

CHAPTER THIRTEEN.

EMPLOYMENT AGENTS.

| | Article | | Article |
|-------------------------------|---------|-----------------------------------|---------|
| Definitions | 5208 | Overcharging | 5215 |
| Exceptions | 5209 | Receipt | 5216 |
| Application and bond..... | 5210 | To protect female applicants..... | 5217 |
| Suits on bond..... | 5211 | License as evidence..... | 5218 |
| Cancellation of license..... | 5212 | Authority of commissioner..... | 5219 |
| Commissioner may examine..... | 5213 | Injunction | 5220 |
| False advertisements | 5214 | Lockout or strike..... | 5221 |

Art. 5208. **Definitions.**—The term "Employment Agent" means every person, firm, partnership or association of persons engaged in the business of assisting employers to secure employees, and persons to secure employment, or of collecting information regarding employers seeking employees, and persons seeking employment. The term "Employment Office" means every place or office where the business of giving intelligence or information where employment or help may be obtained or where the business of an employment agent is carried on. The term "Commissioner" means the Commissioner of Labor Statistics of the State of Texas. The term "Deputy or Inspector" means any person who shall be duly authorized by the Commissioner to act in that capacity. [Acts 1923, p. 75.]

Art. 5209. **Exceptions.**—The provisions of this chapter shall not apply to agents who charge a fee of not more than two dollars for registration only for procuring employment for school teachers; nor to any department or bureau maintained by this State, the United States Government, or any municipal government of this State, nor to any person, firm, partnership, asso-

ciation of persons or corporation or any officer, or employee thereof engaged in obtaining or soliciting help from him, them or it when no fees are charged directly or indirectly the applicant for help or the applicant for employment; nor to farmers and stockraisers acting jointly or severally in securing laborers for their own use where no fee is collected or charged directly or indirectly, nor to any association or corporation chartered under the laws of Texas conducting a free employment bureau or agency. [Id.]

Art. 5210. Application and bond.—Application and bond for private employment agency license shall be executed on blank forms prescribed and furnished by the Commissioner. Application for license to act as employment agent may be made in person or by mail to the Commissioner upon blank application form which shall be verified by the applicant. Where the application is made by a firm, partnership or association of persons, it must be verified by each person for whose benefit the application is made, and such application shall also be accompanied by affidavits of at least five credible citizens, who have resided in the county in which such applicant desires to conduct the business of an employment agent, for at least three years, to the effect that the applicant or applicants has or have resided within the county in which such person or persons desires to become an employment agent for at least one year prior to the date of the application, and that such person or persons are of good moral character. The Commissioner may require additional evidence of the moral character of applicants; and no license shall be granted to any person except he be of good moral character. Such application shall be examined by the Commissioner, and if he finds that the same complies with the law and that the applicant is entitled to a license, then he shall issue a license to the applicant for each county for which application is made and shall deliver such license to the applicant upon the payment of a license fee of one hundred and fifty dollars for each county in which an employment office is to be maintained by said agent, and upon the presentation to and approval by the Commissioner of a good and sufficient bond executed by the applicant with good and sufficient surety in the penal sum of five thousand dollars, payable to the State of Texas, for each county where an employment office is to be maintained; said bond shall be conditioned that the obligor will not violate any of the duties, terms, conditions and requirements of this law, and that the principal, his agents or representatives, will not make any false representation or statement to any person soliciting any assistance from him for help or employment. Said bond shall further recite that any person injured or aggrieved by any false or fraudulent statement of such agent, or any violation of the provisions thereof by such agent, shall be entitled to bring suit thereon. Not more than one office shall be operated under any one license. Each license issued

by the Commissioner shall be for a period of one year. [Acts 1923, p. 75; Acts 2nd C. S. 1923, p. 93.]

Art. 5211. Suits on bond.—Any person injured or aggrieved by any action, conduct, false representation or false statement of any such employment agent may bring suit for damages against such agent on said bond in any county where such action, conduct, false representation or false statement was made in any court of competent jurisdiction, without the necessity of making the State a party thereto; Where the bond has become impaired by recoveries thereon to the extent of fifty per cent of the penal sum named therein, the Commissioner may, by a notice in writing, demand the execution of a new bond which, if not executed and submitted to the Commissioner within twenty days, for his approval, such failure to execute a new bond shall ipso facto forfeit and cancel the license issued to the principal named in said bond. [Acts 1923, p. 77.]

Art. 5212. Cancellation of license.—The Commissioner shall have the authority, and it shall be his duty, to cancel the license of any employment agent when it shall appear to his satisfaction, upon hearing, that such agent has been convicted in a State or Federal court of an offense which under the laws of this State is a felony, or for any offense involving moral turpitude, or that the agent had obtained his license illegally or fraudulently or was guilty of fraud, false swearing, or deception in securing his license, or has violated any provision of this chapter. The Commissioner shall not cancel the license of any employment agent until complaint in writing made by a credible person, shall be filed with him, specifying in general terms the grounds of the proposed cancellation, and a full and fair hearing given to him thereon. Upon the filing of such complaint, the Commissioner shall fix a time and place, reasonably accessible to the employment agent complained against, for the hearing of said complaint. The Commissioner shall notify the agent so complained against of the time and place fixed for said hearing by a registered letter addressed to him at his post-office address as the same appears upon his application for license, accompanied by an exact copy of the complaint against him; and mailing of such notice and copy shall be sufficient and conclusive evidence of proper service of the procedure upon the agent so complained against. The employment agent so complained against shall have at least ten days after the date of said notice mailed, exclusive of the day of mailing and day of hearing, before hearing upon said complaint shall be had, and shall have the right to file answer, introduce evidence and to be heard both in person and by counsel. The Commissioner shall have the power to summon and compel the attendance of witnesses before him to testify in relation to any such complaint, and may require the production of any book, paper or document deemed pertinent thereto. Said Commissioner shall also have the power to provide for the taking of depositions of witnesses and evidence may be heard either from witnesses

present testifying orally, or by deposition taken under such rules, and in such fair and impartial manner as the Commissioner may prescribe. Said hearing shall be had before the Commissioner and shall be conducted in a fair and orderly manner, and in accordance with rules of procedure to be adopted by the Commissioner. At the conclusion of the hearing the Commissioner shall enter his findings and judgment in writing and the same shall be recorded by him in a permanent record to be kept by him, and a copy thereof furnished to the employment agent complained against. Any employment agent whose license shall be cancelled by the Commissioner may, within thirty days after the cancellation thereof, and not thereafter, have his right of action for reinstatement against the Commissioner in the district court of Travis County. If the agent whose license has been cancelled by the Commissioner shall, within ten days after receiving information of such cancellation, give notice to the Commissioner in writing of his intention to file such suit, the action of the Commissioner in cancelling the said license shall be suspended for a period of thirty days, but unless such suit shall be filed within said time, the action of the Commissioner shall be final. If suit shall be filed against the Commissioner to reinstate said license within said time, the action of the Commissioner shall remain suspended until the validity of the license in question shall be adjusted by the court in said suit. In such suits the burden shall be upon the employment agent to show good cause for reinstatement of his license. [Id.]

Art. 5213. Commissioner may examine.—All the books, correspondence, memoranda, papers and records of every kind and character incident to the business of an employment agent of each agent licensed under this chapter shall be subject to examination at any time by the Commissioner, his deputies, or inspectors, and the refusal of any agent to permit the Commissioner, his deputies, or inspectors, to inspect such correspondence, memoranda, papers and records at any time shall be sufficient grounds for the Commissioner to cancel the license of such agent in accordance with the provisions of the fifth article of this chapter. [Id.]

Art. 5214. False advertisements.—No employment agent shall publish or cause to be published any false or misleading advertisements or notice relating to his employment agency; nor shall any such employment agent advertise his agency by means of cards, circulars, signs or in newspapers or other publications, unless such advertisements shall set forth the name of the agent and the address of his employment office; nor shall any such licensed person use any letterheads or blanks not containing the name of such employment agent and the address of his employment office. [Id.]

Art. 5215. Overcharging.—Where a fee is charged for obtaining employment, such fee in no event shall exceed the sum of three dollars, which may be collected from the applicant only after employment has been obtained and accepted by the appli-

cant; provided, however, employment agents engaged exclusively in providing employment for skilled, professional or clerical positions may charge, with the written consent of the applicant, a fee, not to exceed twenty per cent of the first month's salary. [Id.]

Art. 5216. Receipt.—A receipt shall be given to the applicant by the employment agent for all fees collected from such applicant. The form of such receipt shall be prescribed by the Commissioner and shall contain the name of the applicant, the amount of the fee paid, the date, the character of the work or the situation secured, the name of the employer, together with his post-office address and the location of the work the applicant is to perform. [Id.]

Art. 5217. To protect female applicants.—No employment agent shall furnish any female for immoral purposes; or send, or cause to be sent any female to enter as servant, inmate, or for any purpose whatsoever, any place of bad repute, house of ill-fame, or assignation house, or any house or place of amusement kept for immoral purposes, the character of which such employment agent could have ascertained by reasonable diligence. [Id.]

Art. 5218. License as evidence.—Any application made by an employment agent for a license, or a certified copy thereof under the hand and seal of the Commissioner, shall be received as evidence in any court in this State without the necessity of proving the execution thereof. [Id.]

Art. 5219. Authority of Commissioner.—The Commissioner and his deputies, or inspectors, shall have the authority of peace officers only in making arrests of any person or persons who violate, in their presence, any provision of this chapter for which a penalty is prescribed, and when such arrest has been made the Commissioner, or his duly appointed deputies or inspectors, may enter any employment office at any time when such employment office is open for business, and inspect the registers and all other records of whatsoever kind and character of such employment agent for the purpose of ascertaining whether the provisions of this law are being violated, and the refusal of any employment agent to permit such inspection shall be sufficient reason for the Commissioner to cancel the license of such agent in accordance with the provisions of Article 5212. [Id.]

Art. 5220. Injunction.—Any person who shall engage in the business of an employment agent, or who shall conduct an employment office, without first procuring a license as required and provided for in this chapter may be enjoined from unlawfully pursuing such business or occupation, and the Attorney General shall bring suit for such purpose in the name of the State of Texas in Travis County, and the district or county attorney of any county wherein such person engages in such business or conducts an employment office in violation of the preceding article is hereby authorized to maintain in the proper court of said county a suit in the name of the State of Texas

to enjoin and prevent such person from unlawfully pursuing such occupation. In all such cases it shall not be necessary for the attorney bringing the suit to verify the pleadings or for the State to execute any bond as a condition precedent to the issuing of any injunction or restraining order hereunder. [Acts 2nd C. S. 1923, p. 94.]

Art. 5221. Lockout or strike.—No employment agent shall send any person to a prospective employer who is conducting a “lockout” against all or part of his employees; or whose employees, or a part of them are out on a strike, without first apprising said person of the existence of said “lockout” or strike. [Acts 1923, p. 81.]

TITLE 84.

LANDLORD AND TENANT

| | Article | | Article |
|-------------------------------------|---------|---------------------------------|---------|
| Landlord's lien | 5222 | Defendant may replevy | 5231 |
| When lien expires | 5223 | Judgment against sureties | 5232 |
| Does not apply | 5224 | Perishable property sold | 5233 |
| Tenant not to remove property | 5225 | Citation for defendant | 5234 |
| Removal not a waiver | 5226 | Petition | 5235 |
| Distress warrant | 5227 | Rights of tenant | 5236 |
| Oath and bond | 5228 | Tenants shall not sub-let | 5237 |
| Issuance of distress warrant | 5229 | Owners of buildings lien | 5238 |
| Duty of officer | 5230 | Distress warrant | 5239 |

Art. 5222. [5475] [3235] Landlord's lien.— All persons leasing or renting lands or tenements at will or for a term of years shall have a preference lien upon the property of the tenant, as hereinafter indicated, upon such premises, for any rent that may become due and for all money and the value of all animals, tools, provisions and supplies furnished by the landlord to the tenant to make a crop on such premises; and to gather, secure, house and put the same in condition for marketing, the money, animals and tools and provisions and supplies so furnished being necessary for that purpose, whether the same is to be paid in money, agricultural products or other property; and this lien shall apply only to animals, tools and other property furnished by the landlord to the tenant and to the crop raised on such premises. This article shall not apply in any way nor in any case where any person leases or rents lands or tenements at will or for a term of years for agricultural purposes where the same is cultivated by the tenant who furnishes everything except the land, and where the landlord charges a rental of more than one-third of the value of the grain and more than one-fourth of the value of the cotton raised on said land; nor where the landlord furnishes everything except the labor and the tenant furnishes the labor and the landlord directly or indirectly charges a rental of more than one-half the value of the grain and more than one-half of the value of the cotton raised on said land, and any contract for the leasing or renting of land or tenements at will or for a term of years for agricultural purposes stipulating or fixing a higher or greater rental than that herein provided for shall be null and void, and shall not be enforceable in any court in this State by an action either at law or in equity, and no lien of any kind, either contractual or statutory, shall attach in favor of the landlord, his estate or assigns, upon any of the property named, nor for the purpose mentioned in this article. If any landlord or any person for him shall violate or attempt to evade any provision of this article by collecting or receiving a greater amount of rent for such land than herein provided shall be collected or received by him upon any contract, either written or verbal, the tenant or person paying the same, or the legal representatives thereof, may, by an action of debt instituted in the county of the defendant's residence or in the county where such rents or money may have been received or collected, or where said contract may have been entered into,

or where the party or parties paying the same resided when such contract was made, within two years after such payment, recover from the person, firm or corporation receiving the same, double the full amount of such rent or money so received or collected. [Acts 1874, p. 55; P. D. 7418c; G. L. Vol. 8, p. 57; Acts 1915, p. 77.]

Art. 5223. [5477] [3237] When lien expires.—Such preference lien shall continue as to such agricultural products and as to animals, tools and other property furnished to the tenant, as aforesaid, so long as they remain on such rented or leased premises, and for one month thereafter; and such lien as to agricultural products, if stored in public or bonded warehouses controlled or regulated by the laws of the State within thirty days after the removal of said products from said rented premises, shall continue so long as they remain in such warehouses; and such lien, as to agricultural products and as to animals and tools furnished as aforesaid, shall be superior to all laws exempting such property from forced sale. [Id. Acts 1914, 2nd C. S., p. 33.]

Art. 5224. [5478] [3238] Does not apply.—Such lien shall not attach to the goods, wares and merchandise of a merchant, trader or mechanic, sold and delivered in good faith in the regular course of business to the tenant. [Id.]

Art. 5225. [5476] [3236] Tenant not to remove property.—The tenant, while the rent and advances remain unpaid, shall not without the consent of the landlord remove or permit to be removed from the premises so leased or rented any agricultural product produced thereon, or any of the animals, tools or property furnished as aforesaid. [Id.]

Art. 5226. [5478a] [3239] Removal not a waiver.—The removal of the agricultural products with the consent of the landlord for the purpose of being prepared for market shall not be considered a waiver of such lien, but such lien shall continue and attach to the products so removed the same as if they had remained on such rented or leased premises. [Id.]

Art. 5227. [5479] [3240] Distress warrant.—When any rent or advances shall become due, or the tenant shall be about to remove from such leased or rented premises, or to remove his property from such premises, the person to whom the rents or advances are payable, his agent, attorney, assigns, heirs or legal representatives may apply to a justice of the peace of the precinct where the premises are situated, or in which the property upon which a lien for rents or advances exists may be found, or to any justice having jurisdiction of the cause of action, for a warrant to seize the property of such tenant. If a distress warrant shall be issued by any justice, other than the justice of the peace of the precinct in which the rented premises may be situated or in which the defendant may reside, such warrant shall be made returnable to, and the affidavit and bond upon which it is issued shall be transmitted by the justice issuing such distress warrant to some justice of the precinct in

which the rented premises may be situated, or in which the defendant may reside. [Acts 1881, p. 98; G. L. Vol. 9, p. 190.]

Art. 5228. [5480] [3241] Oath and bond.—The plaintiff, his agent or attorney shall make oath that the amount sued for is rent or advances, such as are mentioned in the first article of this title, or shall produce a writing signed by such tenant to that effect, and shall further swear that such warrant is not sued out for the purpose of vexing and harassing the defendant. The person applying for such warrant shall execute a bond with two or more good and sufficient sureties, to be approved by the justice of the peace, payable to the defendant, conditioned that the plaintiff will pay the defendant such damages as he may sustain in case such warrant has been illegally and unjustly sued out, which bond shall be filed among the papers of the cause; and, in case the suit shall be finally decided in favor of defendant, he may bring suit against the plaintiff and his sureties on such bond, and shall recover such damages as may be awarded to him.

Art. 5229. [5481] [3242] Issuance of distress warrant.—Upon the filing of such oath and bond such justice shall issue his warrant to the proper officer commanding him to seize the property of the defendant, or so much thereof as will satisfy the demand. Such warrant shall be returnable to the court having exclusive jurisdiction thereof, but if the amount in controversy is within the jurisdiction of both the county and district courts, the writ shall be made returnable to either court as the plaintiff in such writ may direct. When the writ is made returnable to the district or county court the justice shall transmit all papers in said cause to the proper court on or before the first day of the next term thereof.

Art. 5230. [5482] [3243] Duty of officer.—The officer to whom such warrant is directed shall seize the property of such tenant, or so much thereof as shall be of value sufficient to satisfy such debt and costs, and safely keep it in his possession unless replevied, and make due return thereof to the court to which the warrant is returnable at the next term thereof.

Art. 5231. [5483] [3244] Defendant may replevy.—The defendant at any time within ten days from the date of levy may replevy the property by giving bond payable to the plaintiff, with two or more good and sufficient sureties in double the amount of the debt, or at his election, for the value of the property so seized, conditioned that if the defendant be cast in the action he shall satisfy the judgment that may be rendered against him or pay the estimated value of the property, with lawful interest thereon from the date of the bond.

Art. 5232. [5484] [3245] Judgment against sureties.—When the property levied on has been replevied and if final judgment is rendered against the defendant, such judgment shall also be against him and his sureties on his replevy bond for the amount of the judgment and interest or for the value of

the property replevied and interest, according to the terms of such bond.

Art. 5233. [5485] [3246] Perishable property sold.—If the property is of a perishable or wasting kind, and the defendant fails to replevy as herein provided, the officer making the levy, or the plaintiff, or the defendant, may apply to the court, or judge thereof, to which the warrant is returnable, either in term time or vacation for an order to sell such property; and, if any person other than the defendant apply for such order of sale, the court shall not grant such order, unless the person applying shall file with such court a bond payable to the defendant, with two or more good and sufficient sureties, to be approved by said court, that they will be responsible to the defendant for such damages as he may sustain in case such sale be illegally and unjustly applied for, or be illegally and unjustly made, which sale shall be conducted as sales under execution. [R. S. 1879.]

Art. 5234. [5486] [3247] Citation for defendant.—The justice at the time he issues the warrant shall issue a citation to the defendant requiring him to answer before such justice, if he has jurisdiction to finally try the cause, and upon its being returned served, to proceed to judgment as in ordinary cases; and, if he has not such jurisdiction, the citation shall require the defendant to answer before the court to which the warrant was made returnable, and shall be returned with the other papers to such court. If the defendant has removed from the county without service, the proper officer shall state this fact in his return on the citation; and the court shall proceed to try the case *ex parte*, and may enter the proper judgment. [P. D. 7418f.]

Art. 5235. [5487] [3248] Petition.—When the warrant is made returnable to the district or county court, the plaintiff shall file his petition on or before the appearance day of the term of court to which said papers are returnable. [Id.]

Art. 5236. [5488] [3249] Rights of tenant.—Should the landlord, without default on the part of the tenant or lessee, fail to comply in any respect with his part of the contract, he shall be responsible to said tenant or lessee for whatever damages may be sustained thereby; and to secure such damages to such tenant or lessee, he shall have a lien on all the property of the landlord in his possession not exempt from forced sale, as well as upon all rents due to said landlord under said contract. [Acts 1876, p. 137; G. L. Vol. 8, p. 973.]

Art. 5237. [5489] [3250] Tenants shall not sub-let.—A person renting said lands or tenements shall not rent or lease the same during the term of said lease to any other person without first obtaining the consent of the landlord, his agent or attorney. [Id.]

Art. 5238. [5490] [3251] Owners of buildings lien.—All persons leasing or renting any residence, storehouse, or other building, shall have a preference lien upon all property of the tenant in such residence, storehouse, or other building for the

payment of rents due and to become due provided that in order to secure the lien for rents that are more than six months due, it shall be necessary for the person leasing or renting any storehouse or other building which is used for commercial purposes, to file in the office of the county clerk of the county in which such storehouse or such other building is situated, a sworn statement of the amount of rent due, itemized as to the months for which it is claimed to be due, together with the name and address of the tenant, a description of the rented premises, the date on which the rental contract began and that on which it is to terminate, verified by the person claiming such lien, his agent or attorney, and such statement when so verified shall be recorded by the county clerk in a book to be provided for such purpose. No lien for rent more than six months past due upon any storehouse or other building rented for commercial purposes shall be valid as against bona fide purchasers or unsecured or lien creditors of said tenant, unless said statement shall be verified, filed and recorded as above provided.

Each county clerk shall keep an alphabetical index for the purpose of recording the rental liens above described.

The lien for rents to become due shall not continue or be enforced for a longer period than the current contract years, it being intended by the term "current contract years" to embrace a period of twelve months, reckoning from the beginning of the lease or rental contract, whether the same be in the first or any other year of such lease or rental contract. Such lien shall continue and be in force so long as the tenant shall occupy the rental premises, and for one month thereafter; but this article shall not be construed as in any manner repealing or affecting any Act exempting property from forced sale. [Acts 1889, p. 11; Acts 1919, p. 170.]

Art. 5239. [5491] [3252] Distress warrant.— When any rent shall become due, or the tenant about to remove from such leased or rented buildings, or remove his property therefrom, it shall be lawful for the person to whom the rent is payable, his agent, attorney or assignee, to apply to a justice of the peace of the precinct where the building is situated for a distress warrant, which shall be issued on an affidavit and bond; and the same proceedings shall be had on the issuance, trial and return of such warrant and the same rights conferred on the owners of storehouses and residences as is provided in this title in cases of other landlords. [Acts 1879, p. 128; G. L. Vol. 8, p. 1428.]

TITLE 85.**LANDS—ACQUISITION FOR PUBLIC USE.****1. STATE USE.**

Art. 5240. [5247-8] Mode of acquisition.—When any land shall be required by the State for any character of public use, the Governor is authorized to purchase said land, or the right to the use thereof, for such purpose; or, failing to agree with the owner on the price therefor, such land may be condemned for such public use in the name of this State. Upon the direction of the Governor, proceedings shall be instituted against the owner of the land by the Attorney General or under his direction by the district or county attorney. Should the award of damages in the opinion of the Governor be excessive, such award shall not be paid but the State shall pay the costs of the proceedings and no further action shall be taken. [Acts 1903, 1st C. S., p. 10.]

Art. 5241. [5251] State railroad.—If any land is acquired by purchase or condemnation to obtain right of way for any railroad or tram road, to be built or extended and operated in connection with, or for the use of, any of the penitentiaries of this State, or any of the farms of this State, and used in connection with the State penitentiaries, the penitentiary board is hereby authorized and required to pay, out of any money authorized by law to be used for the support and maintenance of said penitentiaries, the damages and costs of condemnation, or the purchase price of said property. [Id.]

2. FEDERAL USE.

Art. 5242. [5252] Authorized uses.—The United States Government through its proper agent, may purchase, acquire, hold, own, occupy and possess such lands within the limits of this State as it deems expedient and may seek to occupy and hold as sites on which to erect and maintain light houses, forts, military stations, magazines, arsenals, dock yards, custom houses, post offices and all other needful public buildings, and for the purpose of erecting and constructing locks and dams, for the straightening of streams by making cutoffs, building levees, or for the erection of any other structures or improvements that may become necessary in developing or improving the waterways, rivers and harbors of Texas and the consent of the Legislature is hereby expressly given to any such purchase or acquisition made in accordance with the provisions of this law. [Acts 1905, p. 101.]

Art. 5243. [5253] Condemnation proceedings.—Whenever the land owner and the authorized Federal agent cannot agree upon the purchase price, then such agent may institute condemnation proceedings against such owner. [Id.]

Art. 5244. [5271] Immediate occupancy.—Upon the filing of the award of the commissioners with the county judge, if the United States Government shall deposit the amount of the

award of the commissioners, together with all costs adjudged against the United States, they may proceed immediately to the occupancy of the said land and to the construction of their said improvements without awaiting the decision of the county court. [Id.]

Art. 5245. [5273] [372] [331] **State land.**—When this State may be the owner of any land desired by the United States for any purpose specified in this title, the Governor may sell such land to the United States, and upon payment of the purchase money therefor into the Treasury, the Land Commissioner, upon the order of the Governor, shall issue a patent to the United States for such land in like manner as other patents are issued. [Acts 1854, p. 102; P. D. 5450; G. L. Vol. 3, p. 1546.]

Art. 5246. [5274] [373] [332] **To record title.**—All deeds of conveyances, decrees, patents, or other instruments vesting title in lands within this State in the United States, shall be recorded in the land records of the county in which such lands, or a part thereof, may be situated, or in the county to which such county may be attached for judicial purposes and until filed for record in the proper county they shall not take effect as to subsequent purchasers in good faith, for a valuable consideration, and without notice. [Acts 1871, p. 19; P. D. 7693, G. L. Vol. 6, p. 921.]

Art. 5247. [5275-6] **Federal jurisdiction.**—Whenever the United States shall acquire any lands under this title, and shall desire to acquire constitutional jurisdiction over such lands for any purpose authorized herein, it shall be lawful for the Governor, in the name and in behalf of the State, to cede to the United States exclusive jurisdiction over any lands so acquired, when application may be made to him for that purpose, which application shall be in writing and accompanied with the proper evidence of such acquisition, duly authenticated and recorded, containing or having annexed thereto, an accurate description by metes and bounds of the lands sought to be ceded. No such cession shall ever be made except upon the express condition that this State shall retain concurrent jurisdiction with the United States over every portion of the lands so ceded, so far, that all process, civil or criminal issuing under the authority of this State or any of the courts or judicial officers thereof, may be executed by the proper officers of the State, upon any person amenable to the same within the limits of the land so ceded, in like manner and like effect as if no such cession had taken place; and such condition shall be inserted in such instrument of cession. [Acts 1849, p. 12; G. L. Vol. 3, p. 450.]

Art. 5248. [5277] [376] [335] **Exempt from taxation.**—The United States shall be secure in their possession and enjoyment of all lands acquired under the provisions of this title; and such lands and all improvements thereon shall be exempt from any taxation under the authority of this State so long as the same are held, owned, used and occupied by the United States for the purposes expressed in this title and not otherwise. [Acts 1871, p. 19; G. L. Vol. 6, p. 921.]

TITLE 86.

LANDS—PUBLIC.

| | | | |
|----------------------------------|------|---------------------------|------|
| Chapter | Page | Chapter | Page |
| 1 Administration | 1473 | 5 Minerals | 1516 |
| 2 Surveyors and Surveys..... | 1476 | 6 Patents | 1523 |
| 3 Surface and timber rights..... | 1484 | 7 General provisions..... | 1525 |
| 4 Oil and gas..... | 1499 | | |

CHAPTER ONE.

ADMINISTRATION.

1. THE COMMISSIONER.

| | | | |
|----------------------------|---------|-------------------------------|---------|
| | Article | | Article |
| Election | 5249 | Chief clerk | 5255 |
| Bond | 5250 | Spanish translator | 5256 |
| General duties..... | 5251 | Receiving clerk | 5257 |
| Abstract clerk..... | 5252 | Examination of books..... | 5258 |
| Report to Comptroller..... | 5253 | Draftsmen | 5259 |
| May print abstracts..... | 5254 | Conditions of employment..... | 5260 |

Art. 5249. [4392] [2864] **Election.**—The Commissioner of the General Land Office, hereinafter called the Commissioner, shall be elected at each general election for a term of two years, and shall reside at Austin during his continuance in office. [Const. Art. 4, Secs. 2, 23.]

Art. 5250. [4394] [2866] **Bond.**—The Commissioner shall give bond with three or more sureties for fifty thousand dollars, payable to and to be approved by the Governor, conditioned for the faithful discharge of his official duties. All other bonds required by law of employees of the General Land Office shall be executed and approved in like manner. [Acts 1846, p. 232; G. L. Vol. 2, p. 1538.]

Art. 5251. [4396-4397] **General duties.**—The Commissioner shall superintend, control and direct the official conduct of all subordinate officers of the General Land Office, and execute and perform all acts and things touching or respecting the public land of this State or rights of individuals in relation thereto, as may be required by law, and make and enforce suitable rules consistent therewith. He shall give information to the Governor and Legislature concerning the public lands, or the General Land Office, when required.

Art. 5252. [5389] [4215] **Abstract clerk.**—The Commissioner shall make it the special duty of one of his clerks to constantly correct the abstract of patented, titled and surveyed lands required to be kept in his office according to errors discovered, changes by cancellation of patents, changes of county lines, and creation of new counties, and to add all new patented surveys at the date of the patent. [Acts 1837, p. 62; P. D. 4090; G. L. Vol. 1, p. 1404.]

Art. 5253. [5390] [4216] **Report to Comptroller.**—During August of each year the Commissioner shall make out and furnish to the Comptroller a supplementary abstract of all patents issued from his office during the year ending on the last day of August. [Id.]

Art. 5254. [5391-5392] **May print abstracts.**—The Comptroller may have not more than fifteen hundred copies of said supplementary abstracts printed and bound for distribution among those officers of the State and counties whose duties require its use, the surplus copies to be sold at a reasonable price to parties applying for them. The costs so incurred shall be paid out of the general appropriation for printing; and the Comptroller shall pay all money received from such sales into the Treasury to the credit of said appropriation. [Id.]

Art. 5255. [4398-4399] **Chief clerk.**—The Commissioner shall appoint a chief clerk who shall give bond in the sum of twenty thousand dollars. He shall be authorized to perform all of the duties required of the Commissioner in case of his sickness, absence, death or resignation. [Acts 1846, p. 232; G. L. Vol. 2, p. 1538.]

Art. 5256. [4400-4401] **Spanish translator.**—The Commissioner shall appoint a translator who shall thoroughly understand Spanish and English languages, who shall give bond as required of the chief clerk, and take the official oath. He shall translate into English and record in a book all laws and public contracts relating to titles of lands, and all original titles or papers relating thereto on file in the General Land Office, which are written in the Spanish language. [Id.]

Art. 5257. [4402-3-4-5] **Receiving clerk.**—With the consent of the Governor, the Commissioner shall appoint a suitable person as receiving clerk for the Land Office. Such person shall give bond in the sum of twenty-five thousand dollars. The receiving clerk shall:

1. Receive all funds required by law to be paid to the Commissioner and give the person depositing money a certificate of deposit stating the amount, name of party, and character of claim upon which deposited; and if any funds are received of a general character in advance of fees and dues, it shall be so stated; and said clerk shall be responsible therefor to the State or individual.

2. Keep books in which he shall enter each deposit separately, giving name of party, number of claim and situation of land sought to be perfected, and shall keep all letters and other vouchers filed in neat and regular order and number corresponding with his books. He shall report to the Treasurer on the last day of each month all funds in his hands due the State, paying the same in kind and taking the receipt in his own name. He shall keep separate columns in his books, showing the amount of specie or the amount of currency or other funds paid in. Upon his removal or resignation, he shall turn over his books, accounts and money in hand to his successor, when properly qualified, or to the Commissioner, taking a receipt for the same.

3. Furnish the Governor, through the Commissioner, on or before the meeting of the Legislature, a correct report of the condition of his office, the money received, giving character of

claim, the money paid out and character of payment. [Acts 1866, p. 161; G. L. Vol. 5, p. 1079.]

Art. 5258. [4406] [2879] **Examination of books.**—The Commissioner shall examine the books and accounts of the receiving clerk and note that they are properly kept, and if any defalcation is found he shall at once report the same to the Governor, who shall suspend said clerk from office until an examination is made, and if found guilty he shall be removed and suit instituted for recovery upon his bond. [Id.]

Art. 5259. [4407] [2880] **Draftsmen.**—The Commissioner shall appoint a chief draftsman and such number of compiling or assistant draftsmen as authorized by law, who shall make out and complete maps of all surveys made in the several counties from the maps furnished by county surveyors; and they shall plot additional surveys upon the proper county maps as forwarded to the Land Office. They shall perform all drafting and other duties required of them by the Commissioner for the benefit of the State or individuals. [Acts 1841, p. 150; G. L. Vol. 2, p. 614.]

Art. 5260. [4408-9-10] **Conditions of employment.**—The Commissioner shall appoint such number of clerks as authorized by legislative appropriation or other law of this state. All clerks and employees of the Land Office shall hold their offices and positions at the pleasure of the Commissioner, and may be removed by him at any time for satisfactory cause.

2. GENERAL LAND OFFICE.

| | | | |
|-------------------------------|--------------|---------------------------------|--------------|
| Office established | Article 5261 | Removal of papers | Article 5265 |
| Custody of records | 5262 | Receipts for papers | 5266 |
| Filing papers | 5263 | Liability of Commissioner | 5267 |
| Public access to papers | 5264 | | |

Art. 5261. [5280] [4042] **Office established.**—There shall be one general land office at Austin, where all land titles emanating from the State shall be registered when not prohibited by the Constitution. The term "land office," as used in this title shall mean the General Land Office of this State. [Const. Art. 14, Sec. 1; Acts 1846, p. 232; G. L. Vol. 2, p. 1538.]

Art. 5262. [5281] [4043] **Custody of records.**—All books, accounts, records, papers, maps and original documents appertaining to land titles and which were termed archives by law, shall be the books and papers of said office, under the control and custody of the Commissioner. He shall keep in the Land Office a copy of each permit, lease or other paper issued by authority of law. [Acts 1837, p. 63; G. L. Vol. 1, p. 1405.]

Art. 5263. [5283] **Filing papers.**—The Commissioner shall adopt the most convenient method for filing papers and preserving the records of said office. A list of all papers in each file shall be retained in the file. Each employee who files a paper shall place his own name thereon. [Acts 1909, p. 429.]

Art. 5264. [5284-5285] **Public access to papers.**—One desiring to examine any paper, record or file shall first obtain the

written consent of the Commissioner or the chief clerk, and an order for the detail of a clerk to be present and superintend such examination. After the examination, the clerk shall carefully examine the papers of said file and see that they are all in place. [Acts 1873, p. 180; G. L. Vol. 7, p. 632.]

Art. 5265. [5290] [4053] Removal of papers.—No transfer or deed that may be a link in any chain of title to any certificate on file in the Land Office shall be withdrawn by any one. The Commissioner shall deliver to the interested party on demand certified copies thereof which shall have the same force and effect as the originals. If the genuineness of any such original paper is questioned in any suit, the Commissioner shall deliver the same to the proper party on the order of the court where such suit is pending; and the Commissioner shall retain a duly certified copy thereof, which shall have the same force and effect as the original in the event of its loss. [Acts 1879, p. 40; G. L. Vol. 8, p. 1340.]

Art. 5266. [5291] [4061] Receipts for papers.—No paper, certificate, copy or document, other than a patent, shall be delivered to the owner until he has receipted for the same. The receipt shall state his residence and post office, and, if delivered to an agent or attorney, it shall also state his residence and post office. The Commissioner shall file such receipt with the other papers. When the Commissioner has good reason to doubt the genuineness of any transfer, power of attorney, or other paper on file in his office, he shall not permit any one to obtain an official copy thereof until such doubts have been removed. [Id.]

Art. 5267. [5292] [4062] Liability of Commissioner.—The Commissioner and the sureties on his official bond shall be responsible to any party injured by removal, withdrawal or alteration of any record or file in said office, unless said Commissioner can show that such act has taken place by permission of the party owning said file or record. [Id.]

CHAPTER TWO.

SURVEYORS AND SURVEYS.

1. LICENSED LAND SURVEYORS.

| | Article | | Article |
|----------------------------|---------|---------------------------------|---------|
| Board of Examiners..... | 5268 | Authority of licensee..... | 5276 |
| Organization of Board..... | 5269 | Field notes to be recorded..... | 5277 |
| Duties of Board..... | 5270 | Undisclosed land..... | 5278 |
| Examination..... | 5271 | Compensation..... | 5279 |
| Seal of licensee..... | 5272 | Certified copies..... | 5280 |
| License, term of..... | 5273 | Disposition of fees..... | 5281 |
| Revocation of license..... | 5274 | Experienced surveyors..... | 5282 |
| Oath and bond..... | 5275 | | |

Art. 5268. Board of Examiners.—The Board of Examiners of Land Surveyors shall be appointed by the Governor, and shall be composed of the Commissioner and two reputable land surveyors of not less than fifteen years practical and active experience in the field as land surveyors. [Acts 2nd C. S. 1919, p. 173.]

Art. 5269. Organization of board.—The board shall organize

by electing from their number a chairman and a secretary-treasurer. The concurrence of two members shall be necessary for the adoption or rejection of any question upon which they may be called to pass. The records and books of the board relating to the execution of this law shall be deposited in the Land office for safe-keeping when not in use by the Board. [Id.]

Art. 5270. Duties of board.—The board shall prepare written questions upon the theory of surveying, practical surveying, theory and use of surveyor's instruments, calculation of areas, closing field notes, the law of land boundaries and such other matters pertaining to surveying as the board may deem important. When the questions prepared by the board and the answers thereto shall have been returned to the chairman of the board as herein provided, he shall either convene the board for the purpose of passing upon such answers and the issuance or refusal of the license, or he may transmit the questions and answers to other members of the board for their consideration and action, and shall issue license to the applicant if he shall have passed a successful examination as herein provided. Upon receipt of a written application for license, the board shall forward the same to the custodian of questions for teachers' certificates in the county where such applicant resides, together with the questions prepared by the board, with suitable words on the inclosure indicating the contents. [Id.]

Art. 5271. Examination.—Upon receipt of the questions by the custodian of questions for teachers' certificates as provided herein, he shall hold the same unopened and shall open the same only in the presence of the applicant or applicants at the same time and place as may be required for the examination of applicants for teachers' certificates. Each applicant shall deposit ten dollars with the authority that may be authorized to receive such fees from applicants for teachers' certificates. The authority for conducting the examination for teachers' certificates shall conduct the examination of applicants for license hereunder in the same manner as is provided by law for the examination of applicants for teachers' certificates. When such applicant shall have returned the questions and answers to the source from which they were received, the authority receiving them shall return both questions and answers to the chairman of the Board of Examiners of Land Surveyors, together with eight dollars of the ten dollars deposited by each applicant, retaining the two dollars, which two dollars shall be disposed of as are the fees paid by applicants for teachers' certificates. Such questions and answers shall be deposited in the Land Office and there safely kept for at least one year. If a license be refused an applicant he may take any subsequent examination under the same conditions as in the first instance. [Id.]

Art. 5272. Seal of licensee.—Each licensed land surveyor shall procure a seal of office. Around the margin shall be the words "Licensed State Land Surveyor," and between the points

of the star in the said seal shall be the word "Texas." He shall attest with said seal all certificates and other official acts issued under the provisions of this law. No certificate or other instrument issued by such surveyor shall be admitted in evidence or have any legal effect unless such seal is impressed thereon. [Id.]

Art. 5273. **License: term of.**—A license issued to an applicant under these provisions shall be valid for life unless sooner revoked by the Board for any of the following causes: That the holder has been found by a court of competent jurisdiction guilty of a felony or adjudged to have committed a theft, or fraud, or to be insane or incompetent, or shall be found by the Board to have unlawfully given information concerning any undisclosed public land or to have been directly or indirectly interested in the purchase or in the acquisition of title to any public land or to have been found guilty of any act or default discreditable to the surveying profession. [Id.]

Art. 5274. **Revocation of license.**—Before any license issued under these provisions shall be revoked, the holder shall have been advised by written notice from the Board, mailed to him at his last known address, at least thirty days before the day fixed for hearing, of any charge against him, stating the charge, and the time and place for such hearing. The evidence adduced on such hearing shall be reduced to writing. If the Board finds the charges sustained by the evidence, the license of such surveyor shall be revoked. The surveyor whose license has been revoked may appeal from such revocation to any district court of the county in which he resides. Upon such appeal the court shall admit in evidence the written record of the Board together with such other evidence as may be offered on either side in accordance with the rules of evidence in such courts. [Id.]

Art. 5275. **Oath and bond.**—Before one who receives a land surveyor's license shall be authorized to perform the duties of licensed land surveyor, he shall take the official oath, and shall make a good bond in the sum of one thousand dollars payable to the Governor, conditioned that he will faithfully, impartially and honestly perform all the duties of a licensed surveyor, to the best of his skill and ability in all matters wherein he may be employed. Such oath and bond shall be recorded in the office of the county clerk of the county in which the licensee resides, and after being so recorded shall be filed in the Land Office accompanied with one dollar filing fee, and thereupon the licensee shall be authorized to enter upon the discharge of the duties of a licensed land surveyor. [Id.]

Art. 5276. **Authority of licensee.**—Land surveyors licensed under these provisions are hereby authorized to perform the duties that may be performed by county surveyors, and shall be subject to the direction of the Governor, Land Commissioner, Attorney General and the courts of the State in matters of land surveying in such cases as may come under the supervision of

such authorities. The jurisdiction of such licensees shall be co-extensive with the limits of the State. They may hold the office of county surveyor, and if so elected shall qualify as provided by law for county surveyors, but such election for any particular county shall not limit the jurisdiction of said surveyor to such county, nor shall the election of a county surveyor for any particular county prevent any licensed surveyor from performing the duties of a surveyor in such county. All field notes made by one licensed under this law shall be signed by such surveyor, followed by the designation, "Licensed land surveyor." [Id.]

Art. 5277. Field notes to be recorded.—Every survey made by any licensed surveyor shall be recorded in the county surveyor's records of the proper county, and for the purpose of such record, and for all other purposes, licensed surveyors shall have free and unrestrained access to the county surveyor's records. The field notes of all surveys and plats of same made by any licensed land surveyor affecting the lines, boundaries and areas of unpatented land shall be forwarded to the Land Office. All field notes made by a licensed land surveyor in any county in this State shall have the same force and effect and be admissible in evidence the same as field notes made by county surveyors. [Id.]

Art. 5278. Undisclosed land.—If a licensed surveyor shall discover an undisclosed tract of public land he shall not make known that fact to anyone except to such person as may have it enclosed, but he shall forward to the Land Office a report of the existence of such tract and the acreage therein, and its probable value. [Id.]

Art. 5279. Compensation.—A licensed land surveyor shall receive as compensation for his services not to exceed ten dollars per day and other expenses incident to the survey as shall be agreed upon between the surveyor and the interested party, whether the same be a private person, a county, a court, or the State. [Id.]

Art. 5280. Certified copies.—Surveyors qualified under this law and county surveyors may make a certificate of any fact shown by the books, documents and records of any county surveyor's office and may make a certified copy of any document or record or entry shown by record of such county surveyor, and said certificate shall be admissible in evidence as to what said records may disclose. For each such certificate the surveyor may charge a fee of one dollar, and for each one hundred words contained in any certified copy thirty-five cents. When a county has a county surveyor such surveyor alone shall be authorized to make certificates and certified copies and receive the fees therefor. [Id.]

Art. 5281. Disposition of fees.—The sum received by the Board or so much thereof as may be necessary shall be used to defray the actual expenses incurred by the members of said

Board in the execution of this law, and the remainder shall be deposited annually in the State Treasury. No appropriation shall ever be made to defray the expenses of said Board or to carry into effect any provision of this law. [Id.]

Art. 5282. Experienced surveyors.—Any applicant who is a reputable surveyor of fifteen years actual experience in the field as such surveyor shall receive a license without examination when he shall have applied therefor, accompanying such application to the Board with the affidavits of three credible persons to the effect that such applicant is a reputable land surveyor of fifteen years actual experience in the field, and upon the payment of a fee of two dollars to said Board. [Id.]

2. COUNTY SURVEYORS.

| | Article | | Article |
|----------------------------|---------|------------------------------------|---------|
| Election | 5283 | Record of surveys..... | 5291 |
| Bond | 5284 | Right to examine books..... | 5292 |
| Deputy | 5285 | Change of county boundary..... | 5293 |
| Chain carriers | 5286 | Lost records | 5294 |
| Duties | 5287 | Standards of measure..... | 5295 |
| Inclosed school lands..... | 5288 | Removal: delivery of records..... | 5296 |
| Failure to survey..... | 5289 | Custody of records in absence..... | 5297 |
| To record field notes..... | 5290 | Bound records | 5298 |

Art. 5283. [5300-5325-5326] Election.—A county surveyor shall be elected in each county at each general election for a term of two years. He shall reside in the county and keep his office at the courthouse or some suitable building at the county seat, the rent therefor to be paid by the commissioners' court on satisfactory showing that the rent is reasonable, the office necessary and that there is no available office at the courthouse. [Const., Art. 6, Sec. 44; Acts 1858, p. 66; Acts 1876, p. 196; G. L. Vol. 4, p. 938; Vol. 8, p. 1032.]

Art. 5284. [5301] [4069] Bond.—The county surveyor shall first give bond in such sum as the commissioners' court may fix, not less than five hundred nor more than ten thousand dollars, and conditioned that he will faithfully perform the duties of his office. [Acts 1837, p. 63; P. D. 1081, 4522; Acts 1897, p. 26; G. L. Vol. 1, p. 1405]

Art. 5285. [5308] [4076] Deputy.—Each county surveyor may appoint a deputy surveyor as he may deem necessary, and shall administer his official oath and take his bond in the sum of five thousand dollars conditioned for the faithful performance of the duties of his office. The deputy may do all acts authorized or required by law to be done by the county surveyor. [Acts 1837, p. 63; P. D. 4522; G. L. Vol. 1, p. 1405.]

Art. 5286. [5309] [4077] Chain carriers.—Each county surveyor may employ persons sixteen years of age or over as chain carriers or markers, and shall administer to each an oath to faithfully perform his duties as such in accordance with the instructions given him. [Id.]

Art. 5287. [5303-5307] Duties.—Each county surveyor shall receive and examine all field notes of surveys made in said county upon which patents are to be obtained, and shall certify to the same according to law and record such field notes in a

book to be kept by him for that purpose; and he shall perform such other duties as may be required of him by law. The commissioners' court shall furnish him all necessary books of record. [Id.]

Art. 5288. [5304] [4072] **Inclosed school lands.**—He shall report to the commissioners' court on the first Monday in June each year the number of sections of public school lands in his county inclosed during the past year, and the names of the persons controlling same, and the number of sections controlled by each person. [Acts 1879, p. 101; G. L. Vol. 9, p. 1401.]

Art. 5289. [5343] [4153] **Failure to survey.**—If any county surveyor fails, neglects or refuses, when the amount of lawful surveying fees of any location of land may be tendered to him by any person legally entitled to the survey, to make or cause such survey to be made within one month after such tender, he and his sureties shall be liable on his official bond to such injured parties in the amount of damages or injury said parties may sustain by reason of such neglect, refusal or failure. [Acts 1837, p. 63; G. L. Vol. 1, p. 1405.]

Art. 5290. [5305] [4073] **To record field notes.**—Each county surveyor shall record in a well bound book all the surveys in his county, with the plats thereof that he may make, whether private or official. Such record shall be open to the inspection of the public. For such service the surveyor may charge in addition to the fees allowed by law for field work, twenty cents per hundred words for such record. [Acts 1881, p. 71; G. L. Vol. 9, p. 163.]

Art. 5291. [5306-5312] **Record of surveys.**—Each county surveyor shall quarterly plat upon the map of his county all surveys made during the preceding quarter and transmit sketches and field notes of same to the Commissioner. Such map shall be free to public inspection. [Acts 1858, p. 66; P. D. 1087; G. L. Vol. 4, p. 938.]

Art. 5292. [5328] [4098] **Right to examine books.**—Any person interested, for himself, or as agent or attorney of another, shall at all times have the right to examine the books, papers, plats, maps or other archives belonging to the office of any surveyor, on the payment of the fee fixed by law. [Id.]

Art. 5293. [5313] [4081] **Change of county boundary.**—When any county boundaries are changed the surveyor of the county from which territory may be so taken shall furnish the surveyor of the county including such territory with a complete copy of all the field notes of surveys made in the same. [Acts 1840, p. 191; G. L. Vol. 2, p. 365.]

Art. 5294. [5324] [4092] **Lost records.**—Whenever the maps, field notes of surveys, or other records, or any part thereof of the surveyor's office shall from any cause be lost or destroyed, such surveyor shall obtain from the Commissioner a transcript of such lost records certified to as required by law, and which certified copy shall have the same force and effect

as the original. Such surveyor shall receive five cents and the State ten cents per hundred words for such transcript to be paid by the commissioners court. [Acts 1885, p. 92; Amend. Sen. Jour. p. 482, 1895; G. L. Vol. 9, p. 712.]

Art. 5295. [5330-1] Standards of measure.—Each surveyor shall, in some convenient place at the county seat, establish a true meridian by a substantial monument, to be erected at the expense of the county, and shall adjust to the said meridian all compasses or other such instruments before being used; and shall keep in his office a standard chain of the true measurement of ten varas, to which all of his chains shall be adjusted before being used. All surveyors shall be responsible to parties interested for any cost that may accrue in rectifying any errors that may occur in their work by reason of neglect or failure to comply with the requirements of this article. [Acts 1873, p. 173; P. D. 7099; G. L. Vol. 7, p. 625.]

Art. 5296. [5332] [4103] Removal: delivery of records.—Upon removal from office, or at the expiration of his term of office, each county surveyor shall deliver to his successor all records, books, papers, maps and other things appertaining to his office.

Art. 5297. [5333] [4104] Custody of records in absence.—Whenever an organized county from any cause has not a qualified county surveyor, the county clerk of such county shall take charge of all records, maps and papers belonging to the county surveyor's office and safely keep the same in his office. [Acts 1866, p. 31; G. L. Vol. 5, p. 949.]

Art. 5298. [5334] [4105] Bound records.—Whenever the commissioners court deems it necessary it shall order the surveyor's record to be transcribed in good and substantial books, by the surveyor or special deputies sworn to make true copies of the same, for which services they shall be allowed not more than fifteen cents per hundred words, to be paid out of the county treasury. [Acts S. S. 1871, p. 18; G. L. Vol. 7, p. 20.]

3. SURVEYS AND FIELD NOTES.

| | | | |
|-----------------------------------|--------------|----------------------------|--------------|
| Authorized surveys..... | Article 5299 | Division line: notice..... | Article 5303 |
| Field notes: requisites..... | 5300 | Disputed line: trial..... | 5304 |
| Loss of field notes..... | 5301 | Incorrect field notes..... | 5305 |
| Surveys on navigable streams..... | 5302 | | |

Art. 5299. [5335] [4142] Authorized surveys.—All surveys of public lands shall be made by authority of law, and by a surveyor duly appointed, elected or licensed, and qualified.

Art. 5300. [5336] [4144] Field notes; requisites.—The field notes of every such survey shall state:

1. The county in which the land is situated.
2. The authority under or by virtue of which it is made, giving a true description of the same.
3. The land by proper field notes with the necessary calls and connections for identification (observing the Spanish measurement by varas.)

4. A diagram of the survey.
5. The variation at which the running was made.
6. The names of the chain carriers.
7. The date thereof, and the signature of the surveyor.
8. The surveyor shall officially certify to the correctness of the survey, that it was made according to law; that such survey was actually made in the field, and that the field notes have been duly recorded, giving book and page.

9. When the survey has been made by a deputy, the county surveyor shall certify officially that he has examined the field notes, has found them correct, and that they are duly recorded giving book and page of record.

Art. 5301. [5337] [4146] **Loss of field notes.**—When the original field notes of any authorized survey are lost or destroyed, the owner thereof or his agent, on making affidavit of such fact and filing same in the office of the surveyor where the survey was made, may obtain from him a certified copy of the record thereof. Such copy shall be as valid and efficient in law as the original and shall secure to the party all the rights before the Commissioner that the original would have done. [Acts 1841, p. 293; G. L. Vol. 2, p. 1599.]

Art. 5302. [5338-9] **Surveys on navigable streams.**—All lands surveyed for individuals, lying on navigable water courses, shall front one-half of the square on the water course and the line running at right angles with the general course of the stream, if circumstances of the lines previously surveyed under the laws will permit. All streams so far as they retain an average width of thirty feet from the mouth up shall be considered navigable streams within the meaning hereof, and they shall not be crossed by the lines of any survey. All surveys not made upon navigable water courses shall be in a square, so far as lines previously surveyed will permit. [Acts 1837, p. 63; P. D. 4529; G. L. Vol. 1, p. 1405.]

Art. 5303. [5340] [4150] **Division line: notice.**—Before running a division line between two settlers or occupants claiming lands, the surveyor shall give written notice to the interested parties. Any survey made contrary to the true intent and meaning of this article shall be unlawful. [Id.]

Art. 5304. [5341] [4151] **Disputed line: trial.**—When persons cannot agree to a division line of any land which has never been surveyed agreeably to law, either party may apply to the nearest justice of the peace, and make oath that he has tried and has not been able to settle such dispute, naming the parties thereto; and said justice shall issue a warrant to any lawful officer to summon the parties defendant, together with six disinterested jurors, to meet upon the premises in dispute, together with such witnesses as either party may summon, to give evidence on a certain day, naming the time and place. The justice shall meet the parties, examine all the testimony before the jury, who shall on oath hear and determine the case

in dispute and who shall pay the costs. Each juror shall receive two dollars per day for such services, and the other officers such fees as allowed by law for similar services. If the land in dispute is on a county line, a justice of either county in which part of the land lies may act in such case. Either party may appeal to the county court within ten days upon giving bond and security for the costs. [Id.]

Art. 5305. [5344-5-6] **Incorrect field notes.**—The Commissioner shall cause a plain statement of the errors in any field notes in the land office, with a sketch of the map, to be forwarded by mail, or by the party interested, to the surveyor who made the survey, with a requisition to correct and return the same; and said surveyor shall do so at once without further charge. If the conflict exists only on the map or in the field notes, the surveyor need only officially certify to the facts, and furnish a true sketch of the survey with its connections. [Acts S. S. 1871, p. 11; P. D. 7091; G. L. Vol. 7, p. 13.]

CHAPTER THREE.

SURFACE AND TIMBER RIGHTS

1. GENERAL PROVISIONS.

| | | | |
|-------------------------------------|---------|-----------------------------|---------|
| Sale and lease of public lands pro- | Article | Duties of Commissioner..... | Article |
| vided for | 5306 | Accounts | 5307 |
| | | | 5308 |

Art. 5306. [5405] **Sale and lease of public lands provided for.**—All lands set apart for the benefit of the public free schools, the lunatic asylum, the blind asylum, the deaf and dumb asylum, and the orphan asylum shall be sold and leased under the provisions of this chapter. All tracts of less than eighty acres shall be sold as a whole for cash. All such lands shall be sold without condition of settlement and residence, but shall not be sold to corporations. [Acts 1895, p. 63; G. L. Vol. 170, p. 793; Acts 1919, p. 312.]

Art. 5307. [5406] **Duties of Commissioner.**—The Commissioner is hereby vested with all the power and authority necessary to carry into effect the provisions of this chapter, and shall have full charge and discretion of all matters pertaining to the sale and lease of said lands, and their protection from free use and occupancy and from unlawful inclosure, with such exceptions and under such restrictions as may be imposed by the Constitution and laws of this State. He shall adopt such regulations not inconsistent therewith as may be deemed necessary for carrying into effect the provisions of this chapter, and may alter or amend such regulations so as to protect the public interest; but all such regulations shall first be submitted to the Governor for his approval. The Commissioner shall adopt all forms necessary or proper for the transaction of the business imposed upon him by this chapter, and may call upon the Attorney General to prepare such forms, and said officer shall also furnish the Commissioner with such advice and

legal assistance as may be requisite for the due execution of the provisions hereof. The Commissioner shall furnish all available data to the State Board of Education on its request. [Acts 1895, p. 63; G. L. Vol. 10, p. 793.]

Art. 5308. [5449] Accounts.—The Commissioner shall retain in his custody as records of his office each application, affidavit, obligation and paper relating to the sales and leases of said lands, and shall cause to be kept accurate accounts with each purchaser or lessee. [Id.]

2. SALES.

| | | | |
|--------------------------------------|---------|-------------------------------------|---------|
| | Article | | Article |
| Land subject to sale..... | 5309 | First payment accounts..... | 5319 |
| Classification and valuation..... | 5310 | Other accounts..... | 5320 |
| Commissioner shall classify and ad- | | Timber lands..... | 5321 |
| vertise..... | 5311 | Timber: sale..... | 5322 |
| Sold in whole tracts without settle- | | Unsurveyed school lands..... | 5323 |
| ment..... | 5311a | Sale of gayule and lechuguilla..... | 5324 |
| Validating sales..... | 5311b | Unlawful use of minerals..... | 5325 |
| Application to purchase..... | 5312 | Forfeiture for non-payment of in- | |
| Application opening..... | 5313 | terest..... | 5326 |
| Individual bids..... | 5314 | Lien..... | 5327 |
| Cash payments, how remitted..... | 5315 | Transfer of indebtedness..... | 5328 |
| Notice of sale..... | 5316 | Transfers..... | 5329 |
| Awards..... | 5317 | Patents for town sites..... | 5330 |
| Purchaser's name to be given..... | 5318 | | |

Art. 5309. Land subject to sale.—On the first day of September, 1925, and the first day of each January, May and September of each year thereafter all of the surveyed public free school land then unsold and portions of same and all tracts theretofore surveyed for which field notes were returned to and filed in the General Land Office and which reverted to the public domain or the public free school fund, and those surveys for which field notes were returned to and filed in the General Land Office and cannot be legally patented under existing law; and such sold public free school and asylum land as may be forfeited or canceled for any cause prior to the sale date for which the land may be advertised and such unsurveyed land as may hereafter be recovered for the public free school fund upon suit by the Attorney General filed prior to the acquisition of rights to purchase the area as unsurveyed land, shall be subject to and offered for sale by the Commissioner of the General Land Office under the regulations and upon the terms and condition provided in this Act.

Art. 5310. [5407] Classification and valuation.—The Commissioner shall from time to time, as the public interest may require, classify or reclassify, value or revalue, any of the lands included in this chapter, designating the same as agricultural, grazing, or timber, or a combination of said classifications, according to the facts in the particular case, and when entry of the classification and the appraisalment is made on the records of the Land Office, no further action on the part of the Commissioner, nor notice to the county clerk shall be required to give effect thereto. No land classed as agricultural shall be sold for less than one dollar and fifty cents per acre, and no land classed as grazing shall be sold for less than one dollar per acre. The land included in this chapter shall be sold

with the reservation of the oil, gas, coal and all other minerals that may be therein to the fund to which the land belongs, and all applications shall so state. [Acts 1897, p. 184; Acts 1905, p. 159; Acts 1919, p. 312.]

Art. 5311. [5408] **Commissioner shall classify and advertise.**—In cases where any land included in this Act may be leased and the same may come on the market by reason of the expiration or cancellation of such leases and in cases where land may be sold and become subject to forfeiture or cancellation for non-payment of interest and thereby subject to revert to the fund to which it originally belonged by reason of the forfeiture or cancellation of the sale, it shall be the duty of the Commissioner to classify and value same before some sale date thereafter and adopt such means as may be at his command that will give wide publicity and general information as to when such land will be forfeited or canceled, and when it and other land will be on the market for sale together with the regulations, terms and conditions upon which the land may be purchased if past due interest should not be paid. No tract of land shall be subject to sale, except unsurveyed school land, until it shall have been advertised. If there are no other satisfactory or sufficient means at the command of the Commissioner that will give the necessary publicity he shall have printed at the expense of the State, to be paid out of the appropriation for public printing, lists of the land for free distribution to the public. The list shall contain a brief statement of how one shall proceed to buy the land and also state the year to which delinquent interest must be paid to prevent a forfeiture and cancellation. No corporation shall buy any land under this Act.

Art. 5311a. **Sold in whole tracts without settlement.**—The land included in this Act shall be sold in whole tracts only and without condition of settlement and residence. Any unsold land may be leased subject to sale, at not less than five cents per acre per annum, payable in advance each year and for a term not to exceed five years. All land so leased shall be subject to sale on any sale date for which it may be advertised to come on the market.

Art. 5311b. **Validating sales.**—In cases where public free school and asylum land has been advertised as being subject to forfeiture for non-payment of interest and to be forfeited and canceled and come on the market for sale at some future sale date and such land was declared forfeited and the sale canceled on the records of the General Land Office and sale awards issued upon applications filed at such sale date, and said sale award has been held by the Supreme Court to be void and all other sale awards which may be void or voidable or the titles to which may have become defective from any cause, are hereby validated, and when the said land shall be fully paid for together with payment of all fees it shall be patented; provided, in cases where the sale award of the land advertised as aforesaid has not stood one year the owner of said land at date of forfeiture shall have the right to apply to the General Land Office for a re-instate-

ment of said former sale upon the payment of all past due interest at any time within six months after the taking effect of this Act. [Acts 1925, p. 332.]

Art. 5312. [5409] Application to purchase.— One desiring to buy any portion of such surveyed land shall make separate written application to the Commissioner for each tract applied for as a whole, designating the same, and stating the price offered, and make affidavit that he desires to purchase the land for himself and that no other person or corporation is interested in the purchase thereof either directly or indirectly, and pay one-fortieth of the aggregate price offered for the land, and submit his obligation in a sum equal to the amount of the unpaid purchase price offered for the land, binding the purchaser to pay to the State at the General Land Office at Austin, on the first day of each November thereafter until the whole purchase price is paid, one-fortieth of the aggregate price with interest on the unpaid purchase price at the rate of five per cent per annum. Upon receipt and filing of the application, affidavit, obligation and the one-fortieth of the price offered, the sale shall be held effective from that date. [Acts 1895, p. 65; Acts 1919, p. 313.]

Art. 5313. [5410] Application: opening.— The application shall be delivered to the Land Office in a sealed envelope addressed to the Commissioner at Austin, and the envelope shall have indorsed thereon in effect: "Application to buy land," and date when the land will be on the market. Applications received at the Land Office in envelopes not so indorsed shall nevertheless be valid. All such envelopes shall remain unopened and the applications shall remain unfiled and all shall be safely and securely kept by the Commissioner or his Chief Clerk until the day following the day when the land comes on the market and at ten o'clock a. m. on said day one or both of them shall begin to open the envelopes and file all applications; provided, if the opening day should be Sunday or other legal holiday, the opening shall be postponed until the first work day thereafter. Those desiring to be present at such opening may do so. All sales shall be made to, and date from the filing of the application of, the applicant who offers the most for the land, at a price not less than that fixed by the Commissioner, and shall be made by or under the direction of the Commissioner. Should two or more applicants offer the same price for any tract, the same being the highest price offered therefor on any sale date, all bids shall be rejected and the land offered for sale on the next sale date, but a subsequent bid shall not be considered if less than the former price offered. [Acts 1905, p. 159; Acts 1919, p. 314.]

Art. 5314. [5416] Individual bids.— Land that is or may be on the market, and not filed on as provided in the preceding article, may be filed on and sold to any one any time upon proper applications filed in the Land Office as provided by law,

except the envelope enclosing the application shall not be required to have any memorandum thereon, and, if two or more applications should be filed the same day for the same land, the one offering the highest price shall be accepted, but if two or more applicants should offer the same price, the Commissioner shall proceed as herein provided for in the first filing. [Acts 1905, p. 159.]

Art. 5315. [5411] Cash payments, how remitted.—All such applicants shall transmit with their applications the required first payment in the form of money or remittance collectible on demand in Austin, and convertible at par into money on the order of the State Treasurer, without liability; provided, that, should a remittance be made payable to the Commissioner, such payment shall not be invalid for that reason, but the Commissioner shall indorse it to the State Treasurer without incurring liability and the same shall be treated as if payable to the Treasurer. The application shall be void if the payment is not made as required in this article. [Acts 1909, p. 429.]

Art. 5316. [5407] Notice of sale.—The Commissioner shall notify the clerk of the proper county of the sale of each tract, giving the name and address of the purchaser together with the price of the land. When informed of the sale of any land the clerk shall enter on his books opposite the description of the land sold, the name of the purchaser and the date sold, and the notice of such sale and the books of record and entry shall be considered public records. [Acts 1897, p. 184; Acts 1905, p. 159; Acts 1919, p. 312.]

Art. 5317. [5413] Awards.—Notice of awards shall be prepared and issued by the Commissioner, and shall be appropriately numbered and shall be so worded as to constitute a receipt for first payment when signed by the Commissioner. Books shall be prepared containing two copies of the notice of award and a suitable number of coupons to be used by the applicant in making subsequent payments on the land. The notice of awards shall be prepared in duplicate, one to be detached from the book and retained in the Land Office, the other, with the coupons attached, to be sent to the applicant. The coupons in each book shall be prepared in duplicate, each of which shall be numbered with the same number as that on the notice of award. The form of the coupons shall be so prepared as to be suitable for, and shall be used by the remitter in making all subsequent payments on the land, the original to be so worded as to be used as a receipt for remittances when signed as such by the Commissioner. The remitter shall describe each tract of land on which he is making remittance by properly filling in the blanks on both the original and duplicate coupons, and shall enter in the proper blanks the amounts remitted as interest and principal, and both the original and duplicate shall be mailed to the Commissioner with the remittance. [Acts 1909, p. 429.]

Art. 5318. [5415] **Purchaser's name to be given.**—Persons making payments of interest, principal or lease rentals on land shall give the name of the original purchaser or lessee and sufficiently designate the land. [Id.]

Art. 5319. [5412] **First payment accounts.**—When an envelope inclosing an application to purchase land is opened and the remittance for the first payment is in the Land Office, the Commissioner shall cause such remittance to be listed in triplicate daily, and in such form as to show the purpose and amount of each remittance, the name and address of the applicant, and transmit the remittance and two of the lists to the Treasurer. On receipt thereof, the Treasurer shall check the remittances with the lists, and, if found correct, he shall receipt one of the lists and return it to the Commissioner and retain the other list; and thereupon the Commissioner shall deliver the third list retained by him to the Comptroller. The Treasurer shall at once collect all collectible remittances and report to the Commissioner and Comptroller all remittances not collectible in Austin. The items not collected shall be returned to the Commissioner. All first payments thus collected by the Treasurer shall be retained by him until he receives notice from the Commissioner of the final disposition of the applications to purchase, and thereupon he shall at once return to each applicant the amount shown to have been paid on his rejected applications. A duplicate of the notice to the Treasurer of accepted and rejected applications and the amount of first payment shall be transmitted to the Comptroller. On the last working day of each month, the Treasurer shall deposit in the Treasury to the credit of the proper fund the sum collected by him on accepted applications during that month. [Id.]

Art. 5320. [5414] **Other accounts.**—Payments on interest, principal and lease rentals shall be listed and accounted for separate from, but in a similar manner to, first payments. The Treasurer shall deposit eighty per cent of all such remittances received each month to the credit of the probable fund to which they belong, as indicated by the Commissioner; and he shall hold the remaining twenty per cent upon deposit receipts furnished by the Comptroller until receipt of definite notice from the Commissioner of the proper fund, which shall then be credited with the full amount received. The Commissioner shall give such definite notice to the Treasurer and Comptroller immediately after he issues receipts to the remitters. The Commissioner, Treasurer and Comptroller shall each keep an account with each fund according to advices given by them, retaining such advices as permanent records.

Art. 5321. [5429] **Timber lands.**—Timber on lands shall be sold in full tracts for cash at its fair market value, and the Commissioner shall adopt such regulations for the sale thereof as may be deemed necessary and judicious, subject to the provisions of this chapter. By timbered lands is meant lands valued

chiefly for the timber thereon. [Acts 1901, p. 296; Acts 1919, p. 312.]

Art. 5322. [5430] **Timber: sale.**—Application to purchase timber shall be made in the manner provided for the filing of applications for the purchase of lands. If two or more persons each apply to purchase the timber and land on the same day, the one who offers more for the timber but less for the land than a competitor shall have an option for thirty days to take the land at the highest price offered by such competitor, or he may be awarded the timber without the land. If the timber is so sold without the land, such competitor shall have an option for thirty days to purchase the land. If such first party buys neither the timber nor the land, then the land and timber shall be awarded to the one offering the highest price for the land, and next highest price for the timber. If two or more applications for timber alone be filed on the same day the one offering the most therefor shall be accepted. The purchaser of timber without the land shall have the right of ingress and egress upon the land for a period of five years after date of award to remove or protect all the timber thereon. After that time the title to the timber shall revert to the fund to which the land belonged and be again subject to sale by the State, unless the land shall sooner be sold and fully paid for and patent issued thereon; and in that event the timber shall revert to the owner of the land. [Acts 1907, p. 490; Acts 1919, p. 312.]

Art. 5323. [5432] **Unsurveyed school lands.**—The rules governing the sale of unsurveyed school lands are:

1. Application.—One desiring to purchase any portion of the unsurveyed land believed to belong to the school fund shall make a written application of inquiry to the Commissioner. The inquiry shall give the applicant's post-office address, state in effect that he desires to buy the land if it is for sale and sufficiently designate it. If it appears from the records of the Land Office that the area belongs to the public free school fund, or if there be doubt as to the existence of the area as public free school land, the applicant shall be advised and given the name and address of an authorized surveyor with whom he may contract for the survey of the land at the expense of the applicant. The applicant shall file an application with the surveyor accompanied by one dollar as a filing fee. The application shall be filed and recorded and sufficiently describe the land. The survey shall be made and returned to the Land Office within ninety days after the date of the Commissioner's advice as to an available authorized surveyor.

2. Suit to require survey.—If the Commissioner declines to recognize the existence of the area as public school land and refuses to authorize a survey to be made, such person may file suit against the county surveyor in the district court of the county in which the land is located, or in the county to which such county may be attached for judicial purposes, to compel

him to make the survey and thereupon the surveyor shall implead the claimant of the land and in such proceedings determine if the area be public land. In such proceedings the surveyor shall not be held for any cost incurred. If the final judgment of the court should decree the area or part thereof to be school land the surveyor shall make the survey, and the application, field notes and one dollar filing fee shall be filed in the Land Office within ninety days from the date of the final decree.

3. Classification.—When the surveyor returns the field notes and a plat of the survey to the Land Office, together with one dollar filing fee to be paid by applicant, he shall report under oath the classification and reasonable market value of the land and also the timber thereon and its value, which may be considered in connection with such other evidence as may be required by the Commissioner in determining the price to be given for the land and timber. If upon inspection of the papers the Commissioner is satisfied from the report of the surveyor and the records of the Land Office that the land belongs to the public free school fund and the survey has been made according to law, he shall approve the same by classifying and valuing the land, and mail notice of such action to the applicant, giving the classification, price and terms.

4. Terms of sale.—Any timber on such land shall be sold for cash at its reasonable market value. No award shall be issued for the land until the timber shall have been fully paid for. The applicant shall file in the Land Office his application for the purchase of the land together with one-fortieth of the appraised value fixed thereon within sixty days from the date of the notice of the classification and valuation, together with the applicant's obligation for the balance of the unpaid purchase price bearing interest at the rate of five per cent per annum, and the obligation and other conditions of sale shall be the same as that for surveyed land. If such application should not be filed within the time prescribed herein, the Commissioner shall place the land on the market for sale upon the same terms as are herein provided for other surveyed school land. If upon the inspection of any application, field notes and records of the Land Office, there should appear to be a greater area belonging to the school fund than that included in the application and field notes, the Commissioner may, in his discretion, require the applicant to include the whole area in his field notes. If it appears that another than the applicant claims an unsurveyed area which belongs to the school fund, the Commissioner may, in his discretion, refer the removal of such claim to the Attorney General before making a sale to an applicant. The Commissioner may sell the area though the Attorney General refuses to institute proceedings for the removal of such claim. [Acts 1907, p. 490; Acts 1919, p. 315.]

Art. 5324. [5434] **Sale of gayule and lechuguilla.**—The Commissioner may, with the consent and approval of the Governor and Attorney General, sell the gayule or lechuguilla grow-

ing or found upon the public free school land, exclusive of timber. The sales may be upon such terms, conditions and limitations as they may deem most advantageous, having in view the protection of the interest of the school fund and the State. They may also enter into such contracts as they may deem wise for the purpose of having determined the commercial properties and value of any and all such material, and for such purpose they may enter into executory contracts of sale; provided, they shall not in such contracts cause the expenditure of public money nor incur any liability on the State. [Acts 1907, p. 251.]

Art. 5325. [5433] Unlawful use of minerals.—If any person who has no authority or right to do so, cuts or removes any mineral, gayule or lechuguilla from the school land belonging to the public free school fund, judgment shall be rendered against the defendant in behalf of the State in a sum of money equal to the value of the substance so cut or removed, which shall be collected as under execution; and when collected, the money shall be remitted to the State Treasurer, and by him credited to the fund to which the land belongs. [Acts 1907, p. 490.]

Art. 5326. [5423] Forfeiture for non-payment of interest.—If any portion of the interest on any sale should not be paid when due, the land shall be subject to forfeiture by the Commissioner entering on the wrapper containing the papers "Land Forfeited," or words of similar import, with the date of such action and sign it officially, and thereupon the land and all payments shall be forfeited to the State, and the lands shall be offered for sale on a subsequent sale date. In any case where lands have been forfeited to the State for the non-payment of interest, the purchasers, or their vendees, may have their claims reinstated on their written request, by paying into the Treasury the full amount of interest due on such claim up to the date of reinstatement, provided that no rights of third persons may have intervened. In all such cases, the original obligations and penalties shall thereby become as binding as if no forfeiture had ever occurred. If any purchaser shall die, his heirs or legal representatives shall have one year in which to make payment after the first day of November next after such death. Nothing in this article shall inhibit the State from instituting such legal proceedings as may be necessary to enforce such forfeiture, or to recover the full amount of the interest and such penalties as may be due the State at the time such forfeiture occurred, or to protect any other right to such land. [Acts 1897, pp. 39, 184; Acts 1919, p. 314.]

[Following is additional legislative Acts 1925, Chapter 94, p. 267.]

SECTION 1. In case any of the public free school lands that have been heretofore purchased from the State have been heretofore forfeited for non-payment of interest and have not been resold, and that which may hereafter be forfeited for the non-payment of interest that may have accrued prior to November 1, 1925, the owner of such land at the date of forfeiture shall

have the right for a period of ninety days after the date in the notice of revaluation of his land as herein provided, to repurchase upon the terms and conditions prescribed in this Act, any and all of the land in whole tracts according to the forfeiture.

SEC. 2. When any of the land included in the preceding section has been forfeited for the non-payment of interest, the Commissioner of the General Land Office shall forward such list of land to the proper county clerk and include therein such land as may have heretofore been forfeited and remains unsold and within sixty days after the date the list was forwarded to the clerk the owner mentioned in the preceding section who may desire to repurchase such land in whole tracts according to the forfeiture shall advise the Commissioner of the General Land Office of such desire, and transmit with such advice one cent acre for each acre such person desires revalued. As soon as practicable, after the receipt of such advice by the commissioner he shall proceed to ascertain the reasonable value of such land and appraise the same accordingly and shall prepare duplicate notices of the appraisement and send one to each of the forfeiting owners and retain one for the General Land Office. If such forfeiting owner desires to repurchase the land at the appraised value placed thereon, he shall file his application therefor in the General Land Office within ninety days after the date in the notice of appraisement, together with one-fortieth of the appraised value and his obligations for the remaining portion of the purchase price, bearing the same rate of interest per annum as the forfeited purchase bore. The said one-fortieth cash payment shall conform to the requirements now prescribed for the first payment on all applications for the purchase of public free school lands. The one cent per acre received by the Commissioner of the General Land Office, or so much thereof as may be necessary, shall be used by him to defray the expenses incident to the revaluation and the remainder, if any, shall be by him deposited in the State Treasury to the credit of the general revenue.

SEC. 3. If the owner at the date of forfeiture shall not exercise his right to repurchase, the commissioner shall again place the land on the market for sale as is now or may hereafter be provided for the sale of public free school lands. All repurchase under this Act shall be subject to the obligation of interest payments and forfeiture for non-payment of interest that is now provided by law for other purchasers of public free school lands. One-sixteenth of the oil and gas, and all other minerals, in the land included herein, whether known or unknown, are expressly reserved to the public free school fund, in the event the former sale was with mineral reservation.

SEC. 4. Whenever any land affected by this Act is repurchased under the rights of repurchase given herein, any lien, legal or equitable, and any valid contractual right in favor of any person or persons existing against, in and to said land or any part thereof at the time of forfeiture shall remain unimpaired and in full force and effect as if no such forfeiture had occurred. [Acts 1925, p. 267.]

Art. 5327. Lien.—To secure the payment of all principal and interest due upon any sale of public free school land, University land, and the several asylums land, the State shall have an express lien for the use and benefit of the fund to which the land belongs in addition to any right and remedy that it has for the enforcement of the payment of any principal or interest that may become due and unpaid. [Acts 1917, 3rd. C. S., p. 95.]

Art. 5328. Transfer of indebtedness.—If any person, firm or corporation or the Federal Farm Loan Bank with the consent of the owner of any lands mentioned in the preceding article, pays to the State the principal and interest due upon any obligation given for such land, the Commissioner shall be authorized, upon written request of such owner duly acknowledged in the manner required for the conveyance of real estate, coupled with an affidavit of ownership, to execute, acknowledge and deliver a written transfer of the indebtedness held by the State to such person, firm or corporation or the Federal Farm Loan Bank which shall thereupon be subrogated to all the rights, liens and remedies held by the State to secure and enforce the payment on the amount of principal and interest so paid to the State. If the land claimed by the one representing himself to be the owner should be held under such evidence of titles as the law or rules of the Land Office will not authorize or permit to be filed in said office, then the Commissioner may admit the owner to be such person as the person, firm or corporation or the Federal Farm Loan Bank paying the indebtedness shall admit to be the owner, and upon such admission the instrument of transfer shall be executed. Nothing herein shall change in any particular whatever, the law or rules that obtain in the Land Office relative to titles to land and the issuance of patents thereon. [Id.]

Art. 5329. [5435] Transfers.—Owners of public free school land and asylum land purchased from the State may sell their land or a definite portion of the same in any size tract. If in any of the succeeding conditions the land that is desired to be separated from another portion should not be sufficiently designated by metes and bounds in the papers offered for filing, to identify it with certainty, the Commissioner shall require that proper field notes accompany the papers before he files them and separates the land.

1. Personal transfers.—A vendee through personal transfer executed for a whole survey or for a whole portion of a survey purchased from the State as a whole or for a portion of a survey purchased from the State as a whole or in a quantity less than the whole survey, shall have the right to become a substitute purchaser direct from the State in the manner provided herein. With the approval of the Commissioner such vendee may file in said office a complete and valid chain of title through personal transfers which have been duly executed and recorded in the counties in which the land or a part thereof is situated or in the county to which to such county or counties may be

attached for judicial purposes, and pay the lawful fees. When said papers have been filed in said office the substituted purchaser shall have his portion of land separated from the other portion, if any, on the records of the Land Office and thereby he shall assume and become liable to the State for all unpaid principal and interest due and to become due the State for the land conveyed in the deeds so filed, together with all obligations and penalties attaching to the original purchase the same as was the original purchaser. The obligation of the original purchaser and the obligation of all vendors of such substituted purchaser shall be enforceable against the substituted purchaser the same as if he were the original purchaser from the State, and the obligation of the vendor or vendors of the substituted purchaser shall be deemed canceled.

2. Other transfers.—One who claims title through a source other than by personal transfer, to a definite portion of a survey less than a whole as it was purchased from the State may, with the approval of the Commissioner, have that portion of land so claimed separated from the other portion of the survey upon the records of said office by filing therein such evidence of claims as may be required by said Commissioner and pay the lawful fees for the papers filed as evidence of the claim or a right to a separation of such area.

3. Liability of vendee.—When a separation of the land has been made upon the records of the Land Office in either manner provided for herein, that portion so separated shall be charged and credited with its pro-rata part of the principal and interest due and paid to the first day of November preceding the date of the filing of the transfers or other papers.

4. Patent.—If any owner or claimant of any land included in this chapter, which ownership or claim is shown on the records of said office, should desire a patent upon a portion thereof less than the whole, such owner or claimant may, with the approval of the Commissioner, file field notes with lawful filing fee for that portion on which patent is desired and obtain a patent therefor when the land is fully paid for with all lawful fees. If the ownership should be evidenced by personal transfers the patent shall be issued to such owner and his assigns. If the claimant claims title through other evidence than by personal transfer, the patent shall be issued in the name of the person and his assigns that holds title by original purchase or in the name of the person and his assigns who appears on said records to hold title through the last personal transfer. If a patent should be issued in the name of one other than the legal owner, such patent and the rights granted therein shall inure to the benefit of the legal owner. Where any land has been purchased from the State on condition of residence, no patent shall be issued until proper proof of such residence either by the vendor or vendee, or both consecutively, has been filed and the Commissioner is satisfied therewith. Every vendee before the completion of the required residence by his vendor shall file in the Land Office an applica-

tion, affidavit and obligation, such as is required of an original purchaser, together with the partial proof of his vendor's continuous residence to the date of the deed of transfer. On the filing of proof of the required three years' residence, the Commissioner shall issue a certificate of its sufficiency upon the payment of the lawful fees. The said certificate may be recorded in the deed records of the proper county, and when so recorded it shall become a muniment of title. After a certificate has been recorded, neither the sale nor the occupancy of said land shall be questioned by the State nor any person whose rights did not accrue prior to the completion of said residence. The effect of the issuance of said certificate shall include and extend to all land purchased as additional to a home tract on which the said certificate may have been issued. No sale made without condition of settlement shall be questioned by the State or any person after one year from the date of such sale. All purchasers shall have the option of paying the purchase price in full at any time, together with full fees, and obtain a patent for the land. [Acts 1907, p. 490; Acts 1919, p. 316; Acts 1921, p. 118.]

Art. 5330. [5438] **Patents for town sites.**—Whenever a town shall be located and established upon any lands sold under this or any former law, the purchaser or his vendee shall be permitted to pay the entire balance of principal and interest due the State upon such land and obtain a patent therefor at any time; but no such payment shall be permitted or patent issued until such a purchaser or owner of such land shall file in the land office a certified plat of such town, made by a surveyor, which shall be accompanied by the affidavit of the owner of such land, corroborated by the affidavit of five disinterested and credible citizens of the county, to the effect that a town, giving its name, has been located and established upon the land, and that there has been erected therein and is being occupied by bona fide citizens, twenty business and resident houses, or either or both. [Acts 1895, p. 66; G. L. Vol. 10, p. 796.]

3. LEASES.

| | Article | | Article |
|-------------------------------|---------|--|---------|
| Lease of unsold tracts..... | 5331 | Expired leases | 5335 |
| To advertise lands..... | 5332 | Forfeiture: lien | 5336 |
| Application and delivery..... | 5333 | Lessees may remove improve- ments | 5337 |
| Water supply: option..... | 5334 | | |

Art. 5331. **Lease of unsold tracts.**—Any unsold land may be leased at any time at not less than five cents per acre, payable in advance each year and for a term not to exceed five years, but all land so leased and unsold shall be subject to sale on each succeeding sale date. [Acts 1919, p. 314.]

Art. 5332. [5451] **To advertise lands.**—All leases under the provisions of this chapter may be advertised by the Commissioner in such manner as he deems best, and let to the highest responsible bidder in such quantities and under such regulations as he deems to the best interest of the State, not inconsistent with the equities of the occupant. Any bid or offer to lease may

be rejected by him prior to signing the lease contract, for fraud or collusion, or other good and sufficient cause.

Art. 5333. [5452] Application and delivery.—One desiring to lease said lands shall make written application to the Commissioner specifying and describing the particular lands he desires to lease; and thereupon the Commissioner shall notify the applicant in writing who offers the highest price, that his proposition to lease is accepted; and shall execute to the lessee in the name and by authority of the State of Texas a lease on such lands. When the lessee has paid the rent for one year in advance, the Commissioner shall deliver said lease to the clerk of the county in which the land is situated, who shall record in a well-bound book kept in his office, a memorandum or abstract of said lease, showing the number of the survey or surveys leased, the name of the original grantee, the amount leased, the name of the lessee, the date of the lease and the number of years it has to run, and no other record of leases shall be required. The clerk shall be entitled to twenty-five cents for entering said memorandum. Upon payment of said fee, the clerk shall deliver the lease to the lessee. When any such lease is filed for record the clerk shall make the memorandum or abstract above provided for. [Acts 1901, p. 292.]

Art. 5334. [5455] Water supply: option.—Any person desiring to lease any lands on which no permanent water supply exists, shall notify the Commissioner in writing that he desires to lease lands, specifying and describing them, provided he can obtain the necessary supply of water by boring or otherwise, and that he will within ninety days lease said lands, provided such water supply can be obtained; he shall also make and file with the Commissioner his bond, with good and sufficient personal security, to be approved by the Commissioner, in a sum equal to one year's rental of the quantity of land applied for, payable to the State, conditioned that he will diligently and in good faith try to secure water on such land during such ninety days, and if secured will lease the designated lands for the term prescribed herein; and thereupon the Commissioner shall, for such ninety days, withhold such lands from lease to any other person. Within or at the expiration of the said ninety days, and annually thereafter, such applicant shall pay to the State in advance, one year's rental of the land applied for by him; on satisfactory proof of which payment the Commissioner shall execute and deliver to the lessee a lease of the said lands, signed by himself officially, and attested by the seal of the Land Office, together with which he shall deliver up the bond of said lessee, marked, "Satisfied." If said lessee fails to apply for his lease and make the payment aforesaid within said ninety days, and shall also within said ninety days fail to prove to the satisfaction of the Commissioner within that time that he has in good faith diligently used proper means and made proper efforts to secure a water supply on such land and failed, then the Commissioner shall mark said bond, "Forfeited", and shall deliver the same to the Attorney

General, who shall at once cause said bond to be sued upon and collected, and paid to the available school fund. The penalty stated in such bond is hereby declared to be liquidated damages, and judgment for that sum shall in all cases be recovered by the State. Proof satisfactory to the Commissioner that proper, suitable and diligent effort has been made by such applicant to secure water, and that sufficient water could not be secured, shall relieve the principal and sureties on said bond from all responsibilities therein, and it shall be marked, "Satisfied", by said Commissioner and delivered to the principal therein. No lease of less than four sections of unwatered pasture lands shall be made, unless such less number includes all unleased land in that vicinity belonging to the several funds mentioned in this chapter. Lessees or their vendees who shall have at their own expense secured water on their leaseholds in accordance with the provisions of this article, shall at the expiration of their lease contract, have a right to a renewal of their leases for another term of five years at the price then provided by law, by giving sixty days written notice to the Commissioner. [Acts 1895, p. 63; G. L. Vol. 10, p. 793.]

Art. 5335. [5454] **Expired leases.**—When a lease expires, or is canceled for any cause within ninety days from any sale date, the Commissioner shall not consider an application to lease the land within said time. An original lessee, or the assignee of an entire leasehold, who was such at the date of the termination thereof, shall have a preference to another lease of the land at the expiration of the ninety days over another applicant to lease, provided he will pay as much therefor as another, after due publicity. [Acts 1905, p. 159; Acts 1919, p. 314.]

Art. 5336. [5456] **Forfeiture: lien.**—If any lessee fails to pay the annual rent due for any year within sixty days after such rent becomes due, the Commissioner shall cancel said lease by a writing under his hand and seal of office, and filing it with the other papers relating to such lease, when such lease shall immediately terminate. During the continuance of all leases, and after forfeiture, the State shall have a lien upon all property owned by the lessee upon the leased premises to secure the payments of all rents due, which lien shall be superior to all other liens whatsoever. A reservation of such lien in said lease shall not be essential to the preservation or validity thereof. [Acts 1901, p. 29.]

Art. 5337. [5457] **Lessees may remove improvements.**—All improvements made by lessees on lands leased by them are hereby declared to be personal property, which may be removed by such lessees on the expiration of their lease contracts; and they shall have sixty days after such expiration in which to remove the same. [Id.]

CHAPTER FOUR.

OIL AND GAS.

1. UNIVERSITY AND OTHER LANDS.

| | Article | | Article |
|--------------------------------------|---------|--|---------|
| Permit | 5338 | Damages to surface | 5345 |
| Application for surveyed lands | 5339 | Statement of holdings | 5346 |
| Unsurveyed lands: application | 5340 | Distribution of funds | 5347 |
| Issuance of permit | 5341 | General provisions | 5348 |
| Extension of permits | 5341a | Transfer of rights | 5349 |
| Extension of oil leases | 5341b | Transfer of not less than forty acres | 5349a |
| Development work | 5342 | May dissolve combination at wish of owner | 5349b |
| Permits extended | 5342a | Forfeiture of rights | 5350 |
| University permits | 5343 | Pollution of streams | 5351 |
| Oil leases | 5344 | Properties taxable | 5352 |
| Terms of lease | 5344a | | |
| Offset wells | 5344b | | |

Art. 5338. Permit.—Subject to the terms hereof, permits for the development of oil and gas may be issued to any person, firm or corporation upon the following lands: All surveyed public school, University, asylum land and other public lands, fresh water lakes, river beds and channels, belonging to the State and all of said lands, except public school and asylum lands sold or disposed of by the State or by its authority with a reservation of minerals or mineral rights therein, and lands purchased with a relinquishment of the minerals therein. [Acts 1917, p. 158; Acts 2d C. S. 1919, p. 241.]

Art. 5339. Application for surveyed lands.—One desiring to obtain the right to prospect for and develop oil and natural gas that may be in any surveyed area included herein shall file with the county clerk a written application designating it sufficiently to identify it. Such clerk shall, upon receipt of one dollar as a filing fee, file and record the application and note the same on his record of surveys opposite the entry of the proper survey, giving the time of filing. When one has obtained four sections, or the equivalent, eligible to be embraced in one permit, such applicant shall not obtain any more land within two miles thereof, but if one obtains less than four sections eligible to be embraced in one permit, such one may obtain such additional area within two miles of the other area as will equal four sections. One shall not obtain more than one thousand acres within one mile of a well producing petroleum. [Acts 1917, p. 158.]

Art. 5340. Unserved lands: application.—One desiring to obtain the right to prospect for and develop oil and natural gas in any unserved areas named in this law shall file with the county surveyor a written application for each area applied for, designating it sufficiently to identify it, but such areas shall not exceed 2,560 acres. Upon receipt of one dollar filing fee the surveyor shall file and record the application. [Id.]

Art. 5341. Issuance of permit.—When the Commissioner receives an application that was filed with the county clerk or with the surveyor and the field notes and plat, one dollar filing fee and ten cents per acre for each acre applied for, which shall also be paid annually thereafter during the life of the permit, and an affidavit by the applicant showing what interest he has in any

other permit, lease or patent issued under this law and in good standing, he shall file the same, and if upon examination the application and field notes are found correct and the area applied for is within the provisions of this law, the Commissioner shall issue to the applicant or his assignee a permit conferring upon him an exclusive right to prospect for and develop petroleum and natural gas within the designated area for a term not to exceed two years. [Id.]

Art. 5341a. **Extension of permits.**—All permits to prospect for oil and gas heretofore issued on river beds or channels, fresh water lakes and islands therein which have not expired and on which as much as twenty-five thousand dollars (\$25,000.00) has been spent in prospecting for oil and gas and on which actual work is now being done, are hereby extended for a period of ten years from date the permit was issued, upon condition that the owner will pay annually in advance the acreage rental due thereon under the law as provided in the permit. This Act shall not be construed to relieve the owner of such permits from the obligations to drill such offset wells as are required by the law under which the permit was issued. [Acts 1925, p. 349.]

Art. 5341b. **Extension of oil leases.**—All oil and gas permits heretofore or hereafter issued upon lands included herein and which have not expired shall be extended for a term of five years from date thereof, conditioned only upon the payment of the annual rental, as provided by law, in advance and whenever production is secured in paying quantities and the payment of royalty begins, the owner shall not pay any further annual rental money. After production is secured in paying quantities, the owner shall be entitled to a lease which shall run so long as the area covered by his lease produces oil or gas in paying quantities, subject to the provisions of this Act. [Acts 1925, p. 351.]

Art. 5342. **Development work.**—Before the expiration of twelve months after the date of the permit the owner thereof shall in good faith begin actual work necessary to the physical development of said area. If petroleum and natural gas is not sooner developed in commercial quantities the owner or manager shall within thirty days after the expiration of one year from the date of the permit, file in the Land Office an affidavit supported by two disinterested credible persons that such actual work was begun within the first twelve months aforesaid, and that a bona fide effort to develop the said area was made during the twelve months preceding the filing of the statement, and showing what work was done and expenditures incurred and whether or not petroleum or natural gas had been discovered in commercial quantities. A failure to file said affidavit within the time specified, or the filing of an affidavit false in material matters shall subject the permit to forfeiture. The owner of a permit shall not take, carry away or sell any petroleum or natural gas before obtaining a lease therefor; provided such quantity as may be necessary for the continued development of the area before obtaining a lease may be used without accounting therefor. [Id.]

Art. 5342a. **Permits extended.**—All oil and gas permits issued on other than public school or university land, by the Commissioner of the General Land Office of the State of Texas under date of February 3, 1920, and heretofore extended for three years by act of the Legislature, are hereby renewed and extended for an additional period of two years; provided however, that this Act shall apply only to those permits on which all rentals have been paid and under which, as extended, a well has been drilled to a depth of 3000 or more feet, and on which drilling operations for oil and gas are being actively conducted in good faith. Rights hereunder shall be conditioned on regular payment of annual rentals covering the two year extension period, and also on owner making report to the Commissioner of the General Land Office within sixty days after this Act becomes effective, showing drilling operations and depth of well. [Id.]

Art. 5343. **University permits.**—The provisions of subdivision 3 of this Chapter, so far as they relate to a combination of permits and extension of time for beginning development and time for development thereunder, shall apply to permits upon University land.

[Following is additional legislation. Acts 1925, Chapter 71, p. 225.]

SECTION 1. That all university land now unsold and all of said land that has heretofore been sold with reservation of the minerals therein and that which may hereafter be sold with reservation of the minerals therein, whether known or unknown, shall be included in this Act, and leases thereon conferring upon persons, firms and corporations the right to develop the oil and natural gas that may be in said land shall be subject to sale by the Commissioner of the General Land Office in accordance with the provisions of this Act and under such rules and regulations as may be adopted by said commissioner as may be necessary to the proper execution of its purposes; provided, oil and gas permits and leases outstanding, shall not be affected by this Act except as provided in Section 14 hereof.

SEC. 2. Sales of oil and gas leases on the lands included herein shall be made by the Commissioner of the General Land Office not less than once each month, when there is land in demand, and at 10 o'clock A. M. on the day fixed therefor. Sales of leases shall be for ten cents per acre in advance for the first year and twenty-five cents per acre in advance for the second year and fifty cents per acre in advance each year thereafter until production is secured in paying quantities, but not to exceed five years, and a royalty of one-eighth of the gross production of the oil, or the value thereof, produced and saved from the leased premises delivered into such pipe line as the lessee may connect his well, or wells, and one-eighth of the gross production of gas, or the value thereof, produced and sold off of the leased premises, and in addition thereto such sum, of any, that one may pay therefor as provided herein.

SEC. 3. The commissioner shall advertise the land and the time when the mineral lease will be subject to sale, except as

elsewhere provided in the event of tie bids. If there should be no other sufficient means for giving the necessary publicity as to what tracts will be subject to lease and the time when applications may be delivered to the General Land office, the commissioner shall have lists of such tracts printed for free distribution at the expense of the State, which expense shall be paid out of the appropriation for public printing. Such lists shall contain a brief designation of the tracts subject to lease and the terms upon which they may be leased and the time when applications therefor will be opened and filed in the General Land Office.

SEC. 4. Separate applications for each tract, with one dollar for county clerk recording fee, and the first payment of ten cents per acre and the sum offered in addition thereto, if any, for any tract shall be delivered into the General Land Office on or before the day and hour on which the lease will be subject to sale, in sealed envelopes on which shall be endorsed in substance "Application to buy oil and gas," and in addition thereto the time the lease will be subject to sale. All envelopes so endorsed shall be securely kept by the commissioner or his chief clerk unopened until the date on which applications are to be opened and at said hour either or both of them shall begin to open the envelopes in the presence of such persons as may desire to be present. All applications received up to the opening hour, whether open or sealed, endorsed or not endorsed, shall be considered as properly delivered into the General Land office. An application which includes two or more tracts or is for a price less than the fixed royalty and ten cents per acre shall be void. When an application shall have been filed and considered and the land found to be subject to lease, the lease shall be issued for a term not to exceed five years to the applicant that pays the most, if any sum, for the area in addition to the ten cents per acre and the stipulated royalty. If production should not be secured in five years the lease shall terminate and another lease on the land again be subject to sale as in the first instance. A duplicate of the lease shall be kept on file in the General Land Office. All leases shall be forwarded by the commissioner, with one dollar recording fee, to the proper county clerk, who shall record same and deliver the lease to the lessor or his agent. If two or more persons should offer the same price for the same area and the same should be the highest price offered, all shall be rejected and a date fixed within the discretion of the commissioner, but not more than fifteen days after rejection, when a lease on the land will be subject to sale as in the first instance; provided no lease shall be sold for a sum less than the tie bid without the tract having been duly advertised and offered for sale on a regular sale date. All sums paid upon rejected applications shall be returned by the State Treasurer.

SEC. 5. Whenever production is secured in paying quantities and the payment of royalty begins, the owner shall not pay any further annual rental. After production is secured in paying quantities, the owner shall be entitled to an absolute lease which

shall run so long as the area produces in paying quantities, subject only to the provisions of this Act. Whenever a lease ceases to produce in paying quantities, or the owner fails to pay to the State the royalty due, it shall be subject to forfeiture by the commissioner, and when sufficiently informed of the facts which authorize a forfeiture he shall forfeit it, and the area shall be again offered for sale as in the first instance.

SEC. 6. Royalty of one-eighth of the gross production, as herein provided, shall be paid to the General Land Office for the benefit of the University permanent fund on or before the twentieth day of each month for the preceding month during the life of the lease, and it shall be accompanied by the sworn statement of the owner, manager or other authorized agent showing the gross amount of oil produced and saved since the last report and the amount of gas produced and sold off the premises, and the market value of the oil and gas together with a copy of all daily gauges of tanks, gas meter readings, if any, pipe line receipts, gas line receipts and other checks or memoranda of amount produced and put into pipe lines, tanks or pools and gas lines or gas storage. The books and accounts, the receipts and discharges of all lines, tanks, pools and meters, and all contracts and other records pertaining to the production, transportation, sale and marketing of the oil and gas shall at all time be subject to inspection and examination by the Commissioner of the General Land Office, the Attorney General, the Governor or member of the Board of Regents of the University of Texas, or the representative of either.

SEC. 7. Royalty and all other sums shall be due and payable to the State at Austin, Texas, and shall be paid to the Commissioner of the General Land Office, and he shall transmit all remittances in the form received to the State Treasurer, who shall credit the permanent University fund with all amounts received from royalty. All payments shall be in the form of cash, bank draft on some State or National bank in Texas, or post office or express money order, or such other forms as may be collectible in Austin.

SEC. 8. The State shall have a first lien upon all oil and gas produced upon any leased area to secure the payment of all unpaid royalty and other sum or sums of money that may be due and become due under the provisions of this Act and may follow the same and the value thereof into the hands of any purchaser.

SEC. 9. If oil or gas should be produced in commercial quantities in a well on an adjoining area whether privately owned, or covered by separate lease, which well should be within five hundred feet of an area leased under this Act, the owner of the lease on such University area shall, within sixty days after the initial production on such privately owned area, begin in good faith and prosecute diligently the actual drilling of an offset well or wells on the area so leased from the State and such offset well or wells shall be drilled to such depth and under such conditions as may be necessary to prevent the undue drainage

of oil and gas beneath such University area. A log of such well, whether producer or non-producer, shall be filed in the General Land Office within thirty days after the well has been completed or abandoned.

SEC. 10. One may transfer his lease at any time or a part thereof in any size tract not less than forty acres, and such transfer shall be recorded in the county or counties in which the area or part thereof is situated, and the recorded transfer or certified copy of same shall be filed in the General Land Office, accompanied by one dollar as filing fee and ten cents per acre for each acre in the transfer, and thereby the assignee shall have his portion separated from the other part and succeed to all the rights and be subject to all the obligations and penalties of the original lessee. The ten cents per acre as a transfer fee shall be deposited into the State Treasury to the credit of the available University fund, and the lease rental and the bonus paid by a purchaser shall be deposited in the State Treasury to the credit of the University permanent fund.

SEC. 11. An owner may relinquish his lease to the State at any time by having the relinquishment recorded in the county or counties in which the area or part thereof is situated, and the recorded relinquishment or certified copy of same shall be filed in the General Land Office, accompanied by one dollar as filing fee, and thereby the owner of such lease shall be relieved of any further obligations to the State, but such relinquishment shall not have the effect to release the owner from any obligations or liabilities theretofore accrued in favor of the State. The area so relinquished shall be subject to lease as in the first instance.

SEC. 12. If the owner of a lease should fail or refuse to make the payment of any sum due thereon either as rental or royalty on the production within thirty days after same shall become due, or if such owner or his authorized agent should make any false return, or false report concerning production, royalty or drilling, or if such owner should fail or refuse to drill any offset well or wells in good faith as required by this Act, or if such owner or his agent should refuse the proper authority access to the records or other data pertaining to the operations under this Act, or if such owner or his authorized agent should fail or refuse to give correct information to the proper authority, or fail or refuse to furnish the log of any well as provided herein, such lease shall be subject to forfeiture by the Commissioner of the General Land Office, and when sufficiently informed of the facts which authorized a forfeiture, the commissioner shall forfeit same, and the area shall be subject to lease again after due advertisement; provided, such forfeiture may be set aside and the lease and all rights thereunder reinstated before the rights of another intervene, upon satisfactory evidence of future compliance with the provisions of this Act and the rules and regulations authorized to be adopted for the purpose of executing its provisions.

SEC. 13. Whenever it may be necessary for the owner of a lease to enter the enclosed land of another for the purpose of

ingress and egress to and from the area so leased from the State, and such lessee and owner of enclosure or agent of the owner cannot agree upon the terms or place of entry, the lessee or his agent may petition the commissioners' court of the county or counties in which such enclosure may be situated, in whole or in part, for the opening of such way of ingress and egress aforesaid as may be necessary. Upon the filing of such petition it shall be the duty of said court or courts to proceed to lay out and establish in the manner provided for the laying out of third class public roads, such road or roads as may be necessary for the purposes named herein.

SEC. 14. All oil and gas permits heretofore issued upon lands included herein and now in force shall be extended for a term of five years from date thereof, and whenever production is secured in paying quantities and the payment of royalty begins, the owner shall not pay any further annual money rental. After production is secured in paying quantities the owner shall be entitled to a lease which shall run so long as the area covered by his lease produces oil or gas in paying quantities, subject to the provisions of this Act. [Acts 1925, p. 225.]

Art. 5344. Oil leases.—Upon the payment of \$2.00 (two dollars) per acre for each acre in the permit a lease shall be issued for a term of ten (10) years, or less, as may be desired by the applicant, and with the option of a renewal or renewals for an equal or shorter period, and immediately after the expiration of the first year after the date of the lease, the sum of (\$2.00) dollars per acre shall be paid during the life of the lease, and in addition thereto, the owner of the lease shall pay a sum of money equal to a royalty of one-eighth of the value of the gross production of petroleum. The owner of a gas well shall pay a royalty of one-tenth of the value of the metre output of all gas disposed of off the premises; provided, however, that the provisions hereof as to the payment of two (\$2.00) dollars per acre during the lease period and the life of said lease shall not apply to leases of bays, marshes, reefs, salt-water lakes or other submerged lands containing as much as one hundred (100) acres but not in excess of five hundred (500) acres upon which as many as five wells have been drilled, and upon which an expenditure of as much as one hundred thousand (\$100,000.00) dollars has been made. The drilling of said wells and the expenditure of said amount to be established to the satisfaction of the commissioner of the land office. [Acts 1925, p. 348.]

Art. 5344a. Terms of lease.—A lease shall then be issued for a term of ten years or less, with the option of a renewal or renewals for an equal or shorter period, and the owner of the lease shall pay a royalty of one-eighth of the value of the gross production of petroleum. The owner of a gas well shall pay a royalty of one-tenth of the value of the meter output of all gas disposed of off the premises. [Id.]

Art. 5344b. Offset wells.—The permit or lease shall contain the terms upon which it is issued including the authority of the Commissioner to require the drilling of wells necessary to off-

set wells drilled upon adjacent private land, and such other matters as the Commissioner may deem important to the rights of the applicant or the State.

Art. 5345. Damages to surface.—If the surface of an area included within the operations of this law, has been acquired by one prior to the filing of an application under the provisions herein, such area shall nevertheless be subject to prospect and lease as provided herein, but the owner of the permit or lease shall pay ten cents per acre to the owner of the surface annually in advance during the life of the permit or lease. The sum so paid and accepted by the surface owner shall be full compensation for all damages to the surface. [Acts 1917, p. 158; Acts 2 C. S., 1919, p. 241.]

Art. 5346. Statement of holdings.—Whoever applies for a permit or lease shall file with the application an affidavit showing what interest the applicant has in any other permit or lease issued by the State and in good standing at the date of the statement. [Id.]

Art. 5347. Distribution of funds.—The proceeds arising from activities under this law, and chapter five hereof, which affect lands belonging to, the public free school fund and the permanent fund of the several asylums, shall be credited to the permanent funds of said institution. All proceeds paid or collected from activities under this law affecting the lands belonging to the permanent fund of the University of Texas, except the royalties provided hereunder, shall be credited by the State Treasurer to the available fund of such institution, provided that all such funds shall be held by the Board of Regents of the University in a special building fund and shall be expended only for the erection of buildings or for other permanent improvements. All royalties collected under the terms of this law from lands belonging to said University shall be credited to its permanent fund. All proceeds arising from the activities affecting lands other than those belonging to the public free school fund, the University and the several asylums, shall be credited to the game fund. [Id.; Acts 3 C. S. 1920, p. 120.]

Art. 5348. General provisions.—The general provisions in this article shall apply to each foregoing provision so far as applicable.

Surveyed lands within the meaning of this law shall include all tracts for which there are approved field notes on file in the Land Office and eighty acre tracts and multiples thereof of such surveys.

Unsurveyed areas within the meaning of this law shall include all areas for which there are no approved field notes on file in the General Land Office.

All applications for surveyed land shall be filed with the clerk of the county in which the tract or a portion thereof is situated, or with the clerk of the county to which such county may be attached for judicial purposes, and shall be filed in the Land

Office within thirty days after it was filed with the county clerk.

All applications for unsurveyed areas shall be filed with the county surveyor of the county in which the area or part thereof is situated. The area shall be surveyed within ninety days, and the application, field notes and plat shall be filed in the Land Office within one hundred days after the date of filing of the application.

A separate written application shall be made for the area desired in a permit. No permit or lease shall embrace the area in two or more applications.

No application, permit or lease shall embrace a divided area.

Whole tracts of surveyed lands may be applied for as a whole or in eighty acre tracts or multiples thereof without furnishing field notes therefor.

The area in each permit shall be developed independently of other areas.

When one desires a lease, any one or more whole tracts in the permit may be abandoned by relinquishment filed in the Land Office as herein provided and thereupon obtain a lease upon the remaining area; provided such remaining area is in a solid body.

An owner may relinquish a permit or lease at any time by having the deed of relinquishment acknowledged, recorded by the proper county clerk and filed in the Land Office accompanied by one dollar filing fee. The Commissioner shall mail notice to the proper county clerk of the filing of the relinquishment and when said notice has had time through the due course of mail to reach said clerk the area shall be subject to applications as in the first instance. [Id.]

Art. 5349. Transfer of rights.—The owner of a file or permit or lease under any provision of this subdivision may sell same and the rights secured thereby at any time, also fix a lien of any kind thereon to any person, association of persons, corporate or otherwise, who may be qualified to receive a permit or lease in the first instance; provided, the instrument evidencing the sale or lien shall be recorded in the county where the area or part thereof is situated, or in the county to which such county may be attached for judicial purposes, and same shall be filed in the Land Office within sixty days after the date thereof accompanied with a filing fee of one dollar. If not so filed the contract evidenced by said instrument shall be void and the obligations therein assumed shall not be enforceable. A sublease contract need not be filed in the Land Office. [Acts 1917, p. 165.]

Art. 5349a. Transfer of not less than forty acres.—Owners of oil and gas permits and leases that have heretofore been issued and those that may hereafter be issued on University land may sell and transfer same as a whole or in tracts not less than forty acres, and the assignee may have the instru-

ments evidencing such transfer filed in the General Land Office and that portion so transferred separated from the parent tract or parent subdivision of a tract permit or lease on the records of said office upon the payment of one dollar as a filing fee for each transfer and an additional fee of ten cents per acre for each acre in such transfer. The Commissioner of the General Land Office may, when deemed necessary, require field notes before filing a transfer. All transfers shall be recorded in the county or counties in which the area or a part thereof is located before offering same for filing in the Land Office. The one dollar filing fee shall be turned into the State Treasury to the credit of the general revenue and the acreage fee shall be turned into the State Treasury to the credit of the available fund of the State University. The provisions of this Act shall apply to permits and leases that may be held singly or in combination with other permits or leases. [Acts 1925, p. 23.]

Art. 5349b. May dissolve combination at wish of owner.—Owners of oil and gas permits, and leases based thereon, that were heretofore issued and those that may hereafter be issued that have been combined under the provisions of existing law and those that may hereafter be so combined, may dissolve such combinations in such manner as may be satisfactory to the owners thereof, and conditioned only upon the payment of the fees prescribed herein when transfers are presented for filing in the General Land Office after having been recorded in the county or counties in which the area or part thereof may be located; provided no acreage fee shall be charged under this Act; when a transfer includes a whole permit or a whole lease or a whole tract in a permit or lease. [Id.]

SEC. 3. When the transfers provided for herein shall have been filed in the General Land Office the assignee or assignees in such transfer shall become substituted for the original permittee or lessee, as the case may be, and thereby assume all the obligations, pains and penalties that the law imposed upon the original permittee or lessee. [Acts 1925, p. 23.]

Art. 5350. Forfeiture of rights.—If a permit or lease should be issued upon a statement by the applicant which is false or untrue in material matters, or should the owner of a permit fail or refuse to begin in good faith the work necessary to the development of the area within the time required, or to proceed in good faith and with reasonable diligence in a bona fide effort to develop an area included in his permit after having begun the development, or to apply for a lease within the prescribed time, or should the owner of a lease fail or refuse to make proper remittances in payment of royalty or other payments, or to make the proper statement, or to furnish the required evidence of the output and market value and material matters relating thereto when requested, or fail to make the annual payment on the area when requested so to do, the permit or lease, shall be subject to forfeiture. When the Commissioner is sufficiently informed of such facts he may declare the permit or lease forfeited by proper entry upon the duplicate thereof in his

office; and he shall mail a notice of that fact to the proper county clerk and the area shall be subject to the application of another than the forfeiting owner when the notice has had time to reach the county clerk through due course of mail; provided, the Commissioner may exercise large discretion in the matter of requiring one to develop gas wells. All forfeitures may, within the discretion of the Commissioner, be set aside and all rights reinstated before the rights of another intervene. [Id.]

Art. 5351. Pollution of streams.—All development in water or on islands, or river beds and channels shall be done under such regulations as will prevent the pollution of the water and for the prevention of such pollution the Commissioner may call upon the Game, Fish and Oyster Commissioner for assistance in the adoption and enforcement of rules and regulations for the protection of the waters from such pollution. The Commissioner of the General Land Office may cancel a permit or lease for a failure or refusal of the owner to comply with such rules and regulations as may be adopted. [Id.]

Art. 5352. Properties taxable.—Rights acquired under this law shall be subject to taxation as is other property. [Id.]

2. GULF LANDS.

| | Article | | Article |
|-----------------------------|---------|--------------------------------|---------|
| Lands subject to lease..... | 5353 | Forfeiture of rights..... | 5360 |
| Notice for bids..... | 5354 | Access to lands..... | 5361 |
| Application for lease..... | 5355 | Assignments of leases..... | 5362 |
| Tie bids..... | 5356 | Relinquishment of lease..... | 5363 |
| Acceptance of bid..... | 5357 | Disposition of payments..... | 5364 |
| Terms of lease..... | 5358 | Classification of surveys..... | 5365 |
| Offset wells..... | 5359 | Pollution of streams..... | 5366 |

Art. 5353. Lands subject to lease.—All islands, salt water lakes, bays, inlets, marshes and reefs owned by the State within tide water limits, and that portion of the Gulf of Mexico within the jurisdiction of Texas, and unsold unsurveyed public free school lands, shall be subject to lease by the Commissioner to any person, firm or corporation for the production of oil and natural gas that may be therein or thereunder, in accordance with the provisions of this law. [Acts 2nd C. S. 1919, p. 51; Acts 1st C. S. 1921, p. 112.]

Art. 5354. Notice for bids.—The Commissioner shall fix the day and hour when an area or areas will be subject to lease and advertise or readvertise such areas at least thirty days before such lease date, except as provided in case of tie bids. The Commissioner may give such notice by distributing printed lists as provided for sales of surface rights of public lands. [Acts 2nd C. S. 1919, p. 51.]

Art. 5355. Application for lease.—Application for separate areas and the first payment thereon shall be delivered into the Land Office on or before the day and hour on which the area will be subject to lease, in sealed envelopes indorsed, "Application to lease Minerals," with the date the area will be subject to lease. All envelopes so indorsed shall be securely kept by

the Commissioner or his chief clerk unopened until the date on which applications are to be opened, and at said hour either or both of them shall open the envelopes in the presence of such persons as desire to be present. All applications received up to the opening hour, whether open or sealed, indorsed or not indorsed, shall be considered as properly delivered. An application which includes two or more areas, or is for a price less than the fixed royalty and price per acre shall be void. [Id.]

Art. 5356. Tie bids.—If the highest bid for the same area is made by more than one applicant, all such applications shall be rejected and a date fixed within the discretion of the Commissioner, not later than the fifteenth day of the following month, when the area will be subject to lease as in the first instance, but no bids therefor shall be considered if the price is less than the former sum offered. The State Treasurer shall return all sums paid upon rejected applications. [Id.]

Art. 5357. Acceptance of bid.—When an application has been filed and considered and the area found to be subject to lease, the lease shall be issued for a term not to exceed twenty-five years to the applicant that pays the most for the area in addition to the fixed price per acre and the stipulated royalty. If production should not be secured in ten years, the lease shall terminate and the area again be subject to lease. [Id.]

Art. 5358. Terms of lease.—The areas included herein shall be leased for one-eighth of the gross production of oil, or the value of same, that may be produced and saved, and one-eighth of the gross production of gas or the value of same, that may be produced and sold off of the area, and ten cents per acre in advance for the first year, and thereafter in advance an additional sum of twenty-five cents per acre for the second year, and fifty cents per acre for the third year, and one dollar per acre for each year thereafter. When production has been secured in commercial quantities and the payment of royalty begins and continues to be paid, the owner shall be exempt from further annual payments on the acreage. If production should cease and royalty not be paid, the owner of the lease shall, at the end of the lease year in which royalty ceased to be paid, and annually thereafter in advance, pay one dollar per acre so long as such owner may desire to maintain the rights acquired under the lease, not to exceed ten years from the date of said lease. [Id.]

Art. 5359. Offset wells.—If oil or gas should be produced in commercial quantities in a well on an area privately owned when such well is within one thousand feet of an area leased hereunder, the owner of the lease on such State area shall, within sixty days after the initial production on such privately owned area, begin in good faith and prosecute diligently the drilling of an offset well or wells on the area so leased from the State. Such offset wells shall be drilled to such depth and such means shall be used as may be necessary to prevent the undue drainage of oil or gas from beneath such State area. A

log of each well shall be filed in the Land Office within thirty days after the well has been completed or abandoned. [Id.]

Art. 5360. **Forfeiture of rights.**—The provisions of subdivision 3 of this chapter governing the forfeiture of rights thereunder and a reinstatement thereof, shall apply to leases under this subdivision, and on forfeiture of such lease, after due advertisement, it shall be subject to lease by another than such forfeiting owner. [Id.]

Art. 5361. **Access to lands.**—Whenever it becomes necessary for the owner of a lease acquired hereunder to enter the inclosed land of another for the purpose of ingress and egress to and from the area so leased from the State, and such lessee and owner or his agent cannot agree upon the place of such entry, nor the conditions thereof, the lessee or his agent may petition the commissioners courts of the counties in which such inclosure is situated in whole or in part for the opening of such way of ingress and egress as may be necessary. Upon the filing of such petition, said courts shall lay out and establish in the manner provided for the laying out of third class public roads, such roads as may be necessary for the purpose named herein. [Id.]

Art. 5362. **Assignments of leases.**—One may transfer his lease at any time. Such transfer shall be recorded in the counties in which the area or part thereof is situated and within ninety days after the date of its execution the recorded transfer or certified copy of same shall be filed in the Land Office accompanied by one dollar as filing fee, and thereby the assignee shall succeed to all the rights and be subject to all the obligations and penalties of the original lessee. [Id.]

Art. 5363. **Relinquishment of lease.**—An owner may relinquish his lease to the State at any time by having the relinquishment recorded in the counties in which the area or part thereof is situated, and within ninety days after the date of its execution the recorded relinquishment or certified copy of same shall be filed in the Land Office accompanied by one dollar as filing fee, and thereby the owner of such lease shall be relieved of any further obligations to the State, but such relinquishment shall not have the effect to release the owner from any obligations or liabilities theretofore accrued in favor of the State. [Id.]

Art. 5364. **Disposition of payments.**—The State Treasurer shall credit the permanent free school fund with all amounts received from the unsurveyed school lands, and with two-thirds of the amount so received from other areas, and shall credit the general revenue fund with the remaining one-third from said other areas. [Id.]

Art. 5365. **Classification of surveys.**—To administer this law to the best interest of the State, the Commissioner may recognize or decline to recognize any survey heretofore made of any area included herein. Recognized surveys shall be adver-

tised and shall be subject to lease as a whole. Surveys not recognized shall be deemed, together with all adjacent unsurveyed areas, as one unsurveyed area, and the Commissioner shall advertise the whole or designated portions thereof for lease. The Commissioner may require field notes for unsurveyed areas before issuing a lease therefor. [Id.]

Art. 5366. Pollution of streams.—The development of wells and the development and operation upon the areas included herein shall be done so far as practicable in such manner as to prevent such pollution of the water as will destroy fish, oysters and other sea food. The Game, Fish and Oyster Commissioner shall enforce such rules as the Commissioner of the General Land Office may prescribe for that purpose. [Id.]

3. SOLD ASYLUM AND SCHOOL LANDS.

| | Article | | Article |
|-------------------------------------|---------|----------------------------------|---------|
| School and Asylum lands..... | 5367 | May combine permits..... | 5374 |
| Sale and lease by agent..... | 5368 | Operation under permit..... | 5375 |
| Offset wells..... | 5369 | Lease under permit..... | 5376 |
| Failure to drill offset..... | 5370 | Payments under permit..... | 5377 |
| Sale of forfeited rights..... | 5371 | Relinquishment under permit..... | 5378 |
| Forfeiture of rights..... | 5372 | Damages to soil..... | 5379 |
| Rights of subsequent purchaser..... | 5373 | | |

Art. 5367. School and asylum lands.—The State hereby constitutes the owner of the soil its agent for the purposes herein named, and in consideration therefor, relinquishes and vests in the owner of the soil an undivided fifteen-sixteenths of all oil and gas which has been undeveloped and the value of the same that may be upon and within the surveyed and unsurveyed public free school land and asylum lands and portions of such surveys sold with a mineral classification or mineral reservation, subject to the terms of this law. The remaining undivided portion of said oil and gas and its value is hereby reserved for the use of and benefit of the public school fund and the several asylum funds. [Acts 2nd C. S. 1919, p. 249; Acts 1st C. S. 1921, p. 112.]

Art. 5368. Sale and lease by agent.—The owner of said land is hereby authorized to sell or lease to any person, firm or corporation the oil and gas that may be thereon or therein upon such terms and conditions as such owner may deem best, subject only to the provisions hereof, and he may have a second lien thereon to secure the payment of any sum due him. All leases and sales so made shall be assignable. No oil or gas rights shall be sold or leased hereunder for less than ten cents per acre per year plus royalty, and the lessee or purchaser shall in every case pay the State ten cents per acre per year of sales and rentals; and in case of production shall pay the State the undivided one-sixteenth of the value of the oil and gas reserved herein, and like amounts to the owner of the soil. [Acts 2nd C. S. 1919, p. 249.]

Art. 5369. Offset wells.—If oil or gas should be discovered in paying quantities on land not included in this law, and within one thousand feet of land that is so included, the owner, lessee, sub-lessee, receiver or other agent in control of such land includ-

ed herein, shall in good faith begin the drilling of an offset well or wells upon such land within one hundred days after the first discovery, and prosecute same with diligence to completion. Every offset well shall be drilled to the depth necessary for effective protection against undue drainage by other wells on other lands in that locality. [Id.]

Art. 5370. Failure to drill offset.—If such persons fail or refuse to begin drilling such offset wells within the time required, or to drill such offset well or wells diligently and in good faith, or to drill such wells to the depth necessary for the purpose intended, or to use the means necessary to the development of any well or wells thereon within the time required, or to drill such well drilled thereon, thereupon the relinquishment herein granted shall ipso facto terminate and the rights acquired thereunder shall likewise terminate, and the oil and gas relinquished herein shall revert to and become the property of the State's general revenue fund. When the Commissioner is sufficiently informed of the facts which so terminate such rights, he shall, on the wrapper containing the papers relating to the sale of the land, write and sign officially, words indicating such termination. [Id.]

Art. 5371. Sale of forfeited rights.—When the relinquishment granted herein and the rights acquired thereunder have been so terminated, the Commissioner shall take possession of the land and advertise the oil and gas therein for sale. All such sales shall be made at such times as the Commissioner may determine and in the manner provided for the sale of public free school land. The sale shall be made to the person, firm or corporation that will pay the highest price therefor in addition to one-eighth of the oil and gas produced or the value of the same, which shall be reserved to the public free school fund. The sum received in addition to the reserved one-eighth shall be divided equally between the General Revenue Fund and the owner of the soil, after deducting the expenses incident to the advertisement and sale. Purchasers at such sales shall begin the drilling of the necessary offset wells within sixty days after the acceptance of their offer, and the failure to do so and the failure to comply with the provisions of this law relating to the drilling of offset wells shall likewise operate as a termination of the rights acquired thereunder and the substances therein shall again be subject to sale. [Id.]

Art. 5372. Forfeiture of rights.—If any person, firm or corporation operating under this law shall fail or refuse to make the payment of any sum within thirty days after it becomes due, or if such one or an authorized agent should knowingly make any false return or false report concerning production or drilling, or if such one should fail or refuse the proper authority access to the records pertaining to the operations, or if such one or an authorized agent should knowingly fail or refuse to give correct information to the proper authority, or knowingly fail

or refuse to furnish the Land Office a correct log of any well, the rights acquired under the permit or lease shall be subject to forfeiture by the Commissioner, and he shall forfeit same when sufficiently informed of the facts which authorize a forfeiture, and the oil and gas shall be subject to sale in the manner provided for the sale of other forfeited rights hereunder, except that the owner of the soil shall not thereby forfeit his interest in the oil and gas. Such forfeiture may be set aside and all rights theretofore existing shall be reinstated at any time before the rights of another intervene, upon satisfactory evidence of future compliance with the provisions of this law. [Id.]

Art. 5373. Rights of subsequent purchaser.—If one acquires a valid right by permit or lease to the oil and gas in any unsold public free school or asylum land under any other law, a subsequent purchaser of such land shall not acquire any rights to any of the oil and gas that may be therein, but when the rights under such permit or lease terminate in the manner provided in the law under which they were obtained, then the owner of the soil shall become the owner of that portion of the oil and gas herein relinquished, and shall be thereafter subject to the provisions of this law. A forfeiture of the purchase of any survey or tract for any cause shall operate as a forfeiture of the minerals therein to the State. A relinquishment to the State of a lease producing oil or gas in paying quantities shall not operate to relinquish or convey to the owner of the soil any interest whatever in the oil and gas that may be in the land included in said lease. [Id.]

Art. 5374. May combine permits.—Any permits issued upon any land included in this law may upon such terms as the owners may agree, be assigned as a whole into one ownership or may be grouped or combined into one organization, and in one or more groups or combinations not to exceed sixteen sections of 640 acres each, more or less, in one group, for the purpose of developing oil and gas. All such assignments and agreements shall be recorded in the counties in which the land or part thereof is situated and shall be filed in the Land Office within sixty days after the execution of same, with a filing fee of one dollar. [Id.]

Art. 5375. Operation under permit.—The owner of a permit or combination of permits shall have eighteen months from the date or average date thereof in which to begin drilling a well for oil and gas on some portion of the land included therein. The drilling on one permit shall be sufficient protection against forfeiture of all the permits included in a combination. Owners of permits or combination of permits included herein shall have three years after the date or average date thereof in which to complete the development of oil and gas thereon, and if oil and gas should not be found in paying quantities and a lease applied for within said time all rights in such permit or combination of permits shall terminate, and the oil and gas in such land shall

become subject to the provisions of this law relating to the relinquishment of oil and gas to the owner of the soil. [Id.]

Art. 5376. Lease under permit.—If oil or gas should be produced in paying quantities upon any land included in this law, the owner of the permit shall report the development to the Commissioner within thirty days thereafter and apply for a lease upon such whole surveys or tracts in each permit as the owner or owners of a combination of permits may desire to be leased, and accompany the application with a log of the wells, and the correctness of the log shall be sworn to by the owner, manager or driller, and thereupon a lease shall be issued without the payment of any additional sum of money and for a period not to exceed ten years, subject to renewal or renewals. [Id.]

Art. 5377. Payments under permit.—The owner of a permit or combination of permits who desires to avail himself of the terms of this law, shall pay the State ten cents per acre, annually in advance, for the second and third years, and shall likewise pay the owner of the soil ten cents per acre for the first year of such permit, before availing himself of the privileges hereof, and a like sum thereafter annually in advance. A failure to make either of said payments shall subject the permit or permits to forfeiture by the Commissioner, and when sufficiently informed of the facts which subject the permits to forfeiture, said Commissioner shall forfeit the same by an indorsement of forfeiture upon the wrapper containing the papers relating to the permits and sign it officially. The payment of ten cents per acre to the owner of the soil may be made to him or to the county clerk of the county in which the land is situated, and said clerk shall deposit such payment as he receives, in some bank at the county seat to the credit of the record owner of such land. If the owner of the soil refuses to accept such payment, said clerk shall withdraw such deposit and return it to the owner of the permit. The payment, or the tender of payment, shall be evidenced by the receipt of the owner or part owner or county clerk filed among the papers in the Land Office relating to such permits. [Id.]

Art. 5378. Relinquishment under permit.—The owner of a permit or combination of permits may relinquish to the State a permit or combination of permits or any whole survey or whole tract included in a permit at any time before obtaining a lease therefor by having such relinquishment recorded in the counties in which the land or part thereof is situated, and by filing it in the Land Office within sixty days after its execution, with one dollar as a filing fee. [Id.]

Art. 5379. Damages to soil.—The payment of the ten cents per acre and the obligation to pay the owner of the soil one-sixteenth of the production and the payment of same when produced and the acceptance of same by the owner, shall be in lieu of all damages to the soil. [Id.]

4. GENERAL PROVISIONS.

| | | | |
|-------------------------|--------------|--------------|--------------|
| Payment of royalty..... | Article 5380 | } Lien | Article 5382 |
| Form of payments..... | 5381 | | |

Art. 5380. Payment of royalty.—All royalties shall be paid to the State on or before the twentieth day of each month for the preceding month during the life of the lease, accompanied by the affidavit of the owner, manager or other authorized agent, showing the gross amount of oil produced and saved since the last report and the amount of gas produced and sold off the area, and the market value of the oil and gas, together with a copy of all daily gauges of tanks, gas meter readings, pipe line receipts, gas line receipts and other checks or memoranda of amount produced and put into pipe lines, tanks, or pools and gas lines or gas storage. The books and accounts, receipts and discharges of all lines, tanks, pools and meters and all contracts and other records pertaining to the production, transportation, sale and marketing of the oil and gas shall at any time be subject to inspection and examination by the Commissioner, the Attorney General, the Governor, or the representative of either. [Acts 2nd C. S. 1919, p. 51.]

Art. 5381. Form of payments.—All payments shall be in the form of cash, bank draft on some State or National bank in Texas, post-office or express money order, or such other form as the law may prescribe for making remittances to the State Treasury, and shall be due and payable to the Commissioner at Austin. [Id.]

Art. 5382. Lien.—The State shall have a first lien upon all oil and gas produced upon any lease area to secure the payment of all unpaid royalty and other sums that may become due hereunder. [Id.]

CHAPTER FIVE.

MINERALS.

1. COAL AND LIGNITE.

| | | | | |
|-----------------------|--------------|------------------------|-----------------------|------|
| Lands included..... | Article 5383 | } Surface rights | Article 5386 | |
| Permit and lease..... | 5384 | | Laws applicable | 5387 |
| Patent | 5385 | | | |

Art. 5383. Lands included.—Any person, association of persons, corporate or otherwise that may desire to acquire the right to prospect for and mine coal or lignite in or under any of the following lands: all unsold public free school land, University land, asylum land or any such lands sold with a reservation of minerals therein, and either of said substances that may be in or upon said land that was purchased with the relinquishment of the minerals therein, and all lands of which the mineral rights therein have reverted to this State as the Sovereign Government, and either of said substances that may be in or upon any other public lands including islands and river beds and channels which belong to the State, may do so by complying with the following conditions:

1. Notice of location.—Date and post up a notice to the effect that the applicant has located a coal or lignite mine, stating the area desired, not to exceed 2560 acres or four sections of 640 acres each, more or less, and give the approximate courses and the approximate distances that the lines shall extend from the point at which the notice is posted.

2. Application for survey.—Within thirty days after the date of such posting, the applicant shall file an application for a survey of the claim with one dollar as a filing fee. The application shall state when the claim was first posted. If an applicant files on whole tracts or upon eighty acres or multiples thereof of surveyed land, the application shall be filed in the office of the clerk of the proper county with one dollar as a filing fee, and after being recorded by the clerk shall be filed in the Land Office without field notes within thirty days after being filed with the county clerk, with one dollar as a filing fee.

3. Boundary line.—The application and survey shall not differ so materially from the original posted notice as to defeat the rights of subsequent locators. Lines of previous surveys need not be regarded by an applicant unless he may desire to do so.

4. Application for permit.—Within ninety days from the filing of the application, the surveyor shall survey the area in substantial compliance with the posted notice, record the field notes and make a plat of the survey. The application, field notes and plat shall be filed in the Land Office within one hundred days after the application was filed with the surveyor, accompanied by one dollar as a filing fee and ten cents per acre for each acre included within the area embraced in the field notes or in the application if no field notes are required, and accompanied by a sworn statement by the applicant showing what interest he has in any other permit, lease or patent issued under this law and in good standing. [Acts 1917, p. 161.]

Art. 5384. Permit and lease.—When the foregoing conditions have been complied with and the application, field notes and plat have been approved by the Commissioner, he shall issue to the applicant or his assignee a separate permit for each area applied for, conferring upon him an exclusive right to prospect for, develop and put out coal and lignite therein upon the following conditions:

1. The permit shall be void after five years from the date of issue.

2. Development work shall commence within the first year and continue until the discovery of such minerals in paying quantities.

3. Within thirty days after the expiration of each year, except the fifth, the owner or manager shall file in the land office a sworn statement supported by the affidavit of two disinterested credible persons, showing a performance in good faith of the development work required in this article, and expenditures thereunder. If the Commissioner is satisfied that such

statement is true, the owner shall have the right to prospect the area for another year.

4. During the life of the permit, and within thirty days after the discovery of such minerals in paying quantities, the owner shall apply for a lease to develop and put out such minerals in the area included in the permit, or forfeit all rights under such permit.

5. Such lease may be granted for not to exceed ten years, with right of renewals for the same or less term.

6. Royalty of ten cents a ton on coal, and seven cents a ton on lignite shall be paid monthly on each ton mined under such permit or lease.

7. The owner shall annually pay ten cents per acre in advance for each acre covered by his permit or lease.

8. Each mine shall be kept in reasonably continuous operation, and shall be operated in conformity with rules and regulations prescribed by the State Mining Inspector and the laws relating to such mines.

9. On the termination of the rights under a permit, the area shall again be subject to the prospect and development by another than the forfeiting owner. [Id.]

Art. 5385. Patent.—At any time during the life of a permit but prior to accepting a lease upon any area, the owner of a permit may elect to pay one hundred dollars per acre for the area embraced in his permit and obtain a patent for all the minerals that may be in such area except petroleum and natural gas, in lieu of the payment of the royalty as provided in this law; provided, however, one shall pay the prescribed royalty on all coal or lignite put out and disposed of while developing the area prior to obtaining a patent. [Id.]

Art. 5386. Surface rights.—An owner of any claim may fell and remove for building or mining purposes any timber upon any of the unsold areas included within this law, and shall also have the right to occupy within the limits of his application, permit or lease, so much of the surface thereof as may be necessary for the development of the minerals and substances therein, and shall have the right of ingress to and egress from the area embraced in the file, permit, lease or patent. Ten cents per acre per year in advance shall be paid to the owner of the surface and when accepted by the owner, it shall be deemed full compensation for such damages as may be occasioned to the surface through the occupancy and operation by the owner of the permit, lease or patent. [Id.]

Art. 5387. Laws applicable.—In so far as applicable, the provisions of Subdivision 1 of Chapter 4 governing the sale or transfer of a permit or lease, the forfeiture of rights thereunder for a violation of the conditions of said law, the relinquishment of whole tracts under a permit, and the subjection of rights thereunder to taxation, shall all apply to those operating hereunder.

2. OTHER MINERALS.

| | Article | | Article |
|----------------------------------|---------|--------------------------------|---------|
| Lands and minerals included..... | 5388 | Rental and royalty..... | 5395 |
| Extent of claim..... | 5389 | Joint claimants..... | 5396 |
| Boundary marks..... | 5390 | Forfeiture of rights..... | 5397 |
| Application for survey..... | 5391 | Patent..... | 5398 |
| Requisites of survey..... | 5392 | Prison and juvenile lands..... | 5399 |
| Issue of award..... | 5393 | Surface rights..... | 5400 |
| Development of claim..... | 5394 | | |

Art. 5388. Lands and minerals included.—All valuable mineral bearing deposits, placers, veins, lodes and rock carrying metallic or non-metallic substances of value except oil, natural gas, coal and lignite, that may be in any lands included in this chapter shall be subject to development, sale and patenting as provided in this subdivision. [Acts 2nd C. S. 1919, p. 241.]

Art. 5389. Extent of claim.—A mining claim upon mineral lands hereunder may equal, but shall not exceed fifteen hundred feet in length and six hundred feet in width. Such claims may be of unlimited depth, but shall be bounded by four vertical planes from the side and end lines. All claims shall be in the form of a parallelogram unless such form is prevented by adjoining rights. The locator shall be entitled to the use of all superficial area bounded by the enclosed lines of the claim, and to all minerals therein, upon the terms of this law. [Id.]

Art. 5390. Boundary marks.—The locator of any mining claim shall conspicuously post up at the center of one of the end lines of the claim a written notice giving his name and that of the claim, and date of posting, and shall describe the claim by giving the number of feet in length, width and approximate directions the claim lies, in length from the notice, with the section number, if known, and the county; and shall place temporary posts, or stone markers at the four approximate corners of the claim at the time of making the location. The temporary monuments shall be replaced by permanent monuments at the four corners as given by the county surveyor within one hundred days after the issuance of an award to said claim. The permanent monuments shall be of four inch timber posts or their equivalent of stone or concrete, and shall be not less than three feet high. In all conflicts, priority of location shall decide.

Art. 5391. Application for survey.—Within thirty days after posting the required notice the locator shall file with the county surveyor of the county in which the land or part thereof is situated, a written application for the survey of the claim. Such application shall be accompanied by one dollar as a filing fee, and the application shall be recorded by the surveyor. The application shall give the name of the claim and the locator and such description of the boundary and location as will enable the surveyor to identify the area of the land. [Id.]

Art. 5392. Requisites of survey.—In making the survey, the surveyor shall locate and mark the corners of the claim on the ground as described in the location notice, and he shall determine the direction and distance to a corner of a section on

which the claim is located, as well as the direction and distance to some prominent and permanent land mark other than a section corner, which may serve as a mineral monument or marker, and in case of any conflict this direction and distance to said prominent and permanent land mark shall have priority over all other distances and directions in serving to locate the mining claim. The directions and distances herein required shall be incorporated in and made a part of the record of the field notes and plat of the survey. The surveyor shall not charge more than ten dollars per day for his services hereunder. [Id.]

Art. 5393. Issue of award.—Within one hundred days after the application for survey has been filed with the surveyor, the application and field notes of the area applied for shall be filed in the Land Office accompanied by the filing fee of one dollar. When the application has been considered and all things have been done in compliance with the law, the Commissioner shall issue to the applicant an award for the area. Nothing in this article shall interfere with the right of the locator to proceed with the development and operation of the property after the posting of the location, if such operation does not conflict with the mineral rights of a prior locator or owner. [Id.]

Art. 5394. Development of claim.—After the date of an award the owner shall have the exclusive right to the possession and use of the minerals within the area of the claim so long as he continues to do or causes to be done the annual assessment work for each claim consisting of excavation in the form of a shaft or tunnel or an open cut to the extent of ten feet in depth or length and at least four feet by five feet for the other dimensions. If an award is issued prior to the first day of October of any year the first annual assessment work shall be done before the end of that calendar year, and during the month of January following such owner shall file in the Land Office his affidavit that such work has been done and shall state the extent thereof. Such owner shall during each succeeding calendar year beginning January first next after the date of such award, perform the required annual assessment work and file an affidavit thereof as in the first instance. All the assessment work for a contiguous group of claims may be done on one claim. [Id.]

Art. 5395. Rental and royalty.—The owner of each claim shall pay fifty cents per acre annually in advance after the award and during the month of each succeeding January thereafter; and pay two per cent royalty upon the production of such claim as shown by the net smelter, mill, mint, or refinery returns, or of sums arising from the sale of the ore or products from the claim and received by the owner. Royalty payments arising from the sale of ores, mineral or other products shall be due quarterly in January, April, July and October for the quarters preceding. [Id.]

Art. 5396. Joint claimants.—Any mining claim may be filed upon by one or more persons separately or jointly, and if any

one or more of them shall fail to perform his part of the conditions imposed by this law, their right, interest, title and claim shall ipso facto cease, and the same shall revert to the State. The co-owners performing their proportional part of the conditions shall have the prior right within ninety days after such forfeiture to make the delinquent payments and do the work so defaulted, and thereupon they shall have thirty days after the expiration of said ninety days within which to make affidavit to the Commissioner to the effect that all of said conditions have been performed within said time in the same manner as if no location had been made by said defaulting co-owner. [Id.]

Art. 5397. Forfeiture of rights.—Failure of the locator or owner of any claim to comply with any provision of this law prior to receiving patent thereto, shall constitute an ipso facto forfeiture of all his rights in the claim, and the claim shall be open to location by others as prescribed in this law, the same as if no location had ever been made. Any claim which has been forfeited by any locator or owner shall not be relocated either in whole or in part by such forfeiting locator or owner within a period of six months from the time of such forfeiture. [Id.]

Art. 5398. Patent.—At any time after five years from the date of the award, the owner may pay the balance due on the purchase price of the claim and obtain a patent thereto, and after the issuance of the patent no further assessment work shall be required, but the royalty shall be perpetual. The purchase price shall be ten dollars per acre, and the annual payments of fifty cents per acre shall be applied thereon. [Id.]

Art. 5399. Prison and juvenile lands.—All State lands belonging to or under the jurisdiction and control of the Prison Commission or the Board of Control for the State Juvenile Training School, and all other farms belonging to the State and administered by other boards, shall become subject to the provisions of this law; but with the express reservation that in sales of the mineral rights in or under such farms, the annual payments and the royalties shall be made so long as the purchasers of said rights desire to operate their respective claims; and in no event shall a patent issue upon any claim filed upon any such farms belonging to the State, and all rights of the claimant to any land or filings hereunder shall terminate upon permanent cessation by such claimant of operation under such claim. [Id.]

Art. 5400. Surface rights.—The locator or owner of a mining claim shall have the right to occupy within the limits of his claim so much of the surface ground as is strictly necessary for the use and exploration of the mineral deposits and for the building and works necessary for mining operations and for the treating and smelting of the ore produced on such claims and to occupy within and without the limits of his claim the necessary land for right of way, for ingress and egress to and from his claim for roadways and railways. If the locator or owner cannot agree with the owner or lessee of the surface right in regard

to the acquiring of same and in regard to the compensation for the injury incident to the opening and the working of such mine and the access thereto, he may apply to the county judge of the county in which such mining claim is located by filing a written petition so setting forth with a sufficient description the property and surface right sought to be taken and the purpose for which the same is to be taken. Such judge shall then appoint three disinterested freeholders to examine, pass upon and determine the damages and compensation to be paid to the owner of such surface right or other property necessary to be taken, and all proceedings thereunder shall be had in accordance with the law regulating the exercise of the right of eminent domain. Nothing herein shall give the prospector or locator any grazing right, or rights to any surface or well water in use for livestock, or to any timber rights either on or off the claim, to the detriment of the surface owner or lessee. [Id.]

3. GENERAL PROVISIONS.

| | | | |
|------------------------|---------|-----------------------------|---------|
| Payments | Article | Discovery: right of locator | Article |
| Sale of surface rights | 5401 | | 5403 |
| | 5402 | | |

Art. 5401. Payments.—All royalties and other payments under this chapter shall be paid to the State through the Commissioner at Austin. All royalty payments shall be accompanied by the affidavit of the owner or manager showing the number of tons mined, to whom sold, and the selling price, as shown by copies of smelter, mint, mill, refinery or other returns or documents attached to such statement. All books, accounts, weights, wage contracts, correspondence, and other papers in any way pertaining to any mine being operated hereunder shall be open to the inspection of the Commissioner, or his representative and any representative of the State appointed by the Governor or Attorney General.

Art. 5402. Sale of surface rights.—The issuance of an award, permit or lease on unsold land hereunder shall not prevent the sale of such land without minerals under the laws applicable to such land. In case of such sale after an application has been filed with the Commissioner, the purchaser of such land shall not be entitled to any part of the proceeds of such minerals or mining location nor other compensation, nor shall such purchaser have any action for damages done to such land by or resulting from the proper working of or operation under such award or prospector's location.

Art. 5403. Discovery: right of locator.—If any mineral or substance included in this chapter, other than those included in the permit or lease under which one is operating, be discovered while the area is being worked under such permit or lease, the owner thereof shall have a preference right for sixty days after such discovery in which to file on the area allowed one for such minerals or other substances by complying with the provisions of this law relating to the mineral or substances discovered.

CHAPTER SIX.

PATENTS.

| | Article | | Article |
|---|---------|-------------------------------------|---------|
| Requisites of patent..... | 5404 | Cancellation: partial conflict..... | 5410 |
| Doubtful claim..... | 5405 | Purchase money refunded..... | 5411 |
| Church and schoolhouse sites..... | 5406 | Order of issue..... | 5412 |
| Patents on surveys in two counties..... | 5407 | Issuance and delivery..... | 5413 |
| Conflicting surveys..... | 5408 | Deceased patentee..... | 5414 |
| Conflicting title: cancellation..... | 5409 | | |

Art. 5404 [5361] [4175] **Requisites of patent.**—Every patent for land emanating from the State shall be issued in the name and by authority of the State, under the seal of the State and of the land office, signed by the Governor and countersigned by the Commissioner; and before the delivery thereof to the party entitled thereto, it shall be registered in the land office patent book. [Acts 1846, p. 234; G. L. Vol. 2, p. 1540.]

Art. 5405. [5363] [4177] **Doubtful claim.**—Should it appear to the Commissioner from the records of his office or from information on oath given him that there is some illegality in the claim, he shall, if he deems it necessary, refer the matter to the Attorney General, whose written decision shall be sufficient authority for him to issue or withhold the patent.

Art. 5406. [5448] **Church and schoolhouse sites.**—The Commissioner is hereby authorized to patent in quantities of not less than one nor more than five acres any of the vacant and unappropriated public domain of Texas, or any public school or asylum lands, as sites for cemeteries, churches or schoolhouses. When the land is desired as a location for a schoolhouse, the patent shall issue to the county judge of the proper county and his successors in office in trust for that purpose; and when desired for a church house or a cemetery, it shall be issued to trustees designated by those requesting the patent. If the land has been previously sold by the State and not patented, the owner thereof shall execute a deed therefor to the county judge, or trustees, as the case may be, and cause the same to be recorded in the office of the county clerk of the proper county, and be filed in the Land Office, and shall be entitled to credit on his account with the State for the value thereof. Such land shall be taken from the margin of a tract or section, or of a subdivision thereof, as the case may be. [Acts 1895, p. 68; G. L. Vol. 10, p. 798.]

Art. 5407. [5365] [4179] **Patents on surveys in two counties.**—The Commissioner shall issue patents upon all surveys of land in two or more counties where no conflict between such surveys and others exist, and to which there is no other objection than that of a division in said surveys occasioned by a county boundary passing through them; provided, the field notes have been recorded in the office of the county surveyor of both counties. [Acts 1846, p. 188; G. L. Vol. 2, p. 1494.]

Art. 5408. [5367] [4181] **Conflicting surveys.**—Where conflicts exist between surveys, the Commissioner shall issue patents to such portions of such surveys as are free from conflicts. [Id.]

Art. 5409. [5374] [4189] **Conflicting title:—cancellation.**—Where a patent to land through mistake is issued upon any valid claim for land, which is afterwards found to be in conflict with any older title, it shall be competent for the owner of such patent, or of any part of the land embraced therein, and within such conflict, to return the same to the Commissioner for cancellation, or in case the owner of such land in conflict cannot obtain the patent, then he shall return instead thereof legal evidence of his title to such patent, or part thereof. In either case he shall make and file with said Commissioner an affidavit that he is still the owner of the same, and has not sold or transferred it. If it appears from the Land Office records or from a duly certified copy of a judgment of any court of competent jurisdiction before which the title to such land may have been adjudicated, that such conflict really exists, it shall be lawful for the Commissioner to cancel the patent, or such part thereof as shall appear to belong to the party so applying.

Art. 5410. [5375] [4190] **Cancellation: partial conflict.**—In cases where there is only a partial conflict, the Commissioner may, under like circumstances and in like manner as provided in the preceding article, cancel any patent presented to him, and issue a patent to the applicant for such portion of the land covered by his patent as may not be in conflict with the older title, where from the field notes the same may be done. [P. D. 4302.]

Art. 5411. [5378-5404] **Purchase money refunded.**—Upon proper proof that money has been in good faith paid into the State Treasury upon lands for taxes, lease and purchase money, for which, on account of conflicts, erroneous surveys, or illegal sales, patents cannot legally issue, or upon lands on which patents have issued and afterwards are legally canceled, the Comptroller may issue his warrant in favor of the proper parties for the amounts so paid. Proof of such payments may be made upon the certificate of the Commissioner thereto when such facts are disclosed by the records of the Land Office. This article shall not apply to surveys, the errors in which may be corrected. [Acts 1883, p. 113; G. L. Vol. 9, p. 419.]

Art. 5412. [5372] [4186] **Order of issue.**—The Commissioner shall patent surveys in the order in which they may be made ready for patenting, without regard to the order of filing in the Land Office or the order of application; but an application made for patent on any claim accompanied by the office fees therefor shall have preference over claims for which no application has been made; provided, such surveys have been regularly mapped, or there is sufficient evidence that no previous survey has been legally filed in the land office covering the same ground as represented on the maps of the office. [Acts 1861, p. 51; Acts 1879, p. 23, S. S.; G. L. Vol. 5, p. 387.]

Art. 5413. [5376] [4191] **Issuance and delivery.**—The Commissioner shall issue patents when it appears from the books of his office that full payment for the land has been made where

payment is required, and all legal fees due thereon have been paid into said office and not withdrawn, including the legal fees for the recording of said patent in the counties in which the land may be located. When one applies for a patent such person, shall, in addition to all other payments required by law, remit to the land office one dollar for each county in which the land may be wholly or partially located and give the name and address of the owner or agent. When the patent is ready for delivery the Commissioner shall send it by registered mail to the clerk of any such county with the receivers check for one dollar for each such county and accompany the same with the name and address of the owner or his agent. Upon receipt thereof the clerk shall record the patent and send the same by registered mail with such name and address and the remaining fees to the clerk of another proper county until the patent has been recorded in each such county, and thereupon the patent shall be delivered to the proper party by registered mail. [Acts 1891, p. 182; G. L. Vol. 10, p. 184; Acts 4th C. S. 1918, p. 119.]

Art. 5414. [5371] [4185] **Deceased patentee.**—All patents issued in the names of persons deceased at the time of issuance shall convey and secure valid title to the heirs or assignee of such deceased persons. [Acts 1851, p. 21; P. D. 4228a; G. L. Vol. 3, p. 899.]

CHAPTER SEVEN.

GENERAL PROVISIONS.

| | | | |
|-----------------------|---------|------------------------------------|---------|
| | Article | | Article |
| Public domain | 5415 | Unlawful inclosures | 5419 |
| School fund | 5416 | Adverse claimant: suit | 5420 |
| University fund | 5417 | Suits for minerals and timber..... | 5421 |
| Asylum fund | 5418 | | |

Art. 5415. [5279] [4036] **Public domain.**—To bring the provisions of law relating to the public domain together, the following extract is made from the joint resolutions of the Congress of the United States for annexing Texas to the United States, approved June 23, 1845: "Said State, when admitted into the Union, . . . shall also retain all the vacant and unappropriated lands lying within its limits, to be applied to the payment of debts and liabilities of said Republic of Texas, and the residue of said lands, after discharging said debts and liabilities, to be disposed of as said State may direct," etc.

Art. 5416. [5278-5385] **School fund.**—All lands heretofore set apart under the constitution and laws of Texas, and all of the unappropriated public domain remaining in this State of whatever character, and wheresoever located, including any lands hereafter recovered by the State, except that included in lakes, bays and islands along the Gulf of Mexico within tide-water limits, is set apart and granted to the permanent school fund of the State. All such lands heretofore or hereafter recovered from railway companies, firms, persons, or other corporations by the State, by suit or otherwise, and constituting a part of said school fund as herein provided, shall be disposed of

as other school lands, except as otherwise provided by law. In all cases where said land, or any portion thereof, has been surveyed into tracts of six hundred and forty acres, more or less, and field notes thereof returned to and filed in the Land Office, the same is hereby declared a sufficient designation of said land; and the Commissioner shall dispose of the same by the survey and block numbers contained in said field notes. [Acts 1900, p. 29; Acts 1899, p. 123.]

Art. 5417. [5386] [4253] **University fund.**—After the payment of the amounts due from the State to the common free school fund out of the proceeds of the sales of that portion of the public lands set aside for the payment of the public debt by an Act approved July 14, 1879, and an Act amendatory thereof approved March 11, 1881, and the payment directed to be made to the common school and University funds by an Act approved February 23, 1883, the remainder of said land not to exceed two million acres, or the proceeds thereof, shall one-half thereof constitute a permanent endowment fund for the University of Texas and its branches, including the branch for the instruction of colored youths. [Acts 1883, p. 71; G. L. Vol. 9, p. 377.]

Art. 5418. [5387] [4254] **Asylum fund.**—The four hundred thousand acres of land set apart for the lunatic asylum, the blind asylum, the asylum for the deaf and dumb, and an orphan asylum, in equal portions of one hundred thousand acres for each of said asylums, by the provisions of an act of the legislature entitled, "An Act setting aside and appropriating land for the benefit of asylums," approved August 30, 1856, is hereby recognized and set apart to provide a permanent fund for the support, maintenance and improvement of such asylums. [Const. Art. 7; Acts 1856, p. 76; G. L. Vol. 8, p. 494.]

Art. 5419. [5467] **Unlawful inclosures.**—If the Governor shall at any time be credibly informed that any portion of the public lands or the lands belonging to any of the several funds named in this title, have been inclosed or that fences have been erected thereon without authority of law, he is authorized in his discretion to direct the Attorney General to institute suit in the name of the State for the recovery of such lands and damages, and a fee of not less than ten dollars for the attorney when the sum recovered is less than one hundred dollars, and, when it is over that sum, the fee shall be ten per cent, to be paid by the defendant for the use and occupancy of the same, and the removal of such inclosure and fences; and such damages shall not be for a less sum than five cents per acre per annum during such occupancy. In suits provided for in this article the court shall issue a writ of sequestration directed to any sheriff of the State, commanding and requiring such officer to take into his actual custody such land and all property thereon belonging to the persons so unlawfully occupying said lands, and hold the same subject to further orders of the court. Such writ of sequestration may be executed by any

sheriff into whose hands it may be delivered, and he shall proceed to execute such writ. The defendant in such suit may replevy as in ordinary cases by giving bond as prescribed by law; and such cases and all appeals therefrom shall have precedence over all other cases; and, if judgment is recovered by the State in such suit, the court shall order such inclosure or fences to be removed, and shall tax the costs of the suit against the defendant; and all property found upon the land belonging to the defendant, not exempt from execution, shall be liable to the payment of such costs and damages in addition to the personal liability of the defendant. [Acts 1895, p. 63, amended p. 75; G. L. Vol. 10, pp. 793, 805.]

Art. 5420. [5468] Adverse claimant; suit.—When any public lands are held, occupied or claimed by any person, association or corporation adversely to the State, or to any fund, or when lands are forfeited to the State for any cause, the Attorney General shall institute suit therefor, together for rent thereon, and for any damages thereto. For the purposes of this and the preceding article, venue is fixed in Travis County, concurrently with the county of defendant's residence and the county where the land lies. [Acts 1900, p. 29.]

Art. 5421. [5469-70-71-72-73-74] Suits for minerals and timber.—The Commissioner and the county attorneys of the State shall report to the Attorney General semi-annually, or oftener if they desire, the name and residence of each person, firm, association of persons or corporation who has cut, used, destroyed, sold or otherwise appropriated any timber from any public lands or taken any minerals or other property of value therefrom, and such other data within their knowledge, and the county attorneys shall assist the Attorney General in whatever way he requests in relation thereto. The Attorney General shall bring suit for the value of such property in any county where the injury or a part thereof occurs, or in the county where the defendant resides, or he may, with the consent of the Governor, compromise and settle with or without suit any of the aforesaid liabilities. The Attorney General shall pay all sums so collected or received to the permanent funds to which they belong. Of all amounts recovered by suit, the Attorney General shall receive a fee of ten per cent, and the county attorney five per cent, and on amounts recovered by compromise, each shall receive one-half of such fees to be taxed against the defendant as costs. No county attorney shall receive compensation from cases not reported by him to the Attorney General. [Acts 1905, p. 38.]

TITLE 87.

LEGISLATURE.

| | Article | | Article |
|-------------------------|---------|----------------------------|---------|
| Time of meeting | 5422 | Credentials | 5426 |
| Who may organize | 5423 | If no quorum | 5427 |
| Who shall preside | 5424 | Election of Speaker | 5428 |
| Duties of clerk | 5425 | Election of officers | 5429 |

Art. 5422. [5505] [3271] **Time of meeting.**—The Fortieth Legislature shall assemble to hold its biennial session on the second Tuesday in January, A. D. 1927, at 12 o'clock m., and shall meet biennially thereafter on the same day and hour until otherwise provided by law. [Const. Art. 3, Sec. 5.]

Art. 5423. [5506] [3272] **Who may organize.**—Those persons receiving certificates of election to the Senate and House of Representatives of the Legislature, and those Senators whose terms of office shall not have terminated, and none others, shall be competent to organize the Senate and House of Representatives. [Acts 1876, p. 311; G. L. Vol. 8, p. 1147.]

Art. 5424. [5507-8-16] **Who shall preside.**—For the purpose of such organization the Secretary of State shall preside at each recurring session of the Legislature. Should there be no Secretary of State, or in case he be absent or unable to attend, the Attorney General shall attend and perform the duties prescribed. He shall attend at the time and place designated for the meeting of the Legislature, and shall appoint a clerk who shall have been chief clerk of the House the preceding session, if he be present, to take a minute of the proceedings.

Art. 5425. [5509-10-11] **Duties of clerk.**—The clerk, under the direction of the Secretary of State, shall:

1. Call all the counties in alphabetical order. Should returns of election in any county for members of the Legislature not be made to the office of Secretary of State, he shall nevertheless call such county.

2. When the counties are called and the members elect appear and present their credentials, administer to each the official oath.

Art. 5426. [5512] [3278] **Credentials.**—Any person appearing at said call and presenting the proper evidence of his election shall be admitted or qualified in the same manner as though the return of his election had been made to the office of Secretary of State. [P. D. 5438.]

Art. 5427. [5513] [3279] **If no quorum.**—If no quorum is in attendance on the day appointed for the meeting of the Legislature, the Secretary of State and clerk shall attend from day to day until a quorum shall appear and be qualified as above. [P. D. 5439.]

Art. 5428. [5514] [3280] **Election of Speaker.**—When a quorum has appeared and been qualified, the House shall pro-

ceed to the election of a Speaker, unless a majority of the members present shall decide to defer said election. [P. D. 5440.]

Art. 5429. [5515] [3281] **Election of officers.**—When an election for Speaker shall have been had, the Speaker elect shall immediately take the chair, and the House proceed to its further organization by electing the necessary officers, to whom the Speaker shall administer the official oath. [P. D. 5441.]

TITLE 88.

LIBEL.

Art. 5430. [5595] Definitions.—A libel is a defamation expressed in printing or writing, or by signs and pictures, or drawings tending to blacken the memory of the dead, or tending to injure the reputation of one who is alive, and thereby expose him to public hatred, contempt or ridicule, or financial injury, or to impeach the honesty, integrity, or virtue, or reputation of any one, or to publish the natural defects of any one and thereby expose such person to public hatred, ridicule, or financial injury. [Acts 1901, p. 30.]

Art. 5431. [5596] Mitigation of damages.—In any action for libel, the defendant may give in evidence, if specially pleaded, in mitigation of exemplary or punitive damages, the circumstances and intentions under which the libelous publication was made, and any public apology, correction or retraction made and published by him of the libel complained of. The truth of the statement or statements in such publication shall be a defense to such action. [Id.]

Art. 5432. [5597] Privileged matters.—The publication of the following matters by any newspaper or periodical, shall be deemed privileged, and shall not be made the basis of any action for libel without proof of actual malice:

1. A fair, true and impartial account of the proceedings in a court of justice, unless the court prohibits the publication of same, when in the judgment of the court the ends of justice demand that the same should not be published, and the court so orders; or any other official proceedings authorized by law in the administration of the law.

2. A fair, true and impartial account of all executive and legislative proceedings, including all reports of and proceedings in or before legislative committees, and of any debate or statement in or before the Legislature or in or before any of its committees, and including also, all reports of and proceedings in or before the managing boards of educational and eleemosynary institutions supported from the public revenue, of city councils or other governing bodies of cities or towns, of the commissioners' court of any county, and of the board of trustees of the public schools of any district or city, and of any debate or statement in or before any such body.

3. A fair, true and impartial account of public meetings organized and conducted for public purposes only.

4. A reasonable and fair comment or criticism of the official acts of public officials and of other matters of public concern published for general information. [Id. Acts 1919, p. 34.]

Art. 5433. [5598] Construction.—Nothing in this title shall be construed to amend or repeal any penal law on the subject of libel, nor to take away any now or at any time heretofore existing defense to a civil action for libel, either at common law or otherwise, but all such defenses are hereby expressly preserved. [Id. Acts 1917, p. 474.]

TITLE 89.

LIBRARY AND HISTORICAL COMMISSION

| | Article | | Article |
|--------------------------|---------|------------------------------------|---------|
| Organization | 5434 | Duties of Librarian..... | 5441 |
| Purpose | 5435 | Distribution of publications..... | 5442 |
| Powers and duties..... | 5436 | Sale of archives..... | 5443 |
| Seal | 5437 | Legislative reference section..... | 5444 |
| Custody of records..... | 5438 | Assistants..... | 5445 |
| Exchange of records..... | 5439 | Report to Governor..... | 5446 |
| State Librarian | 5440 | | |

Art. 5434. [5600-5601] **Organization.** The Governor shall, by, and with the advice and consent of the Senate, appoint five persons who shall constitute the Texas Library and Historical Commission. Appointments shall be made for a term of six years, the classification to continue as constituted by law. The Commission shall be assigned suitable offices at the capitol where they shall hold at least one regular meeting annually, and as many special meetings as may be necessary. Each such member while in attendance at said meetings shall receive five dollars per day and the actual expenses incurred in attending the meetings. [Acts 1909, p. 122; Acts 2nd C. S. 1919, p. 151.]

Art. 5435. [5599] **Purpose.**—The Commission shall control and administer the State Library, adopt and enforce reasonable rules and regulations governing its administration and control, aid and encourage libraries, collect materials relating to the history of Texas and the adjoining states, preserve, classify and publish the manuscript archives and such other matters as it may deem proper, diffuse knowledge in regard to the history of Texas, encourage historical work and research, mark historic sites and houses and secure their preservation, and aid those who are studying the problems to be dealt with by legislation. [Acts 1909, p. 122.]

Art. 5436. [5602-3] **Powers and duties.**—The Commission is authorized and empowered to purchase within the limits of the annual appropriation allowed by Act of the Legislature from time to time, suitable books, pictures, etc., the same to be the property of the State. The Commission shall have power and authority to receive donations or gifts of money or property upon such terms and conditions as it may deem proper; provided, no financial liability is thereby entailed upon the State. It shall give advice to such persons as contemplate the establishment of public libraries, in regard to such matters as the maintenance of public libraries, selection of books, cataloging and library management. The Commission shall conduct library institutes and encourage library associations. [Id; Acts 2nd C. S. 1919, p. 152.]

Art. 5437. **Seal.**—The style of the Library governed by the Commission shall be "Texas State Library." A circular seal of not less than one and one-half inches, and not more than two inches in diameter, bearing a star of five points, surrounded by two concentric circles, between which are printed the words, "Texas State Library," is hereby designated the official seal of said Library. Said seal shall be used in authentication of the

official acts of the State Library. [Acts 2nd C. S. 1919, p. 152.]

Art. 5438. [5604-5] **Custody of records.**—The custody and control of books, documents, newspapers, manuscripts, archives, relics, mementos, flags, works of art, etc., and the duty of collecting and preserving historical data, is under the control of the Commission. The gallery of the portraits of the Presidents of the Republic and the Governors of this State constitutes a part of the State Library. All books, pictures, documents, publications and manuscripts, received through gift, purchase or exchange, or on deposit, from any source, for the use of the State, shall constitute a part of the State Library, and shall be placed therein for the use of the public. [Acts 1909, p. 122.]

Art. 5439. [5606] **Exchange of records.**—Any State, county or other official is hereby authorized in his discretion to turn over to the State Library for permanent preservation therein any official books, records, documents, original papers, maps, charts, newspaper files and printed books not in current use in his office, and the State Librarian shall receipt for the same. [Id. Acts 2nd C. S. 1919, p. 152.]

Art. 5440. **State Librarian.**—The Commission shall elect a State Librarian, not of their number, who shall be a man or woman of at least one year's training in a library school and at least three year's administrative experience as head of a free public or institutional library, or as an assistant of high rank in such library. Said Librarian shall serve at the will of the Commission, and shall give bond in the sum of five thousand dollars for the proper care of the State Library and its equipment. He shall be allowed his actual expenses when traveling in the service of the Commission, on his sworn account showing such expenses in detail. [Acts 2nd C. S. 1919, p. 151.]

Art. 5441. [5606] **Duties of Librarian.**—The duties of the State Librarian, acting under the direction of said Commission, shall be as follows:

1. He shall record the proceedings of the Commission, keep an accurate account of its financial transactions, and perform such other duties as said Commission may assign him; and he shall be authorized to approve the vouchers for all expenditures made in connection with the State Library.

2. He shall have charge of the State Library and all books, pictures, documents, newspapers, manuscripts, archives, relics, mementos, flags, etc., therein contained.

3. He shall endeavor to collect all manuscript records relating to the history of Texas in the hands of private individuals, and where the originals cannot be obtained he shall endeavor to procure authenticated copies. He shall be authorized to expend the money appropriated for the purchase of books relating to Texas, and he shall seek diligently to procure a copy of every book, pamphlet, map or other printed matter giving valuable information concerning this State. He shall collect portraits or photographs of as many of the prominent men of Texas as possible.

He shall endeavor to complete the files of the early Texas newspapers in the State Library; and he shall cause to be bound the current files of not less than ten of the leading newspapers of the State and the current files of not less than four leading newspapers of other states, and of as many county papers, professional journals, denominational papers, agricultural papers, trade journals and other publications of this State as seem necessary to preserve in the State Library an accurate record of the history of Texas.

4. He shall demand and receive from the officers of State departments having them in charge, all books, maps, papers, manuscripts, documents, memoranda and data not connected with or necessary to the current duties of said officers, relating to the history of Texas, and carefully classify, catalogue and preserve the same. The Attorney General shall decide as to the proper custody of such books, etc., whenever there is any disagreement as to the same.

5. He shall endeavor to procure from Mexico the original archives which have been removed from Texas and relate to the history and settlement thereof, and if he cannot procure the originals, he shall endeavor to procure authentic copies thereof. In like manner he shall procure the originals or authentic copies of manuscripts preserved in other archives beyond the limits of this State, in so far as said manuscripts relate to the history of Texas.

6. He shall preserve all historical relics, mementos, antiquities and works of art connected with and relating to the history of Texas, which may in any way come into his possession as State Librarian. He shall constantly endeavor to build up an historical museum worthy of the interesting and important history of this State.

7. He shall give careful attention to the proper classification, indexing and preserving of the official archives that are now or may hereafter come into his custody.

8. He shall make a biennial report to the Commission, to be by it transmitted to the Governor, to be accompanied by such historical papers and documents as he may deem of sufficient importance.

9. He shall ascertain the condition of all public libraries in this State and report the results to the Commission. He is authorized in his discretion to withhold from libraries refusing or neglecting to furnish their annual reports or such other information as he may request, public documents furnished the Commission for distribution, or interlibrary loans desired by such libraries. [Id; Acts 1909, p. 122.]

Art. 5442. **Distribution of publications.**—On the requisition of the State Librarian therefor, the Board of Control shall cause to be printed and furnished to the State Library for distribution and exchange the following publications, or such additional number as said Librarian shall request: 150 copies of all annual, bi-

ennial and special reports of State departments, boards and institutions, findings of all investigations, bulletins, circulars, laws issued as separates, and legislative manuals, 75 copies of all daily legislative journals, bound journals, bills, resolutions, session laws and compiled statutes, and 150 copies of all other publications, except routine business forms and court reports. All such printed daily legislative journals, bills, resolutions and other legislative documents shall be delivered daily to the State Library, and at the close of each legislative session all daily journals, bills and resolutions in the hands of the sergeant-at-arms of the House and Senate shall be delivered to the State Library to be disposed of at the discretion of the Librarian. No accounts for such printing shall be approved and no warrants shall be issued therefor, until the Board of Control is furnished with the contract printer with the receipt of the Librarian for such publications. [Acts 1913, p. 281; Acts 2nd C. S. 1919, p. 154.]

Art. 5443. Sale of archives.—The Commission is authorized to sell copies of the Texas Archives, printed with funds appropriated for that purpose, at a price not to exceed twenty-five per cent above the cost of publishing, and all moneys received from such sale shall be paid into the State Treasury. One copy of each such volume may be distributed free to the Governor, the members of the Legislature, and to the libraries, indicated in the preceding article. [Acts 1913, p. 281.]

Art. 5444. [5608] Legislative reference section.—The Commission shall maintain for the use and information of the members of the Legislature, the heads of the several State departments, and such other citizens as may desire to consult the same, a section of the State Library for legislative reference and information. This section shall possess available for use, explanatory check lists and catalogues of the current legislation of this and other states, catalogues of the bills and resolutions presented in either branch of the Legislature, check lists of the public documents of the several states, including all reports issued by the various departments, boards and commissions of this State, and digests of such public laws of this and other states as may best be made available for legislative use. Such section shall give the members of the Legislature such aid and assistance in the drafting of bills and resolutions as may be asked. [Acts 1909, p. 122; Acts 2nd C. S. 1919, p. 155.]

Art. 5445. Assistants.—The Commission shall appoint an assistant librarian who shall rank as head of a department and who in the absence of the State Librarian may sign and certify accounts and documents in the same manner and with the same legal authority as the State Librarian. Said assistant shall give bond to the Governor in the sum of three thousand dollars and shall take the official oath. Other assistants in the State Library shall be appointed by the Commission and be divided into four grades: Heads of departments, library assistants, clerks and laborers. Heads of departments and library assistants shall be

required to have technical library training; and heads of departments shall have had at least one year of experience in library work prior to appointment. Clerks shall be required to hold a diploma from a first class high school according to the standards of the State Board of Education or the University of Texas, or to present satisfactory evidence of educational training equal to that provided by such high school, and also to present satisfactory evidence of proficiency in stenography and typewriting or book-keeping. Laborers must present satisfactory evidence of education sufficient to do such elementary clerical work as shall be required of them. The archivist must present satisfactory evidence of one year's advanced work in American or Southwestern history in a standard college and of a fluent reading knowledge of Spanish and French; provided, that the archivist shall not be required to have technical library school training or any library experience. [Acts 2nd C. S. 1919, p. 151.]

Art. 5446. [5609] **Report to Governor.** — The Commission shall make a biennial report to the Governor, which shall include the biennial report of the State Librarian. Said report shall present a comprehensive view of the operation of the Commission in the discharge of the duties imposed by this title, shall present a review of the library conditions in this State, present an itemized statement of the expenditures of the Commission, make such recommendations as their experience shall suggest, and present careful estimates of the sums of money necessary for the carrying out of the provisions of this title. Said report shall be made and printed, and by the Governor laid before the Legislature as other departmental reports. [Acts 1909, p. 122.]

TITLE 90.

LIENS.

| Chapter | Page | Chapter | Page |
|-----------------------------------|------|-------------------------------|------|
| 1 Judgment liens..... | 1536 | 5 Farm, factory and store op- | |
| 2 Mechanics, contractors and | | eratives | 1546 |
| material men..... | 1537 | 6 Chattel mortgages | 1548 |
| 3 Oil and mineral property..... | 1543 | 7 Other liens | 1552 |
| 4 Liens of railroad laborers..... | 1545 | | |

CHAPTER ONE.

JUDGMENT LIENS.

| | Article | | Article |
|-----------------------------|---------|-------------------------------|---------|
| Abstracts of judgments..... | 5447 | Satisfaction of judgment..... | 5450 |
| Recording judgments..... | 5448 | Federal court judgments..... | 5451 |
| Lien of judgment..... | 5449 | | |

Art. 5447. [5611-2-3] Abstracts of judgments.—Each clerk of a court, when the person in whose favor a judgment was rendered, his agent, attorney or assignee, applies therefor, shall make out, certify under his hand and official seal, and deliver to such applicant upon the payment of the fee allowed by law, an abstract of such judgment showing:

1. The names of the plaintiff and of the defendant in such judgment.

2. The number of the suit in which the judgment was rendered.

3. The date when such judgment was rendered.

4. The amount for which the judgment was rendered and balance due thereon.

5. The rate of interest specified in the judgment.

Each justice of the peace shall also make and deliver an abstract of any judgment rendered in his court in the manner herein provided, certified under his hand.

Art. 5448. [5610-4-5-9] Recording judgments. — Each county clerk shall keep a well bound book called the "judgment record," and he shall immediately file and therein record all properly authenticated abstracts of judgment when presented to him for record, noting therein the day and hour of such record. He shall at the same time enter it upon the alphabetical index to such judgment record, showing the name of each plaintiff and of each defendant in the judgment, and the number of the page of the book upon which the abstract is recorded. He shall leave a space at the foot of each such abstract for the entry of credits upon and satisfaction of such judgment, and shall enter the same when properly shown.

Art. 5449. [5516-7] Lien of judgment.—When any judgment has been so recorded and indexed, it shall from the date of such record and index operate as a lien upon all of the real estate of the defendant situated in the county where such record and index are made, and upon all real estate which the defendant may thereafter acquire situated in said county. Said lien shall continue for ten years from the date of such record

and index; but if the plaintiff fails to have execution issued upon his judgment within twelve months after the rendition thereof, said lien shall cease to exist.

Art. 5450. [5618] **Satisfaction of judgment.**—Satisfaction of any judgment in whole or in part may be shown:

1. By return upon an execution issued upon said judgment, or by a certified copy of such return, certified by the officer to whom the return is made, such certificate showing the names of the parties to the judgment, the number and style of the suit, the court in which rendered, the date and amount of the judgment, and the dates of the issuance and return of the execution.

2. By a receipt, acknowledgment or release signed by the party entitled to receive payment of the judgment, or his agent, or attorney of record, and acknowledged or proven for record as required for deeds.

Art. 5451. [3293] **Federal court judgments.**—An abstract of a judgment rendered in this State by any United States Court may be recorded and indexed in the same manner and with like force and effect as provided for judgments of the Courts of this State, upon the certificates of the clerks of such United States courts.

CHAPTER TWO.

MECHANICS, CONTRACTORS AND MATERIAL MEN.

| | Article | | Article |
|-----------------------------------|---------|---------------------------------------|---------|
| Lien prescribed | 5452 | Notice of sub-contractor or laborer | |
| Securing lien | 5453 | to owner of property | 5461 |
| Owner to furnish contractor with | | Diligence, what is sufficient | 5462 |
| account | 5454 | Contractor to defend suits | 5463 |
| Form of claim on unwritten con- | | Preference lien | 5464 |
| tract | 5455 | Copy of bill furnished to owner | 5465 |
| Form when the debtor is not the | | Relinquishment entered | 5466 |
| owner | 5456 | Accrual of indebtedness | 5467 |
| Description of property | 5457 | Equality of liens | 5468 |
| What included on property in city | | Mechanic's fund | 5469 |
| and country | 5458 | Release | 5470 |
| Priority of lien | 5459 | Separate sales | 5471 |
| Lien on homestead | 5460 | Requisite of sale | 5472 |

Art. 5452. [5621] [3294] **Lien prescribed.**—Any person or firm, lumber dealer or corporation, artisan, laborer, mechanic or sub-contractor who may labor or furnish material, machinery, fixtures or tools; (a) to erect or repair any house, building or improvement whatever; (b) for the construction or repair of levees or embankments to be erected for the reclamation of overflow lands along any river or creek in this State; (c) or who may furnish any material for the construction or repair of any railroad within this State under or by virtue of a contract with the owner, owners, or his or their agent, trustee, receiver, contractor or contractors; upon complying with the provisions of this chapter shall have a lien on such house, building, fixtures, improvements, land reclaimed from overflow, or railroad, and all of its properties, and shall have a lien on the lot or lots of land necessarily connected therewith, or reclaimed thereby, to secure payment for the labor done, lumber, material, machinery or fixtures and tools furnished for construction or repair. The

word "improvement" as used herein shall be construed so as to include clearing, grubbing, draining or fencing of land, and shall include wells, cisterns, tanks, reservoirs or artificial lakes or pools made for supplying or storing water and all pumps, siphons, and wind mills or other machinery or apparatus used for raising water for stock, domestic use or for irrigation purposes. [Acts 1895, p. 194; Acts 1913, p. 252; Acts 1917, p. 383; G. L. Vol. 10, p. 924.]

Art. 5453. [5622-3] Securing lien.—The lien provided for in Article 5452 may be fixed and secured in the following manner:

1. Every original contractor, within four months, and every journeyman, day laborer, or other person, within thirty days after the indebtedness accrues, shall file his contract in the office of the county clerk of the county where the property is situated to be recorded in a book kept by the county clerk for that purpose.

2. If a journeyman, day laborer or other person has no written contract, it shall be sufficient to file an itemized account of the claim supported by affidavit showing that the account is just and correct and that all just and lawful offsets, payment and credits known to affiant have been allowed.

3. Within ninety days after such indebtedness accrues, each person, firm or corporation who furnished material to or performed labor for a contractor or subcontractor to construct or repair a house, building, improvement or railroad or its properties, shall give written notice to the owner of such house, building or improvement, or to his agent, or to such railroad company or its agent or receiver of each and every item furnished and showing how much there is due and unpaid on each bill of lumber or material furnished or labor performed by such person, firm or corporation, and shall file with the county clerk of the county in which such property is located or through or into which such railroad may extend, an itemized account of his or their claim to be recorded by such clerk in a book kept for that purpose.

Art. 5454. [5634] [3307] Owner to furnish contractor with account.—Whenever any such account shall be placed in the hands of such owner, or his authorized agent, it shall be the duty of such owner, or his agent, to furnish his contractor with a true copy of said attested account; and, if said contractor shall not, within ten days after the receipt of said copy of attested account, give the owner written notice that he intends to dispute said claim, he shall be considered as assenting to the demand, which shall be paid by the owner when it becomes due.

Art. 5455. [5624] [3297] Form of claim on unwritten contract.—If there be no written contract in cases where the labor is performed for or the material is furnished to the owner of the building or improvements, or the owner or receiver of a railroad, the following form or the substance thereof may be

used for filing the claimant's account, and will be sufficient to fix the meaning contemplated by this chapter:

The State of Texas,

County of_____.

A. B., affiant, makes oath and says that the annexed is a true and correct account of the labor performed (or material furnished) for C. D. of_____County, Texas, and that the prices thereof as set forth in said account hereto annexed are just and reasonable, and the same is unpaid; that said labor was performed (or material furnished; or both) for said C. D. at the time in said account mentioned, under and by virtue of a contract between affiant (or affiant's principal) and C. D. and that due notice was given by affiant (or his principal) of the labor performed (or material furnished) in accordance with law; and affiant further makes oath and says that he is informed that C. D. was at the time said contract was made and entered into and said labor was performed (or material furnished) the owner of the house (or improvements) described as follows: (Here describe the house or improvements). And the said house (or improvements) is situated upon a certain lot or tract of land which affiant is informed is owned by said C. D. and which is described as follows: (Here describe the lot or lots or the land). And this affiant (or his principal) claims a lien upon said house or improvements and upon said land. (Or if the material was furnished to any railroad company, its agent or receiver, to construct or repair its railroad or other property, then the affiant shall describe said railroad by giving its charter name and the name of the receiver, if any, and the agent of said company, if any, with whom the contract was made, and that affiant or his principal claims a lien on said railroad and its property.) [Acts 1889, p. 110; G. L. Vol. 9, p. 1138; Acts 1895, p. 194; G. L. Vol. 10, p. 924.]

Art. 5456. [5625] [3298] Form when the debtor is not the owner.—If the labor is performed for, or the material is furnished to, a contractor, builder, agent or receiver, and not the owner of the property, then the following form shall be deemed sufficient to fix the lien provided for by this chapter:

The State of Texas,

County of_____.

A. B., affiant, makes oath and says that the annexed is a true and correct account of the labor performed for (or the material furnished to) C. D., a contractor (builder, agent, or receiver) by affiant (or his principal) and the prices therefor as set forth in the annexed account are just and reasonable, and that the same is unpaid (or the sum of \$_____, as shown by said account, is unpaid) after allowing all just and lawful offsets, payments and credits known to affiant; that said labor was performed (or material furnished, or both) for (or to) said C. D. to be used in the erection of a house (or building or improvements, or in the repair of the house, building or improve-

ment, or in the construction or improvement of the railroad or its property), owned, as affiant is informed and believes, by E. F., of _____ County, Texas, and that said labor was performed (or material furnished, or both) to (or for) said C. D. under and by virtue of his contract between affiant (or his principal) and said C. D. (And in case of material furnished, affiant shall further swear that he has given to the owner, his agent or representative or receiver, notice in writing of each item of said account as required in this chapter as the same was furnished to said C. D.) [Id.]

Art. 5457. [5626-7] [3299-3300] Description of property.—In case the contract is filed and recorded as provided for in Section 1 and 2 of Article 5453, a like description of the house, building or improvement, and the lot or tract of land, shall accompany the same, as is required in the foregoing forms, except that the same is not required to be under oath. When a contract or account is filed and recorded, it shall be deemed sufficient diligence to fix and secure this lien. [Acts 1889, p. 110.]

Art. 5458. [5627] [3300] What included on property in city and country.—If this lien is against land in a city, town or village, it shall extend to or into the lot or lots upon which such house, building or improvement is situated, or upon which such labor was performed; and, if the lien is against land in the country, it shall extend to and include fifty acres upon which such house, building or improvements are situated, or upon which such labor has been performed; and, if the lien is against a railroad company, it shall extend to and include all of its property. [Acts 1889, p. 110; Acts 1895, p. 194.]

Art. 5459. [5628] [3301] Priority of lien.—The lien herein provided for shall attach to the house, building, improvements or railroad for which they were furnished or the work was done, in preference to any prior lien or encumbrance or mortgage upon the land upon which the houses, buildings or improvements, or railroad have been put, or labor performed, and the person enforcing the same may have such house, building or improvement, or any piece of the railroad property, sold separately; provided, any lien, encumbrance or mortgage on the land or improvement at the time of the inception of the lien herein provided for shall not be affected thereby, and holders of such liens need not be made parties in suits to foreclose liens herein provided for. [Id.]

Art. 5460. [5631] [3304] Lien on homestead.—When material is furnished, labor performed, or improvements as defined in this title are made, or when erections or repairs are made upon homesteads, if the owner thereof is a married man, then to fix and secure the lien upon the same it shall be necessary for the person or persons who furnish the material or perform the labor, before such material is furnished or such labor is performed, to make and enter into a contract in writing, setting forth the terms thereof, which shall be signed by the owner

and his wife, and privily acknowledged by her, as is required in making sale of homestead. And such contract shall be recorded in the office of the county clerk in the county where such homestead is situated, in a well bound book to be kept for that purpose. When such contract has been made and entered into by the husband and wife and the contractor or builder, and the same has been recorded, as heretofore provided, then the same shall inure to the benefit of any and all persons who shall furnish material or labor thereon for such contractor or builder. [Acts 1889, p. 110; G. L. Vol. 9, p. 1138; Acts 1917, p. 383.]

Art. 5461. [5632] [3305] Notice of sub-contractor or laborer to owner of property.—Every person, except the original contractor or builder, or those claiming under Section 3 of Article 5453 who may wish to avail himself of the benefits of this law, shall give at least ten days' notice in writing before the filing of the lien, as herein required, to the owner or owners, or agent, that he holds a claim against such house, building or improvement, setting forth the amount, and from whom the same is due; and thereafter said owner, or owners, or agent, shall be authorized to retain in his hands the amount claimed until the same is settled or determined not to be owing. [Acts 1889, p. 110.]

Art. 5462. [5633] [3306] Diligence, what is sufficient.—A compliance with the provisions of the preceding article shall be deemed sufficient diligence to fix the liability of the owner of such house, building or improvement for the payment of such demand, subject to the subsequent provisions of this law. [Id.]

Art. 5463. [5635] [3308] Contractor to defend suits.—When a lien is filed under a provision of this chapter by any person other than the original contractor or builder, the original contractor shall defend the action brought thereupon, at his own expense; and, the owner may detain the amount of money for which such lien is filed, and in case of judgment against the owner or his property upon the lien, he shall be entitled to deduct from the amount due the contractor the amount of said judgment and costs; and, if he shall have settled with the contractor or builder in full, he shall be entitled to recover from the contractor or builder any amount so paid for which the contractor or builder was originally liable. But the owner shall in no case be required to pay, nor his property be liable for, any money that he may have paid to the contractor before the fixing of the lien or before he has received written notice of the existence of the debt. [Acts 1889, p. 110; G. L. Vol. 9, p. 1138.]

Art. 5464. [5635] [3308] Preference lien.—All sub-contractors, laborers and material men shall have preference over other creditors of the principal contractor or builder. [Id.]

Art. 5465. [5635] [3308] Copy of bill furnished to owner.—A copy of each bill of lumber furnished to the contractor or builder as the same is furnished shall be delivered to the owner of said homestead, said bill specifying each item so furnished,

how much is paid thereon, and what is due for lumber or material furnished for said contract prior thereto. [Id.]

Art. 5466. [5635] [3308] **Relinquishment entered.**—When the debt is paid under the contract for such building or improvements, the party for whose interest the contract was recorded shall enter a relinquishment showing a full compliance of said contract to the extent of all money due them from the original contractor or builder on account of labor done or material furnished; and the money due said original contractor or builder from the person owning or having improvements made shall not be garnisheed by other creditors to the prejudice of such sub-contractors, mechanics, laborers or material men. [Acts 1889, p. 110; G. L. Vol. 9, p. 1138.]

Art. 5467. [5636] [3309] **Accrual of indebtedness.**—When labor is performed by the day or week, then the indebtedness shall be deemed to have accrued at the end of each week during which labor is performed. When material is furnished, the indebtedness shall be deemed to have accrued at the date of the last delivery of such material, unless there is an agreement to pay for such material at a specified time. [Acts 1889, p. 110; G. L. Vol. 9, p. 1138.]

Art. 5468. [5637] [3310] **Equality of liens.**—Except as provided in the succeeding article, the liens for work and labor done or material furnished, as provided in this chapter, shall be upon an equal footing without reference to date or filing the account or lien. In case of foreclosure, if the proceeds of the sale of any property described in any account or lien are insufficient to discharge all the liens against the same, such proceeds shall be paid pro rata on the respective liens; provided, such accounts or liens shall have been filed and suit brought as provided by this law. Nothing in this law shall in any manner affect the contract between the owner and original contractor as to the amount, manner or time of payment of said contract price. [Id.]

Art. 5469. [5638] **Mechanic's fund.**—Whenever any mechanic or artisan shall perform any labor or service for any contractor, sub-contractor, agent or receiver, in the erection or repair of any house, building, fixture or improvement, or as a necessary incident in connection with such work of construction or repair, such owner, agent or receiver shall retain in his hands during the progress of such work and for thirty days after the completion thereof, to secure the payment of said artisans and mechanics, ten per cent of the contract price of such building, fixture or improvement, or the repair thereof, or ten per cent of the value of such building, fixture or improvement, or the repair thereof, measured by the proportion that the work done bears to the work to be done thereon, and using the contract price or the reasonable value of the completed building, fixture or improvement, or the repair thereof, as a basis of computation of value. All mechanics or artisans who may file a mechanic's

lien upon said building, fixture or improvement so made or erected or repaired in accordance with the law applying thereto, shall have ratably among themselves, a preference lien upon said fund so retained in the hands of such owner, or agent, or receiver. If such owner, receiver or agent refuses or fails to comply with the provisions of this law, the mechanics and artisans performing work thereon and in connection therewith, who may file liens thereon in accordance with law, shall have ratably among themselves preference liens, to be preferred above all other liens and claims whatsoever upon such house, building, structure, fixture, or improvement, and all its properties, and on the lot or lots of land necessarily connected therewith to secure payment for such labor thereon. [Acts 1909, p. 184.]

Art. 5470. [5639] [3311] **Release.**—All parties who are authorized under this law to file a lien, and have done so, and had such lien recorded, shall, when such lien is paid or satisfied, or have received their proper lienable parts for which the owner of the building would be liable under this law, shall record a relinquishment and satisfaction of such lien. [Acts 1876, p. 91; G. L. Vol. 8, p. 927; Acts 1889, p. 110; G. L. Vol. 9, p. 1138.]

Art. 5471. [5629] [3302] **Separate sales.**—When the house, building, improvement, or any piece of the railroad's property is sold separately, the officer making the sale shall place the purchaser in possession thereof; and such purchaser shall have the right to remove the same within a reasonable time from the date of purchase. [Acts 1889, p. 110; G. L. Vol. 9, p. 1138; Acts 1895, p. 194; G. L. Vol. 10, p. 924.]

Art. 5472. [5630] [3303] **Requisites of sale.**—Every sale must be upon judgment rendered by some court of competent jurisdiction foreclosing such lien and ordering sale of such property. [Acts 1889, p. 110; G. L. Vol. 9, p. 1138.]

CHAPTER THREE

OIL AND MINERAL PROPERTY.

| | | | |
|------------------------------|---------|-----------------------------------|---------|
| | Article | | Article |
| Contractor's lien | 5473 | Sale or removal of property..... | 5477 |
| Sub-contractor's lien | 5474 | Extent of liability of owner..... | 5478 |
| Priority of lien | 5475 | Remedy cumulative | 5479 |
| Proceedings to fix lien..... | 5476 | | |

Art. 5473. **Contractor's lien.**—Any person, corporation, firm, association, partnership, materialman, artisan, laborer or mechanic, who shall, under contract, express or implied, with the owner of any land, mine or quarry, or the owner of any gas, oil or mineral leasehold interest in land, or the owner of any gas pipe line or oil pipe line, or owner of any oil or gas pipe line right of way, or with the trustee, agent or receiver of any such owner, perform labor or furnish material, machinery or supplies, used in digging, drilling, torpedoing, operating, completing, maintaining or repairing any such oil or gas well, water well, mine or quarry, or oil or gas pipe line, shall have a lien on the whole of such land or leasehold interest therein, or oil pipe line

or gas pipe line, including the right of way for same, or lease for oil and gas purposes, the buildings and appurtenances, and upon the materials and supplies so furnished, and upon said oil well, gas well, water well, oil or gas pipe line, mine or quarry for which the same are furnished, and upon all of the other oil wells, gas wells, buildings and appurtenances, including pipe line, leasehold interest, and land used in operating for oil, gas and other minerals, upon such leasehold or land or pipe line and the right of way therefor, for which said material and supplies were furnished or labor performed. Provided, that if labor, supplies, machinery, or material is furnished to a leaseholder, the lien hereby created shall not attach to the underlying fee title to the land. [Acts 1917, p. 28.]

Art. 5474. Sub-contractor's lien.—Any person, corporation, firm, association, partnership or materialman who shall furnish such machinery, material or supplies to a contractor or sub-contractor, or any person who shall perform such labor under a sub-contract with a contractor, or who as an artisan or day laborer in the employ of such contractor or sub-contractor shall perform any such labor, shall have a lien upon all such property or interest described in the preceding article, including right of way, for which said material and supplies were furnished and labor performed, in the same manner and to the same extent as the original contractor, for the amount due him for material furnished or labor performed. [Id.]

Art. 5475. Priority of lien.—The lien herein provided for shall attach to the machinery, material, supplies and the specific improvements made, in preference to any prior lien or encumbrance or mortgage upon the land or leasehold interest upon which the said machinery, material, supplies or specific improvements are placed or located, provided, however, that any lien, encumbrance, or mortgage upon the land or leasehold interest at the time of the inception of the lien herein provided for shall not be affected thereby, and the holders of such liens upon such land or leasehold interest shall not be necessary parties in suits to foreclose the liens hereby created. [Id.]

Art. 5476. Proceedings to fix lien.—The liens herein created shall be fixed and secured and notice thereof shall be given and such liens shall attach and be enforced in the same manner, and the materialman's statement, or the lien of any laborer herein mentioned shall be filed and recorded within the same time and in the same manner as provided for in the preceding chapter. Whenever any person shall remove any such property to a county other than the one in which the lien has been filed, the lien holder may within ninety days thereafter file an itemized inventory of the property so removed showing the amount due and unpaid thereon, with the clerk of the county to which it has been removed, which shall be recorded in the materialman's lien records of such county, and such filing shall operate as notice

of the existence of the lien and the lien shall attach and extend to the land or leasehold and other premises, properties and appurtenances to which said properties so removed shall attach, of the kind and character enumerated in Article 5473. [Id.]

Art. 5477. **Sale or removal of property.**—When the lien herein provided for shall have attached to the property covered thereby, neither the owner of the land, nor the owner of said oil, gas or mineral leasehold interest therein, nor the owner of any gas or oil pipe line, nor the contractor, nor the sub-contractor, nor the purchaser, nor the trustee, receiver or agent, of any such owner, lessor, lessee, contractor, sub-contractor or purchaser shall either sell or remove the property subject to said lien or cause same to be removed from the land or premises upon which they were to be used, or otherwise sell or dispose of the same, without the written consent of the holder of the lien hereby created; and in case of any violation of the provisions of this article, the said lienholder shall be entitled to the possession of the property upon which said lien exists wherever found, and to have the same then sold for the payment of his debt, whether said debt has become due or not. [Id.]

Art. 5478. **Extent of liability of owner.**—Nothing in this chapter shall be construed to fix a greater liability against the owner of the land or leasehold interest therein than the price or sum stipulated to be paid in the contract under which such material is furnished, or labor performed. [Id.]

Art. 5479. **Remedy cumulative.**—The provisions of this law shall not be construed to deprive or abridge materialmen, artisans, laborers, or mechanics of any rights and remedies now given them by law, and the provisions of this law shall be cumulative of the present lien laws. [Id.]

CHAPTER FOUR.

LIENS OF RAILROAD LABORERS.

Art. 5480. [5640-43] **Lien prescribed.**—All mechanics, laborers and operatives who may have performed labor, or worked with tools, teams or otherwise, in the construction, operation or repair of any railroad locomotive, car or other equipment of a railroad, and to whom wages are due or owing for such work, or for the work of tools or teams thus employed, or for work otherwise performed, shall have a lien prior to all others upon such railroad and its equipments for the amount due them for personal services, or for the use of tools or teams. Such lien shall cease to be operative in twelve months after its creation, if no steps are sooner taken to enforce it. [Acts 1887, p. 17; G. L. Vol 9, p. 815.]

Art. 5481. [5641] [3313] **Enforcement.**—In all suits for wages due by a railroad company for such labor, upon proof being satisfactorily made that such labor had been performed, either at the instance of said company, a contractor, or sub-

contractor or agent of said company, and that such wages are due, and the lien given by the preceding article is sought to be enforced, the court having jurisdiction shall try the same, render judgment for the amount of wages found to be due, and adjudge and order said railroad and equipments, or so much thereof as may be necessary, to be sold to satisfy said judgment. In all suits of this kind, it shall not be necessary for the plaintiff to make other lienholders defendants hereto, but such lienholders may intervene and become parties thereto and have their respective rights adjusted and determined by the court. [Acts 1879, p. 8; G. L. Vol. 8, p. 1308.]

Art. 5482. [5642] [3314] **Venue.**—Such suits may be brought in any county in this State where such labor was performed, or in which the cause of action or part thereof accrued or in the county in which the principal office of such railroad company is situated. [Id.]

CHAPTER FIVE.

FARM, FACTORY AND STORE OPERATIVES.

| | | | |
|----------------------------------|---------|---------------------------|---------|
| | Article | | Article |
| Lien prescribed | 5483 | Liens, how fixed | 5486 |
| Newspaper office employees | 5484 | Right of assignment | 5487 |
| Payment of wages | 5485 | Duration of lien | 5488 |

Art. 5483. [5644] **Lien prescribed.**—Whenever any clerk, accountant, bookkeeper, artisan, craftsman, factory operator, mill operator, servant, mechanic, quarryman, or common laborer, farm hand, male or female, may labor or perform any service in any office, store, hotel, shop, factory, mine, quarry or mill of any character, or perform any service in the cutting, preparation, hauling, handling, or transporting to any mill, or other point for sale, manufacture or other disposition, logs or timber, or perform any service upon any wagon, cart, tram, or railroad, or other means or methods of transporting such logs or timber, and in the construction or maintenance of such tram or railroad, constructed or used for the transportation of logs or timber to or for such mills to its owner or operator, or to points for sale, shipment or other disposition, or any farm hands, under or by virtue of any contract or agreement, written or verbal, with any person, employer, firm or corporation, or his, her, or their agent, receiver or trustee, in order to secure the payment of the amount due or owing under such contract or agreement, written or verbal, the hereinbefore mentioned employees shall have a first lien upon all products, machinery, tools, fixtures, appurtenances, goods, wares, merchandise, chattels, wagons, carts, tram roads, railroads, rolling stock, and appurtenances, or thing or things of value of whatsoever character that may be created in whole or in part by the labor or that may be used by such person or persons or necessarily connected with the performance of such labor or service, which may be owned by or in the possession or under the control of the aforesaid employer, person, firm, corporation, or his or their agent or agents, receiver or receivers, trustee or

trustees, provided, that the lien herein given to a farm hand shall be subordinate to the landlord's lien provided by law. [Acts 1897, p. 218; Acts 1913, p. 151; G. L. Vol. 10, p. 1272.]

Art. 5484. **Newspaper office employees.**—Whenever any newspaper worker in the editorial or reportorial department of any newspaper, publication or periodical, whether daily or otherwise, also any solicitor, clerk or other employee, in the advertising or business office of any newspaper publication or periodical, whether daily or otherwise, shall labor or perform any service in any of the departments or offices of such newspaper or periodical, under or by virtue of any contracts or agreements, written or verbal, with any person, employer, firm or corporation, or his, her or their agent, receiver or trustee, in order to secure the payment of the amount due by such contract or agreement, written or verbal, the hereinbefore mentioned employee shall have a first lien upon all products, papers, machinery, tools, fixtures, appurtenances, goods, wares, merchandise, subscription contracts, chattels, or things of value of whatsoever character that may be created in whole or in part by the labor of such persons, or necessarily connected with the performance of such labor or service, which may be owned by, or in possession of the aforesaid employer, person, firm, corporation, or his, her or their agent, receiver or trustee. [Acts 1917, p. 324.]

Art. 5485. [5646] **Payment of wages.**—Under the operation of this law, all wages, if service is by agreement performed by the day or week, shall be due and payable weekly, or if by the month, shall be due and payable monthly; all payments to be made in lawful money of the United States. [Acts 1897, p. 218; G. L. Vol. 10, p. 1272.]

Art. 5486. [5645] **Liens, how fixed.**—Whenever any person, employer, firm, corporation, his, her or their agent or agents, receiver or receivers, trustee or trustees, shall fail or refuse to make payments as hereinafter prescribed in this law, the said clerk, accountant, bookkeeper, farm hand, artisan, craftsman, operative, servant, mechanic, quarryman, or laborer, who shall have performed service of any character, shall make or have made duplicate accounts of such service, with amount due him or her for the same, and present, or have presented, to aforesaid employer, person, firm or corporation, his, her, or their agent or agents, receiver or receivers, trustee or trustees, one of the aforesaid duplicate accounts within thirty days after the said indebtedness shall have accrued. The other of the said duplicate accounts shall, within the time hereinbefore prescribed, be filed with the county clerk of the county in which said service was rendered, and shall be recorded by the county clerk in a book kept for that purpose. The party or parties presenting the aforesaid account shall make affidavit as to the correctness of the same. A compliance with the foregoing requirements in this article shall be necessary to fix and preserve the lien given under this law; and the liens of different persons shall take prece-

dence in the order in which they are filed; provided, that all persons claiming the benefit of this law shall have six months within which to bring suit to foreclose the aforesaid lien; and provided, further, that a substantial compliance with the provisions of this article shall be deemed sufficient diligence to fix and secure the lien hereinbefore given; provided, that any purchaser of such products from the owner thereof shall acquire a good title thereto, unless he has at the time of the purchase actual or constructive notice of the claim of such lienholder upon such products, said constructive notice to be given by record of such claim, as provided for in this law, or by suit filed. [Acts 1897, p. 218.]

Art. 5487. [5647] **Right of assignment.**—Any party entitled to such lien may transfer or assign his rights hereunder, and his assignee or assignees shall have the same rights and privileges as are conferred upon him. [Id.]

Art. 5488. [5648] **Duration of lien.**—The lien created by this chapter shall cease to be operative after six months after the same is fixed, unless suit is brought within said time to enforce said lien. [Id.]

CHAPTER SIX

CHATTEL MORTGAGES.

| | | | |
|-----------------------------------|--------------|---------------------------------------|--------------|
| Vendor's security | Article 5489 | Satisfaction to be entered..... | Article 5495 |
| Chattel mortgages | 5490 | Property not to be removed..... | 5496 |
| Combined with | 5491 | Effect of registration..... | 5497 |
| Duty of clerk | 5492 | Records of chattels on realty..... | 5498 |
| Copy of instrument: evidence..... | 5493 | Destruction of chattel mortgages..... | 5499 |
| Chattel mortgage record..... | 5494 | | |

Art. 5489. [5654] [3327] **Vendor's security.**—All reservation of the title to or property in chattels, as security for the purchase money thereof, shall be held to be chattel mortgages, and shall, when possession is delivered to the vendee, be void as to creditors and bona fide purchasers, unless such reservations be in writing and registered as required of chattel mortgages. Nothing in this law shall be construed to contravene the landlord and tenant law. [Acts 1885, p. 76; G. L. Vol. 9, p. 696.]

Art. 5490. **Chattel mortgages.** Every chattel mortgage, deed of trust, or other instrument of writing, intended to operate as a mortgage, or lien upon personal property, and every transfer thereof which shall not be accompanied by an immediate delivery and be followed by an actual and continued change of possession of the property mortgaged, pledged, or affected by such instrument, shall be absolutely void as against the creditors of the mortgagor or person making same, as against subsequent purchasers and mortgagees or lien holders in good faith, unless such instrument, or a true copy thereof, shall be forthwith deposited with and filed in the office of the county clerk of the county where the property shall then be situated, or if the mortgagor or person making the same be a resident of this State, then, of the county of which he shall at that time be a resident; provided, that written contracts for the conditional

sale, lease or hire of railroad equipment and rolling stock, by which the purchase money is therein agreed to be paid at any time or times after the date of such contract, with a reservation of title or lien in the vendor, lessor or bailor until the same has been fully paid, shall be recorded in the office of the Secretary of State, in a book of records to be kept by him for that purpose; and on payment in full of the purchase money and the performance of the terms and conditions stipulated in any such contract, a declaration in writing to that effect may be made by the vendor, lessor or bailor, or his or its assignee, which declaration may be made on the margin of the record of the contract, duly attested, or it may be made by a separate instrument to be acknowledged by the lessor, vendor or bailor, or his or its assignee, and recorded as aforesaid; and for such services the Secretary of State shall be entitled to a fee of five dollars for recording each of said contracts and each of said declaration, and a fee of one dollar for entering such declaration on the margin of the record.

Art. 5491. Combined with Article 5490.

Art. 5492. [5656] [3329] **Duty of clerk.**—Upon the receipt of such instrument, the clerk shall indorse thereon the day and hour when the same was deposited in his office for record, and shall keep the same on file in his office for the inspection of all parties interested until satisfaction thereof shall be entered, as provided for in this chapter. If a copy be presented to the clerk for filing, instead of the original instrument, he shall carefully compare such copy with the original, and the same shall not be filed unless it is a true copy thereof, and unless the original has been witnessed by two subscribing witnesses or acknowledged or proven for record and certified as required in case of other instruments for the purpose of being recorded. [Sen. Jour. 1895, p. 479.]

Art. 5493. [5657] [3330] **Copy of instrument: evidence.**—A certified copy of any such instrument so filed as aforesaid, certified to under the hand and seal of said clerk, shall be admitted in evidence in like manner as the original might be, unless the execution of the original has been denied under oath by the party sought to be charged thereby. The party desiring to use such instrument shall file the same in the papers of the cause before announcing ready for trial, and not afterwards. Such certified copy shall in all cases be received as evidence of filing and entry thereof in the chattel mortgage record according to the indorsement of the clerk thereon. [Id., p. 480.]

Art. 5494. [5658] **Chattel mortgage record.** The county clerk shall keep a book in which shall be entered a minute of all such instruments, which shall be ruled off into separate columns, with heads as follows: Time of reception, name of mortgagor, name of mortgagee or trustee and cestui que trust, date of instrument, amount secured, when due, property mortgaged, and remarks; and the proper entry shall be made under each of such heads. Under the head of "property mortgaged" it will be suf-

ficient to enter a general description of the property pledged and the particular place where located, and an index shall be kept in the manner as required for other records. When the instrument is the transfer of a lien the county clerk shall enter on the margin, or under the head "remarks" in connection with the original record of registration of such lien, a notation, "transferred by _____ to _____ this _____ day of _____, 19____," filling the blanks with the names of the parties and the date of such transfer, and note the date it is filed for registration. Provided, however, that the failure of the transferee of any note or lien to have the records so noted shall not operate as a release of the lien then in existence in any manner whatsoever to affect the validity of said lien or to operate so as to give the transferee of said note or lien any less rights than those held by the original payee in the note. [Acts 1925, p. 368.]

Art. 5495. [5659] [3332] Satisfaction to be entered.—When the debt secured by any such instrument has been paid or satisfied, the mortgagee, his assignee, attorney or legal representative shall enter or cause to be entered, and attested by the clerk, as aforesaid, satisfaction thereof, in the record book in which the instrument is entered, which may be done under the head of "remarks." Any instrument acknowledging payment or satisfaction need not be recorded at length, but the entry as above provided showing the same has been paid shall be sufficient, and the original instrument or copy thereof on file shall then be delivered to the mortgagor or maker upon demand, or the clerk may mail the same to him. [Id.]

Art. 5496. [5660] [3333] Property not to be removed.—The person making any such instrument shall not remove the property pledged from the county, nor otherwise sell or dispose of the same, without the consent of the mortgagee; and in case of any violation of the provisions of this article, the mortgagee shall be entitled to the possession of the property, and to have the same then sold for the payment of his debt, whether the same has become due or not. [Id.]

Art. 5497. [5661] [3334] Effect of registration.—Chattel mortgages and other instruments intended to operate as mortgages or liens upon personal property shall not be recorded at length, and all persons shall be thereby charged with notice thereof, and of the rights of the mortgagee, his assignee or representatives thereunder. [Acts 1879, p. 134; Acts 1917, p. 361; G. L. Vol. 8, p. 1434.]

Art. 5498. [5661] [3334] Record of chattels on realty.—When any machinery or other manufactured article is susceptible of being attached to the realty in such a way as to become a fixture thereto and is located upon real estate in such manner as the same may be deemed a fixture thereto, and at the time of its location upon such real estate there is a lien or mortgage evidenced by written instrument or any instrument reserving title in such machinery or other manufactured article to secure an indebtedness thereon, executed by the purchaser or owner of

such machinery or other manufactured article at the time of its location on such real estate, and the instrument evidencing said lien, mortgage or reservation of title contains a description of said machinery or other manufactured article, as well as the real estate upon which it is to be located or situated, reasonably sufficient to identify said real estate, and such instrument is registered under the provisions of this Act, then the registration of such instrument evidencing said lien, mortgage, or reservation of title as provided for by this Act, shall be notice to all persons thereafter dealing with or acquiring any right or interest in said machinery or other manufactured article, or the realty upon which the same is located or other improvements or property situated on said real estate, of all of the rights of the owners or holders of the indebtedness secured by said instrument the same as if recorded at length in the deed records or records of mortgages upon realty of the county where the real estate is situated, and such lien, mortgage or reservation of title upon or to such machinery or other manufactured article shall be as to such machinery and other manufactured article superior to any lien or rights existing in any one to said real estate or other improvements or other property located and situated thereon existing at the time of the location of said machinery or other manufactured article thereon, but nothing herein contained shall be held to give the holder of such lien, mortgage or reservation of title any right to or claim upon the real estate save and except the right to establish and foreclose his lien, mortgage or reservation of title upon such machinery or other manufactured article, and to enforce his rights thereto under the instrument evidencing his lien, mortgage or reservation of title, as in other cases of liens upon personal property hereunder. All such instruments shall be endorsed on the back thereof, to wit, "Liens on machinery situated on realty," and shall be registered in the county where the real estate is located in the manner as other chattel mortgages except that there shall be kept, indexed and recorded, as now herein provided for chattel mortgages, a separate book to be endorsed "chattel mortgage records on realty." The record thereof shall in addition to the other requirements of this Act contain a brief description of said real estate to which said fixtures are to be attached. [Acts 1879, p. 134; Acts 1917, p. 361; G. L. Vol. 8 p. 1434.]

Art. 5499. [5662] Destruction of chattel mortgages. — All chattel mortgages filed with the county clerks of this State in accordance with law shall be prima facie presumed to have been paid after the expiration of six years from the date of the maturity of the debts such mortgages were intended to secure, unless the owner or holder of such mortgages, his agent or attorney, shall, within three months next before the expiration of said time, file an affidavit in writing with the county clerk stating that such debt has not been paid, and the amount still due thereon. If such affidavit is not filed, the clerk shall, at the ex-

piration of said time, either deliver such mortgage to the maker or destroy the same. [Acts 1907, p. 272.]

CHAPTER SEVEN.

OTHER LIENS.

| | | | |
|------------------------------------|---------|-------------------------------|---------|
| | Article | | Article |
| Lien on vessels..... | 5500 | Sale of property..... | 5504 |
| Stock breeder's lien..... | 5501 | Unclaimed proceeds..... | 5505 |
| Livery stables, etc..... | 5502 | Other liens not affected..... | 5506 |
| Mechanics may retain property..... | 5503 | | |

Art. 5500. [5650-51] Lien on vessels.—Every person who may furnish supplies or materials, or do repairs or labor for or on account of any domestic vessel, owned in whole or in part in this State, shall have a lien on such vessel, her tackle, apparel, furniture and freight money for the security and payment of the same. The provisions of this article shall not be construed to alter or affect in any way the general law regulating the liens of seamen on foreign vessels. [Acts Feb. 3, 1848; P. D. 4600, 4601; G. L. Vol. 3, p. 22.]

Art. 5501. [5652-53] Stock breeder's lien.—The owner or keeper of any stallion, jack, bull or boar, who keeps the same confined for the purpose of standing him for profit, shall have a preference lien upon the progeny of such stallion, jack, bull or boar to secure the payment for the amount due such owner or keeper for the services of such stallion, jack, bull or boar, and such lien shall exist by reason of the force and effect of the provisions hereof, and it shall never be necessary in order to secure and fix said lien to secure, file or register any contract or statement thereof with any officer, nor shall it be necessary that the owner of such progeny execute any contract whatever, but such preference lien may be foreclosed in the same manner as the statutory landlord's lien is by law enforced; provided, that where parties misrepresent their stock by false pedigree, no lien shall obtain. Said lien shall remain in force for a period of ten months from the birth of said progeny, but shall not be enforced until five months shall have elapsed after such birth. [Acts 1889, p. 115; Acts 1905, p. 24; G. L. Vol. 9, p. 1143.]

Art. 5502. [5664] [3319] Livery stables, etc.—Proprietors of livery or public stables shall have a special lien on all animals placed with them for feed, care and attention, as also upon such carriages, buggies or other vehicles as may have been placed in their care, for the amount of the charges against the same; and this article shall apply to and include owners or lessees of pastures, who shall have a similar lien on all animals placed with them for pasturage. [Acts 1874, p. 200; Acts 1895, p. 96; G. L. Vol. 8, p. 202; G. L. Vol. 10, p. 826.]

Art. 5503. [5665-6] Mechanics may retain property.—Whenever any article, implement, utensil or vehicle shall be repaired with labor and material, or with labor and without furnishing material by any carpenter, mechanic, artisan, or other workman in this State, such carpenter, mechanic, artisan, or

other workman is authorized to retain possession of said article, implement, utensil, or vehicle until the amount due on same for repairing by contract shall be fully paid off and discharged. In case no amount is agreed upon by contract, then said carpenter, mechanic, artisan, or other workman shall retain possession of such article, implement, utensil or vehicle, until all reasonable, customary and usual compensation shall be paid in full. [Acts 1874, p. 68; P. D. 711a; G. L. Vol. 8, p. 70.]

Art. 5504. [5667-8] Sale of property.—When possession of any of the property embraced in the preceding article has continued for sixty days after the charges accrue, and the charges so due have not been paid, it shall be the duty of the persons so holding said property to notify the owner, if in the State and his residence be known, to come forward and pay the charges due, and on his failure within ten days after such notice has been given him to pay said charges, the persons so holding said property, after twenty days notice, are authorized to sell said property at public sale and apply the proceeds to the payment of said charges, and shall pay over the balance to the person entitled to the same. If the owner's residence is beyond the State or is unknown, the person holding said property shall not be required to give such notice before proceeding to sell. [Id.]

Art. 5505. [5669-70] Unclaimed proceeds.—If the person who is legally entitled to receive the balance mentioned in this chapter is not known, or has removed from the State or from the county in which such repairing was done, or such property was so held, the person so holding said property shall pay the balance to the county treasurer of the county in which said property is held and take his receipt therefor. Whenever such balance shall remain in the possession of the county treasurer for the period of two years unclaimed by the party legally entitled to the same, such balance shall become a part of the county fund of the county in which the property was sold, and shall be applied as any other county fund or money of such county is applied or used. [Id.]

Art. 5506. [5671] [3326] Other liens not affected.—Nothing in this title shall be construed or considered as in any manner impairing or affecting the right of parties to create liens by special contract or agreement, nor shall it in any manner affect or impair other liens arising at common law or in equity, or by any statute of this State, or any other lien not treated of under this title.

TITLE 91.

LIMITATIONS.

I. LIMITATIONS OF ACTIONS FOR LANDS.

| | Article | | Article |
|-------------------------------------|---------|---|---------|
| Three years' possession..... | 5507 | "Adverse possession"..... | 5515 |
| "Title" and "color of title" de- | | Possession by different persons..... | 5516 |
| fined..... | 5508 | Right of the State..... | 5517 |
| Five years' possession..... | 5509 | Person under disability..... | 5518 |
| Ten years' possession..... | 5510 | Action barred in twenty-five years..... | 5519 |
| Land surrounded by other lands..... | 5511 | Actions by vendors..... | 5520 |
| Possession by adjacent owner..... | 5512 | Payment presumed..... | 5521 |
| Title by possession..... | 5513 | Lien continued in force..... | 5522 |
| "Peaceable possession"..... | 5514 | Limitation as to deeds of trust, etc..... | 5523 |

Art. 5507. [5672] [3340] [3191] Three years' possession.

—Suits to recover real estate, as against a person in peaceable and adverse possession thereof under title or color of title, shall be instituted within three years next after the cause of action accrued, and not afterward. [Acts 1841, p. 119; P. D. 4622; G. L. Vol. 2, p. 621.]

Art. 5508. [5673] [3341] [3192] "Title" and "color of title" defined.—By the term "title" is meant a regular chain of transfers from or under the sovereignty of the soil, and by "color of title" is meant a consecutive chain of such transfers down to such person in possession, without being regular, as if one or more of the memorials or muniments be not registered, or not duly registered, or be only in writing, or such like defect as may not extend to or include the want of intrinsic fairness and honesty; or when the party in possession shall hold the same by a certificate of headright, land warrant, or land scrip, with a chain of transfer down to him in possession. [Id.]

Art. 5509. [5674] [3342] [3193] Five years' possession.—Every suit to recover real estate as against a person having peaceable and adverse possession thereof, cultivating, using or enjoying the same, and paying taxes thereon, if any, and claiming under a deed or deeds duly registered, shall be instituted within five years next after cause of action shall have accrued, and not afterward. This article shall not apply to one in possession of land, who deraigns title through a forged deed. And no one claiming under a forged deed, or deed executed under a forged power of attorney shall be allowed the benefits of this article. [Id., Acts 1879, p. 132; G. L. Vol. 8, p. 1432.]

Art. 5510. [5675-5676] [3343] Ten years' possession.—Any person who has the right of action for the recovery of lands, tenements or hereditaments against another having peaceable and adverse possession thereof, cultivating, using or enjoying the same, shall institute his suit therefor within ten years next after his cause of action shall have accrued, and not afterward. The peaceable and adverse possession contemplated in this article, as against the person having right of action, shall be construed to embrace not more than one hundred and sixty acres, including the improvements or the number of acres actually enclosed, should the same exceed one hundred and sixty acres;

but when such possession is taken and held under some written memorandum of title, other than a deed, which fixes the boundaries of the possessor's claim and is duly registered, such peaceable possession shall be construed to be co-extensive with the boundaries specified in such instrument. [Id.; P. D. 4621-24.]

Art. 5511. [5677] [3345] Land surrounded by other lands.—A tract of land owned by one person, entirely surrounded by a tract or tracts owned, claimed or fenced by another, shall not be considered inclosed by a fence inclosing the circumscribing tract or tracts, or any part thereof; nor shall the possession by the owner or claimant of such circumscribing land of such interior tract be the peaceable and adverse possession contemplated by Article 5510 unless the same be segregated and separated from the circumscribing land by a fence, or unless at least one-tenth thereof be cultivated and used for agricultural purposes, or used for manufacturing purposes. [Acts 1891, p. 76; G. L. Vol. 10, p. 78.]

Art. 5512. [5678] [3346] Possession by adjacent owner.—Possession of land belonging to another by a person owning or claiming five thousand acres or more of lands inclosed by a fence in connection therewith, or adjoining thereto, shall not be the peaceable and adverse possession contemplated by Article 5510 unless said land so belonging to another shall be segregated and separated by a substantial fence from said lands connected therewith or thereto adjoining or unless at least one-tenth thereof shall be cultivated and used for agricultural purposes or used for manufacturing purposes, or unless there be actual possession thereof. [Id.]

Art. 5513. [5679] [3347] [3196] Title by possession.—Whenever an action for the recovery of real estate is barred by any provision of this title, the person having such peaceable and adverse possession shall be held to have full title, precluding all claims.

Art. 5514. [5680] [3348] [3197] "Peaceable possession."—“Peaceable possession” is such as is continuous and not interrupted by adverse suit to recover the estate. [Acts 1841, p. 163; P. D. 4621; G. L. Vol. 2, p. 627.]

Art. 5515. [5681] [3349] [3198] "Adverse possession."—“Adverse possession” is an actual and visible appropriation of the land, commenced and continued under a claim of right inconsistent with and hostile to the claim of another.

Art. 5516. [5682] [3350] [3199] Possession by different persons.—Peaceable and adverse possession need not be continued in the same person, but when held by different persons successively there must be a privity of estate between them.

Art. 5517. [5683] [3351] [3200] Right of the State.—The right of the State shall not be barred by any of the provisions of this title, nor shall any person ever acquire, by occupancy or adverse possession, any right or title to any part or portion of any road, street, sidewalk or grounds which belong to any town,

city or county, or which have been donated or dedicated for public use to any such town, city or county by the owner thereof, or which have been laid out or dedicated in any manner to public use in any town, city, or county in this State; provided, this law shall not apply to any alley laid out across any block or square in any city or town. [Id.; P. D. 4622-4; Acts 1887, p. 28; G. L. Vol. 9, p. 826.]

Art. 5518. [5684] [3352] Person under disability.—If a person entitled to sue for the recovery of real property or make any defense founded on the title thereto, be at the time such title shall first descend or the adverse possession commence:

1. A person, including a married woman, under twenty-one years of age, or

2. In time of war, a person in the military or naval service of the United States, or

3. A person of unsound mind, or

4. A person imprisoned, the time during which such disability or status shall continue shall not be deemed any portion of the time limited for the commencement of such suit, or the making of such defense; and such person shall have the same time after the removal of his disability that is allowed to others by the provisions of this title; provided, that notwithstanding a person may be or may have been laboring under any of the disabilities mentioned in this article, one having the right of action for the recovery of any lands, tenements or hereditaments against another having peaceable and adverse possession thereof, cultivating, using or enjoying same, shall institute his suit therefor within twenty-five years next after his cause of action shall have accrued and not thereafter. [Acts 1841, p. 163; P. D. 4621-4; Acts 1895, p. 35; Acts 1919, 2nd C. S., p. 139; G. L. Vol. 2, p. 627; G. L. Vol. 10, p. 765.]

Art. 5519. [5684a] [3352] Action barred in twenty-five years.—No person who has a right of action for the recovery of lands, tenements, or hereditaments shall be permitted to maintain an action therefor against one who holds such lands, tenements and hereditaments by peaceable, adverse claim of right in good faith under a regular chain of title, descending from the State of Texas with all the muniments of such title, duly recorded in the county where the land is situated for a period of twenty-five years prior to the accrual of such cause of action, and one so holding and claiming such lands, tenements and hereditaments under such title shall be held to have a good marketable title thereto. [Id.]

Art. 5520. [5694] Actions by vendors.—There shall be commenced and prosecuted within four years after the cause of action has accrued and not afterward, all actions of the following description:

1. Actions to recover real estate by virtue of a superior title retained by the vendor in a deed of conveyance or purchase money note.

2. Actions for the foreclosure of the vendor's lien on real estate. [Acts 1905, p. 334; Acts 1913, p. 250.]

Art. 5521. [5694] **Presumption of payment.**—Purchase money or mortgage lien notes relating to real estate shall conclusively be presumed to have been paid after four years from the date of maturity of such notes unless extended as provided by law. [Id.]

Art. 5522. [5695] **Lien continued in force.**—When the date of maturity of either debt referred to in either of the foregoing articles is extended, if the contract of extension is signed and acknowledged as provided for in the law relating to the execution of deeds of conveyance by the party or parties obligated to pay such indebtedness as extended and filed for record in the county clerk's office in the county in which the land is situated, the lien shall continue and be in force until four years after maturity of the notes as provided in such extension, the same as in the original contract and the lien shall so continue for any succeeding or additional extension so made and recorded. The date of maturity set forth in the deed of conveyance or deed of trust or mortgage, or the recorded renewal and extension of the same, shall be conclusive evidence of the date of maturity of the indebtedness therein mentioned. Provided the owner of the land and the holder of the note or notes may at any time enter into a valid agreement renewing and extending the debt and lien, so long as it does not prejudice the rights of lien holders or purchasers subsequent to the date such liens became barred of record under laws existing prior to the taking effect of, or under this Act; as to all such lien holders or purchasers any renewal or extension executed or filed for record after the note or notes and lien or liens were, or are, barred of record and before the filing for record of such renewal or extension, such renewal or extension shall be void. [Acts 1925, p. 216.]

Art. 5523. [5693] **Limitation as to deeds of trust, etc.**—No power of sale conferred by a deed of trust or other mortgage on real estate executed subsequent to the 14th day of July, 1905, and prior to the 1st day of July, 1913, shall be enforced after the expiration of ten years from the maturity date of the indebtedness secured thereby, and no power of sale conferred by any deed of trust or other mortgage on real estate executed on or subsequent to the 1st day of July, 1913, or that may hereafter be executed, shall be enforced after the expiration of four years from the maturity of the indebtedness secured thereby, and any such sale under such powers after the expiration of such times, shall be void, and such sale may be enjoined and the lien created in any such deeds of trust or mortgages as were executed subsequent to the 14th day of July, 1905, and prior to the 1st day of July, 1913, shall cease to exist ten years after the maturity date of the debt secured thereby, and as to all deeds of trust or mortgages as were executed on or subsequent to the 1st day of July, 1913, or that may hereafter be executed, the lien created thereby shall cease to exist four years after the maturity of the debt secured thereby; pro-

vided, if several obligations are secured by said mortgage or deed of trust, the same may be enforced at any time prior to four years after the note or obligation last maturing has matured and may be enforced as to all notes and obligations not then barred by the four years statute of limitations; provided, the lien created by such deeds of trust or other mortgages may be extended by an agreement in writing acknowledged by the parties thereto and filed and recorded in the manner provided for the acknowledgment and record of conveyance of real estate.

2. LIMITATION OF PERSONAL ACTIONS.

| | Articles | | Articles |
|--|----------|-----------------------------------|----------|
| Actions to be commenced in one year | 5524 | All other actions barred, when | 5529 |
| Survival of cause of action | 5525 | Actions on foreign judgments | 5530 |
| Actions to be commenced in two years | 5526 | Actions for specific performance | 5531 |
| What actions barred in four years | 5527 | Judgment revived, when | 5532 |
| On bond of executor, administrator or guardian | 5528 | On motion for returning execution | 5533 |
| | | On actions to contest a will | 5534 |
| | | Limitations against infants | 5535 |
| | | In forgery or fraud | 5536 |

Art. 5524. [5685] [3353] [3202] Actions to be commenced in one year.—There shall be commenced and prosecuted within one year after the cause of action shall have accrued, and not afterward, all actions or suits in courts of the following description:

1. Actions for malicious prosecution or for injuries done to the character or reputation of another by libel or slander.

2. Actions for damages for seduction, or breach of promise of marriage. [Acts 1897, p. 12; Act Feb. 5, 1841; Acts Feb. 2, 1860; G. L. Vol. 2, p. 627; G. L. Vol. 10, p. 1066.]

Art. 5525. [5686] Survival of cause of action.—Causes of action upon which suit has been or may hereafter be brought for personal injuries, or injuries resulting in death, whether such injuries be to the health or to the reputation, or to the person of the injured party, or for injuries resulting in death, shall not abate by reason of the death of the person against whom such cause of action shall have accrued; but, in the case of the death of either or both, such cause of action shall survive to and in favor of the heirs and legal representatives of such injured party and against the person, or persons liable for such injuries and his or their legal representatives, and may be instituted and prosecuted as if such person or persons against whom same accrued were alive. [Acts 1925, p. 299.]

Art. 5526. [5687-98] [3354-63] [3203-12] Actions to be commenced in two years.—There shall be commenced and prosecuted within two years after the cause of action shall have accrued, and not afterward, all actions or suits in court of the following description:

1. Actions of trespass for injury done to the estate or the property of another.

2. Actions for detaining the personal property of another, and for converting such property to one's own use.

3. Actions for taking or carrying away the goods and chattels of another.

4. Actions for debt where the indebtedness is not evidenced by a contract in writing.

5. Actions upon stated or open accounts, other than such mutual and current accounts as concern the trade of merchandise between merchant and merchant, their factors or agents. In all accounts, except those between merchant and merchant, as aforesaid, their factors and agents, the respective times or dates of the delivery of the several articles charged shall be particularly specified, and limitation shall run against each item from the date of such delivery, unless otherwise specially contracted. [Acts 1841, p. 163; G. L. Vol. 2, p. 627.]

6. Action for injury done to the person of another.

7. Action for injury done to the person of another where death ensued from such injury; and the cause of action shall be considered as having accrued at the death of the party injured. [Acts 1897, p. 12; Acts 1841, p. 163; Acts 1852, p. 128; P. D. 4604; G. L. Vol. 10, p. 1066; G. L. Vol. 2, p. 627; G. L. Vol. 3, p. 1006.]

8. Actions of forcible entry and forcible detainer.

Art. 5527. [5688] [3356] [3205] **What actions barred in four years.**—There shall be commenced and prosecuted within four years after the cause of action shall have accrued, and not afterward, all actions or suits in court of the following description:

1. Actions for debt where the indebtedness is evidenced by or founded upon any contract in writing.

2. Actions for the penalty or for damages on the penal clause of a bond to convey real estate.

3. Actions by one partner against his co-partner for a settlement of the partnership accounts, or upon mutual and current accounts concerning the trade of merchandise between merchant and merchant, their factors or agents; and the cause of action shall be considered as having accrued on a cessation of the dealings in which they were interested together. [Acts 1841, p. 163; P. D. 4604; G. L. Vol. 2, p. 627.]

Art. 5528. [5689] [3357] [3206] **On bond of executor, administrator or guardian.**—All suits on the bond of any executor, administrator or guardian shall be commenced and prosecuted within four years next after the death, resignation, removal or discharge of such executor, administrator or guardian, and not thereafter. [Acts 1876, p. 102; P. D. 1375, 3923; G. L. Vol. 8, p. 938.]

Art. 5529. [5690] [3358] [3207] **All other actions barred, when.**—Every action other than for the recovery of real estate, for which no limitation is otherwise prescribed, shall be brought within four years next after the right to bring the same shall have accrued and not afterward.

Art. 5530. [5691] [3359] [3208] **Actions on foreign judgments.**—Every action upon a judgment or decree rendered in any other State or territory of the United States, in the District of

Columbia or in any foreign country, shall be barred, if by the laws of such State or country such action would there be barred, and the judgment or decree be incapable of being otherwise enforced there; and whether so barred or not, no action against a person who shall have resided in this State during the ten years next preceding such action shall be brought upon any such judgment or decree rendered more than ten years before the commencement of such action.

Art. 5531. [5692] [3360] [3209] **Actions for specific performance.**—Any action for the specific performance of a contract for the conveyance of real estate shall be commenced within four years next after the cause of action shall have accrued, and not thereafter. [Acts 3rd C. S. 1917, p. 87.]

Art. 5532. [5696] [3361] [3210] **Judgment revived, when.**—A judgment in any court of record, where execution has not issued within twelve months after the rendition of the judgment, may be revived by scire facias or an action of debt brought thereon within ten years after date of such judgment, and not after. [Acts 1841, p. 163; P. D. 4608; G. L. Vol. 2, p. 627.]

Art. 5533. [5697] [3362] [3211] **On motion for returning execution.**—Where execution has issued and no return is made thereon, the party in whose favor the same was issued may move against any sheriff or other officer and his sureties for not returning the same, within five years from the day on which it was returnable, and not after. [Id.; P. D. 4608.]

Art. 5534. [5699] [3364] [3213] **On actions to contest a will.**—Any person interested in any will which shall have been probated under the laws of this State may institute suit in the proper court to contest the validity thereof, within four years after such will shall have been admitted to probate, and not afterward. [Acts 1876, p. 94; G. L. Vol. 8, p. 930.]

Art. 5535. [5708] [3373] [3222] **Limitations against infants.**—If a person entitled to bring any action mentioned in this subdivision of this title be at the time the cause of action accrues either a minor, a married woman, a person imprisoned or of unsound mind, the time of such disability shall not be deemed a portion of the time limited for the commencement of the action and such person shall have the same time after the removal of his disability that is allowed to others by the provisions of this title.

Art. 5536. [5700] [3365] [3214] **In forgery or fraud.**—Any heir at law of the testator, or other person interested in his estate, may institute suit in the proper court to cancel a will for forgery or other fraud within four years after the discovery of such forgery or fraud, and not afterward. [Id.]

3. GENERAL PROVISIONS.

| | Article | | Article |
|----------------------------------|---------|---------------------------------------|---------|
| Temporary absence | 5537 | Debts incurred prior to removal | 5543 |
| Limitation after death | 5538 | One disability not tacked to an- | |
| Acknowledgment must be in writ- | | other | 5544 |
| ing | 5539 | Agreement shortening period in- | |
| Limitation must be pleaded | 5540 | valid | 5545 |
| Presumption of death | 5541 | Notice of claims for damages | 5546 |
| Action against immigrant | 5542 | | |

Art. 5537. [5702] [3367] [3216] Temporary absence.—If any person against whom there shall be cause of action shall be without the limits of this State at the time of the accruing of such action, or at any time during which the same might have been maintained, the person entitled to such action shall be at liberty to bring the same against such person after his return to the State and the time of such person's absence shall not be accounted or taken as a part of the time limited by any provision of this title. [Act Feb. 5, 1841; G. L. Vol. 2, p. 627.]

Art. 5538. [5703-5704] Limitation after death.—In case of the death of any person against whom or in whose favor there may be a cause of action, the law of limitation shall cease to run against such cause of action until twelve months after such death, unless an administrator or executor shall have sooner qualified according to law upon such deceased person's estate; in which case the law of limitation shall only cease to run until such qualification. [Id. P. D. 4606.]

Art. 5539. [5705] [3370] [3219] Acknowledgment must be in writing.—When an action may appear to be barred by a law of limitation, no acknowledgment of the justness of the claim made subsequent to the time it became due shall be admitted in evidence to take the case out of the operation of the law, unless such acknowledgment be in writing and signed by the party to be charged thereby. [Act Feb. 5, 1841; G. L. Vol. 2, p. 630.]

Art. 5540. [5706] [3371] [3220] Limitation must be pleaded.—The law of limitation shall not be available in any suit unless it be specifically set forth by the party who in his answer invokes it as a defense. [Act Feb. 16, 1852; G. L. Vol. 3, p. 1006.]

Art. 5541. [5707] [3372] [3221] Presumption of death.—Any person absenting himself for seven years successively shall be presumed to be dead, unless proof be made that he was alive within that time; but an estate recovered on such presumption, if in a subsequent action or suit the person presumed to be dead shall be proved to be living, shall be restored to him with the rents and profits of the estate with legal interest during such time as he shall be deprived thereof. [Act Feb. 5, 1841; G. L. Vol. 2, p. 627; P. D. 23.]

Art. 5542. [5709] [3374] 3223] Action against immigrant.—No action shall be brought against an immigrant to recover a claim which was barred by the law of limitation of the State or country from which he emigrated; nor shall any action be brought to recover money from an immigrant who was released from its payment by the bankrupt or insolvent laws of the State or country from which he emigrated. [Id. Sec. 13; P. D. 4618.]

Art. 5543. [5710] [3375] [3224] **Debts incurred prior to removal.**—No demand against a person who has removed to this State, incurred prior to his removal, shall be barred by the statute of limitation until he shall have resided in this State for the space of twelve months. Nothing in this article shall be construed to affect the provisions of the preceding article. [Id.]

Art. 5544. [5711] [3376] [3225] **One disability not tacked to another.**—The period of limitation shall not be extended by the connection of one disability with another; and, when the law of limitation shall begin to run, it shall continue to run, notwithstanding any supervening disability of the party entitled to sue or liable to be sued.

Art. 5545. [5713] [3378] **Agreement shortening period invalid.**—No person, firm, corporation, association or combination of whatsoever kind shall enter into any stipulation, contract, or agreement, by reason whereof the time in which to sue thereon is limited to a shorter period than two years. And no stipulation, contract, or agreement for any such shorter limitation in which to sue shall ever be valid in this State. [Acts 1891, p. 20; G. L. Vol. 10, p. 22.]

Art. 5546. [5714] [3379] **Notice of claims for damages.**—No stipulation in a contract requiring notice to be given of a claim for damages as a condition precedent to the right to sue thereon shall ever be valid unless such stipulation is reasonable. Any such stipulation fixing the time within which such notice shall be given at a less period than ninety days shall be void, and when any such notice is required, the same may be given to the nearest or to any other convenient local agent of the company requiring the same. No stipulation in any contract between a person, corporation, or receiver operating a railroad, or street railway, or interurban railroad, and an employe or servant requiring notice of a claim by an employe or servant for damages for injury received to the person, or by a husband, wife, father, mother, child or children of a deceased employe for his or her death, caused by negligence as a condition precedent to liability, shall ever be valid. In any suit brought under this and the preceding article it shall be presumed that notice has been given unless the want of notice is especially pleaded under oath. [Acts 1891, p. 20; Acts 1907, p. 241.]

TITLE 92.

LUNACY—JUDICIAL PROCEEDINGS IN CASES OF

| | | | |
|---------------------------------|---------|---|---------|
| | Article | | Article |
| Apprehension of lunatics..... | 5547 | County attorney to represent State..... | 5556 |
| Writ—requisites of | 5548 | Warrant to convey lunatic to asy- | |
| Jury summoned | 5549 | lum | 5557 |
| Cause docketed, etc..... | 5550 | Relative or friend may give bond, | |
| Jury impaneled and sworn..... | 5551 | etc. | 5558 |
| Special issues submitted..... | 5552 | Record of proceedings and notice..... | 5559 |
| Verdict | 5553 | Clothing to be provided..... | 5560 |
| Judgment | 5554 | Officers' fees | 5561 |
| Reimbursement to the State..... | 5555 | | |

Art. 5547. [150] **Apprehension of lunatics.**—(Repealed, Acts 1925, p. 414.)

Art. 5548. [151] **The writ and its requisites**—(Repealed, Acts 1925, p. 414.)

Art. 5549. [152] **Jury summoned.**—(Repealed, Acts 1925, p. 414.)

Art. 5550. [153] **Cause docketed, etc.**—The cause shall be docketed on the probate docket of the court in the name of the State of Texas as plaintiff, and of the person charged to be insane as defendant. The county attorney shall appear and represent the State on the hearing, and the defendant shall also be entitled to counsel; and in proper cases the county judge may appoint counsel for that purpose. [Id.]

Art. 5551. [154] **Jury impaneled and sworn.**—At the time appointed for the hearing or at any other time to which the proceeding may have been postponed, the cause shall be called for trial and a jury of six men impaneled, to whom shall be administered the following oath:

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

Art. 5552. [155] **Special issues submitted.**—After the evidence is heard the county judge shall submit the matter to the jury upon the following special issues:

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

[Acts 1876, p. 138.]

Art. 5553. [156] **Verdict.**—The jury shall return plain answers in writing to the issues named in the preceding article, but, if they find either the first or second issues in the negative,

they need not determine further, and the defendant shall be discharged.

Art. 5554. [157] **Judgment.**—“Upon return of a verdict finding that the defendant is of unsound mind and that it is necessary that he be placed under restraint, judgment shall be entered adjudging the defendant to be a person of unsound mind and ordering him to be committed for restraint and treatment to any insane asylum operated by the State of Texas in which there may be available room, or delivered into the custody of the United States Veterans' Bureau, or to any other agency or department of the United States Government required or authorized by law to furnish care or treatment to such person of unsound mind in those cases where such agency of the United States will accept such person.” [Acts 1925, p. 234.]

Art. 5555. 158-9] **Reimbursement to the State.**—(Repealed, Acts 1925, p. 214.)

Art. 5556. [160] **County attorney to represent State.**—(Repealed, Acts 1925, p. 414.)

Art. 5557. [161] **Warrant to convey lunatic to asylum.**—“Immediately after any person is adjudged a person of unsound mind, the county judge shall communicate with the superintendents of the insane asylums within this State, and if it is ascertained that there is a vacancy in any of such asylums, or that the patient may be accommodated therein, he shall issue his warrant to the sheriff or to some other suitable person directing him to convey the person of unsound mind to the asylum designated in such warrant, which warrant shall also prescribe the number of guards to be allowed, not to exceed two, and the same shall be executed with all convenient dispatch, provided, that in any case where the United States Veterans' Bureau or any other agency or department of the United States Government will accept such person of unsound mind for care or treatment, that he shall be delivered into the custody of such bureau or department of the United States instead of to the insane asylum of the State; provided further that the State of Texas shall not in any event become liable for any expense in connection with the care or treatment of those persons delivered to the United States Government as provided herein.”—[Acts 1925, p. 234.]

Art. 5558. [162] **Relative or friend may give bond, etc.**—No warrant to convey a lunatic to the asylum shall issue if some relative or friend of the lunatic will undertake, before the county judge, his care and restraint and will execute a bond in a sum to be fixed by the county judge, payable to the State of Texas, with two or more good and sufficient sureties to be approved by the county judge, conditioned that the party giving such bond will restrain and take proper care of the lunatic so long as his mental unsoundness continues or until he is delivered to the sheriff of the county or other person, to be proceeded with according to law, which bond shall be filed with and constitute a part of the record of the proceedings, and may be sued and recovered upon by any party injured, in his own name. [Id.]

Art. 5559. **Record of proceedings and notice.**—“The proceedings in any inquisition to determine whether a person is of unsound mind shall be entered of record in the probate minutes of the county court by the clerk thereof; and before any patient is sent to any asylum or is delivered to the United States for care and treatment as provided in Sections 1 and 2 hereof, the county judge shall cause a complete transcript of the proceedings to be made up and certified by the clerk of the county court under the seal of said court, which transcript he shall forward by mail to the superintendent of the asylum or to the medical officer in charge of the United States Government hospital to which such patient may be sent.” [Acts 1925, p. 235.]

Art. 5560. [164] **Clothing to be provided.**—Before sending any patient to the asylum, the county judge shall take care that the patient is provided with two full suits of substantial summer clothing and one full suit of substantial winter clothing.

Art. 5561. [165] **Officers' fees.**—In such cases the officers and jurors shall be allowed the same fees upon conviction, as are now allowed for similar services performed in misdemeanor cases in the justice courts, to be paid out of the estate of the defendant if he have an estate, otherwise by the county on accounts approved by the county judge. [Acts 1903, p. 110.]

TITLE 93.

MARKETS AND WAREHOUSES.

| Chapter | Page | Chapter | Page |
|--|------|----------------------------------|------|
| 1 Commissioner of Markets and Warehouses | 1566 | 4 Uniform Warehouse Receipts Act | 1582 |
| 2 Warehouses and warehousemen | 1567 | 5 Ginner and cotton | 1594 |
| 3 Markets and warehouse corporations | 1570 | 6 Public weigher | 1598 |
| | | 7 Weights and measures | 1605 |
| | | 8 Marketing associations | 1615 |

CHAPTER ONE.

COMMISSIONER OF MARKETS AND WAREHOUSES.

| | Article | | Article |
|------------------------|---------|-----------------------|---------|
| Appointing Board | 5562 | May examine affairs | 5565 |
| The Commissioner | 5563 | Statistics | 5566 |
| Employees and expenses | 5564 | To establish agencies | 5567 |

Art. 5562. **Appointing Board.**—The Governor, the Commissioner of Agriculture and the Banking Commissioner shall constitute a board which with the consent of the Senate, shall appoint biennially a suitable person as Commissioner of Markets and Warehouses to fill such office for a term of two years. Said Commissioner may for cause be removed at any time by the board. [Acts 1st C. S. 1917, p. 65.]

Art. 5563. **The Commissioner.**—The word "Commissioner," as used in this title, shall mean the Commissioner of Markets and Warehouses of the State of Texas. He shall be furnished proper quarters to be selected by the Governor, to meet the requirements of his department. He shall give bond in the sum of ten thousand dollars payable to the Governor and conditioned for the faithful performance of his duties. [Id.]

Art. 5564. **Employees and expenses.**—The Commissioner with the consent of said Board may employ a chief clerk, and such other help as may be necessary. Such help, other than the chief clerk, shall receive such salaries as may be fixed by the Commissioner and approved by the board. The Commissioner and such employees when traveling on official business shall receive actual necessary expenses. All expenditures, including expenses of administering this department shall be paid by a warrant drawn by the Comptroller on the State Treasurer, on accounts approved by the Commissioner or on his authority. [Id.]

Art. 5565. **May examine affairs.**—The Commissioner and each person appointed by him shall have authority to administer oaths for the purpose of this law, and under the direction and at the instance of the Commissioner, such persons may, upon their warrants, examine into the affairs of any gin or corporation licensed under this Act. [Id.]

Art. 5566. **Statistics.**—The Commissioner shall collect, from every source available, information concerning stocks on hand and the probable yield of farm and ranch products, and disseminate the same. [Id.]

Art. 5567. **To establish agencies.**—The Commissioner shall

establish agencies for the sale of farm, orchard, and ranch products, wherever it may be deemed advisable, in which event he is empowered to prescribe all regulations for the conduct of such agencies as may be found necessary. [Id.]

CHAPTER TWO.

WAREHOUSES AND WAREHOUSEMEN.

| | | | |
|------------------------------|---------|------------------------------------|---------|
| | Article | | Article |
| "Public Warehousemen" and | | Delivery must precede receipt..... | 5573 |
| "Warehouse"..... | 5568 | Delivery from warehouse..... | 5574 |
| Certificate and bond..... | 5569 | Cannot limit liability..... | 5575 |
| Receipts and duplicates..... | 5570 | Receipt negotiable..... | 5576 |
| Cotton under lien..... | 5571 | Exceptions..... | 5577 |
| Exchange of receipt..... | 5572 | | |

Art. 5568. [7819] **"Public Warehousemen" and "Warehouse".**—Any person, firm, company, or corporation who shall receive cotton, wheat, rye, oats, rice, or any kind of produce, wares, merchandise, or any personal property in store for hire, shall be deemed and taken to be public warehousemen.

A warehouse, within the meaning of this law shall be a house, building, or room in which any of the above mentioned commodities are stored and are protected from damage thereto by action of the elements. [Acts 1901, p. 251, Acts 1st C. S. 1913, p. 93, Acts 2nd C. S. 1919, p. 138.]

Art. 5569. [7820] **Certificate and bond.**—The owner, proprietor, lessee or manager of any public warehouse, whether an individual, firm or corporation, before transacting any business in such public warehouse shall procure from the county clerk of the county in which the warehouse or warehouses are situated, a certificate that he is transacting business as a public warehouseman under the laws of the State of Texas, which certificate shall be issued by said clerk upon a written application, setting forth the location and name of such warehouse or warehouses, and the name of each person, individual or a member of the firm, interested as owner or principal in the management of the same, or, if the warehouse is owned or managed by a corporation, the name of the president, secretary and treasurer of such corporation shall be stated, which application shall be received and filed by such clerk and preserved in his office, and the said certificate shall give authority to carry on and conduct the business of a public warehouse and shall be revokable only by the district court of the county in which the warehouse or warehouses are situated, upon a proceeding before the court, by written petition of any person, setting forth the particular violation of the law, and upon process, procedure and proof, as in other civil cases. The person receiving a certificate, as herein provided for, shall file with the county clerk granting same, a bond payable to the State of Texas, with good and sufficient surety, to be approved by said clerk, in the penal sum of five thousand dollars, conditioned for the faithful performance of his duty as a public warehouseman, which bond shall be filed and

preserved in the office of such county clerk. [Acts 1901, p. 251, Acts 1st C. S. 1913, p. 93.]

Art. 5570. [7821] Receipts and duplicates.—On application of the owner or depositor of the property stored in a public warehouse, the warehouseman shall issue over his own signature, or that of his duly authorized agent, a public warehouse receipt therefor, to the order of the person entitled thereto; which receipt shall purport to be issued by a public warehouse, shall bear the date of the day of its issue, and shall state upon its face the name of the warehouse and its location, the description, quantity, number and marks of the property stored. Where such receipt is for cotton it shall state the class and weight, and the date on which it was originally received in warehouse, and that it is deliverable upon return of the receipt properly indorsed by the person to whose order it was issued, and on payment of all charges for storage, and insurance, which charges shall be stated on the face of the receipt. All such receipts shall be numbered consecutively, in the order of their issue. A correct record of such receipts shall be kept in a well bound book, which shall be at all reasonable hours, open to an examination by any interested person. No two receipts bearing the same number shall be issued from the same warehouse during the same year, nor shall any duplicate receipts be issued, except in the case of a lost or destroyed receipt, in which case the new receipt shall bear the same date and number as the original, and shall be plainly marked on its face, "duplicate." No such duplicate receipt shall be issued by the public warehouseman until adequate security acceptable to the warehouseman be deposited with or to the order of said warehouseman, to protect the party or parties who may finally hold the original receipt in good faith and for a valuable consideration. [Acts 1901, p. 251; Acts 1st C. S. 1913, p. 94.]

Art. 5571. Cotton under lien.—If there is any incumbrance or lien of any kind on said cotton at the time of its storage the nature and amount of same shall be clearly set out and it is hereby made the duty of the public warehouseman or his authorized agent issuing the receipt, to have said blank filled in and signed by the owner of the cotton before issuing a negotiable receipt against same. Such statement need not be made if a non-negotiable receipt is desired, but in such cases the public warehouseman issuing said receipt shall write or stamp across the face thereof the words "not-negotiable." [Acts 1st C. S. 1913, p. 95.]

Art. 5572. Exchange of receipt.—If a person holding a non-negotiable receipt for cotton as is herein provided for, shall desire to obtain a negotiable receipt in lieu thereof, he shall return said non-negotiable receipt to the public warehouse issuing same and thereupon shall comply in every respect with the provisions of this chapter relating to negotiable receipts, and upon compliance therewith a negotiable receipt shall be issued to him.

in lieu of said non-negotiable receipt, and said negotiable receipt thereupon shall be canceled, and the word "canceled" plainly marked in ink across the face thereof. [Id.]

Art. 5573. Delivery must precede receipt.—No public warehouse receipt shall be issued except upon the actual previous delivery of the goods in the public warehouse or on the premises, and under the control of the public warehouseman by whom it purports to be issued; and the name of the warehouse shall invariably be specified in such receipt. [Id.]

Art. 5574. Delivery from warehouse.—On the presentation and return to the warehouseman of any public warehouse receipt issued by him and properly indorsed, and the tender of all proper warehouse charges upon the property represented by it, such property shall be delivered immediately to the holder of such receipt; but no public warehouseman who shall issue a receipt for goods shall, under any circumstances or upon any order or guarantee whatsoever, deliver the property for which receipts have been issued, until the said receipt shall have been surrendered and canceled except in case of lost receipts. In default of strict compliance with the provisions of this article, he shall be held liable to the legal holder of the receipt for the full value of the property therein described, as it appeared on the day of the default, and shall also be liable to the special penalty herein provided. Upon delivery of the goods from the warehouse, upon any receipt, such receipt shall be plainly marked in ink across its face with the words "Canceled" with the name of the person canceling the same, and shall thereafter be void, and shall not again be put in circulation. [Id.]

Art. 5575. Cannot limit liability.—No public warehouseman shall insert in the public warehouse receipt issued by him any language limiting or modifying his liabilities or responsibilities as imposed by the laws of this State, excepting, "not accountable for leakage or depreciation," or words of like import and meaning. [Id.]

Art. 5576. Receipt negotiable.—The receipt issued against property stored in a public warehouse, as herein provided for shall be negotiable and transferable by endorsement in blank or by special endorsement; and delivery in the same manner and to the same extent as bills of exchange and promissory notes now are, without other formality; and the transferee or holder of such public warehouse receipt shall be considered and held as the actual and exclusive owner, to all intents and purposes, of the property therein described, subject only to the lien and privilege of the public warehouseman for storage and other warehouse charges; provided, however, that all such public warehouse receipts as shall have the words "not negotiable" plainly written or stamped on the face thereof, shall be exempt from the provisions of this article; and provided, further, that no public warehouseman shall issue a warehouse receipt against his own property in his own warehouse; but, upon sale of such

property in good faith may issue to the purchaser his public warehouse receipt in form and manner as herein provided, which issue and delivery of the receipt shall be deemed to complete the sale, and shall constitute the purchaser full owner, as aforesaid, of the property therein described. Nothing in this last clause shall be construed to exempt the issuer of said receipt for his own goods in his own public warehouse, from complying with and being subject in all respects, to all other articles of this chapter. [Id.]

Art. 5577. Exceptions.—Nothing in this law shall be construed to apply to private warehouses or to the issue of receipts by their owners or managers under existing laws, or to prohibit public warehousemen from issuing such receipts as are now issued by private warehousemen under existing laws. Such private warehouse receipts issued by public warehousemen shall never be written on a form or blank indicating that it is issued from a public warehouse, but shall, on the contrary, bear on its face, in large characters, the words, “not a public warehouse receipt.” [Id.]

CHAPTER THREE.

MARKETS AND WAREHOUSE CORPORATIONS.

| | Article | | Article |
|-----------------------------------|---------|---|---------|
| Application for charter..... | 5578 | Warehouse examiners | 5596 |
| Powers of corporation..... | 5579 | Appointment of examiners | 5597 |
| May issue bonds..... | 5580 | May deny or revoke permit..... | 5598 |
| Fees and certificate..... | 5581 | Safety first | 5599 |
| Bond | 5582 | Fire insurance | 5600 |
| Breach and new bond | 5583 | Charge for storage | 5601 |
| Directors and meetings..... | 5584 | Standard of weights and meas- ures | 5602 |
| Statement of affairs..... | 5585 | Liability or corporation..... | 5603 |
| Examination of affairs..... | 5586 | Lien of corporation..... | 5604 |
| Expense of examination..... | 5587 | Satisfaction of lien..... | 5605 |
| Amenable to general laws..... | 5588 | Landlord's lien | 5606 |
| Limitation of authority..... | 5589 | Delivery of goods..... | 5607 |
| Division of profits..... | 5590 | Forms | 5608 |
| Failure to obey law..... | 5591 | Negotiable receipt | 5609 |
| Certificate of qualification..... | 5592 | Receipts | 5610 |
| Unsafe corporation..... | 5593 | All warehouses included..... | 5611 |
| Forced liquidation..... | 5594 | | |
| Voluntary liquidation | 5595 | | |

Art. 5578. Application for charter.—Any number of persons, not less than ten, at least sixty per cent of whom shall be engaged in agriculture, horticulture, or stock-raising as a business, and not less than three-fourths of whom shall be resident citizens of Texas, may apply to the Commissioner of Markets and Warehouses for a charter to permit them to organize and operate as a co-operative association, under the provisions of this chapter. In cities of a population of forty thousand or over, the above provisions shall not apply. The application for such charter shall contain the information required by the general corporation laws, and also state the number of its directors, which shall not be less than three, nor more than twenty-five and the name and residence of those selected for the first year.

The application shall be accompanied by the affidavit of three of such applicants, showing that no less than fifty per cent of the capital stock is actually paid in, which capital stock shall be, in no instance, less than five hundred dollars, divided into shares

of five dollars each. If the same has been paid in otherwise than in cash, then a detailed statement as to the kind, character, and value of the property in which paid shall be made a part of the affidavit. [Acts 1st C. S. 1917, p. 65.]

Art. 5579. Powers of corporation.—Corporations chartered hereunder shall have the right to act and do, and perform generally, all things which may be done and performed by warehousemen. Such corporations may sell in the market all products of the farm, ranch or orchard, on a commission basis, or such other basis as may be agreed upon by them with their customers. They may purchase, construct or lease all such warehouses, landings and buildings, as may be necessary for their business. They may employ such other instrumentalities and agencies as may be necessary for the storage, preservation and marketing of farm, ranch, and orchard products, to the best advantage of the members and customers. They may loan money upon products placed in their warehouses; provided, that the amount loaned thereon shall not exceed seventy-five per cent of the market value of the property so placed with them. They may loan money upon chattel mortgages, to their members only, for the purpose of enabling them to make and mature their crops, but such chattel mortgages shall always be upon property of at least double the value of money loaned thereon. They may loan money on crop mortgages, but such crop mortgages must always be the first mortgage thereon, exclusive of the landlord's lien, and shall always be secured by an acreage, which, under ordinary general conditions, would produce double the amount loaned thereon. They may invest their capital stock and surplus in a home office building, and may also invest such capital stock, surplus, and undivided profits in United States bonds, Texas State bonds, county, city district, and municipal bonds, and road bonds in the State of Texas; provided, such bonds are issued by authority of law, and interest upon them has never been defaulted. Such corporations shall never receive deposits, nor discount commercial paper generally, but may make such character of loans and investments as are herein provided for; provided, such corporations shall never be permitted to loan money upon chattel mortgages, crop mortgages, or personal security, except to their members, and then only to enable them to make, mature, and gather their crops, or market their farm, ranch or orchard products. They may erect, purchase or lease, and operate warehouses, buildings, elevators, gins, storage tanks, silos, and such other places of storage and security as may be necessary for the storage, grading, weighing and classification of cotton, and all farm products, and for the purpose of preparing such products for the market.

Art. 5580. May issue bonds.—Such corporations shall have authority to contract debts, as have other business corporations, and may issue special bonds, to be known as "sinking fund bonds" as follows: They may invest all or any part of their capital stock in such securities as are herein designated for the

payment or investment of their capital, which, when approved by the Commissioner, shall be deposited in the State Treasury. The interest on such investments shall be annually paid into the State Treasury, and be placed to the credit of the sinking fund for the liquidation of bonds of such corporations, and the interest shall be invested from time to time by the Commissioner in similar securities, which in turn shall be deposited in the State Treasury. Such securities, when so deposited in the State Treasury, shall remain there as the sinking fund out of which the principal sum of the bonds herein provided for shall be paid, and said securities shall not be used for any other purpose than to liquidate the bonds herein provided for, unless, and until, such sinking fund bonds have been paid; in which event, the securities herein provided for shall be returned to the corporation owning same, and shall become a part of the general assets of the corporation. After the investment in such securities has been made, the Commissioner shall grant authority to the corporation to issue bonds in double the amount of such original capital stock, to bear not greater than six per cent interest, and to run not exceeding thirty years. When said bonds have been issued and signed by the proper officers of the corporation, they shall be registered by the Commissioner. Said bonds shall show on their face that the principal thereon is secured by the securities herein required to be deposited in the State Treasury, and shall have plainly written, printed, lithographed, or engraved, on their face the words, "Sinking Fund Bonds of _____ State Bonded Warehouse," with the post-office address of the corporation, the blank space to be filled in with the name of the corporation. Said bonds shall show on their face that the interest contracted to be paid therein is secured to them by the general assets of the corporation. After said bonds have been issued and registered by the Commissioner they shall be returned to the proper officer of the corporation issuing them, and may then be by such corporation placed on the market and sold; but they shall never be sold at less than ninety per cent of their face value. [Id.]

Art. 5581. Fees and certificate.—When such an application for charter is filed with said Commissioner, and approved by him, the Secretary of State shall, upon notice of such filing and approval, and the payment of the following fees: Five dollars for five thousand dollars, or less; ten dollars for ten thousand dollars, or more than five thousand dollars; and twenty-five dollars for all over that amount, issue a charter to the applicants; and thereupon the Commissioner shall record said charter, and furnish the corporation a certified copy thereof; and he shall issue to the corporation a certificate of authority showing that it has complied with the laws of the State of Texas, and is authorized to do business until the last day of April of the succeeding year. No charter fee shall exceed twenty-five dollars. [Id.]

Art. 5582. Bond.—Before said charter is delivered to the corporation, and before said certificate is furnished, the corporation shall execute, by its proper officers, a bond, payable to the

State of Texas, the amount of such bond to be determined by the Commissioner. The amount of any such bond may be changed from time to time, in accordance with the volume of business done or to be done by the corporation; and such bond shall be approved by the Commissioner before it is filed. Such bond shall be conditioned that the corporation will observe all provisions of this law, and the rules of the Commissioner, in so far as its business is regulated and controlled by them; and that the corporation will exercise ordinary care in the storage, preservation, and handling of all farm, ranch, and orchard products intrusted to it for storage or sale, or both; and shall also guarantee the classification, weights, grades and measures made by the corporation, or under its authority, as approximately correct. [Id.]

Art. 5583. Breach and new bond.—The bond herein provided for shall indemnify any person who may be damaged by any statement made by the corporation, or under its authority, in any certificate it may issue for such product stored with it. Such bond may be sued upon by any person sustaining damage by reason of any breach of its condition, growing out of any fault or dereliction of duty by said corporation, or any person authorized to act for it. If any such bond shall become impaired from any cause, the Commissioner may require the maker to furnish a new and sufficient bond, by written notice, and if such impairment is not made good within thirty days after notice, the Commissioner shall have authority to proceed to close the doors of the corporation, liquidate its affairs, and discharge its debts, as is provided for in this chapter. In the event the Commissioner shall take charge of such corporation, he is empowered to collect by suit, or otherwise, the full amount of the bond, or so much thereof as is necessary, which taken with the other assets of the corporation, may be found sufficient to discharge its obligations. [Id.]

Art. 5584. Directors and meetings.—The property and business of corporations chartered hereunder shall be controlled and managed by a board of directors of not less than three, nor more than twenty-five in number, who shall be members of the corporation, and bona fide citizens of Texas, and no member of the board of directors of one such corporation shall be a member of a board of directors of any other such corporation. The directors shall be elected annually, at a general meeting of the directors of such corporation, which meeting shall be held at such time and place as may be prescribed by the by-laws of the corporation. The notice of such meeting shall be mailed to each member at least two weeks before the date set for the same. Each member of the corporation, at all general and special meetings of the same, shall have one vote, and no more. The directors may appoint, or remove any officer or employee at pleasure. [Id.]

Art. 5585. Statement of affairs.—The Commissioner shall, also, at least twice each year, and more if deemed necessary, require each such corporation to file in his office upon forms prescribed by him, a statement of its affairs, showing the condition

of its reserve fund, its assets and liabilities, and such other information as he may deem advisable. Such statement shall be made upon the oath of one of the managing officers of the corporation, and shall be attested by at least a majority of its directors. [Id.]

Art. 5586. **Examination of affairs.**—Every bonded warehouse corporation chartered under the laws of this State shall be subject to the supervision and control of the Commissioner, and he shall make, or cause to be made, an examination of the affairs and dealings of each such corporation, at its expense, at least once each year, and at such other times as the Commissioner may deem necessary. If, upon examination, any such corporation is found to be insolvent, or has exceeded its powers, or its business is being conducted in an unsafe manner, or it has failed to comply with any provision of this chapter within a reasonable time, not to exceed, in any event, thirty days, the Commissioner shall report the condition of the corporation to the Attorney General, who may bring such action as the necessities of the case and law may require.

Art. 5587. **Expense of examination.**—The expense of each regular and special examination of corporations chartered under this chapter shall be paid by the corporation examined, in such an amount as the Commissioner shall certify to be just and reasonable. Such expense shall be paid in proportion to the capital stock of the various corporations, as follows: Those with a capital stock of less than twenty-five hundred dollars shall not pay more than five dollars; those with a capital stock of two thousand five hundred dollars, and not exceeding ten thousand dollars, not exceeding ten dollars; those with a capital stock of twenty-five thousand dollars, and not less than ten thousand dollars, not exceeding twenty dollars; those with a capital stock of one million dollars or more, shall pay not exceeding two hundred dollars, for each examination. All money collected as examination fees shall be paid by the Commissioner directly into the State Treasury to the credit of the general revenue fund. [Id.]

Art. 5588. **Amenable to general laws.**—Every corporation organized under this chapter shall be amenable to and subject to all laws of this State governing corporations generally. [Id.]

Art. 5589. **Limitation of authority.**—No officer or employee shall have power to indorse, sell, pledge, or hypothecate any bond, note or other obligation received by such corporation, or any property deposited with it as warehousemen, until such power and authority shall have been given such officer or employee by the board of directors, in a meeting of the board, regularly called and held, a written record of which proceedings shall have first been made upon the minutes of the corporation; and all such acts of any officer or employe, indorsing, selling, pledging, or hypothecating any such pledge or property, shall, without the authority of the board of directors, as herein provided, be null and void. [Id.]

Art. 5590. **Division of profits.**—Every corporation organized

hereunder may divide its profits among its members, in proportion to the amount of business transacted for each said member, after having paid dividends to each member, on the amount which each of said members has paid into the capital stock of the company, subject, however, to the following provisions: Twenty per cent of the net profit on each years business shall annually be paid into the reserve fund, until the reserve fund shall equal twice the amount placed in the capital stock at the time the corporation was chartered; the balance of the net profits shall be divided in accordance with the by-laws of the corporation; provided, that the subscribers to the capital stock shall first be entitled to a ten per cent dividend, or such less amount as may be stated in the by-laws for each year, before the remainder thereof is divided among the members in proportion to the amount of business transacted for each member. [Id.]

Art. 5591. Failure to obey law.—If any corporation subject to the provisions of this chapter shall refuse to submit its books, and papers, and correspondence, for inspection, to the Commissioner or any of his authorized examiners; or, if any officer or directors of any such corporation shall refuse to be examined on oath touching the business and property of the corporation; or, if it shall be found to have violated its charter, or any law of the State binding upon it, the Commissioner shall report the facts to the Attorney General, who shall institute such proceedings against such corporation as is authorized to be instituted against insolvent corporations. [Id.]

Art. 5592. Certificate of qualification.—Before any such corporation shall be permitted to open its doors for business and in order for it to continue to transact business, the employe or officer in active management shall obtain a certificate from the Commissioner, certifying that he is qualified and authorized to perform the duties of said corporation. In order to receive such certificate such person must present satisfactory evidence to the Commissioner that he is competent to discharge the duties of such position. Upon receiving satisfactory evidence of qualification, and upon the payment of a filing fee of one dollar, the Commissioner may issue to any applicant therefor a certificate showing that such applicant is qualified. The life of any such certificate shall not exceed two years, at the expiration of which time the applicant must obtain a new certificate. [Id.]

Art. 5593. Unsafe corporation.—Whenever, after examination, the Commissioner shall have reason to believe that the capital stock of any corporation subject to the provisions of this chapter is impaired, he shall, by written notice, require the corporation to make good the impairment. Whenever it shall appear to the Commissioner, from any examination made by an examiner, that such corporation is conducting its business in an unsafe, and unauthorized manner, he shall, by an order under his hand and seal, direct the discontinuance of such unsafe and unauthorized practice, and shall require a strict compliance with the requirements of the law. If wrong entries are made in the

books of a corporation, or if wrong or unlawful uses of its funds have been made, the Commissioner shall require that such entries be corrected and such sums as were unlawfully paid out shall be restored to the corporation by the person or persons responsible for the wrongful use thereof. If any corporation shall refuse or neglect to make any such report as hereinafter required, or to comply with any such order as aforesaid, or whenever it shall appear to the Commissioner that it is unsafe or inexpedient for any such corporation to continue to transact business, by reason of neglect or mismanagement, or that any officer or director has abused his trust, or has been guilty of misconduct, or of malversation of his official position, injurious to the institution, or that it has suffered a serious loss by fire, repudiation, or otherwise, the Commissioner shall communicate the facts to the Attorney General, who shall institute such proceedings as the nature of the case may require. [Id.]

Art. 5594. Forced liquidation.—The court, or judge, in term time or vacation, before whom such proceedings may be instituted, shall have power to grant such orders as may be necessary to grant such relief as the evidence and the situation of the parties may require. If, from any examination made by the examiner, it shall be discovered that any such corporation is insolvent, or that its continuance in business will seriously jeopardize the interest of its stockholders or its creditors, the Commissioner shall immediately close such corporation, and shall take charge of all its property and effects. Upon taking charge of any such corporation, the Commissioner shall, as soon as practicable, ascertain by a thorough examination into its affairs, its actual financial condition. If the Commissioner shall become satisfied that such corporation cannot resume business or liquidate its indebtedness to the safety of its shareholders and its creditors, he shall report the fact of its insolvency to the Attorney General. Upon receipt of such notice and information, the Attorney General shall institute proper proceedings, for the purpose of having a receiver appointed to take charge of such corporation, and to wind up its affairs and business for the benefit of its creditors and members; and the court, or judge thereof, in term time or vacation, after such notice and hearing, if it appear necessary, shall appoint a receiver to take possession of the property and effects of said corporation, for the purpose of winding up the business thereof. The Commissioner may appoint a special agent to take charge of the affairs of any such insolvent corporation, until a receiver is appointed. The special agent so appointed shall qualify, give bond, and receive compensation, the same as regularly appointed warehouse examiners; such compensation to be paid by the corporation out of its assets, when allowed by the court as costs in the case of the appointment of a receiver. In no case shall any corporation continue in charge of such special agent for a longer period than sixty days. [Id.]

Art. 5595. Voluntary liquidation.—Any such corporation

may place its affairs and effects under the control of the Commissioner, on notice to him, and by posting a notice on its front door as follows: "This institution is in the hands of the Commissioner of Markets and Warehouses of the State of Texas." The posting of this notice, or a similar notice, by the Commissioner, or under his direction, that he has taken possession of any corporation, shall be sufficient to place the property and assets of the corporation, of whatever nature, in possession of said Commissioner and shall operate as a bar to any and all attachment proceedings. [Id.]

Art. 5596. Warehouse examiners.—The Commissioners shall, from time to time, appoint such number of State warehouse examiners as he may deem necessary to make examination of public warehouses, and corporations chartered under this chapter, which number shall at no time exceed one examiner for each fifty corporations and public warehouses subject to examination under this chapter and laws of this State. As full compensation for the performance of the duties of examiner, each person so appointed shall be entitled to receive a salary of not exceeding two thousand dollars per annum, and all reasonable necessary expenses, including hotel bills. An itemized and sworn account of such expenses shall be presented to the Commissioner for approval. Every warehouse examiner appointed by the Commissioner shall be a cotton grader and classer, and a competent book-keeper. Such examiner shall first make and file with the Commissioner an affidavit that he will make fair and impartial examinations; that he will not accept directly or indirectly any gift or pay for any service done in the line of his duty other than the pay fixed by law, and that he will not reveal the condition of any corporation or public warehouse examined by him, or give out any information secured in the course of any examination to any one except the Commissioner and except when requested to do so in court. [Id.]

Art. 5597. Appointment of examiners.—No such examiner shall be appointed who is, at the time, an officer or stockholder in any warehouse company or corporation, or who owns any interest in any warehouse; or in any firm or corporation engaged in the purchase or sale of farm, ranch or orchard products, on commission or otherwise. No such examiner shall be appointed receiver of any State bonded or public warehouse company whose papers and affairs he shall have examined. Each such examiner shall give a bond payable to the State of Texas, in the sum of five thousand dollars, to be approved by the Commissioner, conditioned that he will faithfully perform his duties as such examiner. [Id.]

Art. 5598. May deny or revoke permit.—The Commissioner shall have power to deny a permit to do business under this chapter and to revoke a permit when in his judgment there are sufficient warehouse facilities at the point where a new corporation may desire to do business. [Id.]

Art. 5599. Safety first.—The Commissioner shall have power

to prohibit the storage of cotton or other inflammable commodities in an unsafe building, or require a storage house to be remodeled within certain specified dates, so as not to unduly hamper the conduct of the business and the convenience of the public. [Id.]

Art. 5600. Fire insurance.—The Commissioner shall require fire insurance by blanket policies or individual policies, in some solvent insurance company chartered under the laws of this State or having a permit to do business in the State, to be carried by all public warehouses and all warehouse corporations operating under this chapter, and to require such other means and methods of protection from fire and weather, or depreciation of warehouse property, as the Commissioner may deem necessary in each case. No fire, fire and marine, marine or inland insurance company, doing business in this State shall expose itself to any one risk, either upon buildings of any character, or their contents, except when insuring cotton in bales, and grain, in an amount exceeding ten per cent of the aggregate of the paid up capital stock, and surplus, unless the excess shall be reinsured by such company in some other solvent insurance company legally authorized to do business in this State. [Id.]

Art. 5601. Charge for storage.—All charges for storage in warehouses operating under the provisions of this and the preceding chapter, shall be subject to limitation and regulation by the Commissioner to the extent of fixing a minimum charge therefor. The charges so fixed need not be the same at all places or at all times, but the Commissioner may take into consideration the local conditions, and the volume of business of each warehouse. In fixing charges for gin compressed cotton, consideration shall be given to the size of the bale. [Id.]

Art. 5602. Standards of weights and measures.—The standards of weights and measures of this State shall be the standards of weights and measures used under the terms and provisions of this chapter. It shall be the duty of the Commissioner to establish standards of classifications of cotton, corn, and other farm and ranch products, of whatever kind and character, which may be subject to classification, and originals of such standards so established shall be maintained, subject to public inspection, in the office of the Commissioner at all reasonable times; and duplicates of such standards as well as the standards of weights and measures, shall be furnished by the Commissioner to all persons who may apply therefor, under the payment of the necessary cost thereof. It shall be the duty of each public warehouse company to keep a duplicate of said standards, as well as the standards of weights and measures, at its warehouse, subject to inspection and comparison of grades and classification by persons storing products therein; provided, that the standards of classification shall always be the standards established by the Government of the United States, or of this State. [Id.]

Art. 5603. Liability of corporation.—The liability of a cor-

poration chartered and operating under this chapter for warehouse purposes, shall be that of a public warehouseman, and it shall have the same rights as a public warehouseman, including a lien for storage, insurance, and other warehouse charges, as well as for charges for any service performed by it. [Id.]

Art. 5604. Lien of corporation.—Such corporation shall also have a lien for all lawful claims for money advanced, interest, insurance, transportation, labor, weighing, cooperating, and other charges and expenses in relation to such goods; and also, all reasonable charges and expenses for notice and advertisement of sale of goods, where sale has been made in satisfaction of the warehouseman's lien. [Id.]

Art. 5605. Satisfaction of lien.—A warehouseman's lien for a claim which has become due may be satisfied as provided in the succeeding chapter. No publication fee shall be charged in excess of the rate now allowed by statute for the publication of legal notices. One notice of sale shall be placed at the court house door of the county in which the warehouse is located. If any goods are delivered to any person paying for the same and the warehouseman desires it, he may require a bond of indemnity as protection from claims of other persons. [Id.]

Art. 5606. Landlord's lien.—The landlord's lien on cotton or other farm products shall continue so long as the same are on storage in any warehouse, whether the same be a warehouse operated under this law or a private warehouse, provided a negotiable receipt has not been issued therefor. [Id.]

Art. 5607. Delivery of goods.—Upon the presentation and return to the warehouse of any warehouse receipt issued by its manager, and properly endorsed, and the tender of all proper warehouse charges upon the property presented by it, such property shall be delivered immediately to the holder of such receipt; but the manager of such warehouse shall not, under any circumstances, or upon any other guarantee, deliver the property upon which said receipts were issued until such receipts have been delivered and cancelled, except in case of lost receipts. Any such receipt, when returned and cancelled, shall be kept by the manager in his office, until ordered destroyed by the directors, for one year from date of cancellation. Upon delivery of the goods in a warehouse, upon any receipt, such receipt shall be plainly marked, or stamped in ink, across its face, with the word "cancelled," together with the name of the manager cancelling the same; and shall thereafter be void, and shall not again be put into circulation. [Id.]

Art. 5608. Forms.—The Commissioner shall prescribe all the forms of receipts, certificates and records, of whatsoever description necessary in the conduct of warehouses under this chapter, but all such receipts, certificates and forms shall be drawn in accordance with the terms of this title. All warehouse receipts shall be of uniform character, in the same class as prescribed by the Commissioner. [Id.]

Art. 5609. Negotiable receipt.—A negotiable receipt issued against goods or products stored in a warehouse under this chapter shall be negotiable and transferable by endorsement in blank, or by a special endorsement and delivery in the same manner and to the same extent as bills of exchange and promissory notes now are, without any formality. The transferee or holder of such warehouse receipt shall be considered and held as actual and exclusive owner, to all intents and purposes, of the property therein described, subject only to lien and privileges of the warehouse for storage, insurance, and other warehouse charges. All such warehouse receipts with the word “non-negotiable” plainly marked or stamped on the face thereof shall be exempt from the provisions of this article. [Id.]

Art. 5610. Receipts.—All receipts shall be numbered consecutively, in the order of their issuance, and a record of such receipt shall be kept at the office of the company. No two receipts bearing the same number shall be issued from the same warehouse during the same year, nor shall any duplicate receipt be issued, except in case of a lost or destroyed receipt, in which case a new receipt shall be issued, which shall bear the same date and number as the original, and shall be plainly marked on its face “Duplicate.” In addition to the other provisions, each receipt shall have a blank form on the back thereof, to be filled in and signed by the owner of the cotton or other products for which it is issued, showing whether a pre-existing and unsatisfied lien of any kind exists against it. If there be a landlord’s lien, or such unsatisfied lien, or incumbrance, or lien of any kind, on said cotton, or other products, at the time of its storage, the amount of the claim shall be clearly set out; and it is made the duty of the manager issuing the receipt to have said blank filled in and signed by the owner of the cotton, or other product before issuing a negotiable receipt for the same; provided, however, such statement may not be made if a non-negotiable receipt is desired. When cotton grown on rented or leased premises is tendered for storage in a State warehouse, in addition to the foregoing instruments, all receipts issued therefor shall be issued jointly, in the name of the owner and the landlord, showing their respective interests in such cotton, unless the tenant or person storing the same presents authority from the landlord, or from the tenant, as the case may be, requesting the issuance of a receipt in the name of the one or the other, which request shall be in writing, and filed with the manager of the warehouse. If the person holding a non-negotiable receipt desires to obtain a negotiable receipt in lieu thereof, he shall return the non-negotiable receipt to the warehouse issuing the same and thereupon shall comply in every respect with the provisions of this Act, relating to negotiable receipts, and upon compliance with which a negotiable receipt shall be issued to him in lieu of the non-negotiable receipt. When the non-negotiable receipt is surrendered or canceled, the word “canceled” shall be plainly marked or stamped in ink, across the

face thereof. No warehouse receipt shall be issued except on the actual previous delivery of the goods in the warehouse or on the premises under the control of the manager thereof. [Id.]

Art. 5611. All warehouses included.—All warehouses now or hereafter operating under an Act passed by the Thirty-third Legislature of Texas, and known as the "Public Warehouse Act," are hereby placed under the management and control of the Commissioner, and all chartered warehouses for the storing of farm, ranch or orchard products, not incorporated under this Act, may, by a majority vote of its stockholders, upon application to the Secretary of State, upon payment of a fee of ten dollars, amend their charter so as to come under this Act. Such warehouses shall make such bonds as the Commissioner may require, and such warehouses shall issue such receipts as are authorized by the Commissioner. [Id.]

SECTION 1. The office of Commissioner of Markets and Warehouses of the State of Texas is hereby abolished, and the authority, duties, powers, functions, rights, and liabilities, heretofore vesting in said commissioner, shall hereafter vest in and be had and performed by the Commissioner of Agriculture. The Markets and Warehouse Department and the Weights and Measures Department of the State of Texas are hereby abolished, and the duties and functions of the same shall hereafter vest in the Commissioner of Agriculture.

SEC. 2. The board, consisting of the Governor, the Commissioner of Agriculture, and the Commissioner of Insurance and Banking, created by Chapter 5, of the General Laws enacted at the Second Called Session of the Thirty-third Legislature, for the purpose of appointing a Commissioner of Markets and Warehouses, is hereby abolished.

SEC. 3. The Board of Supervisors of Warehouses, consisting of the Governor, Commissioner of Agriculture, and the Commissioner of Insurance and Banking, created by Chapter 5, of the General Laws enacted at the Second Called Session of the Thirty-third Legislature, is hereby abolished, and any authority, duties, powers, functions, rights, and liabilities of said board, existing under the law, shall hereafter vest in and be had and performed by the Commissioner of Agriculture.

SEC. 4. The Commissioner of Agriculture shall hereafter have and perform all the authority, duties, powers, rights, and liabilities heretofore vesting in the Commissioner of Insurance and Banking, or the Banking Commissioner of Texas or the Commissioner of Insurance, if any, relative to warehouses, except such as are conferred upon said Commissioner of Insurance and Banking by the provisions of Chapter 3 of the General Laws of the Second Called Session of the Thirty-third Legislature of this State.

SEC. 5. The power and authority to administer the provisions of Chapter 5 of the General Laws of the Second Called Session of the Thirty-third Legislature; Chapter 41 of the General Laws

of the First Called Session of the Thirty-fifth Legislature, and Chapters 116 and 126 of the General Laws of the Regular Session of the Thirty-sixth Legislature and such powers and duties as are conferred upon the Commissioner of Markets and Warehouses by Chapter 22, Acts of the Regular Session of the Thirty-seventh Legislature and Chapter 38 of the Second Called Session of the Thirty-eighth Legislature shall hereafter vest in the Commissioner of Agriculture, and it shall be his duty to administer said laws, or so much of same as may be in force.

SEC. 6. All appropriations heretofore made for the Markets and Warehouse Department and the Weights and Measures Department shall hereafter be available to the Commissioner of Agriculture to expend, as provided by law, in the execution of the work and the performance of the duties herein transferred; provided that the Commissioner of Agriculture shall be authorized to re-apportion and rearrange the duties of the office and of the employees and fix the salaries of said employees, where not fixed by law, and shall be authorized to discontinue any duties, work, or employees, in order to prevent a duplication of work already being performed, or authorized to be performed by the Department of Agriculture. [Id. p. 35.]

The above chapter abolishes the office of Commissioner of Markets and Warehouses and confers some, if not all, of his powers and duties on the Commissioner of Agriculture. Chapters 1, 2 and 3 of Title 93 are retained herein in order that it may be ascertained therefrom what are the powers and duties of the Commissioner of Agriculture under said Chapter 13.

CHAPTER FOUR.

UNIFORM WAREHOUSE RECEIPTS ACT.

| Article | Article | | |
|--|---------|---|------|
| Issue of warehouse receipts..... | 5612 | Loss of lien..... | 5640 |
| Form of receipt..... | 5613 | Lien for charges..... | 5641 |
| Conditions of receipt..... | 5614 | May refuse to deliver goods..... | 5642 |
| Non-negotiable receipt..... | 5615 | Collection of charges..... | 5643 |
| Negotiable receipt..... | 5616 | Satisfaction of lien..... | 5644 |
| Duplicate receipts..... | 5617 | Perishable or dangerous goods..... | 5645 |
| Non-negotiable receipt..... | 5618 | Remedy not exclusive..... | 5646 |
| Bound to deliver goods..... | 5619 | Effect of sale..... | 5647 |
| Justified in delivery..... | 5620 | Negotiation and transfer of receipts..... | 5648 |
| Delivery to wrong person..... | 5621 | Negotiation by indorsement..... | 5649 |
| Failure to cancel receipt..... | 5622 | Non-negotiable receipt..... | 5650 |
| Partial delivery: failure to cancel..... | 5623 | Who may negotiate receipt..... | 5651 |
| Alteration of receipt..... | 5624 | Title by negotiation..... | 5652 |
| Loss of receipt..... | 5625 | Title acquired by transfer..... | 5653 |
| Effect of duplicate receipt..... | 5626 | Who may compel indorsement..... | 5654 |
| Title in warehouseman..... | 5627 | Warranty..... | 5655 |
| May make claimants interplead..... | 5628 | Liability of indorser..... | 5656 |
| Adverse claim..... | 5629 | Implied warranty..... | 5657 |
| Failure to deliver..... | 5630 | Innocent purchaser..... | 5658 |
| Relying on labels..... | 5631 | Subsequent negotiation..... | 5659 |
| Must exercise care..... | 5632 | Purchaser for value..... | 5660 |
| Care of goods..... | 5633 | Who may become public warehouseman..... | 5661 |
| Mingled goods..... | 5634 | Commissioner to supervise..... | 5662 |
| Care of mingled goods..... | 5635 | Interpretation..... | 5663 |
| Surrender of receipt..... | 5636 | Definitions..... | 5664 |
| Rights of creditor..... | 5637 | Citation of Act..... | 5665 |
| Lien of warehouseman..... | 5638 | | |
| Lien enforced against goods..... | 5639 | | |

Art. 5612. Issue of warehouse receipts.—Warehouse receipts may be issued by any warehouseman. [Acts 1919, p. 215.]

Art. 5613. Form of receipt.—Warehouse receipts need not be in any particular form, but every such receipt must embody within its written or printed terms:

1. The location of the warehouse where the goods are stored.
2. The date of issue of the receipt.
3. The consecutive number of the receipt.
4. A statement whether the goods received will be delivered to a specified person, or to a specified person or his order.
5. The rate of storage charges.
6. A description of the goods or of the packages containing them.
7. The signature of the warehouseman, which may be made by his authorized agent.

8. If the receipt is issued for goods of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership, and

9. A statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien. If the precise amount of such advances made or of such liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouseman or to his agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof is sufficient.

A warehouseman shall be liable to any person injured thereby, for all damage caused by the omission from a negotiable receipt of any of the terms herein required.

10. When a negotiable receipt is issued under the terms of this Act for cotton or other agricultural products stored in any warehouse operating under the terms of this Act, it shall, in addition to the other conditions mentioned herein, state the weight, grade, and condition of the same and shall state plainly whether such agricultural products are insured or not. [Id. Sec. 2.]

Art. 5614. Conditions of receipt.—A warehouseman may insert in a receipt, issued by him, any other terms and conditions, provided that such terms and conditions shall not:

1. Be contrary to the provisions of this chapter.
2. In any wise impair his obligation to exercise that degree of care in the safe-keeping of the goods entrusted to him, which a reasonably careful man would exercise in regard to similar goods of his own. [Id. Sec. 3.]

Art. 5615. Non-negotiable receipt.—A receipt in which it is stated that the goods received will be delivered to the depositor, or to any other specified person, is a non-negotiable receipt. [Id. Sec. 4.]

Art. 5616. Negotiable receipt.—A receipt in which it is stated that the goods received will be delivered to the order of any person named in such receipt is a negotiable receipt. No provision shall be inserted in a negotiable receipt that it is non-

negotiable. Such provision, if inserted shall be void. [Id. Sec. 5.]

Art. 5617. Duplicate receipts.—When more than one negotiable receipt is issued for the same goods, the word “duplicate” shall be plainly placed upon the face of every such receipt, except the one first issued. A warehouseman shall be liable for all damages caused by his failure so to do to any one who purchased the subsequent receipt for value supposing it to be an original, even though the purchase be after the delivery of the goods by the warehouseman to the holder of the original receipt. [Id. Sec. 6.]

Art. 5618. Non-negotiable receipt.—A non-negotiable receipt shall have plainly placed upon its face by the warehouseman issuing it, “non-negotiable,” or “not negotiable.” In case of the warehouseman’s failure so to do, a holder of the receipt who purchased it for value supposing it to be negotiable, may, at his option, treat such receipt as imposing upon the warehouseman the same liabilities he would have incurred had the receipt been negotiable. This action shall not apply, however, to letters, memoranda, or written acknowledgments of an informal character. [Id. Sec. 7.]

Art. 5619. Bound to deliver goods.—A warehouseman, in the absence of some lawful excuse provided by this law, is bound to deliver the goods upon a demand made either by the holder of a receipt for the goods or by the depositor, if such demand is accompanied with:

1. An offer to satisfy the warehouseman’s lien.
2. An offer to surrender the receipt if negotiable, with such indorsements as would be necessary for the negotiation of the receipt, and
3. A readiness and willingness to sign, when the goods are delivered, an acknowledgment that they have been delivered, if such signature is required by the warehouseman.

In case the warehouseman refuses or fails to deliver the goods in compliance with a demand by the holder or depositor so accompanied, the burden shall be upon the warehouseman to establish the existence of a lawful excuse for such refusal. [Id. Sec. 8.]

Art. 5620. Justified in delivery.—A warehouseman is justified in delivering the goods, subject to the provisions of the three following articles, to:

1. The person lawfully entitled to the possession of the goods, or his agent.
2. A person who is either himself entitled to delivery by the terms of a non-negotiable receipt issued for the goods, or who has written authority from the person so entitled either endorsed upon the receipt or written upon another paper, or
3. A person in possession of a negotiable receipt by the terms of which the goods are deliverable to him or order or to bearer, or which has been endorsed to him or in blank by the

person to whom delivery was promised by the terms of the receipt or by his mediate or immediate indorsee. [Id. Sec. 9.]

Art. 5621. Delivery to wrong person.—Where a warehouseman delivers the goods to one who is not in fact lawfully entitled to the possession of them, the warehouseman shall be liable as for conversion to all having a right of property or possession in the goods if he delivered the goods otherwise than as authorized by Subdivision 1 and 2 of the preceding article and though he delivered the goods as authorized by said subdivisions he shall be so liable, if prior to such delivery he had either:

1. Been requested, by or on behalf of the person lawfully entitled to a right of property in or possession of the goods, not to make such delivery, or

2. Had information that the delivery about to be made was to one not lawfully entitled to the possession of the goods. [Id. Sec. 10.]

Art. 5622. Failure to cancel receipt.—Except as hereinafter provided, where a warehouseman delivers goods for which he has issued a negotiable receipt, the negotiation of which would transfer the right to the possession of the goods, and fails to take up and cancel the receipt, he shall be liable to any one who purchases for value in good faith such receipt, for failure to deliver the goods to him, whether such purchaser acquired title to the receipt before or after the delivery of the goods by the warehouseman. [Id. Sec. 11.]

Art. 5623. Partial delivery; failure to cancel.—Except as hereinafter provided, where a warehouseman delivers part of the goods for which he had issued a negotiable receipt and fails either to take up and cancel such receipt, or to place plainly upon it a statement of what goods or packages have been delivered, he shall be liable to any one who purchases for value in good faith such receipt, for failure to deliver all the goods specified in the receipt whether such purchaser acquired title to the receipt before or after the delivery of any portion of the goods by the warehouseman. [Id. Sec. 12.]

Art. 5624. Alteration of receipt.—The alteration of a receipt shall not excuse the warehouseman who issued it from any liability if such alteration was immaterial, authorized or made without fraudulent intent. If the alteration was authorized, the warehouseman shall be liable according to the terms of the receipt as altered. If the alteration was unauthorized, but made without fraudulent intent, the warehouseman shall be liable according to the terms of the receipt, as they were before alteration. Material and fraudulent alteration of a receipt shall not excuse the warehouseman who issued it from liability to deliver, according to the terms of the receipt as originally issued, the goods for which it was issued, but shall excuse him from any other liability to the person who made the alteration and to any person who took with notice of the alteration. Any purchaser of the receipt for value without notice of the alteration shall

acquire the same rights against the warehouseman which such purchaser would have acquired if the receipt had not been altered at the time of the purchase. [Id. Sec. 13.]

Art. 5625. Loss of receipt.—Where a negotiable receipt has been lost or destroyed, a court of competent jurisdiction may order the delivery of the goods upon satisfactory proof of such loss or destruction and upon the giving of a bond with sufficient securities to be approved by the court to protect the warehouseman from any liability or expense, which he or any person injured by such delivery may incur by reason of the original receipt remaining outstanding. The Court may also in its discretion order the payment of the warehouseman's reasonable costs. The delivery of the goods under an order of the Court shall not relieve the warehouseman from liability to a person to whom the negotiable receipt has been or shall be negotiated for value without notice of the proceedings or of the delivery of the goods. [Id. Sec. 14.]

Art. 5626. Effect of duplicate receipt.—A receipt upon the face of which the word "duplicate" is plainly placed is a representation and warranty by the warehouseman that such receipt is an accurate copy of an original receipt properly issued and uncanceled at the date of the issue of the duplicate, but shall impose upon him no other liability. [Id. Sec. 15.]

Art. 5627. Title in warehouseman.—No title or right to the possession of the goods, on the part of the warehouseman, unless such title or right is derived directly or indirectly from a transfer made by the depositor at the time of or subsequent to the deposit for storage, or from the warehouseman's lien, shall excuse the warehouseman from liability for refusing to deliver the goods according to the terms of the receipt. [Id. Sec. 16.]

Art. 5628. May make claimants interplead.—If more than one person claims the title or possession of the goods, the warehouseman may, either as a defense to an action brought against him for non-delivery of the goods, or as an original suit, whichever is appropriate, require all known claimants to interplead. [Id. Sec. 17.]

Art. 5629. Adverse claim.—If some one other than the depositor or person claiming under him has a claim to the title or possession of the goods, and the warehouseman has information of such claim, the warehouseman shall be excused from liability for refusing to deliver the goods, either to the depositor or person claiming under him or to the adverse claimant, until the warehouseman has had a reasonable time to ascertain the validity of the adverse claim or to bring legal proceedings to compel all claimants to interplead. [Id. Sec. 18.]

Art. 5630. Failure to deliver.—Except as provided otherwise in this chapter, no right or title of a third person shall be a defense to an action brought by the depositor or person claiming under him against the warehouseman for failure to deliver the goods according to the terms of the receipt. [Id. Sec. 19.]

Art. 5631. **Relying on labels.**—A warehouseman shall be liable to the holder of a receipt for damages caused by the non-existence of the goods or by the failure of the goods to correspond with the description thereof in the receipt at the time of its issue. If, however, the goods are described in a receipt merely by a statement of marks or labels upon them, or upon packages containing them, or by a statement that the goods are said to be goods of a certain kind, or that the packages containing the goods are said to contain goods of a certain kind, or by words of like purport, such statements, if true, shall not make liable the warehouseman issuing the receipt, although the goods are not of the kind which the marks or labels upon them indicate, or of the kind they were said to be by the depositor. [Id. Sec. 20.]

Art. 5632. **Must exercise care.**—A warehouseman shall be liable for any loss or injury to the goods caused by his failure to exercise such care in regard to them as a reasonably careful owner of similar goods would exercise, but he shall not be liable, in the absence of an agreement to the contrary, for any loss or injury to the goods which could not have been avoided by the exercise of such care. [Id. Sec. 21.]

Art. 5633. **Care of goods.**—Except as provided in the following article, a warehouseman shall keep the goods so far separate from goods of other depositors, and from other goods of the same depositor for which a separate receipt has been issued, as to permit at all times the identification and redelivery of the goods deposited. [Id. Sec. 22.]

Art. 5634. **Mingled goods.**—If authorized by agreement or by custom, a warehouseman may mingle fungible goods with other goods of the same kind and grade. In such case the various depositors of the mingled goods shall own the entire mass in common and each depositor shall be entitled to such portion thereof as the amount deposited by him bears to the whole. [Id. Sec. 23.]

Art. 5635. **Care of mingled goods.**—The warehouseman shall be severally liable to each depositor for the care and re-delivery of his share of such mass to the same extent and under the same circumstances as if the goods had been kept separate. [Id. Sec. 24.]

Art. 5636. **Surrender of receipt.**—If goods are delivered to a warehouseman by the owner or by a person whose act in conveying the title to them to a purchaser in good faith for value would bind the owner, and a negotiable receipt is issued for them, they can not thereafter, while in the possession of the warehouseman, be attached by garnishment or otherwise, or be levied upon under an execution, unless the receipt be first surrendered to the warehouseman, or its negotiation enjoined. The warehouseman shall in no case be compelled to deliver up the actual possession of the goods until the receipt is surrendered to him or impounded by the court. [Id. Sec. 25.]

Art. 5637. **Rights of creditor.**—A creditor whose debtor is

the owner of a negotiable receipt shall be entitled to such aid from the courts, by injunction and otherwise, in attaching such receipt or in satisfying the claim by means thereof as is allowed at law or in equity, in regard to property which can not readily be attached or levied upon by ordinary legal process. [Id. Sec. 26.]

Art. 5638. Lien of warehouseman.—Subject to the provisions of the second succeeding article, a warehouseman shall have a lien on goods deposited or on the proceeds thereof in his hands, for all lawful charges for storage and preservation of the goods; also for all lawful claims for money advanced, interest, insurance, transportation, labor, weighing, coopering and other charges and expenses in relation to such goods; also for all reasonable charges and expenses for notice, and advertisements of sale, and for sale of goods where default has been made in satisfying the warehouseman's lien. [Id. Sec. 27.]

Art. 5639. Lien enforced against goods.—Subject to the provisions of the second succeeding article, a warehouseman's lien may be enforced:

1. Against all goods, whenever deposited, belonging to the person who is liable as debtor for the claims in regard to which the lien is asserted, and

2. Against all goods belonging to others which have been deposited at any time by the person who is liable as debtor for the claims in regard to which the lien is asserted if such person has been so entrusted with the possession of the goods that a pledge of the same by him at the time of the deposit to one who took the goods in the good faith for value would have been valid. [Id. Sec. 28.]

Art. 5640. Loss of lien.—A warehouseman loses his lien upon goods by surrendering possession thereof, or by refusing to deliver the goods when a demand is made with which he is bound to comply under the provisions of this law. [Id. Sec. 29.]

Art. 5641. Lien for charges.—If a negotiable receipt is issued for goods, the warehouseman shall have no lien thereon, except for charges for storage of those goods subsequent to the date of the receipt, unless the receipt expressly enumerates other charges for which a lien is claimed. In such case there shall be a lien for the charges enumerated so far as they are within the terms of this law, although the amount of the charges so enumerated is not stated in the receipt. [Id. Sec. 30.]

Art. 5642. May refuse to deliver goods.—A warehouseman having a lien valid against the person demanding the goods may refuse to deliver the goods to him until the lien is satisfied. [Id. Sec. 31.]

Art. 5643. Collection of charges.—Whether a warehouseman has or has not a lien upon the goods, he is entitled to all remedies allowed by law to a creditor against his debtor, for the collection from the depositor of all charges and advances which the de-

positor has expressly or impliedly contracted with the warehouseman to pay. [Id. Sec. 32.]

Art. 5644. Satisfaction of lien.—A warehouseman's lien for a claim which has become due may be satisfied as follows: The warehouseman shall give a written notice to the person on whose account the goods are held, and to any other person known by the warehouseman to claim an interest in the goods. Such notice shall be given by delivery in person or by registered letter addressed to the last known place of business or abode of the person to be notified. The notice shall contain:

1. An itemized statement of the warehouseman's claims, showing the sum due at the time of the notice and the date or dates when it became due;

2. A brief description of the goods against which the lien exists;

3. A demand that the amount of the claim as stated in the notice, and of such further claims as shall accrue, shall be paid on or before a day mentioned, not less than ten days from the delivery of the notice if it is personally delivered, or from the time when the notice should reach its destination, according to the due course of post, if the notice is sent by mail; and

4. A statement that unless the claim is paid within the time specified the goods will be advertised for sale and sold by auction at a specified time and place.

In accordance with the terms of a notice so given, a sale of the goods by auction may be had to satisfy any valid claim of the warehouseman for which he has a lien on the goods. The sale shall be had in the place where the lien was acquired, or, if such place is manifestly unsuitable for the purpose, at the nearest suitable place. After the time for the payment of the claim specified in the notice to the depositor has elapsed, an advertisement of the sale, describing the goods to be sold, and stating the name of the owner or person on whose account the goods are held, and the time and place of the sale, shall be published once a week for two consecutive weeks in a newspaper published in the place where such sale is to be held. The sale shall not be held less than fifteen days from the time of the first publication. If no newspaper is published in such place, the advertisement shall be posted at least ten days before such sale in not less than six conspicuous places therein. From the proceeds of such sale, the warehouseman shall satisfy his lien, including the reasonable charges of notice, advertisements and sale. The balance, if any, of such proceeds shall be deposited with the county clerk of the county in which the warehouse is located and shall be delivered, on demand, to the person to whom the warehouseman would have been bound to deliver, or justified in delivering the goods, for which the receipt was issued. At any time before the goods are so sold any person claiming a right of property or possession therein may pay the warehouseman the amount necessary to satisfy his lien and to pay the reasonable

expenses and liabilities incurred in serving notices and advertising and preparing for the sale up to the time of such payment. The warehouseman shall deliver the goods to the person making such payment if he is a person entitled, under the provisions of this Act, to the possession of the goods on payment of charges thereon. Otherwise the warehouseman shall retain possession of the goods according to the terms of the original contract or deposit. [Id. Sec. 33.]

Art. 5645. Perishable or dangerous goods.—If goods are of a perishable nature, or by keeping will deteriorate greatly in value, or by their odor, leakage, inflammability, or explosive nature, will be liable to injure other property, the warehouseman may give such notice to the owner, or to the person in whose name the goods are stored, as is reasonable and possible under the circumstances, to satisfy the lien upon such goods, and to remove them from the warehouse, and in the event of the failure of such person to satisfy the lien and to remove the goods within the time so specified, the warehouseman may sell the goods at public or private sale without advertising. If the warehouseman after a reasonable effort is unable to sell such goods, he may dispose of them in any lawful manner, and shall incur no liability by reason thereof. The proceeds of any sale made upon the terms of this article shall be disposed of in the same way as the proceeds of sales made under the terms of Article 5644. [Id. Sec. 34.]

Art. 5646. Remedy not exclusive.—The remedy for enforcing a lien herein provided does not preclude any other remedies allowed by law for the enforcement of a lien against personal property nor bar the right to recover so much of the warehouseman's claim as shall not be paid by the proceeds of the sale of the property. [Id. Sec. 35.]

Art. 5647. Effect of sale.—After goods have been lawfully sold to satisfy a warehouseman's lien, or have been lawfully sold or disposed of because of their perishable or hazardous nature, the warehouseman shall not thereafter be liable for failure to deliver the goods to the depositor, or owner of the goods, or to a holder of the receipt given for the goods when they were deposited, even if such receipt be negotiable. [Id. Sec. 36.]

Art. 5648. Negotiation and transfer of receipts.—A negotiable receipt may be negotiated by delivery:

1. Where, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the bearer, or

2. Where, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of a specified person, and such person or a subsequent indorsee of the receipt has indorsed it in blank or to bearer.

Where, by the terms of a negotiable receipt, the goods are deliverable to bearer or when a negotiable receipt has been indorsed in blank or to bearer, any holder may indorse the same to himself or to any other specified person, and in such case the receipt

shall thereafter be negotiated only by the indorsement of such indorsee. [Id. Sec. 37.]

Art. 5649. Negotiation by indorsement.—A negotiable receipt may be negotiated by the indorsement of the person to whose order the goods are, by the terms of the receipt, deliverable. Such indorsement may be in blank, to bearer or to a specified person. If indorsed to a specified person, it may be again negotiated by the indorsement of such person in blank, to bearer or to another specified person. Subsequent negotiation may be made in like manner. [Id. Sec. 38.]

Art. 5650. Non-negotiable receipt.—A receipt which is not in such form that it can be negotiated by delivery may be transferred by the holder by delivery to a purchaser or donee. A non-negotiable receipt can not be negotiated, and the indorsement of such receipt gives the transferee no additional right. [Id. Sec. 39].

Art. 5651. Who may negotiate receipt.—A negotiable receipt may be negotiated by the owner thereof or by any person to whom the possession or custody thereof has been entrusted by the owner, if, by the terms of the receipt the warehouseman undertakes to deliver the goods to the order of the person to whom the possession or custody of the receipt has been entrusted, or if at the time of such entrusting the receipt is in such form that it may be negotiated by delivery. [Id. Sec. 40.]

Art. 5652. Title by negotiation.—A person to whom a negotiable receipt has been duly negotiated acquires thereby:

1. Such title to the goods as the person negotiating the receipt to him had or had ability to convey to a purchaser in good faith for value, and also such title to the goods as the depositor or person to whose order the goods were to be delivered by the terms of the receipt had or had ability to convey to a purchaser in good faith for value, and

2. The direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt as fully as if the warehouseman had contracted directly with him. [Id. Sec. 41.]

Art. 5653. Title acquired by transfer.—A person to whom a receipt has been transferred but not negotiated, acquires thereby, as against the transferrer, the title of the goods, subject to the terms of any agreement with the transferrer. If the receipt is non-negotiable, such person also acquires the right to notify the warehouseman of the transfer to him of such receipt, and thereby to acquire the direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt. Prior to the notification of the warehouseman by the transferrer or transferee of a non-negotiable receipt, the title of the transferee to the goods and the right to acquire the obligation of the warehouseman may be defeated by the levy of an attachment or execution upon the goods by a creditor of the transferrer, or by a notification to the ware-

houseman by the transferrer or a subsequent purchaser from the transferrer of a subsequent sale of the goods by the transferrer. [Id. Sec. 42.]

Art. 5654. **Who may compel indorsement.**—Where a negotiable receipt is transferred for value by delivery, and the indorsement of the transferrer is essential for negotiation, the transferee acquires a right against the transferrer to compel him to indorse the receipt, unless a contrary intention appears. The negotiation shall take effect as of the time when the indorsement is actually made. [Id. Sec. 43.]

Art. 5655. **Warranty.**—A person who for value negotiates or transfers a receipt by indorsement or delivery, including one who assigns for value a claim secured by a receipt, unless a contrary intention appears, warrants:

1. That the receipt is genuine;
2. That he has a legal right to negotiate or transfer it;
3. That he has knowledge of no fact which would impair the validity or worth of the receipt; and
4. That he has a right to transfer the title to the goods and that the goods are merchantable or fit for a particular purpose whenever such warranties would have been implied, if the contract of the parties had been to transfer without a receipt the goods represented thereby. [Id. Sec. 44.]

Art. 5656. **Liability of indorser.**—The indorsement of a receipt shall not make the indorser liable for any failure on the part of the warehouseman or previous indorsers of the receipt to fulfill their respective obligations. [Id. Sec. 45.]

Art. 5657. **Implied warranty.**—A mortgagee, pledgee or holder for security of a receipt who in good faith demands or receives payment of the debt for which such receipt is security, whether from a party to a draft drawn for such debt or from any other person, shall not by so doing be deemed to represent or to warrant the genuineness of such receipt or the quantity or quality of the goods therein described. [Id. Sec. 46.]

Art. 5658. **Innocent purchaser.**—The validity of the negotiation of a receipt is not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the receipt was induced by fraud, mistake, or duress to entrust the possession or custody of the receipt to such person, if the person to whom the receipt was negotiated, or a person to whom the receipt was subsequently negotiated, paid value therefor, without notice of the breach of duty, or fraud, mistake or duress. [Id. Sec. 47.]

Art. 5659. **Subsequent negotiation.**—Where a person having sold, mortgaged, or pledged goods which are in a warehouse and for which a negotiable receipt has been issued, or having sold, mortgaged, or pledged the negotiable receipt representing such goods, continues in possession of the negotiable receipt, the subsequent negotiation thereof by that person under any sale, or other disposition thereof to any person receiving the same in

good faith, for value and without notice of the previous sale, mortgage, or pledge, shall have the same effect as if the first purchaser of the goods or receipt had expressly authorized the subsequent negotiation. [Id. Sec. 48.]

Art. 5660. Purchaser for value.—Where a negotiable receipt has been issued for goods, no seller's lien or right or stoppage in transit shall defeat the rights of any purchaser for value in good faith to whom such receipt has been negotiated, whether such negotiation be prior or subsequent to the notification to the warehouseman who issued such receipt of the seller's claim to a lien or right of stoppage in transit. Nor shall the warehouseman be obliged to deliver or justified in delivering the goods to an unpaid seller, unless the receipt is first surrendered for cancellation. [Id. Sec. 49.]

Art. 5661. Who may become public warehouseman.—Any person, firm, corporation, partnership, or association of persons, may become a public warehouseman under the provisions of this chapter by filing with the county clerk of the county in which he is located and proposes to do business, a good and sufficient bond in the sum of five thousand dollars conditioned that he will conduct his business in accordance with the provisions of this chapter. Upon the filing and approval of such bond with the county clerk, it shall be the duty of the county clerk to immediately certify such fact to the Commissioner of Markets and Warehouses. Any one injured by the violation of the terms of the bond, and the provisions of this chapter may recover damages to the extent of said bond. Should said bond become impaired by recovery, or otherwise, said Commissioner may require such public warehouseman to file an additional bond, but in no event shall such additional bond be for a greater amount than five thousand dollars. The bond required hereunder shall be good for the term of one year from the date of filing and the right to continue as a public warehouseman shall be conditioned upon the renewal of said bond from year to year, according to the terms of this chapter. The form of the bond required hereunder shall be prescribed by said Commissioner, and the bond may be made by any surety company authorized to do business under the laws of this State; or by two solvent sureties to be approved by the county clerk of the county in which such public warehouseman may desire to do business. [Id. Sec. 56.]

Art. 5662. Commissioner to supervise.—The Commissioner may exercise a general supervision over all private warehouses operating under the provisions of this chapter, and may, in his discretion, prescribe rules and regulations for the conduct of same not inconsistent with the provisions of this chapter. [Id. Sec. 57.]

Art. 5663. Interpretation.—In any case not provided for in this chapter, the rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent and to the effect of fraud, misrepresentation, duress

or coercion, mistake, bankruptcy, or other invalidating cause, shall govern. This law shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it. [Id. Secs. 59 and 60.]

Art. 5664. Definitions.—In this chapter, unless the context or subject-matter otherwise requires:

“Action” includes counter claim, set-off, and suit in equity.

“Delivery” means voluntary transfer of possession from one person to another.

“Fungible goods” means goods of which any unit is from its nature or by mercantile custom, treated as the equivalent of any other unit.

“Goods” means chattels or merchandise in storage, or which has been or is about to be stored.

“Holder” of a receipt means a person who has both actual possession of such receipt and a right of property therein.

“Order” means an order by indorsement on the receipt.

“Owner” does not include mortgagee or pledgee.

“Person” includes a corporation or partnership or two or more persons having a joint or common interest.

To “purchase” includes to take as mortgagee or as pledgee.

“Purchaser” includes mortgagee and pledgee.

“Receipt” means a warehouse receipt.

“Value” is any consideration sufficient to support a simple contract. An antecedent or pre-existing obligation, whether for money or not, constitutes value where a receipt is taken either in satisfaction thereof or as security therefor.

“Warehouseman” means a person lawfully engaged in the business of storing goods for profit.

A thing is done “in good faith” within the meaning of this law when it is in fact done honestly, whether it is done negligently or not. [Id. Sec. 61.]

Art. 5665. Citation of Act.—This Act may be cited as the Uniform Warehouse Receipts Act. [Id. Sec. 63.]

CHAPTER FIVE.

GINNERS AND COTTON.

| | Article | | Article |
|--------------------------------|---------|----------------------------------|---------|
| “Ginners” | 5666 | Duty of Commissioner | 5673 |
| To obtain license | 5667 | Cotton board | 5674 |
| Bond | 5668 | Marking cotton | 5675 |
| Suit on bond | 5669 | Wrapping cotton | 5676 |
| Ginner to take sample | 5670 | Baling of cotton regulated | 5677 |
| Certificate with sample | 5671 | Liability | 5678 |
| Certificate of guarantee | 5672 | Duty of Commissioner | 5679 |

Art. 5666. “Ginners.”—All persons, partnerships, joint stock companies or corporations operating in this State any gin ginning cotton for commercial purposes shall be known as ginners, and shall be charged with the public use. [Acts 1st C. S. 1917, p. 65.]

Art. 5667. To obtain license.—All such ginners shall be required to obtain a license as a licensed ginner, from the Com-

missioner of Markets and Warehouses, which license shall be renewed each year, upon the payment of an annual fee of one dollar. Application for such license shall be made to said Commissioner stating the location and amount of capital of the gin, by whom owned, by whom conducted, and the post-office address of the owner and operator. Such application shall be accompanied by a bond prescribed by the board. [Id.]

Art. 5668. Bond.—Such bond may be that of a bonding company authorized to do business in Texas, or may be a personal surety bond. In the event of a personal surety bond, such bond shall be renewed once each year. In no event shall a bond less than two hundred nor more than one thousand dollars be required of any ginner for each gin he may own. Said bond shall be payable to the State of Texas, for the use and benefit of all who may have a cause of action against the maker thereof under the provisions of this chapter and shall be conditioned that the cotton ginned by the ginner designated in the bond and in the application for license has been carefully ginned, and that no foreign matter or substance has been placed in the cotton, nor has any water nor anything that would increase the weight thereof been placed therein during the process of ginning or thereafter while the cotton was in the possession of the gin; and that the ginner will separate the dirt from the seed; and that any sample of cotton taken from the bale during the process of ginning, is a fair and true sample of the cotton in the bale. [Id.]

Art. 5669. Suit on bond.—Suit may be brought against the maker thereof on such bond in the name of the aggrieved party, without the necessity of binding the State in the suit. Said bond shall not be void on first recovery but repeated suits may be brought on one bond until the amount of same has been exhausted. When the bond has become impaired by reason of any judgment thereon, the maker thereof shall be required to give a new bond, or make good the impairment; otherwise the board shall cancel his license as a public ginner. [Id.]

Art. 5670. Ginner to take sample.—Each licensed ginner shall take from each bale of cotton ginned by him one fair, true, and correct sample of cotton, unless requested in writing by the owner of the cotton, not to do so. When a sample of cotton is taken, such sample shall weigh not less than four nor more than six ounces; and the ginner shall wrap the same tightly in a sample wrapper, to secure a reasonable degree of compactness. Such sample shall be taken in three draws, as nearly as practicable, representing three parts of a bale. Any ginner who takes a sample from a bale of cotton, under the provisions of this Act, may, at his option, take and file a like sample from such bale for protection under the bond given by such ginner. [Id.]

Art. 5671. Certificate with sample.—With each sample of cotton there shall be placed a certificate, under the signature

of the ginner, that same is a fair and true sample, as far as said ginner may be able to determine; and that the ginner guarantees no fraud was practiced in taking such sample; and that it was taken from the bale in such manner as to secure a correct sample of the cotton in the bale. [Id.]

Art. 5672. Certificate of guarantee.—Whether or not a sample of the bale of cotton so ginned shall be requested and taken by the ginner, the ginner shall nevertheless, place with each bale of cotton ginned by him a certificate guaranteeing under his bond that during the process of ginning, or thereafter, while the cotton was in the possession of the ginner, no water or foreign substance of any nature had been placed with such cotton, with intent to defraud. Such certificate shall bear the name and address of the person for whom the cotton was ginned, the number of the bale on the books of the ginner, and the weight of the bale at the gin. [Id.]

Art. 5673. Duty of Commissioner.—The Commissioner shall have power and authority, and it shall be his duty to enforce all provisions of this chapter relating to ginner and to regulate and control them in all matters relating to the performance of their duties as such. [Id.]

Art. 5674. Cotton Board.—All matters relating to the issuance of a ginner's license, and all rules and regulations pertaining to gins, ginning, and ginner, as authorized and required by any provision of this chapter shall be subject to review for affirmation, modification or rejection, by a board hereby created to be known as the Cotton Board, which Board shall be composed of the Commissioner of Agriculture, Banking Commissioner, and the Commissioner of Markets and Warehouses. The last named Commissioner shall be chairman of the said board, and shall have the power, and it shall be his duty, to convene said board at all reasonable necessary times, to hear and decide all questions properly coming before it for review and decision. All rules, regulations, and acts of the Commissioner of Markets and Warehouses, or of said board, pertaining to gins, ginner, and ginning, shall be subject to review by any court of competent jurisdiction in this State. [Id.]

Art. 5675. Marking cotton.—Each licensed and bonded ginner shall place in letters and figures, on one side of each bale of cotton ginned by him, in appropriate and distinct letters, the following: "B....." and "B. G....." The manner of marking for identification may at any time be changed or regulated by the Commissioner. The first blank above indicated shall be filled in by the ginner by placing the same number, numerically, as that of the bale, as shown on the books of the gin ginning the same; and the letter "B", shall stand for "bale". The second blank shall be filled in by the ginner, by inserting the number of the gin license assigned to it by the Commissioner; and the letters "B. G.", when so used, shall stand for "Bonded Gin." [Id.]

Art. 5676. Wrapping cotton.—Each bale of cotton ginned by a licensed and bonded ginner in this State shall be so wrapped that the bale will be completely covered when compressed and that the ends of the bale shall be closed and well sewed. The quality of the bagging shall at all times be such that the markings thereon will, under ordinary conditions, remain intact and visible. [Id.]

Art. 5677. [1322] Baling of cotton regulated.—Every person, firm, corporation or association of persons, owning or operating a compress in this State, and their agents and employes, are hereby required, in compressing, recompressing, baling or rebaling cotton bales, to so bind and tie every bale of cotton by them compressed, recompressed, baled or rebaled, that no such bale shall be delivered to any railroad company, or other common carrier, by such person, firm, corporation or association of persons, their agents or employes, unless such bale of cotton shall be free from all or any dangerously exposed ends of bands or buckles, or any dangerously exposed or protruding part of the ties, bands, buckles or splices used in tying or binding such bale of cotton. Any such person, firm, corporation or association of persons, who shall fail to bind or tie any such bale of cotton by them compressed, recompressed, baled or rebaled, in the manner above provided, and shall deliver or cause to be delivered, any such bale of cotton to any railroad company, or other common carrier, shall forfeit and pay to the State of Texas not less than fifty nor more than two hundred and fifty dollars, which may be recovered in a civil suit brought in the name of the State.. [Acts 4th C. S. 1910, p. 118.]

Art. 5678. [1323] Liability.—Any person, firm, corporation or association of persons, receiving for storage, loading for transportation, or transporting, any such compressed bale or bales of cotton, in this State, containing any dangerously exposed ends of bands or buckles, or any dangerously protruding part or parts of the ties, bands, buckles or splices used in tying or binding such bale or bales of cotton, shall be liable in damages for injury to any person in the employ of such person, firm, corporation or association of persons, occasioned by reason of such dangerously exposed ends of bands or buckles, or any dangerously exposed or protruding part or parts of the ties, bands, buckles, or splices used in tying or binding such bale or bales of cotton while in the discharge of the duties of such employment. The duty of inspection of such bales of cotton shall be on the employer and not the employee. [Id.]

Art. 5679. [1324] Duty of Commissioner.—The Commissioner of Labor Statistics shall see that the provisions of the two preceding articles are observed and enforced. He shall obtain and collect evidence of any violation thereof upon the part of any person, firm, corporation, or association of persons engaged in the business of compressing cotton, who shall fail to comply with said provisions. Said commissioner shall file an-

nual statements with the Governor, showing in detail all expenses incurred by him in connection with his duties under this law. [Id.]

CHAPTER SIX.

PUBLIC WEIGHER

| | Article | | Article |
|--|---------|------------------------------------|---------|
| "Public weigher" defined..... | 5680 | Deputy weighers | 5691 |
| Appointment | 5681 | Special weighers | 5692 |
| Recommendation for appointment..... | 5682 | Must comply with law | 5693 |
| Election | 5683 | Commissioner to supervise..... | 5694 |
| Office—in cities of not less than 25,— | | Duty of Commissioner..... | 5695 |
| 600 population, etc..... | 5683a | Weight certificates | 5696 |
| Office—in cities of not less than 55,— | | Seal | 5697 |
| 700 population..... | 5683b | Record of weights..... | 5698 |
| Qualifications of weigher..... | 5684 | Piled or stored separately | 5699 |
| Term and removal..... | 5685 | To tag or mark article | 5700 |
| Abolishing elective office..... | 5686 | Re-weighing | 5701 |
| Bond of appointed weigher..... | 5687 | Suspension or dismissal..... | 5702 |
| Bond of elective weigher..... | 5688 | Factor or commission merchant..... | 5703 |
| Filing bond and oath of office..... | 5689 | Owner may weigh, etc..... | 5704 |
| Certificate of authority..... | 5690 | | |

Art. 5680. "Public weigher" defined.—Any person engaged in the business of public weighing for hire, or any person, who shall weigh or measure any commodity, produce or article, and issue therefor a weight certificate or weight sheet, which shall be accepted as the accurate weight upon which the purchase or sale of such commodity, produce or article is based, shall be known as a public weigher, and shall comply with the provisions of this chapter. The provisions of this article shall not apply to the owners, managers, agents or employees of any compress or any public warehouse in their operation as a warehouseman. This exemption shall not apply in any manner to any Texas port. [Acts 1919, p. 168.]

Art. 5681. [7828] [4308] Appointment.—The Governor is authorized and required to appoint five persons as public weighers in every city which receives annually one hundred thousand bales of cotton on sale or for shipment. In all cities and towns which receive as much as fifty thousand bales of cotton, twenty-five thousand tons of cotton seed; one hundred thousand bushels of grain or rice, one hundred thousand pounds of wool; five thousand barrels of sugar, or any other commodity in large quantities, it shall be lawful for the Governor to appoint a sufficient number of public weighers for such city or town to carefully and accurately weigh all produce tendered for the purpose of weighing for shipment. [Acts 1883, p. 83; Acts 1899, p. 264; Acts 1919, p. 124.]

Art. 5682. Recommendation for appointment.—No man shall be appointed as such weigher unless he shall receive the endorsement of the senator and a majority of the representatives from the senatorial district where such appointee would hold such office. [Acts 1919, p. 124.]

Art. 5683. [7828] [4308] Election.—In all counties in which there are no city or cities in which the Governor is authorized to appoint public weighers, there shall be elected at each general election a public weigher for each justice precinct in the manner and form governing the election of other precinct officers. The commissioners court at the regular February term

preceding the election may unite two or more justice precincts for the purpose of electing such public weighers. [Id.]

Art. 5683a. Office—in cities not less than 25,600 population.—In and for all counties in this State having a population, according to the United States census of 1920, of not less than 25,600 people and not more than 25,700 people, there is created the office of public weigher, whose official headquarters shall be at the county seat of such county and who shall discharge and perform at the county seat only, all the duties required by law of any public weigher, and whose qualifications shall be the same as required by law of public weighers elected in precincts, and who shall appoint a sufficient number of deputies to enable him to discharge his duties.

2. Such public weigher shall take the oath required by the Constitution of public officers, and shall give a bond in the sum of \$2,500.00, payable, conditioned and to be approved as required in cases of bonds of precinct public weighers, and shall procure a like certificate of authority from the Commissioner of Markets and Warehouses. The deputies of such public weigher shall take such oath and give bond in like manner, which bond, however, shall in the case of such deputies be in the sum of \$1,000.00.

3. At the first regular term of the commissioners' court of such counties, following the passage of this Act, such commissioners' court shall appoint a public weigher for its county, who shall serve until the next general election when his successor shall be elected.

4. This Act shall not be construed to suspend the operation of the present law, providing for the election of precinct public weighers, in the counties effected by this law.

Art. 5683b. Office—in cities not less than 55,700 population.—In and for all counties in this State having a population according to the United States census of 1920 not less than 55,700 and not more than 55,800 people, there is created the office of public weigher to be filled by two officers of equal rank, whose official headquarters shall be in the county seat of such county and who shall discharge and perform at the county seat only, all the duties required by law of any public weigher and whose qualifications shall be the same as required by law of public weighers elected in precincts, and who shall appoint a sufficient number of deputies to enable them to discharge their duties.

SEC. 2. Each of said public weighers shall take the oath required by the Constitution of public weighers and give a bond in the sum of \$2,500, payable, conditioned and to be approved as required in cases of bonds of precinct public weighers, and shall procure a like certificate of authority from the Commissioner of Markets and Warehouses.

SEC. 3. Such public weighers shall be elected by popular vote of the entire county as other county officers. One of said weighers shall fill a place called Place No. 1 and the other shall fill the place called Place No. 2.

SEC. 4. This Act shall not be construed to suspend the oper-

ations of the present law, providing for the election of precinct public weighers, in the counties affected by this law except precinct in which the county seat is located, and it shall not disturb the present public weighers but shall take effect December 1, 1926.

Art. 5684. [7828] [4308] Qualifications of weigher.—No person shall be appointed or elected public weigher unless he is a qualified voter in the city or precinct for which he is appointed or elected and is of a good moral character and unquestioned integrity. He shall have a fair education and be able to keep an accurate set of books as required by this law. No person shall be appointed or elected public weigher, or deputy public weigher who is interested in the buying or sale of cotton, wool, sugar or grain to be weighed, either as principal, agent, factor, commission merchant or employee. [Id.]

Art. 5685. Term and removal.—All public weighers appointed by the Governor or elected for any precinct shall hold their office for the term of two years. [Id.]

Art. 5686. Abolishing elective office.—When the people of any subdivision of a county that has an elective weigher may wish to abolish said office of public weigher, the commissioners court of said county shall, upon petition to abolish said office signed by qualified voters at least one-third in number of the whole vote cast for Governor at the last preceding election in the weigher's precinct, order an election to decide whether such office of public weigher of the subdivision named in the petition, shall be abolished or not. Said election shall be held in the same manner as other elections. If a majority of the votes of the subdivision of the county ordering said election shall be cast in favor of abolishing any office of public weigher, the commissioners court shall declare such office to be abolished within thirty days after the election; and another election for this purpose shall not be held for two years.

Art. 5687. Bond of appointed weigher.—Every public weigher appointed by the Governor, shall file a bond payable to the State of Texas in the sum of five thousand dollars, conditioned that he will accurately weigh, or measure all produce tendered to him for weighing or measuring, and that all certificates of weights issued by him shall represent a true and accurate weight of the produce so weighed and that he will comply with the laws governing public weighers, and that he will not permit any one to molest, mutilate or destroy any article, produce or commodity while in his possession. Such bond shall not be void on first recovery, but may be sued on by any person injured by such public weigher. All bonds given by such public weighers or their deputies shall be subject to approval by the Commissioner of Markets and Warehouses. [Acts 1919, p. 122.]

Art. 5688. [7829] Bond of elective weigher.—Each public weigher elected for a precinct shall execute a bond payable to the county judge in the sum of five thousand dollars to be approved by the commissioners court, conditioned upon the faithful and

impartial performance of the duties of his office. The bond of a weigher for a precinct where not over five thousand bales of cotton are received for sale or shipment shall be two thousand five hundred dollars. [Acts 1903, p. 216.]

Art. 5689. Filing bond and oath of office.—Each public weigher, whether elected or appointed, before entering upon his duties as such, shall take and subscribe to the official oath and file said oath and his bond with the county clerk of the county in which he resides. [Id.]

Art. 5690. Certificate of authority.—All public weighers or deputy public weighers, appointed or elected shall obtain from the Commissioner of Markets and Warehouses a certificate of authority to carry on the business of public weigher or deputy public weigher within the city, town, precinct or shipping point for which he was elected or appointed. [Acts 1919, p. 124.]

Art. 5691. Deputy weighers.—Each public weigher, appointed or elected, shall have the right, and it shall be his duty to appoint a sufficient number of deputies in each precinct, to weigh all produce tendered for the purpose of weighing, at any and all points within such precinct. He shall require of each of said deputies to file a bond in the penal sum of one thousand dollars, under the same terms and conditions as the bond which he filed with the commissioners court of the county in which he resides, before he shall be permitted to engage in the business of deputy public weigher; such bond so filed, shall be payable to the State of Texas, and shall be subject to the approval of the commissioners court of the county in which he resides, and certified to the Commissioner of Markets and Warehouses, before such deputy public weigher shall be entitled to engage in the business of public weighing. Such public weigher shall have the right to appoint a sufficient number of deputies to serve at will of the public weigher, to aid him in weighing or measuring any commodity that is tendered to him for weighing.

Art. 5692. Special weighers.—In all counties of this State in which there are two or more cities, towns or shipping points that receive as much as fifty thousand bales of cotton, or twenty-five tons of cotton seed, or one hundred thousand bushels of grain, or two hundred thousand bushels of rice, or one hundred thousand pounds of wool, or five thousand barrels of sugar, or any other commodity in large quantities, it shall be lawful for the Governor to appoint a sufficient number of weighers for such county to carefully and accurately weigh all commodities tendered for the purpose of weighing for shipment, sale or purchase. This article shall not apply to Galveston and Nueces counties. All such appointments shall be made by the Governor on the recommendation of the Senator from whose senatorial district such appointment is made, together with a majority of the representatives in the Legislature from such senatorial district. No man shall be appointed unless he shall receive the endorsement of the Senator and a majority of the representatives from such district. Every public weigher so appointed shall file a bond pay-

able to the State of Texas, in the sum of five thousand dollars, conditioned that he will accurately weigh, or measure, all commodities tendered to him in said county for weighing or measuring, and that all certificates of weight issued by him shall represent a true and accurate weight of such produce so weighed, and otherwise complying with the law governing the conditions of bonds required of public weighers. Such bond so given shall not be void upon first recovery but may be sued on successively by any and all persons who are injured by such public weigher. Such public weigher shall have the right to appoint a sufficient number of deputies to aid him in weighing or measuring any commodity that is tendered to him for weighing. All bonds given by such public weighers or their deputies shall be subject to the approval of the Commissioner of Markets and Warehouses, and all bonds and oaths of such public weighers or their deputies shall be filed with said Commissioner. [Acts 1st C. S. 1921, p. 35.]

Art. 5693. Must comply with law.—No one shall be allowed to pursue the business of weighing for the public or grant a certificate or weight sheet upon which a purchase or sale is made unless he comply with the provisions of this chapter. [Id. Acts 1919, p. 124.]

Art. 5694. Commissioner to supervise.—All public weighers in this State as provided for in this chapter, shall be under the supervision of the Commissioner of Markets and Warehouses and all weights made by them shall be subject to his approval. In any case where any discrepancy arises as to weights or measures of cotton or other farm products, made between public weighers in different sections of this State, or between public and private weighers, the difference shall be subject to review by the Commissioner; and any party who may be dissatisfied with the weights or measures of any public or private weigher, may appeal to the Commissioner, and have such cotton or other farm products re-weighed or re-measured, for the purpose of ascertaining and deciding the correct weight and measure thereof. The scales of all public and private weighers weighing cotton and other products shall at all reasonable times be subject to inspection by the Commissioner, or his duly authorized representative. Compliance with this article shall be absolute prerequisite to the right to institute and maintain any action concerning the subject matter hereof, in any court of this State. The authority herein conferred upon the Commissioner, to review the weights, shall not be construed as in any manner affecting the selection of public weighers or of fixing the charge to the public of such public weighers. [Acts 1st C. S. 1917, p. 68.]

Art. 5695. Duty of Commissioner.—The Commissioner of Markets and Warehouses shall issue a certificate of authority to all persons engaged in the business of weighing for the public; carefully and accurately test all scales, weights, beams and

measures, used by such public weighers at least once every twelve months, and charge such public weigher a fee of five dollars for such inspection, which fee shall be paid, by the Commissioner into the State Treasury; such inspection fee to be collected at the time of the certificate of authority is issued to any public weigher or deputy public weigher in this State, and such fee shall be collected annually thereafter from all persons engaged in the business of public weigher. [Id. p. 126.]

Art. 5696. Weight certificates.—The Commissioner shall prescribe the form of weight certificate to be used by all public weighers in this State, which certificate shall be known as a State certificate of Weights and Measures. Such certificate shall state thereon the kind of produce; the number of same, the date of the receipt of the produce, the owner, agent, or consignee, the total weight of the produce, the vessel, railroad, or other means by which the produce was received, and any trade or other mark thereon; and such other information as may be necessary to distinguish or identify the produce from a like kind. No certificate other than the one herein prescribed shall be used by any public weigher in this State, and such certificate when so made and properly signed, shall be prima facie evidence of such weight. All certificates of weights and measures or weight sheets as provided for in this chapter shall contain the accurate and correct weight of any and all commodities weighed when issued by public weighers. [Id. p. 126.]

Art. 5697. Seal.—Every public weigher in this State shall provide himself with a seal, consisting of a star of five points, and shall have inscribed on the outer margin thereof the words, "Public Weigher, Precinct No., County, Texas" or "Public Weigher, city, Texas" which seal shall be impressed upon each weight certificate issued by such public weigher, or deputy public weigher, on all weight sheets made out by them. [Id. p. 125.]

Art. 5698. Record of weights.—All public weighers shall keep and preserve in a well bound book a correct and accurate record of all weights by them, as provided in this chapter, which record shall at all times be open for inspection to the public and to the Commissioner of Markets and Warehouses, his deputies or inspectors. Such record shall be uniform throughout the State, and the form of such record shall be prescribed by the Commissioner. [Id.]

Art. 5699. Piled or stored separately.—All amounts, lots, or shipments or consignments of produce, after having been weighed, shall be piled or stored separately as nearly as can be, in order that amounts, lots, shipments or consignments, may be distinguished from other lots, shipments, or consignments of like kind. [Id. p. 127.]

Art. 5700. To tag or mark article.—All public weighers in weighing any commodity, produce, or article, shall immediately tag or mark such commodity, produce or article that has been

weighed by him so as to distinguish same from that which has not been weighed. [Id.]

Art. 5701. Re-weighing.—When any doubt or difference arises as to the correctness of the net or gross weight of any amount, or a part of a commodity, produce or article, for which a certificate of weight or measure has been issued, as provided in this State, by the public weigher, the owner, agent or consignee, may, upon complaint to the Commissioner of Markets and Warehouses, have said amount, or part of any commodity, produce or article re-weighed by the Commissioner, or his deputy, or by a public weigher designated by the Commissioner by depositing with the Commissioner sufficient money to defray the cost of re-weighing such article or commodity. If on re-weighing, it is discovered that fraud or carelessness, or any faulty weighing apparatus was the cause of a discrepancy in weights, the cost of re-weighing shall, in all instances, be borne by the public weigher who issued the weight sheet or weight certificate. [Id.]

Art. 5702. Suspension or dismissal.—Whenever any public weigher, or deputy public weigher appointed or elected under the provisions of this chapter shall be guilty of malfeasance in office, or who is grossly incompetent in the performance of his duties, he shall be subject to suspension or dismissal from office by the commissioners court of the county in which he resides, or by the Governor, should he be appointed by the Governor. In all cases it shall be the duty of the Commissioner of Markets and Warehouses, to file with the commissioners court or the Governor the specific charges alleging malfeasance, misfeasance, dishonesty or incompetency or other cause. Such case may be set down for hearing not less than ten nor more than thirty days from the filing of such charges. The accused shall be furnished a copy of such charges and be notified of the date set for hearing of his case. He shall have the right to be represented by an attorney, to introduce evidence in his own behalf, and to have compulsory process for witnesses and the production of records. If he is found guilty, the commissioners court or Governor shall immediately discharge him as a public weigher, provided, he may have the right of appeal to the district court of his county or to the district court of Travis county. [Id.]

Art. 5703. [7833] [4314] Factor or commission merchant.—It shall not be lawful for any factor, commission merchant, or other person or persons, to employ any other than a public weigher, or his deputies to weigh cotton, wool, sugar, hay, or grain, or other produce, sold or offered for sale in any city or justice precinct having a public weigher duly qualified. Whoever violates any provision of this article shall be liable at the suit of the public weigher to damages in any sum not less than five dollars for each bale of cotton, bale or sack of wool, ton of hay, or ton of grain, so unlawfully weighed. [Id.]

Art. 5704. [7834] [4316] Owner may weigh, etc.—Nothing in this chapter shall prevent any person, firm or corporation

from weighing his own cotton, wool, sugar, hay, grain or pecans in person. In places where there are no public weighers appointed or elected, any person who shall weigh cotton, wool, sugar, grain, hay, or pecans for compensation shall be required before weighing such produce to enter into a bond for twenty-five hundred dollars approved and payable as in case of public weighers referred to in this chapter, and conditioned that he will faithfully perform the duties of his office and turn over all property weighed by him on demand of the owner. This article shall not apply to merchant flouring mills. [Acts 1905, p. 117.]

CHAPTER SEVEN.

WEIGHTS AND MEASURES

| | Article | | Article |
|-------------------------------------|---------|--|---------|
| Commissioner to enforce law..... | 5705 | To supervise local sealers..... | 5722 |
| Expenses..... | 5706 | Duty of sealer and inspector..... | 5723 |
| Duty of Commissioner..... | 5707 | Sealing and marking..... | 5724 |
| Rules and regulations..... | 5708 | Subject to inspection..... | 5725 |
| Jurisdiction..... | 5709 | Testing weights and devices..... | 5726 |
| Same power as peace officer..... | 5710 | Marking and tagging..... | 5727 |
| Record of acts and reports..... | 5711 | Fees..... | 5728 |
| Test of standard..... | 5712 | Definitions..... | 5729 |
| To keep and maintain standards..... | 5713 | Legal standards..... | 5730 |
| Shall establish tolerances..... | 5714 | Standard of avoirdupois and troy weights..... | 5731 |
| Copies to cities..... | 5715 | Standard for liquids..... | 5732 |
| Correcting standards of cities..... | 5716 | Standard for solids..... | 5733 |
| Sale of false devices..... | 5717 | Weight per bushel, barrel or ton..... | 5734 |
| Certified standard..... | 5718 | Failure to regard unit of measure..... | 5735 |
| Copies of original standard..... | 5719 | This law to govern contracts..... | 5736 |
| Tests for State institutions..... | 5720 | | |
| Charges against city sealer..... | 5721 | | |

Art. 5705. Commissioner to enforce law.—The Commissioner of Markets and Warehouses shall have power and authority to enforce, or cause to be enforced, any provision of this chapter. He shall appoint a chief deputy, who shall be known as Chief Deputy of Weights and Measures. In the absence or inability of the Commissioner, such deputy may perform any duty required by the provisions of this chapter. The Commissioner shall also appoint such additional deputies from time to time to serve as sealers of weights and measures, as may be provided for by appropriation. He may also designate such inspectors, lecturers, or employes, serving under him as Commissioner, as sealers of weights and measures. [Acts 1919, p. 237.]

Art. 5706. Expenses.—Such deputies, together with the chief deputy and the Commissioner, shall be entitled to their actual traveling expenses when traveling on business for the State, and the Legislature shall provide from time to time by appropriation other estimated expenses to fully carry out the provisions of this chapter. [Id.]

Art. 5707. Duty of Commissioner.—The Commissioner shall investigate conditions throughout the State, and especially in all the cities and towns in the State, with respect to weights and measures, and the sale of goods, wares and merchandise, commodities, food stuff and feed stuff sold in packages or containers, and also all kinds of feed, fuel or ice that is sold by weight or measure. The Commissioner shall annually report

to the Governor, and shall, prior to each regular session of the Legislature, file a copy of such report made by him to the Governor, together with his recommendations, with the Legislature of the State. [Id.]

Art. 5708. **Rules and regulations.**—The Commissioner shall issue instructions and make such rules and regulations for the government of all State sealers of weights and measures, deputy sealers, inspectors and local sealers, as he may see proper in order to carry out the purposes of this chapter. All such rules and regulations so issued by him shall have the same force and effect as if they were enacted into law. [Id.]

Art. 5709. **Jurisdiction.**—The jurisdiction of all State sealers, deputy sealers and inspectors appointed by the Commissioner shall be co-extensive with the limits of the State and they shall have a right to inspect weights and measures in any and all districts or localities designated by the Commissioner. The jurisdiction of all local sealers of weights and measures appointed by the governing body of any city in this State shall be co-extensive with the limits of said city. [Id.]

Art. 5710. **Same power as peace officer.**—The Commissioner, his deputy, sealers or inspectors and all local sealers and their deputies in the performance of their official duties, shall have the same power as peace officers in this State. [Id.]

Art. 5711. **Record of acts and reports.**—The Commissioner shall keep in his office a complete record of all acts done by him; of all inspections made throughout the State, and a record of all prosecutions for the violation of any provision of this chapter. He shall keep an accurate record of the reports of all the various sealers of weights and measures, deputy sealers and inspectors appointed by him, or under his direction, as well as a record of the inspections of all local sealers of weights and measures appointed by the various cities of the State; such record shall always be open to the inspection of the public. Copies of such record may be had by application therefor, together with the necessary cost of making such copies. [Id.]

Art. 5712. **Test of standard.**—The standard of weights and measures received from the United States under a resolution of Congress, approved June 14, 1836, and such new weights and measures as shall be received from the United States as standard weights and measures in addition thereto, or in renewal thereof, and such as shall be procured by the State in conformity therewith and certified by the bureau of standards, shall be the State's standards by which all State and municipal standards of weights and measures shall be tried, authenticated, proved and sealed. [Id.]

Art. 5713. **To keep and maintain standards.**—The standards referred to in the preceding article shall be kept by the Commissioner in a safe and suitable place in his office, from which they shall not be removed except for repairs or certification. He shall maintain such standards in good order and shall submit

them, at least once in ten years to the National Bureau of Standards for certification. He shall purchase such apparatus as shall be found necessary to a proper prosecution of the work of the office. [Id.]

Art. 5714. Shall establish tolerances.—The Commissioner shall establish tolerances and specifications for commercial weighing and measuring apparatus for use in this State, similar to the tolerances and specifications recommended by the National Bureau of Standards and he may establish a standard net weight or net count of any commodity, produce, or article, and prescribe such tolerances for same as he may in his best judgment deem necessary for the proper protection of the public. [Id.]

Art. 5715. Copies to cities.—The Commissioner shall, at the request of any city council, town council, city commission or any other such town or city body, furnish to them copies of the standard weights and measures of the State; such copies shall be furnished at the expense of any such city or town requesting the same. He shall, upon request of any such city council, town council, or city commission, test and accurately approve copies of the State's standards of weights and measures procured for the use of any such city or town, to be used by the sealer of weights and measures for such city or town. All copies furnished or copies tested and approved by the Commissioner shall be true and correct; shall be sealed and certified by the Commissioner and stamped with the letter "C." Such copies need not be of the same material or construction as the standards of the State and such copies may be furnished in any suitable materials or construction that the city or town requiring the same may specify, subject, however, to the approval of the Commissioner. [Id.]

Art. 5716. Correcting standards of cities.—The Commissioner shall inspect and correct the standards used by any incorporated city or town in this State at least once every two years and compare the same with others in his possession, and keep a record of the state of inspection and character of weights and measures so compared. [Id.]

Art. 5717. Sale of false devices.—The Commissioner shall have general supervision over all weights and measures and weighing and measuring devices sold or offered for sale in this State. If any false weights or measures are being sold, offered for sale, or about to be sold, he shall have full authority to condemn same and prohibit the sale and distribution of such false weights and measures, or weighing and measuring devices in this State. [Id.]

Art. 5718. Certified standard.—All sealers of weights and measures, or deputy sealers of weights and measures appointed under the terms and provisions of this law are prohibited from using for the purpose of comparison or verification in any official capacity any weights or measures, unless same have been

certified to by the Commissioner. All expenses incurred in certifying to the correctness of the weights and measures or copies of the same used by any incorporated city or town in this State shall be paid by such city or town for whom the comparison or test is made. [Id.]

Art. 5719. Copies of original standard.—In addition to the standards heretofore referred to, and required to be kept by the State, the State shall also have a complete set of copies of such original standards of weights and measures adopted by this chapter, which shall be used for adjusting municipal standards by the Commissioner or his deputy in the performance of their duties, and the original standards shall not be used, except for the adjustment of this set of copies and for certification purposes. Additional complete sets of copies for such original standards of weights and measures may be purchased by the Commissioner when the same are necessary for use by any State sealer of weights and measures, or deputy State sealer of weights and measures. In all instances where the State shall furnish true and correct copies of weights and measures for the use of any incorporated city or town in this State, such city or town shall reimburse the State for the actual cost thereof, plus such expenses as are necessary to pay the freight, express and cost of certification thereof. [Id.]

Art. 5720. Tests for State institutions.—The Commissioner or his deputy shall at least once annually, or oftener if requested so to do by the Board of Control, or board of supervisors, regents or other governing body of any State institution or penitentiary commission or the governing body of any other penal institution of the State, test all scales, weights and measures used in checking the receipt and distribution of supplies of any such institution under the control of the State, and shall report his findings to the Chairman of the Board, or the superintendent of such institution. He shall also test all scales, weights and measures used for any other purpose by such institution. [Id.]

Art. 5721. Charges against city sealer.—The Commissioner, if he finds that any sealer or deputy sealer of weights and measures appointed by any incorporated city or town in this State, by virtue of the authority given them under the law, is neglecting to perform the duties of his office, or has refused to accept the recommendations and instructions of the Commissioner and be guided thereby, or is guilty of any malfeasance in office, or who is incompetent, he shall present to the governing body or officer who has control or supervision of such city sealer of weights and measures, or deputy sealer of weights and measures, a written charge and accusation based upon and clearly stating the offense of such sealer or deputy sealer and request such officer or governing body to hear and determine such accusation. Upon receipt of such charge and accusation, such officer or city commission with whom the same has been

filed, shall make an order setting the same for a hearing at a time which shall be not less than ten nor more than twenty days from the date of filing of such charge and accusation and shall in such order fix the time and place for such hearing. A copy of such charge and accusation, together with a copy of such order, shall be served upon the accused at least seven days prior to the time fixed for such hearing. At such hearing the accused shall have the right to be represented by counsel and to produce evidence in his defense. If, upon such hearing, he shall be found guilty of malfeasance, or misfeasance in office or adjudged to be incompetent to perform the duties of the office, the officer or governing body before whom such hearing is had must forthwith remove him from office. Whenever it shall become known to the Commissioner or his deputy that any local sealer of weights and measures for any city or town in this State, or deputy sealer of weights and measures, is guilty of accepting any bribe, gift or money from any one who is interested in procuring false weights and measures, as soon as such fact shall become known, or be made known to the officer or governing body employing such sealer or deputy sealer, he or they shall immediately suspend such sealer from office. [Id.]

Art. 5722. To supervise local sealers.—Every local sealer of weights and measures, or deputy sealer, appointed by any governing body of any town or city shall be under the supervision of the Commissioner, and shall be required to report to him regularly and carry out all the instructions of the Commissioner. Failure or refusal to do so shall be grounds for dismissal from the service. [Id.]

Art. 5723. Duty of sealer and inspector.—Each sealer of weights and measures, deputy sealer, inspector, or local sealer shall carefully preserve all copies of the standards of weights and measures used by him in his inspection work, and keep the same safe and in good order, when not in actual use. He shall keep a record of all work done by him showing the inspections made, for whom made, giving the name and post-office address of each party for whom any measurement, test weight, inspection, condemnation or prosecution is made; such record shall be preserved by him, from which he shall compile his reports at regular intervals to the Commissioner when required to make a report. He shall keep a careful record of all violations of the weights and measures law and report in detail to the Commissioner. [Id.]

Art. 5724. Sealing and marking.—Every person, firm or corporation, or association of persons, using or keeping for use, or having or offering for sale, weights, scales, beams or measures of any kind, instruments or mechanical devices for weighing or measuring, and tools, appliances and accessories connected with any or all of such instruments or measurements within this State, shall cause the same to be sealed and marked by the sealer of weights and measures as to their correctness, and no instru-

ment shall be sold for the purpose of weighing or measuring unless it shall bear the seal of the inspector of weights and measures as to its correctness. [Id.]

Art. 5725. Subject to inspection.—When any weight, scale, beam, measure of any kind, instrument or mechanical device for weighing or measuring; also all tools and appliances necessary or connected with any such instruments of measure have been tested and found correct by any sealer appointed under the provisions of this chapter, the same may be used, kept for use, offered for sale, sold or kept for sale anywhere within this State for one year without being further tested. Any weight, scale, beam, measures of every kind, instruments or mechanical devices for weighing or measuring, or appliances and accessories connected with any or all of such instruments or measure, which have been tested and sealed and certified as correct by the National Bureau of Standards may be kept for sale, sold or offered for sale without being tested and sealed by a sealer under the provisions of this chapter, but all such weights, scales, beams, measures or any kind, instruments or mechanical devices for weighing or measuring; also all tools and appliances necessary connected with any or all of such instruments or measures shall always be subject to inspection and testing as herein provided, notwithstanding that the same have been tested and sealed, either by a sealer appointed under the provisions of this chapter, or by the National Bureau of Standards. Any scale, beam or mechanical device for weighing or measuring, which, after being sold, and before being used for weighing and measuring, is found necessary to assemble and set up, may be sold, kept for sale or offered for sale without first being tested and sealed, but such scale, beam or measuring device for weighing or measuring, before being used for weighing or measuring, without the consent of the Commissioner, must be tested and sealed as provided in this chapter. [Id.]

Art. 5726. Testing weights and devices.—All sealers, deputy sealers, inspectors, and local sealers shall inspect, try and test all weights, scales, beams, measures of any kind, instruments or mechanical devices for weighing or measuring and all tools, appliances and accessories connected with any or all such instruments or measures kept for the purpose of sale, sold or used by any proprietor, agent, lessee or employee in proving the size, quantity, extent, area, weight or measurement of quantities, things, produce, articles for distribution or consumption, purchased or offered or submitted by such person or persons for sale, hire, or award, and ascertain if the same are correct, and he shall have the power to and shall from time to time weigh or measure packages or amounts of commodities of whatsoever kind kept for the purpose of sale, offered for sale or sold, or in the process of delivery, in order to determine whether the same contains the quantity or amount represented and whether they are being offered for sale or sold in accordance with law and may

seize for use as evidence such amounts of commodities or packages which shall be found to contain a less amount than that represented. He shall at least once each year, or as much oftener as may be found necessary, and directed by the Commissioner, see that the weights, measures and all weighing and measuring apparatus, used in any locality to which he is assigned for the purpose of inspection, are correct. All local sealers of weights and measures shall test at least once each year all scales, weights and measures of every kind and device within any such city to which they are appointed, and oftener, if required so to do. Any sealer, or deputy sealer, or inspector for the purposes above mentioned, and in the general performance of his duty may, without warrant, enter, go into or upon any stand, place, building or premises, or stop any vendor, peddler, junk dealer, driver of a coal wagon, ice wagon or delivery wagon or the driver of any wagon containing commodities for sale or delivery, and if necessary require him to proceed to some place which the sealer may specify for the purpose of making the proper tests. [Id.]

Art. 5727. **Marking and tagging.**—Whenever a sealer, deputy sealer, or inspector of weights and measures compares weights and measures, or weighing or measuring instruments and finds that they correspond, or causes them to correspond to the standards, he shall seal or mark under his name such weight or measure or weighing or measuring instrument with an appropriate device showing that the weight or measure, or weighing or measuring instrument is correct, and the date of the inspection, which device shall be placed so as to be easily seen. He shall condemn and seize and may destroy incorrect weights and measures and weighing and measuring instruments, which in his best judgment are not susceptible of repair, but any weights and measures, or weighing or measuring instruments which shall be found to be incorrect, but which, in his best judgment are susceptible of repair, he shall cause to be marked with a tag or other suitable device with the words "Out of Order." The owner or user of any weights or measures, or weighing or measuring instruments, which have been marked "Out of Order," as in this article provided, may have the same repaired or corrected within thirty days, but until the same have been repaired or corrected and tested as herein provided, the owner or user thereof must neither use nor dispose of the same in any way, but shall hold the same at the disposal of the Commissioner or any deputy or local sealer. When the same have been repaired or corrected, the owner or user thereof shall notify the Commissioner or his deputy or local sealer and they shall again be tested for the purpose of proving the weight, measure or weighing or measuring instrument which had been found to be incorrect and marked as in this article, and until such weight, measure or weighing or measuring instrument has been re-inspected by the sealer and found correct, the same shall not be used or in any way disposed

of by the owner. When any weight, measure or weighing or measuring instrument has been repaired and corrected, and has been re-inspected and found correct by the sealer of weights and measures, the sealer of weights and measures shall remove the tag or device with the words "Out of Order" and shall mark such weight, measure or weighing or measuring instrument in the manner provided for the marking of same where upon inspection they were found to be correct. [Id.]

Art. 5728. **Fees.**—The Commissioner shall have the right and power to fix and collect a nominal fee for testing all weights, scales, beams and any kind of instruments or mechanical devices for weighing or measuring; all tools, appliances and accessories connected with all such instruments before they are offered for sale; such fee, however, to be reasonable and to be graduated according to the cost of such instrument, and it shall be unlawful for anyone to sell any weights, scales, beams, measuring instruments or mechanical devices for weighing or measuring, or to lease or rent same, unless such instruments have been duly inspected, tested and approved by the Commissioner, or one of his duly accredited deputies. All moneys collected by the Commissioner shall be paid into the State Treasury. [Id.]

Art. 5729. **Definitions.**—The word "person," whenever used in this chapter, shall be deemed to include person, firm or corporation and all officers, directors and managers of corporations shall comply with the provisions of this chapter on behalf of their respective corporations. [Id.]

Art. 5730. **Legal standards.**—The standard of weights and measures adopted and used by the Government of the United States is hereby declared the legal standard of weights and measures of this State; provided, that as to commodities for which the Congress of the United States provided no standard of weights or measures, the standards adopted by this State shall be the standards of weights and measures for such commodities. The unit of standard of length and surface, from which all the other measures of extension, whether lineal, superficial or solid, shall be derived and ascertained, is the standard yard designated in this chapter, which is divided into three equal parts called feet, and each foot into twelve equal parts called inches. For measures of cloth, and other commodities commonly sold by the yard, it may be divided into halves, quarters, eighths and sixteenths. The rod, pole or perch contains five and one-half yards; the mile one thousand seven hundred and sixty yards. The Spanish vara, thirty-three and one-third inches. Where land is measured by the English rule, the chain for measuring land shall be twenty-two yards long and divided into one hundred equal parts called links. The acre for land measure shall be measured horizontally and shall contain forty eight hundred and forty square yards; six hundred and forty acres shall constitute a square mile. [Acts 1919, p. 232.]

Art. 5731. Standard of avoirdupois and troy weights.—The units or standards of weight from which all the other weights shall be derived and ascertained shall be the standard of avoirdupois and troy weights designated in this chapter, and avoirdupois pounds shall bear to the troy pounds the ratio of seven thousand to five thousand seven hundred and sixty grains, and the avoirdupois pound shall be divided into sixteen equal parts called ounces. The hundred weight shall consist of one hundred avoirdupois pounds, and twenty hundred weight shall constitute a ton. The troy ounce shall be one twelfth of a troy pound. [Id.]

Art. 5732. Standard for liquids.—The units or standards of measure of capacity for liquids from which all other measures shall be derived and ascertained, shall be the standard gallon and its parts designated in this chapter. The barrel shall constitute thirty-one and one-half gallons and two barrels shall make a hogshead. All other measures of capacity for liquids shall be derived from the liquid gallon by continual division by the number two, so as to make half gallons, quarts, pints, half pints and gills. [Id.]

Art. 5733. Standard for solids.—The unit or standard measure of capacity for substance not liquids, from which all measures of such substance shall be derived and ascertained, is the standard half bushel mentioned in this chapter. The peck, half peck, quarter peck, quart and pint measure for measuring commodities which are not liquid shall be derived from the half bushel by successively dividing that measure by two. The standard bushel measure shall constitute two thousand one hundred fifty and forty-two one hundredths cubic inches; the standard half-bushel measure shall contain ten hundred seventy-five and twenty one-hundredths cubic inches; the standard gallon shall contain two hundred thirty-one cubic inches. All measures for measuring dry commodities shall not be heaped but shall be stricken with a straight stick or roller. [Id.]

Art. 5734. Weight per bushel, barrel or ton.—Whenever any of the following articles shall be contracted for, sold or delivered, the weight per bushel or barrel or divisible merchantable quantities of a bushel or barrel shall be as follows: Wheat flour, per barrel 200 pounds; half barrel sack 100 pounds; quarter barrel sack 50 pounds; eighth barrel sack 25 pounds. Corn meal, per bushel sack 50 pounds; half bushel sack 25 pounds; quarter bushel sack $12\frac{1}{2}$ pounds. Alfalfa Seed, per bushel 60 pounds. Apples, green, per bushel 50 pounds; dried, per bushel 28 pounds. Barley, per bushel 48 pounds. Beans, green or string, per bushel 24 pounds; wax, per bushel 24 pounds; white, per bushel 60 pounds; castor, per bushel 46 pounds. Beets, per bushel 60 pounds. Blue Grass Seed, per bushel 14 pounds. Bran, per bushel 20 pounds by the 100 pounds in 100 pound bags. Buckwheat, per bushel 52 pounds. Carrots, per bushel 50 pounds. Charcoal, per bushel 22 pounds. Clover seed, per

bushel 60 pounds. Coal, anthracite, per bushel 80 pounds. Coke, per bushel 40 pounds. Broomcorn Seed, per bushel 48 pounds. Corn meal unbolted, per bushel 48 pounds. Corn, in the ear, per bushel 70 pounds, after December 1st; New crop, before December 1st., 72 pounds; Corn, shelled, per bushel 56 pounds; Kaffir Corn, per bushel 50 pounds. Cotton Seed, per bushel 32 pounds; by the ton, 2000 pounds. Cranberries, per bushel 33 pounds. Cucumbers, per bushel 48 pounds. Flax Seed, per bushel 56 pounds. Gooseberries, per bushel 40 pounds. Hair, plastering, unwashed, per bushel 8 pounds; washed, per bushel 4 pounds. Hemp Seed, per bushel 44 pounds. Hickory Nuts, per bushel 50 pounds. Hungarian Grass Seed, per bushel 48 pounds. Indian Corn or maize, per bushel 56 pounds. Lime, unslacked, per barrel 180 pounds net; hydrated, per sack 100 pounds net; hydrated per bag 40 pounds net; agricultural, per sack 100 pounds net; agricultural, per bag 50 pounds net. Milo Maize, per bushel 50 pounds. Millet, per bushel 50 pounds; Japanese barnyard, per bushel 35 pounds. Oats, per bushel 32 pounds. Onions, per bushel 57 pounds. Onion sets, top, per bushel 30 pounds; bottom, per bushel 32 pounds. Orchard Grass Seed, per bushel 14 pounds. Parsnips, per bushel 50 pounds. Peaches, per bushel 50 pounds; dried, per bushel 28 pounds. Peanuts, green, per bushel 22 pounds, Georgia or Virginia; Spanish, per bushel 24 pounds; roasted, per bushel 20 pounds. Pears, per bushel 58 pounds. Peas, dried, per bushel 60 pounds; green, in pod, per bushel 32 pounds. Popcorn, in ear, per bushel 70 pounds; shelled, per bushel 56 pounds. Potatoes, Irish, per bushel 60 pounds; sweet, per bushel 50 pounds. Quinces, per bushel 48 pounds. Rape Seed, per bushel 50 pounds. Red Top Seed, per bushel 14 pounds. Rice Bran, per sack 143 pounds; Rice polish, per sack 200 pounds; Rough Rice, per bushel 45 pounds. Rutabagas, per bushel 50 pounds. Rye Meal, per bushel 50 pounds. Rye, per bushel 56 pounds. Salt, coarse, per bushel 55 pounds; fine, per bushel 50 pounds. Shorts, per bushel, 20 pounds; by 100 pounds in 100 pound bags. Sorghum Seed, per bushel 50 pounds. Sudan Grass Seed, No. 1, per bushel 32 pounds; No. 2, per bushel 30 pounds. Sudan Grass Seed, No. 3, per bushel 28 pounds. Spinach, per bushel 12 pounds. Sweet clover seed, unhulled, per bushel 23 pounds. Timothy seed, per bushel 45 pounds. Tomatoes, per bushel 56 pounds. Turnips, per bushel 55 pounds. Walnuts, per bushel 50 pounds. Wheat, per bushel 60 pounds.

Whenever any commodity is sold by the cord it shall mean 128 cubic feet, or the contents of a space eight feet long, four feet wide and four feet high. Whenever anything is sold by the ton, it shall mean two thousand pounds avoirdupois. Whenever any of the following articles are sold by the cubic yard, and the same are weighed, the following weights shall govern: Torpedo sand or gravel, 3,000 pounds equal one cubic yard, and 2,500

pounds of bank sand equals one cubic yard. [Acts 1907, p. 244; Acts 1919, p. 233.]

Art. 5735. Failure to regard unit of measure.—Whoever in buying any of the articles mentioned in the preceding article shall take any greater number of pounds thereof to the bushel, barrel or cubic yard, or divisible, merchantable quantity of bushel, barrel, cubic yard, or lineal yard, or in selling any of said articles shall give any less number of pounds thereof to the bushel, barrel, cubic or lineal yard than is allowed by the laws of this State, with intent to gain an advantage thereby, shall be liable to the party injured in double the amount of the property wrongfully taken, or not given. This article does not apply to cases where the buyer or seller is expressly authorized by special contract or agreement to take more or give less of such articles. [Id.]

Art. 5736. This law to govern contracts.—All contracts hereafter to be executed and made within this State for any work to be done, or for anything to be sold, delivered, done or agreed for, by weight or measure, shall be construed to be made according to the standard weight and measure ascertained as hereinbefore provided, unless there is an express contract to the contrary. In making any adjustment of weights or measures under the laws of this State, the standard given in this chapter shall be taken as the guide for making such adjustment. [Id.]

CHAPTER EIGHT.

MARKETING ASSOCIATIONS.

| | Article | | Article |
|---|---------|--|---------|
| Declaration of policy..... | 5737 | Referendum | 5752 |
| Definitions | 5738 | Marketing contract | 5753 |
| Who may organize..... | 5739 | Purchasing business of others..... | 5754 |
| Purposes | 5740 | Annual reports | 5755 |
| Preliminary investigation | 5741 | Conflicting laws not to apply..... | 5756 |
| Powers | 5742 | Bond | 5757 |
| Members | 5743 | Interest in other corporations or | |
| Articles of Incorporation | 5744 | associations | 5758 |
| Amendments to Articles of Incorporation | 5745 | Contracts and agreement with | |
| By-laws | 5746 | other associations | 5759 |
| General and special meetings | 5747 | Association heretofore organized..... | 5760 |
| Directors—Election | 5748 | Breach of contract or false reports..... | 5761 |
| Election of officers | 5749 | Associations not in restraint of | |
| Stock—Membership Certificates | 5750 | trade | 5762 |
| Removal of officer or director..... | 5751 | Application of general laws..... | 5763 |
| | | Fees | 5764 |

Art. 5737. Declaration of policy.—In order to promote, foster and encourage the intelligent and orderly marketing of agricultural products through co-operation and to eliminate speculation and waste; and to make the distribution of agricultural products as direct as can be efficiently done between producer and consumer; and to stabilize the marketing problems of agricultural products, this law is passed. [Acts 1921, p. 45.]

Art. 5738. Definitions.—(a) The term “Agricultural products” shall include horticultural, viticultural, forestry, dairy, livestock, poultry, bee and any farm and ranch products; (b) the term “member” shall include actual members of associations without capital stock and holders of common stock in asso-

ciations organized with capital stock; (c) the term "association" means any corporation organized under this Act; and (d) the term "person" shall include individuals, firms, partnerships, corporations and associations. Associations organized hereunder shall be deemed non-profit, inasmuch as they are organized not to make profits for themselves, as such, or for their members, as such, but only for their members as producers. This Act shall be referred to as the "Co-operative Marketing Act." [Id.]

Art. 5739. Who may organize.—Five or more persons engaged in the production of agricultural products may form a non-profit co-operative association, with or without capital stock, under the provisions of this chapter. [Id.]

Art. 5740. Purposes.—An association may be organized to engage in any activity in connection with the marketing or selling of the agricultural products of its members, or with the harvesting, preserving, drying, processing, canning, packing, storing, handling, shipping, or utilization thereof, or the manufacturing or marketing of the by-products thereof; or in connection with the manufacturing, selling or supplying to its members of machinery, equipment or supplies; or in the financing of the above enumerated activities; or in any one or more of the activities specified herein. [Id.]

Art. 5741. Preliminary investigation.—Every group of persons contemplating the organization of an association under this chapter is urged to communicate with the Commissioner of Markets and Warehouses, who will inform it, whatever a survey of the marketing conditions affecting the commodities to be handled by the proposed association indicates, regarding probable success. [Id.]

Art. 5742. Powers.—Each association incorporated under this chapter shall have the following powers:

(a) To engage in any activity in connection with the marketing, selling, harvesting, preserving, drying, processing, canning, packing, storing, handling or utilization of any agricultural products produced or delivered to it by its members, or the manufacturing or marketing of the by-products thereof or in connection with the purchase, hiring, or use by its members of supplies, machinery or equipment, or in the financing of any such activities; or in any one or more of the activities specified in this article. No association, however, shall handle the agricultural products of any non-member.

(b) To borrow money and make advances to members.

(c) To act as the agent or representative of any member or members in any of the above mentioned activities.

(d) To purchase or otherwise acquire, and to hold, own and exercise all rights of ownership in, and to sell, transfer, or pledge shares of the capital stock or bonds of any corporation or association engaged in any related activity or in the handling or marketing of any of the products handled by the associa-

tion. (e) To establish reserves and to invest the funds thereof in bonds or such other property as may be provided in the by-laws. (f) To buy, hold and exercise all privileges of ownership over such real or personal property as may be necessary or convenient for the conducting and operation of any of the business of the association or incidental thereto. (g) To do each and everything necessary, suitable or proper for the accomplishment of any one of the purposes or the attainment of any one or more of the objects herein enumerated; or conducive to or expedient for the interest or benefit of the association; and to contract accordingly; and in addition to exercise and possess all powers, rights and privileges necessary or incidental to the purposes for which the association is organized or to the activities in which it is engaged; and in addition, any other rights, powers and privileges granted by the laws of this State to ordinary corporations, except such as are inconsistent with the express provisions of this Act; and to do any such thing anywhere. [Id.]

Art. 5743. Members.—(a) Under the terms and conditions prescribed in its by-laws, an association may admit as members, or issue common stock, only to persons engaged in the production of the agricultural products to be handled by or through the association, including the lessees and tenants of land used for the production of such products and any lessors and landlords who receive as rent part of the crop raised on the leased premises. (b) If a member of a non-stock association be other than a natural person, such member may be presented by any individual, associate officer or member thereof, duly authorized in writing. (c) One association organized hereunder may become a member or stockholder of any other association or associations organized hereunder. [Id.]

Art. 5744. Articles of incorporation.—Each association formed under this Act must prepare and file Articles of Incorporation, setting forth: (a) The name of the association. (b) The purposes for which it is formed. (c) The place where its principal business will be transacted. (d) The term for which it is to exist, not exceeding fifty years. (e) The number of directors thereof, which must not be less than five and may be any number in excess thereof, and the term of office of such directors. (f) If organized without capital stock, whether the property rights and interests of each member shall be equal or unequal; and if unequal, the Articles shall set forth the general rule or rules applicable to all members by which the property rights and interests, respectively, of each member may and shall be determined and fixed; and the association shall have the power to admit new members who shall be entitled to share in the property of the association with the old members, in accordance with such general rule or rules. This provision of the Articles of Incorporation shall not be altered, amended, or repealed except by the written consent or

the vote of three-fourths of the members. (g) If organized with capital stock, the amount of such capital stock and the number of shares into which it is divided and the par value thereof. The capital stock may be divided into preferred and common stock. If so divided, the Articles of Incorporation must contain a statement of the number of shares of stock to which preference is granted and the number of shares of stock to which no preference is granted and the nature and extent of the preference and privileges granted to each. The Articles must be subscribed by the incorporators and acknowledged by one of them before an officer authorized by the law of this State to take and certify acknowledgments of deeds and conveyances; and shall be filed in accordance with the provisions of the general corporation law of this State; and when so filed the said Articles of Incorporation, or certified copies thereof, shall be received in all courts of this State, and other places, as prima facie evidence of the facts contained therein, and of the due incorporation of such association. A certified copy of the Articles of Incorporation shall also be filed with the Commissioner of Markets and Warehouses. [Id.]

Art. 5745. Amendments to articles of incorporation.—The Articles of Incorporation may be altered or amended at any regular meeting or at any special meeting called for that purpose. An amendment must first be approved by two-thirds of the directors and then adopted by a vote representing a majority of all the members of the Association. Amendments to the Articles of Incorporation when so adopted shall be filed in accordance with the provisions of the general corporation law of this State. [Id.]

Art. 5746. By-laws.—Each association incorporated under this Act must, within thirty days after its incorporation, adopt for its government and management, a code of by-laws, not inconsistent with the powers granted by this law. A majority vote of the members or stock-holders, or their assent, is necessary to adopt such by-laws. Each association under its by-laws may also provide for any or all of the following matters: (a) The time, place and manner of calling and conducting its meetings. (b) The number of stock-holders or members constituting a quorum. (c) The right of members or stock-holders to vote by proxy or by mail, or by both, and the conditions, manner and effects of such votes. (d) The number of directors constituting a quorum. (e) The qualifications, compensation and duties and term of office of directors and officers; time of their election and the mode and manner of giving notice thereof. (f) Penalties for violations of the by-laws. (g) The amount of entrance, organization and membership fees, if any; the manner and method of collection of the same, and the purposes for which they must be used. (h) The amount which each member or stock-holders shall be required to pay annually or from time to time, if at all, to carry on the business of the association; the

charge, if any, to be paid by each member or stock-holder for services rendered by the association to him and the time of payment and the manner of collection; and the marketing contract between the association and its members or stock-holders which every member or stock-holder may be required to sign. (i) The number and qualification of members or stock-holders of the association and the conditions precedent to members of ownership of common stock; the method, time and manner of permitting members to withdraw or the holders of common stock to transfer their stock; the manner of assignment and transfer of the interest of members, and of the shares of common stock; the conditions upon which, and time when membership of any member shall cease. The automatic suspension of the rights of a member when he ceases to be eligible to membership in the association, and mode, manner and effect of the expulsion of a member; manner of determining the value of a member's interest and provision for its purchase by the association upon the death or withdrawal of a member or stockholder, or upon the expulsion of a member or forfeiture of his membership, or, at the option of the association, by conclusive appraisal by the board of directors. In case of the withdrawal or expulsion of a member, the board of directors shall equitably and conclusively appraise his property interests in the association and shall fix the amount thereof in money, which shall be paid to him within one year after such expulsion or withdrawal. [Id.]

Art. 5747. **General and special meetings.**—In its by-laws each association shall provide for one or more regular meetings annually. The board of directors shall have the right to call a special meeting at any time, and ten per cent of the members or stock-holders may file a petition stating the specific business to be brought before the association and demand a special meeting at any time. Such meeting must thereupon be called by the directors. Notice of all meetings, together with a statement of the purposes thereof, shall be mailed to each member at least ten days prior to the meeting. The by-laws may require instead that such notice may be given by publication in a newspaper of general circulation published at the principal place of business of the association. [Id.]

Art. 5748. **Directors—Election.**—The affairs of the association shall be managed by a board of not less than five directors, elected by the members or stock-holders from their own number. The by-laws may provide that the territory in which the association has members shall be divided into districts and that the directors shall be elected according to such districts. In such a case the by-laws shall specify the number of directors to be elected by each district, the manner and method of re-apportioning the directors and of re-districting the territory covered by the association. The by-laws may provide that primary elections should be held in each district to elect the directors apportioned to such districts and the result of all such primary elec-

tions must be ratified by the next regular meeting of the association. An association may provide a fair remuneration for the time actually spent by its officers and directors in its service. No director, during the term of his office, shall be a party to a contract for profit with the association differing in any way from the business relations accorded regular members or holders of common stock of the association, or to any other kind of contract differing from terms generally current in that district. When a vacancy on the board of directors occurs, other than by expiration of term, the remaining members of the board, by a majority vote, shall fill the vacancy, unless the by-laws provide for an election of directors by district. In such a case the board of directors shall immediately call a special meeting of the members or stock-holders in that district to fill the vacancy. [Id.]

Art. 5749. Election of officers.—The directors shall elect from their number a president and one or more vice-presidents. They shall also elect a secretary and treasurer, who need not be a director, and they may combine the two latter offices and designate the combined office as secretary-treasurer. The treasurer may be a bank or any depository, and as such shall not be considered as an officer but as a function of the board of directors. In such case the secretary shall perform the usual accounting duties of the treasurer, excepting that the funds shall be deposited only as authorized by the board of directors. [Id.]

Art. 5750. Stock—Membership Certificates.—When a member of an association established without capital stock, has paid his membership fee in full, he shall receive a certificate of membership. No association shall issue stock to a member until it has been fully paid for. The promissory notes of the members may be accepted by the association as full or partial payment. The association shall hold the stock as security for the payment of the note, but such retention as security shall not affect the members' right to vote. Except for debts lawfully contracted between him and the association, no member shall be liable for the debts of the association to an amount exceeding the sum remaining unpaid on his membership fee or his subscription to the capital stock, including any unpaid balance on any promissory notes given in payment thereof. No stock-holder of a co-operative association shall own more than one-twentieth of the issued common stock of the association; and an association, in its by-laws, may limit the amount of common stock which one member may own to any amount less than one-twentieth of the issued common stock. No member or stock-holder shall be entitled to more than one vote. Any association organized with stock, under this law may issue preferred stock, with or without the right to vote. Such stock may be redeemable or retirable by the association on such terms and conditions as may be provided for by the Articles of Incorporation and printed on the face of the certificate. The by-laws shall prohibit the transfer of the common stock of the association to persons not engaged in the pro-

duction of the agricultural products handled by the association, and such restrictions must be printed upon every certificate of stock subject thereto. The association may at any time except when the debts of the association exceed fifty per cent of the assets thereof, buy in or purchase its common stock at book value thereof as conclusively determined by the board of directors and pay for it in cash within one year thereafter. [Id.]

Art. 5751. Removal of officer or director.—Any member may bring charges against an officer or director by filing them in writing with the secretary of the association, together with a petition signed by ten per cent of the members, requesting the removal of the officer or director in question. The removal shall be voted upon at the next regular or special meeting of the association, and by a vote of a majority of the members, the association may remove the officer or director and fill the vacancy. The director or officer against whom such charges have been brought shall be informed in writing of the charges previous to the meeting and shall have an opportunity at the meeting to be heard in person or by counsel and to present witnesses; and the person or persons bringing the charges against him shall have the same opportunity. In case the by-laws provide for election of directors by districts with primary elections in each district, then the petition for removal of a director must be signed by twenty per cent of the members residing in the district from which he was elected. The board of directors must call a special meeting of the members residing in that district to consider the removal of the director. By a vote of the majority of the members of that district, the director in question shall be removed from office. [Id.]

Art. 5752. Referendum.—Upon demand of one-third of the entire board of directors, any matter that has been approved or passed by the board must be referred to the entire membership or the stockholders for decision at the next special or regular meeting. A special meeting may be called for that purpose. [Id.]

Art. 5753. Marketing contract.—The association and its members may make and execute marketing contracts, requiring the members to sell, for a period of time, not over ten years, all or any specified part of their agricultural products or specified commodities exclusively to or through the association or any facilities to be created by the association. The contract may provide that the association may sell or resell the products of its members, with or without taking title thereto; and pay over to its members the resale price, after deducting all necessary selling, overhead and other costs and expenses, including interest on preferred stock, not exceeding eight per cent per annum,^o and reserves for retiring the stock, if any, and other proper reserves; and interest not exceeding eight per cent per annum upon common stock. The by-laws and the marketing contract may fix, as liquidated damages, specific sums to be paid by the

member or stockholder to the association upon the breach by him of any provisions of the marketing contract regarding the sale or delivery or withholding of products; and may further provide that the member will pay all costs, premiums for bonds, expenses and fees in case any action is brought upon the contract by the association; and any such provisions shall be valid and enforceable in the courts of this State. In the event of any breach or threatened breach of such marketing contract by a member, the association shall be entitled to an injunction to prevent the further breach of the contract and to a decree of specific performance thereof. Pending the adjudication of such an action and upon filing a verified complaint showing the breach or threatened breach, and upon filing a sufficient bond, the association shall be entitled to a temporary restraining order and preliminary injunction against the member. [Id.]

Art. 5754. Purchasing business of others.—Whenever an association organized hereunder with preferred capital stock, shall purchase the stock or any property, or any interest in any property of any person, firm, or corporation or association, it may discharge the obligations so incurred, wholly or in part, by exchanging for the acquiring interest, shares of its preferred capital stock to an amount which at par value would equal a fair market value of the stock or interest so purchased, as determined by the board of directors. In that case the transfer to the association of the stock or interest purchased shall be equivalent to payment in cash for the shares of stock issued. [Id.]

Art. 5755. Annual reports.—Each association formed under this Act shall prepare and make out an annual report on forms furnished by the Commissioner of Markets and Warehouses, containing the name of the association, its principal place of business and a general statement of its business operations during the fiscal year, showing the amount of capital stock paid up and the number of stockholders of a stock association or the number of members and amount of membership fees received, if a non-stock association; the total expenses of operation; the amount of its indebtedness, or liability, and its balance sheets. [Id.]

Art. 5756. Conflicting laws not to apply.—Any provision of law which is in conflict with this chapter shall not be construed as applying to the associations herein provided for. [Id.]

Art. 5757. Bond.—Each and all officers, employees and agents handling funds or property of the corporation created under the provisions of this chapter, or any property or funds of any person placed under the control of or in the possession of said corporation, shall be required to execute and deliver to the corporation a bond, for the benefit of all members of said corporation, conditioned upon the faithful performance of the duties and obligations of such person, and further conditioned that such person shall faithfully account for any and all funds,

moneys and property coming into his or her hands or possession, by reason of such office or employment, and shall promptly remit to the person, or persons, entitled to receive the same, all moneys which may come into his possession by virtue of being such officer, employe or agent, and in case of sale or failure to sell any products under the care of and in the possession of such officer, employe or agent, that he shall promptly make a true and correct report of said sale, or in case of failure to sell, the reasons why said sale is not made. In case the officers and directors of any corporation authorized to be created under the provisions of this law shall fail to have all officers, employees and agents handling such funds or property, execute the bond provided for herein, each and all of said officers and directors shall be personally liable for all losses occasioned by such failure, and which might have been recovered on said bond. [Id.]

Art. 5758. Interest in other corporations or associations.—

An association may organize, form, operate, own, control, have an interest in, own stock of, or be a member of any other corporation or corporations, with or without capital stock, and engaged in preserving, drying, pressing, canning, packing, storing, handling, shipping, utilizing, manufacturing, marketing or selling of the agricultural products handled by the association, or the by-products thereof. If such corporations are warehousing corporations, they may issue legal warehouse receipts to the association or to any other person and such legal warehouse receipts shall be considered as adequate collateral to the extent of the current value of the commodity represented thereby. In case such warehouse is licensed or licensed and bonded under the laws of this State or the United States, its warehouse receipts shall not be challenged or discriminated against because of ownership or control, wholly or in part, by the association. [Id.]

Art. 5759. Contracts and agreement with other associations.

—Any association may, upon resolution adopted by its board of directors, enter into all necessary and proper contracts and agreements and make all necessary and proper stipulations, agreements and contracts and arrangements with any other co-operative corporation, association or associations, formed in this or any other State for the co-operative and more economical carrying on of its business, or any part or parts thereof. Any two or more associations may, by agreement between them, unite in employing and using or may separately employ and use the same methods, means and agencies for carrying on and conducting their respective businesses. [Id.]

Art. 5760. Associations heretofore organized.—Any corporation or association organized under previously existing statutes, may by a majority vote of its stockholders or members be brought under the provisions of this chapter by limiting its membership and adopting the other restrictions as provided

herein. It shall make out in duplicate a statement signed and sworn to by its directors, upon forms supplied by the Secretary of State, to the effect that the corporation or association has by a majority vote of its stockholders or members decided to accept the benefits and be bound by the provisions of this chapter. Articles of Incorporation shall be filed as required in the eighth article of this chapter, except that they shall be signed by the members of the board of directors. The filing fee shall be the same as for filing an amendment to Articles of Incorporation. [Id.]

Art. 5761. Breach of contract or false reports.—Any person or persons or any corporation whose officers or employes knowingly induce or attempt to induce any member or stockholder of an association organized hereunder to breach his marketing contract with the association, or who maliciously and knowingly spread false reports about the finances or management thereof shall be liable to the association aggrieved thereby in a civil suit for damages suffered in three times the amount of actual damage proven for each offense. [Id.]

Art. 5762. Associations not in restraint of trade.—No association organized hereunder shall be deemed to be a combination in restraint of trade or an illegal monopoly; or an attempt to lessen competition or fix prices arbitrarily; nor shall the marketing contracts or agreements between the association and its members nor any agreements authorized in this chapter, be considered illegal or in restraint of trade. [Id.]

Art. 5763. Application of general laws.—The provisions of the general corporation laws of this State, and all powers and rights thereunder shall apply to the association organized hereunder, except when in conflict with the express provisions of this chapter. [Id.]

Art. 5764. Fees.—Each association organized hereunder shall pay to the Commissioner an annual license fee of ten dollars but shall be exempt from all franchise or license taxes. For filing articles of incorporation, an association organized hereunder shall pay ten dollars, and for filing an amendment thereto, two dollars and fifty cents. [Id.]

TITLE 94.

MILITIA.

| | | | |
|----------------------------|------|-----------------------------|------|
| Chapter | Page | Chapter | Page |
| 1 General provisions | 1625 | 3 National guard | 1629 |
| 2 Reserve militia | 1626 | 4 State naval militia | 1667 |

CHAPTER ONE.

GENERAL PROVISIONS.

| | | | |
|--------------------------|--------------|--------------------------|--------------|
| Active and reserve | Article 5765 | Commander-in-chief | Article 5768 |
| Who are subject | 5766 | Expenditures | 5769 |
| Exemptions | 5767 | | |

Art. 5765. [5764] Active and reserve.—The militia of this State shall be divided into two classes, the active and reserve militia. The active militia shall consist of the organized and uniformed military forces of this State, which shall be known as the Texas National Guard; the reserve militia shall consist of all those liable to service in the militia, but not serving in the Texas National Guard. [Acts 1905, p. 167.]

Art. 5766. [5765] Who are subject.—All able-bodied male citizens, and able-bodied males of foreign birth who have declared their intention to become citizens, who are residents of this State and between eighteen and forty-five years of age, and who are not exempted by the laws of the United States or of this State, shall constitute the militia and be subject to military duty. [Id.]

Art. 5767. [5766] Exemptions.—In addition to those exempted by the laws of the United States, the following persons shall be exempt from military duty in this State:

1. The Lieutenant-Governor and the heads of the several departments.
2. The judges and clerks of all courts of record.
3. The members and officers of both houses of the Legislature.
4. Each sheriff, district attorney, county attorney, county assessor, county collector, county treasurer, and county commissioner.
5. The mayor, aldermen, assessor and collector of incorporated cities and towns.
6. The officers and guards of State prisons, houses of correction, and the officers and instructors and attendants of other State institutions; keepers, attendants and assistants of poor houses; superintendents, nurses, and assistants of all hospitals.
7. The members of any regularly organized and paid fire or police department in any city or town, but no member of the active militia shall be relieved from duty because of his joining any such fire company or department.
8. All ministers of the gospel exclusively engaged in their calling; all teachers engaged in public institutions and public schools.

9. All persons who shall have served in the active militia of this State for the term of seven years, and have been honorably discharged therefrom.

10. Idiots, lunatics, vagabonds, confirmed drunkards, persons addicted to the use of narcotic drugs, and persons convicted of infamous crimes.

11. Any person who conscientiously scruples to bear arms; provided he shall pay an equivalent for personal service.

12. All such exempted persons, except those enumerated in subdivision 10, shall be liable to military duty in case of war, insurrection, invasion or imminent danger thereof. [Id.]

Art. 5768. [5767] **Commander-in-chief.**—The Governor by virtue of his office, shall be commander-in-chief of the military forces of this State, except such portions as may at times be in the service of the United States. Whenever the Governor is unable to perform the duties of commander-in-chief, the Adjutant General shall command the military forces of this State, except in cases where the Lieutenant-Governor, or the president of the Senate, under the laws of this State, is required to perform the duties of Governor. [Id.]

Art. 5769. **Expenditures.**—All amounts expended from appropriations made for the military forces of this State shall be paid only on itemized accounts sworn to by the party expending the same and showing the time, purpose and for what said amount was expended and by whom, approved by both the Adjutant General and the Governor before their payment. The Comptroller shall not issue warrants upon the State Treasury for any moneys expended under this title until said itemized accounts have been filed in the Comptroller's office. [Id.]

CHAPTER TWO.

RESERVE MILITIA.

| | | | |
|------------------------|--------------|----------------------------|--------------|
| Military duty | Article 5770 | Drafts: report | Article 5775 |
| Enrollment | 5771 | Drafts: substitute | 5776 |
| Notice | 5772 | Civil officers' duty | 5777 |
| Assessment rolls | 5773 | Power of Governor | 5778 |
| Drafts | 5774 | Mustering | 5779 |

Art. 5770. [5768] **Military duty.**—The reserve militia shall not be subject to active military duty, except when called into the service of this State, or of the United States, in case of war, insurrection, invasion, or for the prevention of invasion, the suppression of riot, tumults and breaches of the peace, or to aid the civil officers in the execution of the law and the service of process, in which case, they or so many of them as the necessity requires, may be ordered out for actual service by draft or otherwise as the Governor may direct. The portion of the reserve militia ordered out or accepted shall be mustered into the service for such period as may be required, and the Governor may assign them to existing organizations of the active militia, or or-

ganize them as the exigency of the occasion may require. [Acts 1905, p. 167.]

Art. 5771. [5769] **Enrollment.**—Whenever the Governor deems it necessary, he may order the county tax assessors or may designate other persons to make an enrollment of all persons liable to military duty, other than members of the active militia. Such enrollment shall state the name, residence, age, color and occupation of the persons enrolled. Enrolling officers may question under oath, which they are hereby authorized to administer, any person deemed liable to perform military duty, but who denies the same; and, if any person refuses to be sworn, the enrolling officer shall enroll his name in the same manner as though he had admitted his liability. Said enrolling officers shall, within such time as the Governor may require, prepare and file three copies of such enrollment, properly certifying that he has enrolled all persons residing in his county, who are liable to perform military duty, one copy to be filed in the office of the Adjutant General, one in the office of the county clerk of the county in which the enrollment was made, and one copy retained by the enrolling officer. Upon filing such lists the enrolling officer shall be paid out of the county treasury eight cents for each person so enrolled and notified as hereinafter set out. [Id.]

Art. 5772. [5770] **Notice.**—The enrolling officer shall at the time of making the enrollment, serve a notice of such enrollment upon each person enrolled, by delivering such notice to him, or leaving it with some person over fourteen years old at his place of residence, or by mailing such notice at the expense of the county to his last known place of residence or abode. All persons claiming exemption, must within ten days after receiving such notice, file a written verified statement of such exemption in the office of the county clerk. Such clerk shall thereupon, if such person be exempted according to law, mark the word "exempt" opposite his name; and the remainder of all thus enrolled and not thus found to be exempt shall constitute the militia of this State and be subject to military duty. Such clerk shall transmit a copy of such corrected list of enrollment to the Adjutant General within twenty days after the filing of the original list of enrollment for which he shall be allowed two cents for each name on such list, to be paid by the county. The officer highest in rank in the active militia, and the heads of the fire and police departments in each city or town, shall whenever an enrollment is ordered, file within ten days in the office of such county clerk a certified list of the names of all persons in the active militia of such county or in such department. [Id.]

Art. 5773. [5771] **Assessment rolls.**—Each county assessor shall allow persons appointed to make such enrollment, if persons other than the assessor be appointed, at all times to examine their assessment rolls and make copies thereof. All persons shall, upon the application of any person making such en-

rollment, give the name of and all other information concerning any person within their knowledge liable to be enrolled, under penalty of ten dollars for every concealment or false information, or refusal to give the information requested, to be recovered in the name of the State of Texas by a judge advocate, district or county attorney in the justice court at Austin, or in the precinct of his residence with costs. The officer making the enrollment shall, within ten days, report to the Adjutant General all persons who fail or neglect to give information. [Id.]

Art. 5774. [5772] **Drafts.**—Whenever it shall be necessary to call out any portion of the reserve militia for active duty, the Governor may apportion the number by draft according to the population of the several counties of the State, or otherwise, as he shall direct. The Governor shall direct his order to the sheriff of each county from which any draft is required, setting forth the number of persons such county is to furnish. Upon the requisition of the Governor being received by the sheriff, he shall immediately personally notify the county clerk, who shall copy by name or number, from the corrected list of enrollment of such county on file in his office, all persons who are so returned as liable to perform military duty; such names or their corresponding numbers, shall be placed on slips of paper of the same size and appearance, as near as practicable, which slips so named or numbered, shall be placed in a box suitable for that purpose, and the number required to fill such draft or requisition shall be drawn therefrom, in the same manner provided by law for drawing jurors. All persons so drawn and liable to perform military duty shall be determined to be legally held to serve, in the manner and for the purpose and time specified in the requisition; and the sheriff shall notify the persons so drafted by registered letter, or personally in writing, at what time and place they shall appear, for which he shall receive expense of postage and five cents each to be paid by the county. [Id.]

Art. 5775. [5773] **Drafts: report.**—Every member of the reserve militia ordered out, or who volunteers, or is drafted, under the provisions of this law, who does not appear at the time and place so designated by the sheriff, or his commanding officer within twenty-four hours from such time, or furnish a substitute or who does not produce a sworn statement of physical disability from a physician in good standing of his inability to so appear, shall be deemed to be a deserter and dealt with as prescribed by law for deserters. [Id.]

Art. 5776. [5774] **Drafts; substitute.**—Any person in the reserve militia of this State, who has been drawn to perform military duty, may at any time, be exempt until again required in his turn to serve, by furnishing an acceptable substitute on or before the day fixed for his appearance; but if during any period of service, any man who is serving in the active militia as a substitute for another, becomes liable to service in his own person, he shall be taken for such service, and his place as sub-

stitute shall be supplied by the man in whose stead he was serving, or another substitute. [Id.]

Art. 5777. [5775] **Civil officers' duty.**—Any sheriff, or constable, county assessor or county clerk who neglects or refuses to perform any duty enjoined upon him by this law, in addition to criminal liability, shall be liable to a penalty of not less than one hundred nor more than one thousand dollars to be recovered against him or his bondsmen in the name of the State by suit instituted by a judge advocate or district or county attorney, in the proper court of Travis County, or the county of which such person is the sheriff, constable, assessor or clerk. [Id.]

Art. 5778. [5776] **Power of Governor.**—The Governor shall have power in the case of insurrection, invasion, tumult, riot or breach of peace, or imminent danger thereof, to order into the active service of this State any part of the militia that he may deem proper. When the militia of this State, or any part thereof, is called forth under the Constitution and laws of the United States, the Governor shall order out for service the active militia, or such part thereof as may be necessary; and, if the number be insufficient, he shall order out such part of the reserve militia as he may deem necessary. During the absence of organizations of the militia in the service of the United States, their State designations shall not be given to new organizations. [Id.]

Art. 5779. [5777] **Muster.**—The portion of the reserve militia ordered out or accepted into the service, as indicated in Articles 5770 and 5774 of this chapter, shall be immediately mustered into service for such period as the Governor may direct, and shall be organized into troops, batteries, companies and such other organizations as may be necessary, which may be arranged in squadrons, battalions, regiments or corps, or assigned to organizations of the active militia already existing. The Governor is authorized to appoint the officers necessary to commence or complete, or to command any organization thus created. Such new organization shall be equipped, disciplined and governed according to the military laws and military regulations of this State. [Id.]

CHAPTER THREE.

NATIONAL GUARD.

ORGANIZATION.

| | | | |
|------------------------|--------------|--------------------------------|--------------|
| Strength | Article 5780 | Bodies corporate | Article 5784 |
| Regulations | 5781 | Discipline | 5785 |
| Publication | 5782 | Prohibiting organization | 5786 |
| Governor's staff | 5783 | | |

Art. 5780. [5778] **Strength.**—The Texas National Guard shall consist of the existing military organizations, and such others as may be organized hereafter, and such persons as are held to military duty under the laws of this State, or such per-

sons as are exempt under said laws who may accept appointment or voluntarily enlist therein, or of such persons of the reserve militia as may be mustered therein, but at no time, except in case of war, insurrection, invasion, the prevention of invasion, the suppression of riot, or the aiding of the civil authorities in the execution of the laws of this State, shall the maximum strength thereof exceed seven thousand officers and enlisted men. [Acts 1905, p. 167.]

Art. 5781. [5779] **Regulations.**—The Governor shall prescribe such regulations as he may see fit for the organization of the Texas National Guard; and he shall, from time to time, as he may deem for the best interests of the service, change such regulations, which shall be in accordance with this chapter, and conform as near as practicable to the organization of the regular army of the United States. He may, at any time for cause deemed good and sufficient by him, muster out of the service or reorganize any portion of the Texas National Guard or the reserve militia, or discharge any officer or enlisted man thereof, and he shall have full control and authority over all matters touching the military forces of this State, its organization, equipment and discipline. [Id.]

Art. 5782. [5780] **Publication.**—The Governor shall make and publish regulations in accordance with existing military laws, for the government of the military forces of this State, which shall embrace all necessary orders and forms of general character for the performance of all duties incumbent on officers and men in the military service, including the rules for the government of courts martial; the existing regulations to remain in force until the Governor shall have published such regulations. The Governor shall, as he may see fit from time to time, create new regulations, or amend, modify, or repeal existing regulations. [Id.]

Art. 5783. [5781] **Governor's staff.**—The Governor shall have a staff consisting of the Adjutant General and twelve aides-de-camp. The Adjutant General shall have rank and be appointed as provided by this law; the twelve aides-de-camp shall have the rank of lieutenant-colonel while also serving, and shall be appointed by, and serve during the pleasure of the Governor. Three of the aides-de-camp shall be selected from the officers of the Texas National Guard below the grade of colonel, and nine shall be selected without restriction as to the source of selection; provided, further, that said aides-de-camp shall not be ineligible from holding any office of emolument, trust or honor within this State, nor shall said aides-de-camp be ineligible from serving as chairman or member of any committee of any political party or organization. [Acts 1907, p. 224; Acts 1911, p. 25.]

Art. 5784. [5782] **Bodies corporate.**—Whenever any troop, battery, company, signal corps or band is mustered into the active militia of this State by the authority of the Governor,

such troop, battery, company, signal corps or band shall, from the date of such muster in, be deemed and be held in law a body corporate and politic, with power under its corporate name to take, purchase, own in fee simple, hold, transfer, mortgage, pledge and convey real or personal property to an amount in value, at the time of its acquisition, of two hundred thousand dollars (provided that the natural enhancement in value of any property properly acquired by any such company shall not affect the right of such company to hold or otherwise handle such property), and with like power under its corporate name to sue and be sued, plead and be impleaded, and to prosecute and defend in the courts of this State or elsewhere; to have and use a common seal of such device as it may adopt; to ordain, establish, alter or amend by-laws for the government and regulation of the company affairs not inconsistent with the Constitution and laws of this State and of the United States, and the orders and regulations of the Governor; and generally to do and perform any and all things necessary and proper to be done in carrying out and perfecting the purpose of its organization, of which the officers, and in case of a band, the non-commissioned officers, shall be directors, the senior the president. [Acts 1907, p. 224; Acts 1911, p. 149.]

Art. 5785. [5783] Discipline.—The system of discipline and exercise of the active militia of this State shall conform generally to that of the army of the United States, as prescribed by the President, and to the provisions of the laws of the United States, except as otherwise provided by law, or by the regulations issued by the Governor. [Acts 1905, p. 167.]

Art. 5786. [5784] Prohibiting organization.—No body of men, other than the regularly organized militia of this State and the troops of the United States, shall associate themselves together as a military company or organization or parade in public with firearms in any city, or town of this State; provided that students in the educational institutions where military science is a prescribed part of the course of instruction, and soldiers honorably discharged from the service of the United States, and Confederate veterans, may, with the consent of the Governor, drill and parade with firearms in public. Nothing herein shall be construed to prevent parades by the active militia of any other State as hereinafter provided. [Id.]

ADJUTANT GENERAL.

| | Article | | Article |
|---------------------|---------|---------------------------------|---------|
| Department | 5787 | Regulations and duties..... | 5793 |
| Oath and bond | 5788 | Report to Governor | 5794 |
| Seal | 5789 | Assistants | 5795 |
| Powers | 5790 | Assistant Adjutant General..... | 5796 |
| Duties | 5791 | To issue certificates | 5797 |
| Bids | 5792 | To purchase stores | 5798 |

Art. 5787. [5785-6-7] Department.—The Adjutant General shall be the head of the Adjutant General's Department, and shall have the rank of brigadier general. He shall be biennially

appointed for a term of two years by the Governor, by and with the advice and consent of the Senate, if in session. [Id.]

Art. 5788. [5788] **Oath and bond.**—The person appointed Adjutant General shall first enter into a bond with two or more good and sufficient sureties payable to and to be approved by the Governor, which bond shall be in the sum of ten thousand dollars, conditioned for the faithful performance of the duties of said office. [Id.]

Art. 5789. [5789] **Seal.**—The device upon the seal of the Adjutant General shall consist of a star of five points with the words, "Office of Adjutant General, State of Texas," around the margin. [Id.]

Art. 5790. [5790] **Powers.**—The Adjutant General shall be in control of the military department of this State and subordinate only to the Governor in matters pertaining to said department, or the military forces of this State; and he shall perform such duties as the Governor may from time to time entrust to him, relative to the military commissions, the military forces, the military stores and supplies, or to other matters respecting military affairs of this State; and he shall conduct the business of the department in such manner as the Governor shall direct. He shall have the custody and charge of all books, records, papers, furniture, fixtures and other property relating to his department; and shall perform as near as practicable, such duties as pertain to the chief of staff, the military secretary and other chiefs of staff departments, under the regulations and customs of the United States Army. [Id.]

Art. 5791. [5791] **Duties.**—The Adjutant General shall, from time to time, define and prescribe the kind and amount of supplies to be purchased for the military forces of this State, and the duties and powers respecting such purchases; and shall prescribe general regulations for the transportation of the articles of supply from the places of purchase to the several camps, stations of companies, or other necessary places for the safe-keeping of such articles, and for the distribution of an adequate and timely supply of the same to the regimental quartermasters, and to such other officers as may, by virtue of such regulations, be entrusted with the same; and shall fix and make reasonable allowance for the store rent and storage necessary for the safe-keeping of all military stores and supplies; and shall control and supervise the transportation of troops, munitions of war, equipment, military property and stores throughout the State. [Id.]

Art. 5792. [5792] **Bids.**—The Adjutant General may prescribe rules and regulations to be observed in the preparation and submission and opening of bids for contracts under his department; and at his discretion may require any bid to be accompanied by a good bond in such penal sum as he deems advisable, conditioned that the bidder will enter into a contract agreeable to the terms of his bid, if the same be awarded to

him, within sixty days from the date of the opening of the bids, or otherwise pay the penalty. No bid shall be withdrawn by the bidder within said period of sixty days. [Id.]

Art. 5793. [5793] Regulations and duties.—The Adjutant General shall prescribe regulations not inconsistent with law for the government of his department and the custody, use and preservation of the records and property appertaining to it whether belonging to this or the United States, such regulations to be operative and in force when promulgated in the form of general orders, circulars or letters of instruction and shall:

1. Superintend the preparation of such returns and reports as may be required by the laws of the United States from this State.

2. Keep a register of all officers of the militia of Texas, and keep in his office all records and papers required to be kept and filed therein.

3. Have printed at the expense of the State, when necessary, the military law and regulations of Texas, and distributed to the commissioned officers, sheriffs, clerks and assessors of the counties of Texas at the rate of one copy to each.

4. Issue to each commissioned officer and headquarters one copy of the necessary text books, and of such annual reports concerning the militia as the Governor may direct.

5. Cause to be prepared and issued all necessary blank books, blanks, forms and notices required to carry into full effect the provisions of this law. [Id.]

Art. 5794. [5793-94] Report to Governor.—He shall report annually to the Governor the following information to be laid before the Legislature:

1. A statement of all moneys received or disbursed by him since his last annual report.

2. An account of all arms, ammunition, and other military property belonging to this State, or in possession of this State, from what source received, to whom issued, and its present condition, so far as he may be informed.

3. The number, condition and organization of the Texas National Guard and reserve militia.

4. Any suggestions which he may deem of importance to the military interests and conditions of this State, and the perfection of its military organization. [Id.]

Art. 5795. [5795-6] Assistants.—The Adjutant General shall have one assistant who shall fill the position of chief clerk, with the rank of colonel, one assistant quartermaster general, with the rank of colonel. All necessary clerks and employees may be employed and laborers hired by the Adjutant General as may be required to carry on the operations of his department. [Id.]

Art. 5796. [5797-8] Assistant Adjutant General.—The Governor shall appoint the Assistant Adjutant General on the recommendation of the Adjutant General. He shall remain in

office during the pleasure of the Governor, and shall be entitled to all the rights, privileges and immunities granted officers of like rank in the Texas National Guard. He shall before entering upon the duties of his office, take and subscribe to the oath of office prescribed for officers of the Texas National Guard, which oath shall be deposited in the office of the Adjutant General. He shall aid the Adjutant General by the performance of such duties as may be assigned him, and shall, in case of absence or inability of the Adjutant General to act, perform all such portions of the duties of Adjutant General as the latter may expressly delegate to him, and shall on application and without compensation therefor, administer oaths of office to officers of the active militia, and to employes of the Adjutant General's office required to be taken on their appointment or promotion. [Id.]

Art. 5797. [5799] **To issue certificates.**—On the muster-in to the active militia of this State of any troop, battery, company, signal corps, or band, the Adjutant General shall issue to such organization a certificate to the effect that such organization has been duly organized in accordance with the laws and regulations of the militia service of this State, and that such organization is entitled to all the rights, powers, privileges and immunities conferred by such laws and regulations. Such certificate shall be in such form as the Adjutant General may prescribe. Such certificate shall be evidence in all the courts of this State that the organization therein named is duly incorporated. [Id.]

Art. 5798. [5800] **To purchase stores.**—The Adjutant General, after the appropriations are made for that purpose, may purchase and keep ready for use, or issue to the military forces of this State, as the best interests of the service may require, such amount and kind of quartermasters, ordnance, subsistence, medical, signal, engineers, and all other military stores and supplies as shall be necessary; he shall see that all military stores and supplies both the property of this State and of the United States are properly cared for and kept in good order, ready for use; and all accounts which may accrue against this State under the provisions of this chapter shall, if correct, be certified and approved by the Adjutant General and paid out of the State Treasury as other claims are paid. Any military stores belonging to this State which may become unserviceable, obsolete, or unfit for further use, may be disposed of in such manner as the Governor or Adjutant General may prescribe by regulations or order; and the Adjutant General may sell or destroy as he may see fit for the best interests of the service, any unserviceable, or obsolete, or unsuitable military stores belonging to this State, the sums realized from the sale thereof to be turned into the State Treasury, or he may in his discretion, exchange such stores for such other military stores as the interest of the service may require, for the use of the active militia of this state. [Id.]

ASSISTANT QUARTERMASTER GENERAL.

Art. 5799. [5801] Assistant.—The Assistant Quartermaster General shall be appointed by the Governor on the recommendation of the Adjutant General, and shall remain in office during the pleasure of the Governor. He shall be entitled to all the rights, privileges and immunities granted officers of like rank in the Texas National Guard. He shall first enter into bond in the sum of ten thousand dollars, payable to and to be approved by the Governor, and conditioned faithfully to discharge the duties of his office and disburse and account for all moneys, and to faithfully keep, issue and and account for all military stores, supplies and other property of this State, or of the United States, coming into his possession or entrusted to his care for the use of the military forces of this State. He shall take and subscribe the oath of office prescribed for officers of the Texas National Guard. He shall, under the immediate direction of the Adjutant General, perform as near as may be, the duties pertaining to the chiefs of the quartermaster, subsistence, and ordnance department under the regulations and customs of the United States army. Upon assuming his duties he shall receipt to the Adjutant General for all military property of whatever kind belonging to this State, or to the United States, which may be on hand and intended for the use of or issued to the military forces of this State, and receipt to the Adjutant General for such other military property as may be received from the United States or other sources. He shall be responsible for all quartermasters, subsistence, ordnance, medical, signal, and all other military stores and supplies belonging to this State, or which may be issued to this State by the United States, except such of the above mentioned stores and supplies as may be issued to the officers and organizations of the military forces of this State in accordance with the regulations in force. He shall issue and receive such quartermasters, subsistence, ordnance, medical, signal, and all other military stores and supplies as the Governor or the Adjutant General may direct; attend to the care, preservation, safe-keeping, and repairing of the arms, ordnance, accoutrements, equipments and all other military property belonging to this State, or issued to this State by the United States, for the purpose of arming and equipping the military forces of this State; prepare such returns of all quartermasters, subsistence, ordnance, medical, signal and other military stores and supplies that have been issued to this State by the United States at the times and in the manner required by the Secretary of War, and render semi-annually to the Adjutant General returns of all military stores and supplies on hand or issued, in such manner as the Adjutant General may require. He shall render to the Adjutant General annually, or oftener, if required, a statement of all moneys received or disbursed by him since last report. He shall perform the duties of the quartermaster, commissary, and paymaster of the Ranger force, and such other

duties as the Governor or the Adjutant General may require of him. [Id.]

COMMISSIONED OFFICERS.

| | Article | | Article |
|----------------------------|---------|--------------------------------|---------|
| Term | 5800 | Board to examine officers..... | 5810 |
| Commissions | 5801 | Bond of officers..... | 5811 |
| Qualifications | 5802 | Records admissible | 5812 |
| Other qualifications | 5803 | Pay deductions | 5813 |
| Examination | 5804 | Company funds | 5814 |
| Boards of Examiners..... | 5805 | Absence of commander..... | 5815 |
| Oath | 5806 | Absence of men..... | 5816 |
| Brevet commissions..... | 5807 | To furnish arms, etc..... | 5817 |
| Supernumerary list | 5808 | Examination exemption | 5818 |
| Retirement | 5809 | | |

Art. 5800. [5802] **Term.**—All officers of the National Guard of Texas shall be appointed and commissioned by the Governor, and shall hold their positions until they shall have reached the age of sixty-four years, unless sooner retired by reason of resignations, disability or for cause to be determined by a court martial or an efficiency board legally convened for that purpose. [Acts 1905, p. 167; Acts 1917, 1st C. S. p. 3.]

Art. 5801. [5803] **Commissions.**—All commissions in the military service of this State shall be in the name and by authority of the State of Texas, sealed with the State seal, signed by the Governor and attested by the Secretary of State, and recorded by the Adjutant General in a record book kept in his office for that purpose. No fee for issuing such commissions shall be charged, or collected. [Acts 1905, p. 167.]

Art. 5802. [5804] **Qualifications.**—Staff officers, including officers of the pay, inspection, subsistence and medical departments, shall have had previous military experience. Vacancies among said officers shall be filled by the appointment from the officers of the militia of the State of Texas. All other officers of the National Guard of Texas shall be selected from the following classes: officers and enlisted men of the National Guard; officers on the reserve or unassigned list of the National Guard; officers, active or retired, and former officers of the United States Army, Navy, and Marine Corps; graduates of the United States Military and Naval Academies, and graduates of schools, colleges and universities where military science is taught under the supervision of an officer of the Regular Army; for the technical branches and staff corps or departments, such other civilians as may be especially qualified for duty therein. [Acts 1905, p. 167; Acts 1st C. S. 1917, p. 3.]

Art. 5803. **Other qualifications.**—All officers of the National Guard of Texas shall be citizens of the United States, over twenty-one and under sixty-four years of age, and shall take and subscribe the official oath, and shall have successfully passed the physical examination as prescribed by the laws of the United States. [Id.]

Art. 5804. [5805] **Examination.**—Before receiving a commission consequent upon an original appointment or before commissioned to a higher grade as a result of promotion, each officer must pass a satisfactory examination before a board as to

his knowledge of military affairs and general knowledge and fitness for the service. No one failing to pass such examination shall be eligible for an office in the militia of this State, or for promotion, for the period of one year from the date of such failure. Judge advocates, medical officers, and veterinary surgeons shall be examined as to their general and professional knowledge and fitness for such service only. The following are exempt from examination: General officers, chaplains and enlisted men placed on the retired list as brevet second lieutenants. [Acts 1905, p. 167.]

Art. 5805. [5806] **Boards of examiners.**—Boards of examination under the preceding article shall be appointed by the Governor. Such boards shall consist of not less than three officers, and shall have the same power to take evidence, administer oaths, and compel witnesses to attend and testify and produce books and papers, and punish their failure to do so, as is possessed by a general court martial. When returns of appointments are received by a board, the persons appointed shall by it be ordered before it for examination, and the result of the examination, with all papers in the case, shall be forwarded to the Adjutant General. [Id.]

Art. 5806. [5807] **Oath.**—Every officer duly commissioned shall, within ten days after his commission is tendered him, or within ten days after he shall have been notified personally or by mail that the same is held in readiness for him by a superior officer, take and subscribe the official oath. Such oath shall be taken and subscribed before an officer authorized to administer an oath, or some general or field officer or an officer who shall hold the assimilated grade of a field officer, who has taken the oath himself, and who is hereby authorized to administer the same. In case of neglect or refusal to take and subscribe such oath within the time mentioned such commission shall be canceled by the Governor, and a new appointment shall be made. Such oath of office shall be filed in the office of the Adjutant General. [Id.]

Art. 5807. [5808] **Brevet commissions.**—The Governor may, upon the recommendation of their commanding officers, confer brevet commissions of a grade higher than the ordinary or brevet commissions ever held by them, upon the officers of the military service of this State for gallant conduct, or meritorious service of not less than twenty-five years. He may also confer upon officers in active service in the military service of this State, who have previously served in the forces of the United States in time of war, brevet commissions of a grade equal to the highest grade in which they previously served. Such commissions shall carry with them only such privileges or rights as are allowed in like cases in the military service of the United States. [Id.]

Art. 5808. [5809] **Supernumerary list.**—Officers who shall be rendered surplus by reduction or disbandment of organiza-

tions, or in any manner provided by this law, shall at the discretion of the Governor, be withdrawn from active service and placed upon the supernumerary list. The Governor may detail supernumerary officers for active duty, in which case they shall rank in their grade from the date of such detail, and he may relieve them from such duty and return them to the supernumerary list at his discretion.

Art. 5809. [5810] **Retirement.**—Any officer of the active militia who has reached the age of sixty-four years may be placed upon the retired list by the Governor. Any officer who shall have served as an officer in the same grade in the military service of this State for the continuous period of eight years, or as an officer in the military service of this State continuously for ten years, or as an officer in the military service of this State for twelve years or as an officer and enlisted man in the military service of this State for eighteen years may, upon his own request, be placed upon the retired list and withdrawn from active service and command by the Governor. Any officer who becomes disabled, and thereby incapable of performing the duties of his office, shall be withdrawn from active service and placed on the retired list by the Governor. Any officer who becomes unfit or incompetent, and thereby incapable of performing the duties of his office, shall be discharged upon the recommendation of his commanding officer, or the recommendation of an inspecting officer. Such retirement or discharge shall be by order of the Governor, and in either case, shall be subject to the provisions of this article. Before making such order the Governor shall, at his discretion, appoint a board of not less than five commissioned officers, one of whom shall be a surgeon, whose duty it shall be to determine the facts as to the nature and cause of incapacity of such officer as appears disabled or unfit, or incompetent from any cause, to perform military service, and whose case shall be referred to it. No officer whose grade or promotion would be affected by the decision of such board, in any case that may come before it, shall participate in the examination or decision of the board in such case. Such board is hereby invested with the powers of courts of inquiry and courts martial, and whenever it finds an officer incapacitated for active service, shall report such fact to the Governor, stating cause of incapacity, whether from disability, unfitness, or incompetency, and if he approves such finding such officer shall be placed on the retired list or discharged as herein provided. The members of the board shall first be sworn to honestly and impartially perform their duties as members of such board. No officer shall be placed upon the retired list, or discharged by the action of such board, if appointed by the Governor, without having had a fair and full hearing before the board, if upon notice he shall demand it, and the Governor in his discretion shall think proper to appoint such board. No case need be referred for the action of such board, under

this article, unless the officer designated to be placed on the retired list or discharged shall, within twenty days after being notified that he will be so retired or discharged, serve on the Adjutant General a written notice that he demands a hearing and examination before such board, and the Governor approve such demand. The Governor may withdraw from active service and command and place upon the retired list any officer who has been twenty-five years in the military service of this State, on the recommendation of the commanding officer of the brigade or division. Vacancies created by the operations of this article shall be filled in the same manner as other vacancies. [Id.]

Art. 5810. [5811] **Board to examine officers.**—The Governor may whenever he may deem that the good of the service requires it, order any officer before a board of examination, to consist of not less than three nor more than five officers above the grade of captain, which is hereby invested with the powers of courts of inquiry and courts martial, and such board shall examine into the moral character, capacity, and general fitness for the service of such officer, and record and return the testimony taken and a record of its proceedings. If the findings of such board be unfavorable to such officer and be approved by the Governor, he shall be discharged from the service. No officer whose grade or promotion would in any way be affected by the decision of such board, in any case that may come before it, shall participate in the examination or decision of the board in such case. Failure to appear when ordered before a board constituted under this article shall be sufficient ground for a finding by such board that the officer ordered to appear be discharged. [Id.]

Art. 5811. [5812] **Bond of officers.**—When required to do so by the Governor, any officer of the active militia of this State shall give good and sufficient bond in such sum as the Adjutant General may direct, payable to the Governor conditioned faithfully to discharge the duties of his office, and faithfully to expend all public money of this State and account for the same, and to account for and safely keep all public property of this State or of the United States issued and intended for the use of the military forces of this State, which he may receive from time to time, and to promptly turn over the same to whomsoever the Governor may direct. Such bond shall be in such sum as prescribed by the Adjutant General, and shall be approved by him and filed in his office; and such bond shall not apply to the reasonable wear and tear of arms, equipments, and other military supplies, incident to the military service. The commanding officer of every troop, battery, company, or signal corps and the chief musician of every band mustered into the military service of this State shall file such bond in the office of the Adjutant General, before the commission of such officer shall be issued for the use of his organization. When required to do so by the Governor, any non-commissioned officer or enlisted man of the military forces of

this State shall make and file the bond as provided by this article. Such bond shall provide for the payment of a reasonable attorney's fee, not to exceed ten per cent, nor be less than ten dollars. [Id.]

Art. 5812. [5813] Records admissible.—Copies of all bonds and other papers filed in the office of the Adjutant General, in accordance with the provisions of any law of this State, certified under the hand and seal of office of the Adjutant General, shall be admitted in evidence in all the courts of this State, in the same manner and with like effect as the original would be if duly proven. [Id.]

Art. 5813. [5814] Pay deductions.—The commanding officer of any troop, battery, company, signal corps or band is hereby authorized to deduct from any pay for military service due any officer or enlisted man of his organization such amount as such officer or enlisted man may owe his organization for dues and fines, as provided by the by-laws of such organization. [Id.]

Art. 5814. [5815] Company funds.—The commanding officer of each company shall be the custodian of the company fund, and shall receive, safely keep, and properly disburse, as may be required by the Governor, all money that may be entrusted to his care, and to render on June 30 and December 31 of each year, to the Adjutant General, an itemized statement of all money by him received and disbursed for the preceding six months. [Id.]

Art. 5815. [5816] Absence of commander.—The duties assigned to an officer by title in this chapter shall devolve in case of absence or disability to command of the officer named, upon the line officer next in rank, except as otherwise provided in this chapter. [Id.]

Art. 5816. [5817] Absence of men.—The officer ordering any military duty may excuse any officer or enlisted man for absence therefrom upon good and sufficient grounds. [Id.]

Art. 5817. [5818] To furnish arms, etc.—Every commissioned officer shall provide himself with the arms, uniforms, and equipments prescribed and approved by the Governor. [Id.]

Art. 5818. [5819] Examination exemption.—Any person who graduates from any college or school of this State, wherein there is a prescribed course of military instruction under the supervision of an officer of the United States army, or an officer of the active militia of this State shall, if he applies for appointment as a commissioned officer in the active militia of this State, in the grade of second lieutenant, within two years after graduation, be exempt from examination in all military subjects, except the militia law of this State, and examination as to personal qualifications and physical condition. In no case shall such graduate be drafted to serve in any capacity other than that of commissioned officer; provided, that when an officer of the active militia of this State is a military instructor, the Adjutant General shall prescribe the course of military instruction to be given, and when such colleges or schools do not follow the course

of instructions so prescribed, the graduates thereof shall not be entitled to the exemptions and privileges specified in this article. [Id.]

NON-COMMISSIONED OFFICERS AND ENLISTED MEN.

| | | | |
|------------------------------|---------|------------------------------|---------|
| | Article | | Article |
| Enlistment | 5819 | Officers, how appointed..... | 5825 |
| Three year enlistment..... | 5820 | Re-enlistments | 5826 |
| Oath | 5821 | Second lieutenants | 5827 |
| Administering oaths | 5822 | Physical examination | 5828 |
| Disqualifications | 5823 | Assignment of pay..... | 5829 |
| Federal laws applicable..... | 5824 | | |

Art. 5819. [5820] **Enlistment.**—Any male citizen of the United States, or any male who has declared his intention to become such citizen, who is a resident of this State, if more than eighteen or less than forty-five years of age, able-bodied, free of disease, and of good character and temperate habits, may voluntarily enlist in the active militia of this State; provided, persons not within such ages may enlist on the written authority of the Adjutant General. [Id.]

Art. 5820. [5821] **Three year enlistment.**—All enlistments in the active militia of this State shall be for the term of three years. No soldier shall be again enlisted in the active militia of this State whose service during his last preceding term of enlistment has not been honest and faithful. [Id.]

Art. 5821. [5822] **Oath.**—Every person who enlists or re-enlists in the active militia of this State shall sign and make oath to an enlistment paper, which shall be filed in the office of the Adjutant General. Such oath may also be taken and subscribed to before a field officer, or the commanding officer of a signal corps, troop, battery or company, who are hereby authorized to administer such oaths. [Id.]

Art. 5822. [5830] **Administering oaths.**—No civil or military officer shall be entitled to charge or receive any fee or compensation for administering or certifying any oath administered or certified under any provision of this title. [Id.]

Art. 5823. [5823] **Disqualifications.**—No minor shall be enlisted without the written consent of his parents or guardian. One who has been expelled or dishonorably discharged from military service of this State or of the United States shall not be eligible for enlistment or re-enlistment, unless he produce the written consent to such enlistment of the commanding officer of the organization from which he was expelled or dishonorably discharged, and of the commanding officer who approved such expulsion, or issued such dishonorable discharge. [Id.]

Art. 5824. **Federal laws applicable.**—The terms of and requirements for enlistments and the qualifications of enlisted men in the National Guard shall be that prescribed by the laws of the United States. [Acts 1st. C. S. 1917, p. 3.]

Art. 5825. [5824] **Officers, how appointed.**—Commanding officers of regiments and of batalions and squadrons not part of regiments shall appoint and warrant the non-commissioned staff officers of their respective regiments, battalions, or

squadrons, and they shall, in their discretion, warrant the non-commissioned officers of the troops, batteries and companies of their respective regiments, battalions and squadrons from the members thereof, upon the written nomination of the commanding officer of the troops, batteries and companies, respectively. In troops, batteries and companies not a part of a regiment, battalion or squadron, and in signal and hospital corps, the non-commissioned officers shall be warranted by the commanding officer of the brigade or division, in his discretion, to which such organization may be attached, from the members of such organization upon the written nomination of the commanding officer of the troop, battery, company, signal or hospital corps. To be eligible for appointment as sergeant, first class of the hospital corps, a candidate must be a registered pharmacist. A sergeant of the hospital corps must be appointed from the hospital corps. The officer warranting a non-commissioned officer shall have power to reduce to the ranks for good and sufficient reasons the non-commissioned officers herein named. [Acts 1905, p. 167.]

Art. 5826. [5825] **Re-enlistments.**—Men who have been discharged by reason of disbandment may be re-enlisted, and shall then receive credit for the period served at the time of such disbandment. A man discharged from physical disabilities shall, if such disability cease, and he again enlists, or a man discharged upon his own request shall, if he again enlists, receive credit for the period served prior to such discharge. [Id.]

Art. 5827. [5826] **Second lieutenants.**—The Governor may appoint and commission enlisted men, who have served well and faithfully in the active militia of this State for a period of not less than twenty-five years, without examination, second lieutenants by brevet; provided, such enlisted men, so appointed and commissioned, shall be immediately placed on the retired list. [Id.]

Art. 5828. [5827] **Physical examination.**—No applicant for appointment or enlistment in the active militia of this State will be commissioned or enlisted without first passing a satisfactory physical examination. [Id.]

Art. 5829. [5828] **Assignment of pay.**—No assignment of pay by any officer or an enlisted man shall be valid, except as otherwise provided by the Governor. [Id.]

SERVICE AND DUTIES.

| | | | |
|--------------------------------|-----------------|----------------------------|-----------------|
| Governor may call..... | Article 5830 | Active militia | Article 5834 |
| Impending riot | 5831 | Sale of arms | 5835 |
| Mobilization order | 5832 | Regular training | 5836 |
| Commanding officer's duty..... | 5833 | Practice marches, etc..... | 5837 |

Art. 5830. [5831] **Governor may call.**—When an invasion of, or an insurrection in, this State is made or threatened, or when the Governor may deem it necessary for the enforcement of the laws of this State, he shall call forth the active

militia or any part thereof, to repel, suppress, or enforce the same, and if the number available is insufficient he shall order out such part of the reserve militia as he may deem necessary. [Id.]

Art. 5831. [5832] **Impending riot.**—When there is in any county, city or town in this State tumult, riot or body of men acting together by force with intent to commit a felony, or breach of the peace, or to do violence to person or property, or by force to break or resist the laws of this State, or when such tumult riot, mob or other unlawful act or violence is threatened and that fact is made to appear to the Governor, he may issue his order to any commander of a division, brigade, regiment, squadron, battalion, troop, battery or company of the active militia of this State to appear at the time and place directed, to aid the civil authorities to suppress or prevent such violence and in executing the laws; provided, whenever the necessity for military aid in preventing or suppressing such violence and in executing the law is immediate and urgent, and when it is impracticable to furnish such information to the Governor in time to secure military aid by his order, the district judge of the judicial district in which the disturbance occurs, or the sheriff of such county, or the mayor of such city, or town, may call in writing for aid upon the commanding officer of the active militia stationed therein, or adjacent thereto; and the civil officer making the call shall at once notify the Governor of his action. [Id.]

Art. 5832. [5833] **Mobilization order.**—The officer to whom the order of the Governor, or the call of the civil authority, is directed shall, upon its receipt, forthwith order his command, or such portion thereof as may be ordered or called for, to parade at the time and place appointed, and shall immediately notify the Governor of his action. [Id.]

Art. 5833. [5834] **Commanding officer's duty.**—When such troops have appeared at the appointed place, the commanding officer thereof shall obey and execute such general instructions, which shall be in writing, if practicable, otherwise verbal instructions given in the presence of two or more credible witnesses, as he may there and then receive from the civil authorities charged by law with the suppression of riot, or tumult or the preservation of the public peace, but such commanding officer shall exercise his discretion as to the proper method of practically accomplishing the instructions received; the kind and extent of force to be used, and the particular means to be employed to accomplish the object specified by the civil authority shall be left solely to such commanding officer. [Id.]

Art. 5834. [5835] **Active militia.**—The Governor may order the active militia, or any part thereof, to assist the civil authorities in guarding prisoners, or in conveying prisoners from and to any point in this State, or discharging other duties in

connection with the execution of the law as the public interest or safety at any time may require. [Id.]

Art. 5835. [5836] Sale of arms.—Whenever any part of the active militia of this State is on active duty pursuant to the order of the Governor, or call of civil authority, to aid in the enforcement of the law, the commanding officer of such troops may order the closing of any place where arms, ammunition, dynamite or other explosives are sold, and forbid the sale, barter, loan or gift of any said article so long as any of the troops remain on duty in such place, or in the vicinity where such place may be located. [Id.]

Art. 5836. [5837] Regular training.—Officers and enlisted men of each troop, battery, and company of the active militia of this State shall assemble for and undergo drill and instruction at company, battalion, or regimental armories (troop, squadron, or battery armories for cavalry or field artillery) or rendezvous or for target practice, not less than twenty-four times during each calendar year preceding the annual allotment of funds under Section 1661 Revised Civil Statutes of the United States as amended. During the same period there shall be at least one inspection of each troop, battery, and company by an officer of the active militia of this State, or by an officer of the regular army of the United States, at such times as the Governor may direct. In addition to such drills and parades, the commanding officer of any organization may require the officers and enlisted men of his command to meet for parade, drill or instruction at such times and places as he may appoint. [Id.]

Art. 5837. [5838] Practice marches, etc.—Each troop, battery or company of the active militia of this State, not especially excused by the Governor, will be required to participate for at least five consecutive days annually in practice marches or camps of instruction, under such regulations as the Governor may prescribe, and under such instructors as he may appoint. [Id.]

COMPENSATION AND PRIVILEGES.

| | Article | | Article |
|--------------------------|---------|---------------------------------|---------|
| Active militia service | 5838 | Non - commissioned officers ex- | |
| Enumeration | 5839 | empt | 5844 |
| Tax exemptions | 5840 | Disabled men | 5845 |
| Poll tax exemptions | 5841 | Transportation, etc. | 5846 |
| Road and jury exemptions | 5842 | Exempt from arrest | 5847 |
| Staff officers exempt | 5843 | | |

Art. 5838. [5839] Active militia service.—The military forces of this State when called into active service of this State in time of war, insurrection, invasion, or imminent danger thereof, or the prevention of invasion, shall during their time of service, be entitled to the same pay, rations, and allowances for clothing as is now or may hereafter be established by the laws for the army of the United States. [Id.]

Art. 5839. [5840] Enumeration.—When the military forces of this State, or any part thereof, are called into active ser-

vice under the fifth, sixth, seventh or eighth articles, officers shall, during their term of service, receive the same pay as now or may be established by law for the army of the United States, and enlisted men shall be paid for such time per day as follows: Chief musician of cavalry, artillery, infantry and engineers, three dollars; first class sergeants of signal corps, two dollars and seventy-five cents, battalion sergeants major of engineers, battalion quartermaster sergeants of engineers, sergeants major of artillery senior grade, first sergeant of engineers, company quartermaster sergeants of engineers, sergeants of engineers, sergeants of signal corps, regimental quartermaster sergeants, regimental commissary sergeants, and regimental sergeants, two dollars and fifty cents; sergeants major of artillery, junior grade, first sergeants of infantry, cavalry and artillery, sergeants of hospital corps, drum majors, sergeant major of squadron and battalion, color sergeants, chief trumpeters of cavalry, artillery, infantry and engineers, two dollars and twenty-five cents; corporals of engineers, and signal corps, cooks of engineers and signal corps, sergeants and cooks of infantry, cavalry, artillery and bands, mechanics of coast artillery, stable sergeants of field artillery, privates of hospital corps, company quartermaster sergeants of cavalry, artillery and infantry, two dollars; first class privates of engineer and signal corps, corporals of cavalry, artillery, infantry and bands, artificers of field artillery and infantry, farriers, blacksmiths, saddlers and waggoners of cavalry, one dollar and seventy-five cents; privates of cavalry, artillery, infantry, signal corps and bands, second class privates of engineers, musicians of artillery, infantry and engineers, trumpeters cavalry, one dollar and fifty cents. [Id.]

Art. 5840. [5841] Tax exemptions.—All officers and enlisted men of the active militia of this State, who comply with their military duties as prescribed by this chapter, shall be entitled to exemption from the payment of all poll taxes, except the poll tax prescribed by the Constitution for the support of the public schools; exemption from the payment of any road or street tax, and from any road duty whatsoever under the laws of this State, and exemption from jury service or duty of every character and description. [Id.]

Art. 5841. [5842] Poll tax exemptions.—To entitle any troop, battery, company, signal corps, or band of the active militia of this State to the exemption from the payment of poll taxes as specified in the preceding article, the commanding officer of such organization shall, between the first days of January and April of each year, file with the assessor of taxes for his county a list of all members of his command who have discharged the military duties required of them for the preceding year, and who have been present for at least twenty-four drills or parades, or have been excused for non-attendance thereof by reason of illness or other necessary cause; such list

shall be certified to by such commanding officer, and the persons whose names appear on such list, shall not be assessed for any poll taxes whatever, other than the poll tax of one dollar prescribed by the Constitution for the support of public schools for the current year; and each assessor with whom such lists are filed shall note the exemptions on his assessment roll as set forth in such lists, and furnish such information to all concerned as may be necessary in carrying out the provisions of this article. [Id.]

Art. 5842. [5843] Road and jury exemptions.—To entitle any troop, battery, company, signal corps or band of the active militia of this State to exemption from the payment of road or street taxes, jury service or duty, and road duty as specified in Article 5840 of this chapter, the commanding officer of such organization shall, between the first and thirty-first days of January of each year, file lists similar to that set forth in the preceding article, certified to him, one copy with clerk of the district court of his county and one copy with the clerk of the county court of his county; and the names appearing on such lists shall thereafter be exempt from jury service or duty of every character and description, from the performance of any road duty, and from the payment of any road or street tax in such county for the current year. County clerks shall furnish information of those so exempt to the proper road overseers and to all others concerned. [Id.]

Art. 5843. [5844] Staff officers exempt.—To entitle any general, field or staff officer of the active militia of this State to said exemptions as set forth in this chapter, such officer shall between the first days of January and April of each year, file with the assessor of taxes for his county his certificate to the effect that he is an officer of the active militia of this State in good standing, and that he has faithfully discharged all the military duties required of him during the preceding year, and, on filing the certificate as herein required, such officer shall not be assessed for any poll tax whatever other than the poll tax of one dollar prescribed by the Constitution for the support of public schools for the current year; and such officer shall file similar certificates between the first and thirty-first days of January of each year, with the district and county clerks of his county, and on filing such certificates, shall thereafter be exempt from jury service or duty of every character and description, from the performance of any road duty and from the payment of any road or street tax in such county for the current year. [Id.]

Art. 5844. [5845] Non-commissioned officers exempt.—To entitle any non-commissioned staff officer, member of the engineer or hospital corps, or any other enlisted man of the active militia of this State not belonging to the regular organization, to the exemptions as set forth in the fourth preceding article, such non-commissioned officer or soldier shall prepare

and file affidavits similar to the certificate provided in the preceding article for officers, with the assessor, district and county clerks of his county; such affidavits shall be filed during the same period and in the same manner as set forth above for officers. On filing such affidavits, such non-commissioned officer or soldier shall be entitled to the same exemptions in the same manner as provided for such officers. [Id.]

Art. 5845. [5846] **Disabled men.**—Every member of the military forces of this State who shall be wounded or disabled while in the service of this State, in case of riot, tumult, breach of the peace, resistance to process, invasion, insurrection or imminent danger thereof, or whenever called upon in aid of the civil authorities, shall be taken care of and provided for at the expense of this State. [Id.]

Art. 5846. [5847] **Transportation, etc.**—The State shall make suitable provision for the pay, transportation, subsistence and quarters of all troops of this State who may attend at any annual encampment, or when called into active service of this State. [Id.]

Art. 5847. [5848] **Exempt from arrest.**—No persons belonging to the active militia of this State shall be arrested on any civil process while going on duty or returning from any place at which he may be required to attend for military duty, except in cases of treason, felony or breach of the peace. [Id.]

ARMS, EQUIPMENT, ETC.

| | Article | | Article |
|--------------------------|---------|------------------------------|---------|
| To return property..... | 5848 | Sheriff to collect arms..... | 5853 |
| Liabie for damage..... | 5849 | Exempt from execution..... | 5854 |
| Private use..... | 5850 | Governor to draw arms..... | 5855 |
| Provided by State..... | 5851 | Storing arms..... | 5856 |
| Warrant for seizure..... | 5852 | Uniform..... | 5857 |

Art. 5848. [5849] **To return property.**—An enlisted man who has not returned all the public property for which he is responsible, shall under no circumstances, receive a full and honorable discharge. [Id.]

Art. 5849. [5850] **Liabie for damage.**—The cost of arms, equipment, and all other military supplies and stores, and the cost of repairs or damages done to arms, equipment and all other military supplies and stores, shall be deducted from the pay of any officer or soldier in whose care or use the same were when such loss, destruction or damage occurred, if said loss, destruction or damage was occasioned by the carelessness, neglect or abuse of said officer or soldier. [Id.]

Art. 5850. [5851] **Private use.**—No officer or enlisted man of the active militia of this State having property in charge shall lend for private use, or permit to be used for any other purpose than the legitimate purpose intended, any public property that he may be responsible for to the Governor. All property issued to a brigade, regimental, battalion, or company commander, or to any band, corps, or auxiliary squad or to any military organization whatever, when not in legitimate

use, shall be carefully stored and protected from waste, theft, loss or injury. [Id.]

Art. 5851. [5852] Provided by State.—All organizations shall be provided by this State with such arms, equipments, books of instruction and of record and other supplies as may be necessary for the proper performance of the duty required of them by this chapter. Each organization shall keep such property in proper repair and in good condition. [Id.]

Art. 5852. [5853-54] Warrant for seizure.—Whenever it comes to the knowledge of the Governor, on the affidavit of a credible person, that the persons having arms, equipment, or other military property issued by this State for the use of the military forces of this State without authority of law, fail or refuse to deliver up such property, he shall issue his warrant to the sheriff of the county where such persons may be or reside, commanding such sheriff to seize and take into his possession such arms, equipments, or other military property, and keep the same subject to the further order of the Governor. Any sheriff receiving such warrant shall without delay execute the same as directed, and in executing such warrant he may summon to his aid the power of the county and any command of the active militia of this State that may be convenient. [Id.]

Art. 5853. [5855] Sheriff to collect arms.—Each sheriff shall, from time to time, collect such arms or property as may be liable to loss or in the hands of unauthorized persons, and such property when collected shall be kept safely subject to the order of the Governor, to whom a report of such collection shall be made. The official bond of sheriffs shall extend to and include the faithful performance of their duties under this and the preceding articles. [Id.]

Art. 5854. [5856] Exempt from execution.—Arms, equipments, clothing or other military supplies issued by this State to organizations or members of the active militia for military purposes, shall be exempt from levy and sale by virtue of an execution for debt, or any other legal proceedings. [Id.]

Art. 5855. [5857] Governor to draw arms.—The Governor in his official capacity is authorized to draw from the United States government all arms, equipment, munitions, or other military stores to which this State may, from time to time, be entitled, for the use of the militia, and may execute such bonds in the name of the State as may be necessary or requisite to secure their issuance. [Id.]

Art. 5856. [5858] Storing arms.—The Governor shall cause all arms, equipment, munitions, or other military property belonging to or under the control of this State, to be stored at such points as he may deem to the best interests of this State. [Id.]

Art. 5857. [5859] Uniform.—The uniform for officers and enlisted men of the active militia of this State shall be the same as that prescribed for the United States army, with such modifications as the Governor may deem necessary from time to time.

All uniforms and other military property issued by this State shall be used for military purposes only, and when issued shall be receipted for, and kept and accounted for in such manner as the Adjutant General may prescribe. [Id.]

ARTICLES OF WAR.

Art. 5858. [5860] **Rules.**—The military forces of this State shall be governed by the following rules known as articles:

The word "officer" as used therein, shall be held to designate commissioned officers: the word "soldier" includes non-commissioned officers, musicians, artificers, privates and enlisted men; the word, "company" shall be understood to include troops, batteries, companies, signal corps, hospital corps, bands and detachments, and the convictions mentioned therein shall be understood to be convictions by court martial.

1. Enlistment in the active militia of this State shall be voluntary, and every person who enlists therein shall take and subscribe an oath in the following form:

"I, _____, do solemnly swear that I will bear true faith and allegiance to the State of Texas and to the United States of America; that I will serve them honestly and faithfully against all their enemies whomsoever, and that I will obey the orders of the Governor of Texas, and the orders of the officers appointed over me, according to the laws, rules and articles for the government of the military forces of the State of Texas."

2. Every officer who knowingly enlists or musters into the military service of this State any minor over the age of sixteen years without the consent of his parents or guardian, or any minor under the age of sixteen years, or any insane or intoxicated person, or any deserter from the military service of this State or of the United States, or any person who has been convicted of any infamous crime, shall upon conviction, be dismissed from the service or suffer such other punishment as a court martial may direct.

3. No enlisted man, duly sworn, shall be discharged from service without a discharge in writing, signed by a field officer of the regiment to which he belongs, or by the commanding officer when no field officer is present; and no discharge shall be given to any enlisted man before his term of service has expired, except by order of the Governor, the Adjutant General, or by order of a court martial.

4. Any officer who knowingly musters as a soldier a person who is not a soldier, shall be deemed guilty of knowingly making a false muster, and punished as a court martial may direct.

5. Any officer who takes money, or other thing by way of gratification, on mustering any regiment or company, or on signing muster rolls, shall be dismissed from the service, and shall thereby be disabled to hold any office or employment, civil or military, in the service of the State of Texas, or suffer such other punishment as a court martial may direct.

6. Every commanding officer shall, in the beginning of January and July of each year, and oftener if required by the Governor, transmit to the Adjutant General's department an exact return of the troops under his command, specifying the names of the officers absent from their posts, with the reasons for and the time of their absence. Such returns shall be made in the form and forwarded in the manner prescribed by the Adjutant General; and any such officer, who through neglect or design omits to send such return shall, on conviction thereof, be punished as a court martial may direct.

7. Every officer who knowingly makes a false return to the Adjutant General's department, or to any of his superior officers authorized to call for such returns, of the state of the regiment or company under his command, or of any arms, ammunition, clothing or other stores thereunto belonging, shall be punished as a court martial may direct.

8. Every officer who signs a false certificate relating to the absence or pay of any officer or soldier shall be dismissed from the service, or suffer such other punishment as a court martial may direct.

9. Any officer who knowingly makes a false muster of man or horse, or who signs, or directs, or allows, the signing of any muster roll, knowing the same to contain a false muster shall, upon proof thereof by two witnesses before a court martial, be dismissed from the service, and shall thereby be disabled to hold any office or employment, civil or military in the service of the State of Texas.

10. Any officer who wilfully or through neglect suffers to be lost, damaged or spoiled any military stores or supplies belonging to this State, or to the United States, which has been received for use of the military forces of this State, shall make good the loss or damage, and suffer such punishment as a court martial may direct.

11. Any soldier who sells or through neglect loses or spoils the arms, uniforms, equipments, accoutrements, or any other military stores or supplies issued to him for his use or in his charge, shall make good the loss or damage, and suffer such punishment as a court martial may direct.

12. Any officer or soldier who shall strike his superior officer, or offers any violence to him, the said superior officer being engaged in the reasonable execution of his official duties, or any officer or soldier who disobeys any lawful command of his superior officer shall be punished as a court martial may direct.

13. Any officer or soldier who begins, excites, causes or joins in any mutiny or sedition in any regiment, company quarters or guard, shall suffer such punishment as a court martial may direct.

14. Any officer or soldier, who being present at any mutiny or sedition, does not use his utmost endeavor to suppress the same, or having any knowledge of any intended mutiny or sedi-

tion, does not, without delay, give information thereof to his commanding officer, shall suffer such punishment as a court martial may direct.

15. All officers, of what conditions soever, have power to quell all quarrels, frays and disorders, whether among persons belonging to their own or to any regiment or company, and to order officers into arrest and non-commissioned officers and soldiers into confinement who take part in same, until their proper superior officer is acquainted therewith. Whoever being so ordered refuses to obey such officer or non-commissioned officer, or draws a weapon upon him, shall be punished as a court martial may direct.

16. No officer or soldier shall send a challenge to another officer or soldier to fight a duel, or accept a challenge so sent. Any officer who so offends shall be dismissed from the service. Any soldier who so offends shall suffer such punishment as a court martial may direct.

17. Any soldier who absents himself from his company or guard, without leave from his commanding officer, shall be punished as a court martial may direct.

18. Any officer or soldier who fails except when prevented by sickness or other necessity, to repair at the fixed time, to the place of parade, exercise, or other rendezvous appointed by his commanding officer, or goes from the same, without leave from his commanding officer, before he is dismissed or relieved, shall be punished as a court martial may direct.

19. Any soldier who is found one mile from camp, without leave in writing from his commanding officer, shall be punished as a court martial may direct.

20. Any officer who is found drunk on his guard, party or other duty, shall be dismissed from the service. Any soldier who so offends shall suffer such punishment as a court martial may direct.

21. Any sentinel who is found sleeping upon his post, or who leaves it before he is regularly relieved, shall suffer such punishment as a court martial may direct.

22. Any officer or soldier who quits his guard without leave from his superior officer, except in case of urgent necessity, shall be punished as a court martial may direct.

23. Any officer who, by any means whatsoever, occasions false alarms in camp, command or quarters, shall suffer such punishment as a court martial may direct.

24. Any officer or soldier who misbehaves himself before the enemy, runs away, or shamefully abandons any place, post or guard, which he is commanded to defend, or speaks words inducing others to do the like, or casts away his arms or ammunition, or quits his post or colors to plunder or pillage, shall suffer such punishment as a court martial may direct.

25. Any officer or soldier who, having been duly enlisted or drafted in the military service of this State, deserts the same shall suffer such punishment as a court martial may direct.

26. Every soldier who deserts the military service of this State shall be liable to serve for such period as shall, with the time he may have served previous to his desertion, amount to the full term of his enlistment; and such soldier shall be tried by a court martial and punished, although the term of his enlistment may have elapsed previous to his being apprehended and tried.

27. Any officer who, having tendered his resignation, quits his post or proper duties, without leave and with intent to remain permanently absent therefrom, prior to due notice of the acceptance of the same, shall be deemed and punished as a deserter.

28. No soldier shall enlist himself in any other regiment or company, without a regular discharge from the regiment or company in which he last served, on a penalty of being reputed a deserter and suffering accordingly. And in case any officer shall knowingly receive and entertain such soldier, or shall not, after his being discovered to be a deserter, immediately give notice thereof to the command in which he last served, the said officer shall, by court martial be dismissed.

29. In time of war, insurrection or rebellion, larceny, robbery, burglary, arson, rape or assault with intent to rape, mayhem, manslaughter, murder, assault and battery with attempt to kill, wounding by shooting or stabbing with intent to commit murder, shall be punished by the sentence of a general court martial when committed by persons in the military service of the State; and punishment in every such case shall not be less than the punishment provided for like offenses by the Penal Code of this State.

30. When any officer or soldier is accused of a capital crime, or of any offense against the person or property of any citizen of this State, which is punishable by the laws of this State, the commanding officer and the officers of the regiment or company to which the person so accused belongs are required, except in time of war, upon application duly made by or in behalf of the party injured, to use their utmost endeavors to deliver him over to the civil authority and to aid the officers of justice in apprehending and securing him in order to bring him to trial. If, upon application, any officer refuses or wilfully neglects, except in time of war, to deliver over such accused person to the civil authorities, or to aid the officers of justice in apprehending him, he shall be punished as a court martial may direct.

31. Any person in the military service of this State, who makes or causes to be made, any claim against this State or the United States, or any officer thereof, knowing such claim to be false or fraudulent; or who presents or causes to be presented, to any person in the civil or military service thereof, for approval or payment, any claim against this State, or the United States, or against any officer thereof, knowing such claim to be false or fraudulent; or

Who enters into any agreement or conspiracy to defraud this State or the United States, by obtaining, or aiding others to obtain, the allowance or payment of any false or fraudulent claim; or

Who for the purpose of obtaining or aiding others to obtain, the approval, allowance or payment of any claim against this State, or the United States, or against any officer thereof, makes or uses, or procures or advises the making or use of, any writing, or other papers knowing the same to contain any false or fraudulent statement; or

Who for the purpose of obtaining, or aiding others to obtain, the approval, allowance or payment of any claim against this State or the United States, or any officer thereof, makes or procures or advises the making of, any oath to any fact or to any writing or other paper knowing such oath to be false; or

Who for the purpose of obtaining, or aiding others to obtain, the approval, allowance or payment of any claim against this State, or the United States, or any officer thereof, forges or counterfeits or procures or advises the forging or counterfeiting of any signature upon any writing or other paper, or uses or procures or advises the use of any such signature, knowing the same to be forged or counterfeited; or

Who, having charge, possession, custody or control of any money or other property of this State, or the United States, furnished or intended for the military service of this State, knowingly delivers or causes to be delivered to any person having authority to receive the same, any amount less than that for which he receives a certificate or receipt; or

Who, being authorized to make or deliver any papers certifying the receipt of any property of this State, or the United States, furnished or intended for the military service of this State, makes or delivers to any person, such writing, without having full knowledge of the truth of the statements therein contained, or with intent to defraud this State, or the United States; or

Who steals, embezzles, knowingly and wilfully misappropriates, applies to his own use or benefit, or wrongfully or knowingly sells or disposes of any ordnance, arms, equipment, ammunition, clothing, subsistence stores, money or other property of this State, or the United States, furnished or intended for the military service of this State; or

Who knowingly purchases, or receives in pledge for any obligation or indebtedness, from any soldier, officer or other person who is part of, or employed in, said forces or service, any ordnance, arms, equipment, ammunition, clothing, subsistence stores or other property of this State, or the United States, such soldier or officer, or other person not having lawful right to sell or pledge the same shall on conviction thereof, be punished by fine or imprisonment, or by such other punishment as a court martial may adjudge, or by any or all of said penalties. If any

person, being guilty of any of the offenses aforesaid, while in the military service of this State, receives his discharge, or is dismissed from the service, he shall continue to be liable to be arrested and held for trial and sentence by a court martial, in the same manner and to the same extent as if he had not received such discharge or been dismissed.

32. Any officer who is convicted of conduct unbecoming to an officer and a gentleman shall be dismissed from the service.

33. All crimes not capital, and all disorders and neglects which officers and soldiers may be guilty of, to the prejudice of good order and military discipline, though not mentioned in the foregoing articles, are to be taken cognizance of by a general or regimental, or a summary court martial, according to the nature and degree of the offense, and punished at the discretion of such court.

34. Whenever, by these articles of war for the government of the military forces of this State, the punishment or conviction of any military offense, is left to the discretion of the court martial, the punishment therefor shall not be in excess of a limit which the Governor may prescribe.

35. The officers and soldiers of any troops whether active or reserve militia of this State or otherwise appointed, enlisted, mustered or drafted into the military forces of this State, shall at all times, and in all places be governed by these articles, and shall be tried by courts martial.

36. All retainers of the camp and all persons serving with the military forces of this State in the field, though not enlisted soldiers, shall be subject to these rules and articles in the same manner as enlisted men.

37. Officers charged with crime shall be arrested and confined in their quarters or tents, or other place, and deprived of their swords by the commanding officer. And any officer who leaves his confinement before he is set at liberty by his commanding officer shall be dismissed from the service, and suffer such other punishment as a court martial may direct.

38. Soldiers charged with crime shall be confined until tried by court martial, or released by proper authority.

39. Any provost marshal, or any officer commanding a guard, who shall refuse to receive or keep any prisoner committed to his charge by an officer belonging to the military forces of this State shall suffer such punishment as a court martial may direct, provided the officer committing shall, at the same time, deliver a statement in writing, signed by himself, of the crime charged against the prisoner.

40. Every officer to whose charge a prisoner is committed, shall within twenty-four hours after such commitment, or as soon as he is relieved from his guard, report in writing to the commanding officer the name of such prisoner, the crime charged against him, and the name of the officer committing him; and

if he fails to make such report, he shall be punished as a court martial may direct.

41. Any officer who presumes without proper authority, to release a prisoner committed to his charge, or suffers any prisoner so committed to escape, shall be punished as a court martial may direct,

42. No officer or soldier put in arrest shall be continued in confinement more than five days, or until such time as a court martial can be assembled.

43. When an officer is put in arrest for the purpose of trial, except at remote stations, the officer by whose order he is arrested shall see that a copy of the charges on which he is to be tried is served upon him within five days after his arrest, and that he is brought to trial within ten days thereafter, unless the necessities of the service prevent such trial; and then he shall be brought to trial within thirty days after the expiration of said ten days. If a copy of the charges be not served, or the arrested officer be not brought to trial, as herein required, the arrest shall cease. But officers released from arrest under the provisions of this article, may be tried, whenever the exigencies of the service shall permit, within twelve months after such release from arrest.

44. The Governor, or any general, or other officer commanding a division or brigade, may appoint general courts martial whenever necessary. But when any such general or other officer is the accuser or prosecutor of any officer under his command, the court shall be appointed by the Governor; and its proceedings and sentence shall be sent directly to the Adjutant General, by whom they shall be laid before the Governor for his approval or orders in the case.

45. Officers who may appoint a court martial shall be competent to appoint a judge advocate for the same.

46. General courts martial may consist of any number of officers, from five to thirteen inclusive, but they shall not consist of less than thirteen when that number can be convened without injury to the service. A decision of the appointing authority as to the number that can be assembled without injury to the service is conclusive.

47. When the requisite number of officers to form a general court martial is not present in any command or detachment, the commanding officer shall, in cases which require the cognizance of such a court, report to the Governor, who shall thereupon order a court to be assembled at the nearest and most convenient place at or near which there may be such a requisite number of officers, and shall order the party accused, with the necessary witnesses to be transported to the place where the said court shall be assembled.

48. Every officer commanding a camp or other place where the troops consist of different corps, and every officer commanding a regiment, separate squadron or battalion, shall be

competent to appoint for such camp or other place, or such regiment, separate squadron or battalion, regimental courts martial, consisting of three officers, to try enlisted men for offenses not capital; but such courts martial shall be appointed and the officers designated by superior authority when by him deemed desirable. Such courts martial shall have power to award punishment not to exceed confinement at hard labor for thirty days, or forfeiture of thirty dollars pay, or a fine of thirty dollars, or any or all of such confinement, forfeiture of pay and fine, and in case of a non-commissioned officer, reduction to the ranks in addition thereto.

49. Every commanding officer of each camp or other place, regiment or corps, detached battalion or company, and the commanding officer of each company at its home station, shall have power to appoint for such place, command or station summary courts martial to consist of one officer to be designated by him, to try enlisted men for offenses not capital, but such summary courts martial may be appointed and the officer designated by superior authority when by him deemed desirable; and, when but one commissioned officer is present with a command, he shall hear and finally determine such cases. Such summary courts shall have power to adjudge punishment not to exceed confinement at hard labor for thirty days, forfeiture of thirty dollars pay, or a fine of thirty dollars or any or all of such confinement, forfeiture of pay and fine, and, in case of non-commissioned officers, reduction to the ranks in addition thereto; provided such summary courts shall not adjudge confinement for more than ten days, forfeiture of more than ten dollars pay, or a fine of more than ten dollars, or any or all of such confinement, forfeiture of pay and fine, unless the accused shall, before trial, consent in writing to trial by said court; but in case of refusal to so consent, the trial may be had either by general, regimental or by said summary court, but in case of trial by said summary court without the consent as aforesaid, the court shall not adjudge confinement for more than ten days, or forfeiture of more than ten dollars pay, or a fine of more than ten dollars, or any or all of such confinement, forfeiture of pay and fine. The officer holding the summary court shall have power to administer oaths and to hear and determine cases cognizable by said court, and when satisfied of the guilt of the accused, adjudge the punishment to be inflicted which shall not exceed the limit prescribed in this article.

50. There shall be a summary court record kept at the headquarters of the proper command in the field, each regiment or corps, detached battalion or company, and each company at its home station, for which summary courts martial have been appointed, in which shall be entered a record of all cases heard and determined and the action had thereon. The commanding officer of each camp or other place, regiment or corps, detached battalion or company, and each company at its

home station, for which summary courts martial have been appointed shall, on the last day of every month and oftener if required, make a report to the Adjutant General of the number of cases determined by summary courts, during the period, setting forth the offenses committed and the penalties awarded.

51. The judge advocate of any general or regimental court martial shall administer to each member of such court, before they proceed upon any trial, the following oath: "You, A. B., do solemnly swear that you will well and truly try and determine according to evidence, the matter now before you, between the State of Texas and the prisoner to be tried, and that you will duly administer justice, without partiality, favor or affection, according to the provisions of the rules and articles for the government for the military forces of this State, and if any doubts should arise, not explained by said articles, then according to your conscience, and the best of your understanding, and the customs in like cases; and you do further swear that you will not divulge the sentence of the court until it shall be published by the proper authority, except to the judge advocate; neither will you disclose or discover the vote or opinion of any particular member of the court martial, unless required to give evidence thereof as a witness by a court of justice in due course of law. So help you God."

52. When the oath has been administered to the members of a court martial, the president of the court shall administer to the judge advocate, or person officiating as such an oath in the following form: "You do swear that you will not disclose or discover the vote or opinion of any particular member of the court martial, unless required to give evidence thereof as a witness by a court of justice in due course of law; nor divulge the sentence of the court to any but the proper authority until it shall be duly disclosed by the same. So help you God."

53. A court martial may punish, at discretion, any person who uses any menacing words, signs or gestures in its presence, or who disturbs its proceedings by any riot or disorder.

54. All members of a court martial are to behave with decency and calmness.

55. Members of a court martial may be challenged by a prisoner, but only for causes stated to the court. The court shall determine the relevancy and validity thereof, and shall not receive a challenge to more than one member at a time.

56. When a prisoner, arraigned before a court martial, from obstancy and deliberate design, stands mute or answers foreign to the purpose, the court may proceed to trial and judgment as if the prisoner had pleaded not guilty.

57. The judge advocate general or some person deputed by him, or by the Governor, or general or officer commanding the division, brigade, camp or other place, regiment, separate squadron or battalion shall prosecute on the name of the State of Texas; but when the prisoner has made his plea he

shall so far consider himself counsel for the prisoner as to object to any leading question to any of the witnesses and to any question to the prisoner, the answer to which might tend to criminate himself. Whenever a court martial shall sit in closed session the judge advocate shall withdraw, and, whenever his legal advice or his assistance in referring to recorded evidence is required, it shall be obtained in open court.

58. The judge advocate general and the officers of his department, the judge advocate of court martial and the trial officers of summary courts are hereby authorized to administer oaths for the purpose of administration of military justice and for other military purposes.

59. The deposition of witnesses for the accused residing beyond the limits of the State, or the county in which any military court may be ordered to sit, may be taken and read in evidence as provided by the laws of this State.

60. All persons who give evidence before a court martial shall be examined on oath administered by the judge advocate in the following form: "You swear that the evidence you shall give in the case now in hearing shall be the truth, the whole truth, and nothing but the truth. So help you God."

61. A court martial for reasonable cause shall grant a continuance to either party for such time and as often as may appear to be just; provided, that if the prisoner be in close confinement the trial shall not be delayed for more than sixty days.

62. Members of a court martial in giving their votes, shall begin with the youngest in commission.

63. Officers shall be tried only by general courts martial; and no officer shall, when it can be avoided, be tried by officers inferior to him in rank.

64. No officer shall be discharged or dismissed from the service except by order of the Governor, or by sentence of a general court martial.

65. When an officer is dismissed from the service for cowardice or fraud, the sentence shall direct that the crime, punishment, name and place of abode of the delinquent shall be published in the newspapers in and about the State and in the county in which the offender lives, or where he usually resides; and, after such publication, it shall be scandalous for an officer to associate with him.

66. When a court martial suspends an officer from command it may also suspend his pay and emoluments for the same time according to the nature of his offense.

67. No person shall be tried for the second time for the same offense.

68. No person shall be liable to be tried or punished by a general court martial for any offense except for desertion in the face of an enemy, committed more than two years before the arraignment of such person for such offense, unless he shall

have meanwhile absented himself from this State, in which case the time of his absence shall be excluded in computing the period of the limitation; provided that said limitation shall not begin until the end of the term for which said person was mustered into service.

69. No sentence of a court martial respecting a general officer, and no sentence of a court martial directing the dismissal of any officer, shall be carried into execution until it shall have been confirmed by the Governor.

70. No sentence of a court martial shall be carried into execution until the same shall have been approved by the officer ordering the court, or by the officer commanding for the time being.

71. All sentences of a court martial may be confirmed and carried into execution by the officer ordering the court, or by the officer commanding for the time being, where the confirmation by the Governor is not required by these articles.

72. Any officer who is authorized to confirm and carry into execution the sentence of a court martial shall have power to pardon or mitigate any punishment adjudged by it, except the punishment of dismissal of an officer; and the Governor shall have power to pardon or mitigate any punishment adjudged by any court martial.

73. Every judge advocate, or person acting as such, at any general or regimental court martial shall, with such expedition as the opportunity of time and distance of place may admit, forward the original proceedings and sentences of such court to the Adjutant General in whose office they shall be carefully preserved.

74. Every party tried by general or regimental court martial shall, upon demand thereof, made by himself or any person in his behalf, be entitled to a copy of the proceedings and sentences of such court.

75. A court of inquiry to examine into the nature of any such transaction of, or accusation or imputation against, any officer or soldier may be ordered by the Governor, or by any commanding officer; but such courts of inquiry shall never be ordered by any commanding officer, except upon a demand by the officer or soldier whose conduct is to be inquired of.

76. A court of inquiry shall consist of one or more officers, not exceeding three, and a recorder to reduce the proceedings and evidence to writing.

77. The recorder of a court of inquiry shall administer to the members the following oath: "You shall well and truly examine and inquire, according to the evidence, into the matter now before you without partially, favor, affection, prejudice or hope of reward. So help you God." After which the president of the court shall administer to the recorder the following oath: "You do swear that you will according to your best abilities, accurately and impartially record the proceedings of

the court and the evidence to be given in the case in hearing. So help you God."

78. A court of inquiry and the recorder thereof shall have the same power to summon and examine witnesses as is given to courts martial and the judge advocates thereof. Such witnesses shall take the same oath which is taken by witnesses before courts martial and the party accused shall be permitted to examine and cross-examine them so as to fully investigate the circumstances in question.

79. A court of inquiry shall not give an opinion on the merits of the case inquired of, unless specially ordered to do so.

80. The proceedings of a court of inquiry must be authenticated by the signatures of the recorder and the president thereof, and delivered to the commanding officer.

81. The proceedings of a court of inquiry may be admitted as evidence by a court martial in cases not extending to the dismissal of an officer; provided, that the circumstances are such that oral testimony can be obtained.

82. The foregoing articles shall be read once in every twelve months to every company in the military service of this State, and shall be duly observed and obeyed by all officers and soldiers in said service. [Id.]

COURTS MARTIAL.

| | Article | | Article |
|--------------------------------|---------|---------------------------------|---------|
| Evidence | 5859 | Suits on bonds, etc..... | 5872 |
| Privileges of accused..... | 5860 | Laws applicable | 5873 |
| Counsel for defendant..... | 5861 | Warrant of arrest..... | 5874 |
| Reporter | 5862 | Officers' fees | 5875 |
| May issue process | 5863 | Felony | 5876 |
| Process generally | 5864 | Misdemeanor | 5877 |
| Penalty | 5865 | Fine and costs | 5878 |
| Witnesses expenses | 5866 | Payment of fines..... | 5879 |
| Compensation of | 5867 | Fines | 5880 |
| Account | 5868 | Sheriff to execute process..... | 5881 |
| Attachment for witnesses..... | 5869 | Jurisdiction presumed | 5882 |
| Witness fees | 5870 | Exemption from sentence..... | 5883 |
| Governor may order arrest..... | 5871 | Change of venue..... | 5884 |

Art. 5859. [5861] **Evidence.**—The rules of evidence in all courts martial shall follow in general, so far as apposite, the common law rules of evidence as observed by the courts of this State in criminal cases; but a certain latitude in the introduction of evidence and the examination of witnesses by an avoidance of restrictive rules is permissible, when it is in the administration of military justice.

Art. 5860. [5862] **Privileges of accused.**—In all trials before courts martial, the accused shall have the right to demand the nature and cause of the accusation against him, and to be presented with a copy of the charges. He shall have the right of being heard by himself or counsel, or both; shall be confronted with the witnesses against him, and shall have compulsory process for obtaining witnesses in his favor. [Id.]

Art. 5861. [5863] **Counsel for defendant.**—The officer ordering a general or regimental court martial will at the request of any prisoner who is to be arraigned, detail as coun-

sel for his defense a suitable officer, one not acting as a summary court; provided such request is made within a reasonable time before trial. If there be no such officer available, the fact will be reported to the Adjutant General for his action. An officer so detailed shall perform such duties as usually devolve upon counsel for defendant before civil courts in criminal cases. [Id.]

Art. 5862. [5864] **Reporter.**—The judge advocate of a military court shall have power to appoint a reporter, who shall record the proceedings of, and testimony taken before such court, and may set down the same, in the first instance in shorthand. The reporter shall, before entering upon his duty, be sworn faithfully to perform the same. [Id.]

Art. 5863. [5865] **May issue process.**—The president or judge advocate of every general or regimental court martial shall have power to issue like process to compel witnesses to appear and testify, which courts of criminal jurisdiction within this State may lawfully issue; and such process shall be issued in the same style and manner and executed by the same officers as when issued by such court. [Id.]

Art. 5864. [5866] **Process generally.**—The president of any court martial, and any summary court officer, shall have authority to issue, under his hand, in the name of the State of Texas, directed to any sheriff or constable, whose duty it shall be to serve or execute the same in the same manner in which like process is served or executed when issued by a magistrate, all necessary process, subpoenas, attachments, warrants of arrest and warrant of commitment. [Id.]

Art. 5865. [5867] **Penalty.**—Every person, who being duly subpoenaed to appear as a witness before a regimental or general court martial, who wilfully neglects or refuses to appear, or refuses to qualify as a witness or produce documentary evidence which such person may have been legally subpoenaed to produce, shall be deemed guilty of a misdemeanor, and prosecuted in the proper justice court, and punished by a fine not exceeding one hundred dollars; provided, such witness may plead as a defense that he was not tendered or paid one day's fee and mileage for the journey to and from the place of trial, as provided in this chapter, such amounts to be paid by the Adjutant General's department out of any appropriation of funds available for that purpose; provided, that no witness shall be compelled to incriminate himself, or to answer any questions which may tend to incriminate or degrade him. [Id.]

Art. 5866. [5868] **Witnesses expenses.**—Persons in the employ of this State, but not belonging to the military forces thereof, when traveling upon summons as witnesses before military courts, are entitled to transportation from their place of residence to the place where the court is in session and return. If no transportation be furnished they are entitled to reimbursement of the cost of travel actually performed by the

shortest usually traveled route. They are also entitled to reimbursement of the actual cost of meals and rooms at a rate not to exceed two dollars per day for each day actually and unavoidably consumed in travel, or in attendance upon the court under the order or summons. No allowance will be made to them when attendance upon court does not require them to leave their place of residence. [Id.]

Art. 5867. [5869] Compensation of.—A person not in the employ of this State and not belonging to the active military forces thereof, who has been duly summoned to appear as a witness before a military court, will receive one dollar and fifty cents per day for each day actually in attendance upon the court, and six cents a mile for going from his place of residence to the place of trial or hearing, and six cents a mile for returning. Civilian witnesses will be paid by the Adjutant General's department. [Id.]

Art. 5868. [5870] Account.—The charges for return journeys of witnesses will be made upon the basis of the actual charges allowed for travel to the court, and the entire account thus completed will be paid upon discharge from attendance without waiting for completion of return travel. [Id.]

Art. 5869. [5871] Attachment for witnesses.—If a witness has been subpoenaed and fails to attend, attachment shall issue, and he shall be liable for the costs of such attachment unless good cause be shown to the court why he failed to obey the subpoena, which cost may be recovered by civil suit. [Id.]

Art. 5870. [5872] Witness fees.—No fees shall be allowed to a person as witness fees, unless such person has been subpoenaed, attached, or recognized as a witness in the case.

Art. 5871. [5873] Governor may order arrest.—When charges against any person in the military service of this State are made to the Governor, or any officer authorized to order a court martial for the trial of such person, and the Governor or such officer, believes that such charges can be sustained, and has reason to believe that the person so charged will not appear for trial, or intends to flee from justice, the Governor, or such officer, may issue a warrant of arrest to the sheriff or any constable of the county in which the person so charged resides, or wherein he is supposed to be, commanding the sheriff or constable to take the body of the person so charged and confine him in jail until such time as his case may be finally disposed of; and the sheriff or constable, on the order of the Governor, or officer ordering the court, shall bring the person so charged before the court martial for trial, or turn him over to whoever the order may direct; the Governor, or the officer issuing the warrant of arrest, shall indorse thereon the amount of bail to be required; and it shall be a violation of duty on the part of any sheriff or constable to permit a person so committed to remain out of jail, except that he may, when such person desires it, permit him to give bail in the sum indorsed

on the warrant, conditioned for his appearance, from time to time, before such court martial as he may be ordered for trial, and until his case is finally disposed of, or until such time as he may surrender to the sheriff or constable as directed by the reviewing authority of the court martial before which he may be ordered for trial. [Id.]

Art. 5872. [5874] Suit on bonds, etc.—Upon the failure of any person, who has been admitted to bail conditioned for his appearance for trial before a court martial, or upon the failure of any person admitted to bail to appear as a witness in any case before a court martial, as conditioned in the bail bond of any such person, the court martial shall certify the fact of such failure to so appear to the officer ordering the court martial, or to the officer commanding for the time being, as the case may be; and such officer shall cause a judge advocate, district or county attorney to file suit in Travis County therefor. [Id.]

Art. 5873. [5875] Laws applicable.—The rules laid down in the Code of Criminal Procedure of this State relating to the giving of bail, the amount of bail, the number of sureties, the persons who may be sureties, the property exempt from liability, the responsibility of parties to the same and all other rules of a general nature not inconsistent with this law are applicable to bail taken as provided in this chapter. [Id.]

Art. 5874. [5876] Warrant of arrest.—A warrant of arrest issued by the Governor, or other officer authorized to order a general court martial, and all subpoenas and other process issued by general courts martial shall extend to every part of the State; but warrants of arrest issued by an officer, other than those named above, and all subpoenas and other process issued by other military courts can not be executed in any other county than the one in which they were issued, except they be indorsed by the Governor, or an officer authorized to order a general court martial, in which case they can be executed anywhere in the State. The indorsement may be "Let this process be executed in any county in the State of Texas." The indorsement shall be dated and signed officially by the Governor or officer making it. [Id.]

Art. 5875. [5877-78] Officers' fees.—Upon conviction of any person by a court martial, all costs including the cost accruing for witness fees and the fees for sheriffs or constables for executing the process, subpoenas, writs of attachment, warrant of arrest, warrant of commitment, or any other authorized writs, shall be taxed against defendant; and any sheriff or constable executing any process, subpoena, writ of attachment, warrant of arrest, warrant of commitment, or any other authorized writs, shall be allowed the same fees as provided by the Code of Criminal Procedure in this State. When the defendant is imprisoned for costs the Adjutant General shall pay said costs out of any fund that may be available. [Id.]

Art. 5876. [5879] **Felony.**—When the sentence of a court martial adjudges confinement, and the reviewing authority has approved the same in whole or in part, and such sentence as approved exceeds two years confinement, the reviewing authority, or the commanding officer for the time being, as the case may be, shall issue a warrant of commitment to the sheriff of the county in which the court martial was held, directing such sheriff to take the body of the person so sentenced and confine him in the county jail of such county until taken charge of by a duly accredited agent of the State penitentiary; and such reviewing authority, or the commanding officer for the time being, as the case may be, shall certify a copy of the proceedings, as approved, of the court martial in the case of such person to be confined to the superintendent of the State penitentiary, which shall be sufficient authority for, and such superintendent shall send for and confine such person in said penitentiary for the period named in the proceedings of the court martial as approved, or until he may be directed to release him by proper authority; and the State penitentiary board shall make such provision as may be necessary for receiving from the sheriff as aforesaid and confining such person in such manner as persons are received and confined in the State penitentiary on sentence of district courts in this State. [Id.]

Art. 5877. [5880] **Misdemeanor.**—When the sentence of a court martial adjudges confinement, and the reviewing authority has approved the same in whole or in part, and such sentence as approved, does not exceed two years confinement, the reviewing authority, or the commanding officer for the time being, as the case may be, shall issue a warrant of commitment to the sheriff of the county in which such court martial was held, directing such sheriff to take the body of the person so sentenced and confine him in the county jail of such county for the period named in such sentence, as approved, or until he may be directed to release him by proper authority; and such confinement shall be carried out as prescribed for confinement in jail by the Code of Criminal Procedure of this State. [Id.]

Art. 5878. [5881] **Fine and costs.**—When the sentence of a court martial adjudges a fine and cost against any person, and such fine and cost has not been fully paid within ten days after the confirmation thereof, the Governor or officer ordering the court or the officer commanding for the time being, as the case may be, shall issue a warrant of commitment directed to the sheriff of the county in which the court martial was held, directing him to take the body of the person so convicted and confine him in the county jail; and the sheriff shall take the body of the person convicted and confine him in the county jail for one day for any fine not exceeding one dollar,

and one additional day for every dollar above that sum, and one additional day for each dollar of cost. [Id.]

Art. 5879. [5882] Payment of fines.—All fines and forfeitures, imposed by general or regimental courts martial, shall be paid to the officer ordering such courts, or to the officer commanding for the time being, and by said officer, within five days from the receipt thereof, paid to the Adjutant General, who shall disburse the same as he may see fit for military purposes. [Id.]

Art. 5880. [5883] Fines.—All fines and forfeitures imposed by summary courts martial shall be paid to the officer ordering the court, or the officer commanding for the time being, and by such officer, within five days from the receipt thereof, placed to the credit of the company fund of the company of which the person fined was a member when the fine was imposed. [Id.]

Art. 5881. [5884] Sheriff to execute process.—When any lawful process, issued by the proper officer of any court martial, comes to the hands of any sheriff or constable, he shall perform the usual duties of such officer and perform all acts and duties by this chapter imposed or authorized to be performed by any sheriff or constable. [Id.]

Art. 5882. [5885] Jurisdiction presumed.—The jurisdiction of the courts and boards established by this chapter shall be presumed and the burden of proof shall rest on any person seeking to oust such courts or boards of jurisdiction in any action or proceeding. [Id.]

Art. 5883. [5886] Exemption from sentence.—No action or proceeding shall be prosecuted or maintained against a member of the military forces of this State or officer or person acting under its authority or reviewing its proceedings on account of the approval or imposition or execution of any sentence, or the imposition or collection of any fine or penalty, or the execution of any warrant, writ, execution, process, or mandate of a military court. [Id.]

Art. 5884. [5887] Change of venue.—Any officer or member of the military forces of this State, who is sued for any injury to persons or property done while performing, or endeavoring to perform, any duty required of him by this law, shall have the right, and the court in which suit is pending, upon the application of the person sued, shall remove the venue of such cause to some court of competent jurisdiction in another county not subject to the same or some other disqualification; provided, such application is supported by the affidavit of two credible persons to the effect that they have good reason to believe that the defendant cannot have a fair and impartial trial before such court. [Id.]

GENERAL PROVISIONS.

| | Article | | Article |
|-----------------------------|---------|----------------------|---------|
| Appropriations | 5885 | Gambling, etc. | 5888 |
| Right of way on street..... | 5886 | Insurrection | 5889 |
| Penalties | 5887 | Foreign troops | 5890 |

Art. 5885. [5888] Appropriations. — Each commissioners court and the council of any city or town in this State are hereby authorized and empowered, in their discretion, to appropriate a sufficient sum, not otherwise appropriated, to pay the necessary expenses of the troops, batteries, companies, signal corps, hospital corps and bands of the active militia of this State located in their respective counties, cities or towns, not to exceed the sum of one hundred dollars per month for such expenses of any one organization. [Id.]

Art. 5886. [5889] Right of way on street.—The commanding officer of any portion of the active militia of this State, parading or performing any military duty in any street or highway, may require any or all persons in such street or highway to yield to the right of way to such militia; provided, that the carriage of the United States mails, the legitimate functions of the police and the progress and operations of hospital ambulances, fire engines and fire departments shall not be interfered with thereby. [Id.]

Art. 5887. [5890] Penalties.—Any person who shall secrete, sell, dispose of, offer for sale, purchase, retain after demand made by a commissioned officer of the active militia of this State, or in any manner pawn or pledge any arms, uniforms, equipment, or other military property issued under the provisions of this chapter, or of the military regulations of this State, or any person who shall wear any uniform or part thereof, or device, strap, knot, or insignia of any design or character used as a designation of grade, rank of office, such as are by law or by general regulations duly promulgated, prescribed for the use of the active militia of this State, or similar thereto, except members of the army of the United States or the active militia of this State; or any person who shall subject or cause to be subjected any other person to the deprivation of any right, privilege or immunity usually enjoyed by the public on account of membership in the army, navy, marine corps or revenue cutter service of the United States, or of the National Guard or naval service of this State, or otherwise in the military or naval service of the United States or of this State, wearing the uniform prescribed for him at that time by law, regulation of the service or custom, on account of his wearing such uniform or of being in such service; or who on account of such membership or the wearing of such uniform shall make or cause to be made such discrimination, shall forfeit to the State one hundred dollars for each offense, to be sued for in the name of the State of Texas by a judge advocate, district or county attorney. All money recovered by any action under this article shall be paid to the Adjutant General, who shall apply the same to the

use of the active militia of this State. [Acts 1905, p. 167, Sec. 72; Acts 1st C. S. 1917, p. 20.]

Art. 5888. [5891] **Gambling, etc.**—The commanding officer upon any occasion of duty may place in arrest, during the continuance thereof, any person who shall trespass upon the camp ground, parade ground, armory or other place devoted to such duty, or shall in any way or manner interrupt or molest the orderly discharge of duty by those under arms, or shall disturb or prevent the passage of troops going to and returning from any duty. He may prohibit and prevent the holding of huckster or auction sales, and all gambling within the limit of the post, camp ground, place of encampment, parade or drill under his command, or within limits not exceeding one mile therefrom as he may prescribe. And he may in his discretion, abate as a common nuisance all such sales. [Acts 1905, p. 167.]

Art. 5889. [5892] **Insurrection.**—Whenever any portion of the military forces of this State is employed in aid of the civil authority, the Governor, if in his judgment the maintenance of law and order will thereby be promoted may, by proclamation, declare the county or city in which the troops are serving, or any special portion thereof, to be in a state of insurrection. [Id.]

Art. 5890. [5893] **Foreign troops.**—No armed military force from another State, territory or district shall be permitted to enter this State without the permission of the Governor, unless such force is a part of the United States army. [Id.]

CHAPTER FOUR.

STATE NAVAL MILITIA.

Art. 5891. **Texas Naval Board.**—The “Texas Naval Board” shall consist of the Governor, and one other person to be appointed by him, which board shall have power to make, adopt and promulgate all such rules, orders and regulations as may be advisable and necessary to create and maintain an efficient naval militia, and is further empowered to co-operate with the Secretary of the Navy of the United States in putting into effect in the State of Texas, the provisions of an Act passed by the Sixty-third Congress, entitled: “An Act to promulgate the efficiency of the naval militia, and for other purposes.” [Acts 1915, p. 124.]

TITLE 95.

MINES AND MINING.

1 MINING BOARD AND INSPECTOR.

| | Article | | Article |
|---------------------------------|---------|-----------------------------|---------|
| Mining Board | 5892 | Compensation of board | 5897 |
| Board to select inspector | 5893 | Duties of inspector | 5898 |
| Qualifications and term | 5894 | Discrimination | 5899 |
| Supervision and removal | 5895 | Bond and liability | 5900 |
| Meetings of board | 5896 | | |

Art. 5892. [5923-4] Mining Board.—The Governor shall biennially appoint for a term of two years a board of seven members to be known as the State Mining Board, who shall make formal inquiry into and pass upon the qualifications and personal fitness of those seeking appointment as State Mining Inspector. Three members of said board shall be practical miners and three shall be mine operators. These six members shall nominate to the Governor a suitable person for appointment as the seventh member. If the said nomination is not made within ten days after their appointment, the Governor shall appoint the seventh. [Acts 1907, p. 331.]

Art. 5893. [5925] Board to select inspector.—The board shall meet biennially in the State Capitol to hear applications for the office of State Mining Inspector, and shall examine thoroughly all applicants who may come before it and select from among them the one who in its opinion is best qualified to perform the duties of said office, and upon their nomination, the Governor shall appoint their nominee. [Id. Sec. 16.]

Art. 5894. [5926] Qualifications and term.—The State Mining Inspector shall be a citizen of the United States, and shall have resided in this State for one year, a man at least thirty years old, of good repute, personal integrity and temperate habits, without any pecuniary interest in any mine in this State, and with at least five years experience working in and around coal mines. He shall hold office for a term of two years. [Id. Sec. 17.]

Art. 5895. [5927] Supervision and removal.—The board shall exercise supervision over the acts of said inspector, and in the event of his incompetency or the neglect of his duty being proved to the board, they shall recommend to the Governor that he be removed from office, and his successor shall be chosen as herein provided. [Id. Sec. 18.]

Art. 5896. [5928] Meetings of board.—The board shall meet twice each year at such time and place as the majority may select for the purpose of receiving reports from the inspector and instructing him in the performance of his duties. [Id. Sec. 19.]

Art. 5897. [5929] Compensation of board.—The members of said board shall receive as compensation for their services five dollars a day not exceeding thirty days in any one year, and traveling expenses going to and returning from board meetings. [Id. Sec. 20.]

Art. 5898. [5930] Duties of inspector.—Said inspector under the instruction of said board shall enforce the provisions of this title, and shall make a report to said board at its semi-annual meeting and oftener if required. He shall file an itemized statement showing the number of times he inspected each mine and the actual amounts expended. [Id. Acts 1909, p. 163.]

Art. 5899. [5931] Discrimination.—Neither the instructions of said board nor the acts of said inspector shall ever discriminate in favor of or against any mine or against any owner, operator or employe of any mine, but said acts, either of the board or of the inspector, shall be impartial, fair and just to all persons or corporations subject to this law. [Id.]

Art. 5900. [5932] Bond and liability.—Before receiving his appointment by the Governor, said inspector shall enter into and deliver to the Governor a bond in the sum of ten thousand dollars, with at least three good and sufficient sureties, conditioned for the faithful and impartial performance of his duty, which bond shall be payable to and approved by the Governor. His sureties shall make affidavit that they, in their own right, are worth over and above all exemptions the full amount of the bond they sign as sureties. On proof that said inspector has discriminated against and to the injury of any owner, operator or employe of any mine, the said owner, operator or employe may sue upon said bond and shall be entitled to recover such damages as may be proved in such suit. [Id.]

2 MINING REGULATIONS.

| Article | Article | | |
|---------------------------------|---------|----------------------------|------|
| Shafts, cages and passways..... | 5901 | Posting mine rules..... | 5911 |
| Props and timbers..... | 5902 | Coal scales..... | 5912 |
| Abandoned workings..... | 5903 | Check weighman..... | 5913 |
| Ventilation..... | 5904 | Oil used..... | 5914 |
| Cut-throughs..... | 5905 | Insulating live wires..... | 5915 |
| Notice of fire damp..... | 5906 | Duty of inspector..... | 5916 |
| Mining cage..... | 5907 | Map of mine..... | 5917 |
| Powder..... | 5908 | Animals in mines..... | 5918 |
| Safety lamps..... | 5909 | Exceptions..... | 5919 |
| Endangering life or health..... | 5910 | Bath facilities..... | 5920 |

Art. 5901. [5933] Shafts, cages and passways.—Any shaft in process of sinking, and any opening projected for the purpose of mining coal of all kinds, shall be subjected to the provisions of this and the thirteen succeeding articles. At the bottom of each shaft and every caging place therein, a safe commodious passageway must be cut around said landing place, to serve as a traveling way by which employes shall pass from one side of the shaft to the other without passing under or on the cage. The upper and lower landings at the top of each shaft, and the openings of each intermediate seam from or to the shaft, shall be clear and free from loose materials and shall be securely fenced with automatic or other gates or bars so as to prevent either men or materials from falling into the shaft. Every hoisting shaft must be equipped with substantial cages fitted to guide rails running from the top to the bottom. Said

cages must be safely constructed, they must be furnished with suitable boiler iron covers to protect persons riding thereon from falling objects, and they must be equipped with safety catches. Every cage on which people are carried must be fitted with iron bars, rings or chains in proper place and in sufficient number to furnish a secure handhold for every person permitted to ride thereon. At the top landing, cage supports, where necessary, must be carefully set and adjusted so as to work properly and securely hold the cages when at rest. In all cases where the human voice cannot be distinctly heard, there shall be provided a metal tube or telephone from the top to the bottom of the shaft or slope through which conversation may be held between persons at the bottom and top of such shaft or slope, and there shall also be maintained an efficient system of signaling to and from the top of the shaft or slope and each seam or opening. Every underground place on which persons travel, worked by self-acting engines, windlasses or machinery of any description, shall be provided with practical means of signaling between the stopping places and the ends of the plane, and shall further be provided, at intervals of not more than sixty feet, with sufficient manholes for places of refuge. [Acts. 1907, p. 331.]

Art. 5902. [5934] Props and timbers.—Every mine shall be supplied with props and timbers of suitable length and size; and, if from any cause the timbers are not supplied when required, the miners shall vacate any and all such working places until supplied with timber needed. [Id.]

Art. 5903. [5925] Abandoned workings.—All openings connecting with worked-out or abandoned portions of every operated mine likely to accumulate explosive gases or dangerous conditions shall be securely gobbed and blocked off from the operated portions thereof, so as to protect every person working in such mines from all danger that may be caused or produced by such worked-out portions of such mines. [Id.]

Art. 5904. [5936] Ventilation.—Throughout every mine there shall be maintained currents of fresh air sufficient for the health and safety of all men and animals employed therein, and such ventilation shall be produced by a fan or some other artificial means; provided, a furnace shall not be used for ventilating any mine in which explosive gases are generated. The quantity of air required to be kept in circulation and passing a given point shall be not less than one hundred cubic feet per minute for each person, and not less than three hundred cubic feet per minute for each animal, in the mine, measured at the foot of the downcast; and this quantity may be increased at the discretion of the inspector whenever in his judgment unusual conditions make a stronger current necessary. Said current shall be forced into every working place throughout the mine, so that all parts of the same shall be reasonably free from standing powder smoke and deleterious air of any kind. The

measurement of the current of air shall be taken with an anemometer at the foot of the downcast, at the foot of the up-cast and at the working face of each division or split of the air current. The main current of air shall be split or subdivided so as to provide a separate current of reasonably pure air to every one hundred men at work; and the inspector shall have authority to order separate currents for smaller groups of men, if in his judgment special conditions make it necessary. The air current for ventilating the stables shall not pass into the intake air current for ventilating the working parts of the mine. Whenever the inspector shall find men working without sufficient air, he shall at once give the mine manager or operator notice and a reasonable time in which to restore the current; and, upon his refusal or neglect to act promptly, the inspector may order the endangered men out of the mine. [Id. Sec. 2.]

Art. 5905. [5937] Cut-throughs.—The mine foreman shall see that proper cut-throughs are made in all the pillars at such distances as in the judgment of the mine inspector may be deemed requisite, not more than twenty yards nor less than ten yards apart, for the purpose of ventilation; and the ventilation shall be conducted through said cut-throughs into the rooms and entries by means of check doors made of canvas or other material, placed on the entries or in other suitable places; and he shall not permit any room to be opened in advance of the ventilating current. Should the mine inspector discover any room, entry, airway, or other working place, being driven in advance of the air current contrary to the requirements of this article, he shall order the workmen in such places to cease work at once until the law is complied with. [Id. Sec. 6.]

Art. 5906. [5938] Notice of fire damp.—Immediate notice must be conveyed by the miner or mine owner to the inspector upon the appearance of any large body of fire damp in any mine, whether accompanied by any explosion or not, and upon the occurrence of any serious fire within the mine or on the surface. [Id. Sec. 3.]

Art. 5907. [5939] Mining cage.—Cages on which men are riding shall not be lifted or lowered at a rate greater than six hundred feet per minute, except with the written consent of the inspector. No person shall carry any tools or material with him on a cage in motion, except for use in making repairs; and no one shall ride on a cage while the other cage contains a loaded car. No cage having an unstable or self-dumping platform shall be used for the carriage of men or materials unless the same is provided with some convenient device by which said platform can be securely locked, and unless it is so locked whenever men or material are being conveyed thereon. [Id. Sec. 4.]

Art. 5908. [5940] Powder.—No miner or other person shall

carry powder into the mine except in the original keg or in a regulation powder can securely fastened, and the can in otherwise air tight condition. [Id. Sec. 5.]

Art. 5909. [5941] **Safety lamps.**—At any mine where the inspector shall find fire damp is being generated so as to require the use of a safety lamp in any part thereof, the operator of such mine, upon receiving notice from the inspector that one or more such lamps are necessary for the safety of the men in the mines, shall at once procure and keep for use such number of safety lamps as may be necessary. [Id. Sec. 7.]

Art. 5910. [5942] **Endangering life or health.**—It shall be unlawful for any miner, workman or other person knowingly or carelessly to injure any shaft, safety lamp, instrument, air-course or brattice, or to obstruct or throw open an airway, or to carry any open lamp or lighted pipe or fire in any form, into a place worked by the light of safety lamps, or within three feet of any open powder, or to handle or disturb any part of the hoisting machinery, or to enter any part of the mine against caution, or to do any wilful act whereby the lives or health of persons working in the mines, or the security of the mine machinery thereof is endangered. [Id. Sec. 8.]

Art. 5911. [5943] **Posting mine rules.**—Every operator shall post on the engine house and at the pit top of his mine, in such manner that the employees of the mine can read them, rules not inconsistent with this law, plainly printed in the English language, which shall govern all persons working in the mine. The posting of such notice shall charge all employees of such mine with legal notice of the contents thereof. [Id. Sec. 9.]

Art. 5912. [5944] **Coal scales.**—The owner or operator of every coal mine shall provide adequate and accurate scales for weighing coal; the mine inspector shall examine such scales, and if same are not found to be accurate, he shall notify the owner to repair same; and, if such owner fails or refuses to repair same within a reasonable time, said inspector shall institute proceedings under the law against the proper parties. [Id. Sec. 10.]

Art. 5913. [5945] **Check weighman.**—The employees in any mine shall have the right to employ a check weighmen at their own option and their own expense. [Id. Sec. 11.]

Art. 5914. [5946] **Oil used.**—No miner or other person employed in a mine shall use any kind of oil other than a good quality of lard oil for lighting purposes, except when repairing downcast or upcast shafts. [Id. Sec. 12.]

Art. 5915. **Insulating live wires.**—In all mines where electricity is or hereafter shall be used as a part of the system, power or means of mining and procuring the coal or other mineral from any of said mines, the owners or operators of every such mine shall cause all wires conducting electricity in and about said mine to be carefully and thoroughly insulated

or protected in a safe manner, so that the person or animal coming in contact therewith shall not be injured thereby. All wires as aforesaid shall either be thoroughly insulated or placed where persons employed in and about the mines cannot come in contact therewith, or shall be covered, protected or shielded in a safe manner, so as to prevent any injuries or accidents therefrom to those in or about the mines. It shall not be necessary to insulate or cover trolley wires, but they shall all be hung and kept not less than five feet and six inches above the rail, and shall be securely fastened, and not permitted to sag less than said height, where there is sufficient height in existing entries to permit this; but where sufficient height is not available in existing entries, then the trolley wires shall be placed to one side of the entry, six inches outside the rail; and in all such cases the trolley wire shall be placed on the side of the entry opposite from the working rooms, except where there are rooms on both sides of the entry, in which event the trolley wires may be placed over the opening of said rooms, said trolley wires to be safely shielded. Where it is impracticable in existing entries to place trolley wires six inches outside the rail, or five feet and six inches high, and where separate travel way is not provided, then the trolley wire shall be safely shielded. This article shall not apply to entries that are not used as travel ways for workmen or work animals, nor to mines in operation on January 1, 1902, and prior thereto, and which have developed until there is at least two thousand feet distance from the shaft to the face of the coal being operated, except as to extensions of trolley wires made in such mines. [Acts 1911, p. 196.]

Art. 5916. Duty of inspector.—The State Mining Inspector shall see that the provisions of this title are complied with and shall report all violations hereof to the State Mining Board and to the proper district or county attorney. [Id.]

Art. 5917. Map of mine.—Every operator of a coal mine in this State shall make a map of the underground workings of every mine in his charge. Said map shall be drawn on a scale of one inch to one hundred feet, and shall indicate the surface land lines as well as the rooms, entries or openings underground. It shall be brought up to date at least once each month, covering operations for the preceding month. The original of said map shall be on file at the office of the operator at or near said mine. Said map shall be extended or brought up to date at any time requested by the State Mine Inspector, at least every three months. If, for any reason, a mine should be closed, then a final map shall be made and filed; but maps existing may be continued on the same scale as begun, if not smaller than one-half inch to one hundred feet. [Id.]

Art. 5918. Animals in mines.—It shall be unlawful for any person, association of persons, corporation or receiver, own-

ing, operating or managing any mine in this State to permit any work animal under his control to remain in any mine longer than ten consecutive hours, or to feed or permit to be fed any work animal in said mine, or to store or keep any feed for such animals in said mine. Each person, company, corporation or receiver who shall in any manner violate any provision of this article shall for each offense committed forfeit and pay to the State a penalty of not less than one hundred nor more than five hundred dollars, and the district or county attorney shall institute suit in the name of the State for the recovery of same. [Acts 1911, p. 205.]

Art. 5919. Exceptions.—The preceding article shall not apply when the stables in which work animals are kept are equipped with fireproof doors at each opening, with door-frames of concrete, stone or brick, laid in mortar, and which door is kept closed during working hours, and where not more than twenty-four hours' supply of grass, cane, hay or other like inflammable feed, except corn, corn chops, bran and shelled oats, is taken down in any mine in any one day, and where no such feed, except corn, corn chops, bran and shelled oats, is taken down in the mine until after the regular day shift is out of the mine, and where no open light is taken into any underground stable in any mine. [Id.]

Art. 5920. Bath facilities.—The operator, owner, lessee or superintendent of every coal mine in this State employing ten or more men shall provide a suitable building convenient to the principal entrance of such mine, for the use of persons employed in and about said mine, for the purpose of washing themselves and changing their clothing when entering or leaving the mine. Such building shall be provided with proper light and heat, with a supply of hot and cold water and shower baths, and with properly constructed individual lockers for the use of such employees. The employees shall furnish their own towels, soap and locks for their lockers, and shall exercise control over and be responsible for all property by them left in such house. The baths and lockers for negroes shall be separate from those for whites, but may be in the same building. No operator, owner, lessee or superintendent or company, its officers or agents, maintaining such a bath house at his or its mine as required herein shall be liable for the loss or destruction of any property left at or in said house. The Commissioner of Labor Statistics of the State of Texas shall enforce the provisions of this article. [Acts 1915, p. 100.]

TITLE 96.**MINORS—REMOVAL OF DISABILITIES OF.**

Art. 5921. [5947-5949] **Requisites of removal.**—Minors above the age of nineteen years, where it shall appear to their material advantage, may have their disabilities of minority removed, and be thereafter held, for all legal purposes, of full age, except as to the right to vote. [Acts 1881, p. 16; G. L., Vol. 9, p. 108.]

Art. 5922. [5947] [3499] **Petition and hearing.**—The petition for such removal shall state the grounds relied on, whether the parents of the minor are living or dead, and the name and residence of each living parent. Such petition shall be sworn to by a person cognizant of the facts, and shall be filed in the district court of the county where the minor resides, and a hearing had on any day of any term of said court. [Id.]

Art. 5923. [5948-50] **Citation and procedure.**—A copy of the petition shall be served upon the father of the minor, if living within the State. If the father be dead, or living without the State, then such service shall be had upon the county judge of the county in which the petition was filed, in which event the trial court shall appoint a special guardian, who shall in connection with the county judge, represent the true interests of the minor in aiding or resisting his application. The judge shall make an allowance to such guardian, which shall be paid out of the estate of such minor, and shall, if the petition be granted, order a certified copy of the decree to be recorded in the deed records of the county where the estate of the minor is situated, the fee for recording to be paid out of the estate of the minor. If the court grants such petition the decree shall specifically adjudge the minor of full age for all legal purposes except as to the right to vote. [Id.]

TITLE 97.

NAME.

| | | | |
|----------------------|------|-----------------------|------|
| Chapter | Page | Chapter | Page |
| 1 Assumed name | 1676 | 2 Change of name..... | 1677 |

CHAPTER ONE.

ASSUMED NAME.

| | | | |
|----------------------------------|---------|---------------------------|---------|
| | Article | | Article |
| Business under assumed name..... | 5924 | Index of certificate..... | 5926 |
| Change of ownership..... | 5925 | Exceptions | 5927 |

Art. 5924. Business under assumed name.—No person shall conduct or transact business in this State under any assumed name or under any designation, name, style, corporate or otherwise other than the real name of each individual conducting or transacting such business, unless such person shall file in the office of the county clerk of the counties in which such person conducts, or transacts or intends to conduct or transact such business, a certificate setting forth the name under which such business is, or is to be, conducted or transacted, and the true full name or names of each person conducting or transacting the same, with the post-office address of each. Said certificate shall be executed and duly acknowledged by the persons so conducting or intending to conduct said business in the manner provided for acknowledgment of conveyance of real estate. [Acts 1921, p. 142.]

Art. 5925. Change of ownership.—Whenever there is a change in ownership of any business operated under any such assumed name each person disposing of his interest therein or withdrawing therefrom shall file with the county clerk of each county in which such business is being conducted and has a place of business, a certificate setting forth the fact of such withdrawal from or disposition of interest in such business, which certificate shall be executed and duly acknowledged as directed in the preceding article. [Id.]

Art. 5926. Index of certificate.—Each county clerk shall keep an alphabetical index of all persons filing certificates provided for herein, and for indexing and filing each certificate shall receive a fee of one dollar. A copy of such certificate duly certified to by the county clerk in whose office the same was filed shall be presumptive evidence in all courts in this State of the facts therein contained. [Id.]

Art. 5927. Exceptions.—The three preceding articles shall not apply to any domestic or foreign corporation lawfully doing business in this State. [Id.]

CHAPTER TWO.

CHANGE OF NAME.

| | | | |
|----------------------------|---------|---------------------------------|---------|
| Application | Article | Not to injure third person..... | Article |
| Changing minor's name..... | 5928 | In divorce suits..... | 5930 |
| | 5929 | | 5931 |

Art. 5928. [5951] [377] [336] **Application.**—Whoever desires to change either his Christian or surname, or both, and to adopt another name instead, shall file his application in the district court of the county of his residence, setting forth the causes for such desire. The judge of said court, if in his opinion it is for the interest or benefit of the applicant to so change his name shall decree that the adopted name of the party shall be substituted for the original name. [Act Feb. 5, 1856; G. L., Vol. 4, p. 260.]

Art. 5929. [5952] [378] [337] **Changing minor's name.**—Whenever it shall be to the interest of any minor to change his name, the guardian or next friend of said minor shall file his application in the district court of the county of said minor's residence, alleging the reason for the change and giving the full name which the minor wishes to adopt. The judge of said court, if the facts alleged and proven satisfy him that such change will be for the benefit and interest of the minor shall grant authority to change his original name and adopt another. [Id.]

Art. 5930. [5953] [379] [338] **Not to injure third persons.**—Whenever any person shall change his original name and adopt another, it shall not operate to release him from any responsibility which he may have incurred by the original name nor defeat or destroy any rights or property or action which the person had or held in his original name. [Id.]

Art. 5931. [5954] [380] [339] **In divorce suits.**—On the final disposition of a divorce suit, the court, may in its discretion, enter a decree changing the name of either party specially praying for such change. [Id.]

TITLE 98.

NEGOTIABLE INSTRUMENTS ACT.

NEGOTIABLE INSTRUMENTS IN GENERAL

| | Article | | Article |
|-------------------------------|---------|---------------------------------|---------|
| Form and interpretation | 5932 | Presentment for payment | 5937 |
| Consideration | 5933 | Notice of dishonor | 5938 |
| Negotiation | 5934 | Discharge of negotiable instru- | |
| Rights of the holder | 5935 | ments | 5939 |
| Liabilities of parties | 5936 | | |

Art. 5932. Form and interpretation.—

Sec. 1. An instrument to be negotiable must conform to the following requirements:

1. It must be in writing and signed by the maker or drawer;
2. It must contain an unconditional promise or order to pay a sum certain in money;
3. Must be payable on demand, or at a fixed or determinable future time;
4. Must be payable to order or to bearer; and
5. Where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty.

Sec. 2. The sum payable is a sum certain within the meaning of this Act, although it is to be paid:

1. With interest; or
2. By stated installments; or
3. By stated installments, with a provision that upon default in payment of any installment or of interest, the whole shall become due; or
4. With exchange, whether at a fixed rate or at the current rate; or
5. With costs of collection or an attorney's fee, in case payment shall not be made at maturity.

Sec. 3. An unqualified order or promise to pay is unconditional within the meaning of this Act, though coupled with:

1. An indication of a particular fund out of which reimbursement is to be made, or a particular account to be debited with the amount; or
2. A statement of the transaction which gives rise to the instrument; but an order or promise to pay out of a particular fund is not unconditional.

Sec. 4. An instrument is payable at a determinable future time, within the meaning of this Act, which is expressed to be payable:

1. At a fixed period after date or sight; or
2. On or before a fixed or determinable future time specified therein; or
3. On or at a fixed period after the occurrence of a specified event, which is certain to happen, though the time of happening be uncertain.

An instrument payable upon a contingency is not negotiable, and the happening of the event does not cure the defect.

Sec. 5. An instrument which contains an order or promise to do any act in addition to the payment of money is not negotiable. But the negotiable character of an instrument otherwise negotiable is not affected by a provision which:

1. Authorizes the sale of collateral securities in case the instrument be not paid at maturity; or
2. Authorizes a confession of judgment if the instrument be not paid at maturity; or
3. Waives the benefit of any law intended for the advantages or protection of the obligor; or
4. Gives the holder an election to require something to be done in lieu of payment of money.

Nothing in this section shall validate any provision or stipulation otherwise illegal.

Sec. 6. The validity and negotiable character of an instrument are not affected by the fact that;

1. It is not dated; or
2. Does not specify the value given, or that any value has been given therefor; or
3. Does not specify the place where it is drawn or the place where it is payable; or
4. Bears a seal; or
5. Designates a particular kind of current money in which payment is to be made.

Nothing in this section shall alter or repeal any statute requiring in certain cases the nature of the consideration to be stated in the instrument.

Sec. 7. An instrument is payable on demand;

1. Where it is expressed to be payable on demand, or at sight, or on presentation; or
2. In which no time for payment is expressed.

Where an instrument is issued, accepted, or indorsed when overdue, it is, as regards the person so issuing, accepting, or indorsing it, payable on demand.

Sec. 8. The instrument is payable to order where it is drawn payable to the order of a specified person or to him or his order. It may be drawn payable to the order of;

1. A payee who is not maker, drawer, or drawee; or
2. The drawer or maker; or
3. The drawee; or
4. Two or more payees jointly; or
5. One or some of several payees; or
6. The holder of an office for the time being.

Where the instrument is payable to order the payee must be named or otherwise indicated therein with reasonable certainty.

Sec. 9. The instrument is payable to bearer;

1. When it is expressed to be so payable; or

2. When it is payable to a person named therein or bearer ;
or
3. When it is payable to the order of a fictitious or non-existing person, and such fact was known to the person making it so payable; or
4. When the name of the payee does not purport to be the name of any person; or
5. When the only or last indorsement is an indorsement in blank.

Sec. 10. The instrument need not follow the language of this Act, but any terms are sufficient which clearly indicate an intention to conform to the requirements hereof.

Sec. 11. Where the instrument or an acceptance or any indorsement thereon is dated, such date is prima facie evidence of the true date of the making, drawing, acceptance, or indorsement as the case may be.

Sec. 12. The instrument is not invalid for the reason only that it is ante-dated or post-dated, provided this is not done for an illegal or fraudulent purpose. The person to whom an instrument so dated is delivered acquires the title thereto as of the date of delivery.

Sec. 13. Where an instrument expressed to be payable at a fixed period after date is issued undated, or where the acceptance of an instrument payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the instrument shall be payable accordingly. The insertion of a wrong date does not avoid the instrument in the hands of a subsequent holder in due course; but as to him, the date so inserted is to be regarded as the true date.

Sec. 14. Where the instrument is wanting in any material particular, the person in possession thereof has a prima facie authority to complete it by filling up the blanks therein. And a signature on a blank paper delivered by the person making the signature in order that the paper may be converted into a negotiable instrument operates as a prima facie authority to fill it up as such for any amount. In order, however, that any such instrument when completed may be enforced against any person who became a party thereto prior to its completion, it must be filled up strictly in accordance with the authority given and within a reasonable time. But if any such instrument, after completion, is negotiated to a holder in due course, it is valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up strictly in accordance with the authority given and within a reasonable time.

Sec. 15. Where an incomplete instrument has not been delivered it will not, if completed and negotiated, without authority, be a valid contract in the hands of any holder, as against any person whose signature was placed thereon before delivery.

Sec. 16. Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the

purpose of giving effect thereto. As between immediate parties, and as regards a remote party other than a holder in due course, the delivery, in order to be effectual, must be made either by or under the authority of the party making, drawing, accepting or indorsing, as the case may be; and in such case the delivery may be shown to have been conditional, or for a special purpose only, and not for the purpose of transferring the property in the instrument. But where the instrument is in the hands of a holder in due course, a valid delivery thereof by all parties prior to him so as to make them liable to him is conclusively presumed. And where the instrument is no longer in the possession of a party whose signature appears thereon, a valid and intentional delivery by him is presumed until the contrary is proved.

Sec. 17. Where the language of the instrument is ambiguous or there are omissions therein, the following rules of construction apply:

1. Where the sum payable is expressed in words and also in figures and there is a discrepancy between the two, the sum denoted by the words is the sum payable; but if the words are ambiguous or uncertain, reference may be had to the figures to fix the amount;

2. Where the instrument provides for the payment of interest, without specifying the date from which interest is to run, the interest runs from the date of the instrument, and if the instrument is undated, from the issue thereof;

3. Where the instrument is not dated, it will be considered to be dated as of the time it was issued;

4. Where there is a conflict between the written and printed provisions of the instrument, the written provisions prevail;

5. Where the instrument is so ambiguous that there is doubt whether it is a bill or note, the holder may treat it as either at his election;

6. Where a signature is so placed upon the instrument that it is not clear in what capacity the person making the same intended to sign he is to be deemed an indorser;

7. Where an instrument containing the words "I promise to pay" is signed by two or more persons, they are deemed to be jointly and severally liable thereon.

Sec. 18. No person is liable on the instrument whose signature does not appear thereon, except as herein otherwise expressly provided. One who signs in a trade or assumed name will be liable to the same extent as if he had signed in his own name.

Sec. 19. The signature of any party may be made by a duly authorized agent. No particular form of appointment is necessary for this purpose; and the authority of the agent may be established as in other cases of agency.

Sec. 20. Where the instrument contains or a person adds to his signature words indicating that he signs for or on behalf

of a principal, or in a representative capacity, he is not liable on the instrument if he was duly authorized; but the mere addition of words describing him as an agent, or as filling a representative character, without disclosing his principal, does not exempt him from personal liability.

Sec. 21. A signature by "procuration" operates as notice that the agent has but a limited authority to sign, and the principal is bound only in case the agent in so signing acted within the actual limits of his authority.

Sec. 22. The indorsement or assignment of the instrument by a corporation or by an infant passes the property therein, notwithstanding that from want of capacity the corporation or infant may incur no liability thereon.

Sec. 23. When a signature is forged or made without the authority of the person whose signature it purports to be, it is wholly inoperative, and no right to retain the instrument, or to give a discharge therefor, or to enforce payment thereof against any party thereto, can be acquired through or under such signature, unless the party, against whom it is sought to enforce such right, is precluded from setting up the forgery or want of authority. [Acts 1919, p. 190.]

Art. 5933. Consideration.—

Sec. 24. Every negotiable instrument is deemed prima facie to have been issued for a valuable consideration; and every person whose signature appears thereon to have become a party thereto for value.

Sec. 25. Value is any consideration sufficient to support a simple contract. An antecedent or pre-existing debt constitutes value; and is deemed such whether the instrument is payable on demand or at a future time.

Sec. 26. Where value has at any time been given for the instrument, the holder is deemed a holder for value in respect to all parties who became such prior to that time.

Sec. 27. Where the holder has a lien on the instrument, arising either from contract or by implication of law, he is deemed a holder for value to the extent of his lien.

Sec. 28. Absence or failure of consideration is matter of defense as against any person not a holder in due course; and partial failure of consideration is a defense pro tanto, whether the failure is an ascertained and liquidated amount or otherwise.

Sec. 29. An accommodation party is one who has signed the instrument as maker, drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person. Such a person is liable on the instrument to a holder for value, notwithstanding such holder at the time of taking the instrument knew him to be only an accommodation party. [Id.]

Art. 5934. Negotiation.—

Sec. 30. An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the

transferee the holder thereof. If payable to bearer it is negotiated by delivery; if payable to order it is negotiated by the indorsement of the holder completed by delivery.

Sec. 31. The indorsement must be written on the instrument itself or upon a paper attached thereto. The signature of the indorser, without additional words, is a sufficient indorsement.

Sec. 32. The indorsement must be an indorsement of the entire instrument. An indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the instrument to two or more indorsees severally, does not operate as a negotiation of the instrument. But where the instrument has been paid in part, it may be indorsed as to the residue.

Sec. 33. An indorsement may be either special or in blank; and it may also be either restrictive or qualified, or conditional.

Sec. 34. A special indorsement specifies the person to whom, or to whose order, the instrument is to be payable; and the indorsement of such indorsee is necessary to the further negotiation of the instrument. An indorsement in blank specifies no indorsee, and an instrument so indorsed is payable to bearer, and may be negotiated by delivery.

Sec. 35. The holder may convert a blank indorsement into a special indorsement by writing over the signature of the indorser in blank any contract consistent with the character of the indorsement.

Sec. 36. An indorsement is restrictive, which either:

1. Prohibits the further negotiation of the instrument; or
2. Constitutes the indorsee the agent of the indorser; or
3. Vests the title in the indorsee in trust for or to the use of some other person.

The mere absence of words implying power to negotiate does not make an indorsement restrictive.

Sec. 37. A restrictive indorsement confers upon the indorsee the right:

1. To receive payment of the instrument;
2. To bring any action thereon that the indorser could bring;
3. To transfer his rights as such indorsee, where the form of the indorsement authorizes him to do so.

All subsequent indorsees acquire only the title of the first indorsee under the restrictive indorsement.

Sec. 38. A qualified indorsement constitutes the indorser a mere assignor of the title to the instrument. It may be made by adding to the indorser's signature the words "without recourse" or any words of similar import. Such an indorsement does not impair the negotiable character of the instrument.

Sec. 39. Where an indorsement is conditional, a party required to pay the instrument may disregard the condition, and make payment to the indorsee or his transferee, whether the condition has been fulfilled or not. But any person to whom an instrument so indorsed is negotiated, will hold the same, or

the proceeds thereof subject to the rights of the person indorsing conditionally.

Sec. 40. Where an instrument, payable to bearer, is indorsed specially, it may nevertheless be further negotiated by delivery, but the person indorsing specially is liable as indorser to only such holders as make title through his indorsement.

Sec. 41. Where an instrument is payable to the order of two or more payees or indorseees who are not partners, all must indorse, unless the one indorsing has authority to indorse for the others.

Sec. 42. Where an instrument is drawn or indorsed to a person as "Cashier" or other fiscal officer of a bank or corporation, it is deemed prima facie to be payable to the bank or corporation of which he is such officer; and may be negotiated by either the indorsement of the bank or corporation, or the indorsement of the officer.

Sec. 43. Where the name of a payee or indorsee is wrongly designated or misspelled, he may indorse the instrument as therein described, adding, if he thinks fit, his proper signature.

Sec. 44. Where any person is under obligation to indorse in a representative capacity, he may indorse in such terms as to negative personal liability.

Sec. 45. Except where an indorsement bears date after the maturity of the instrument, every negotiation is deemed prima facie to have been effected before the instrument was overdue.

Sec. 46. Except where the contrary appears, every indorsement is presumed prima facie to have been made at the place where the instrument is dated.

Sec. 47. An instrument negotiable in its origin continues to be negotiable until it has been restrictively indorsed or discharged by payment or otherwise.

Sec. 48. The holder may at any time strike out any indorsement which is not necessary to his title. The indorser whose indorsement is struck out, and all indorsers subsequent to him, are thereby relieved from liability on the instrument.

Sec. 49. Where the holder of an instrument payable to his order transfers it for value without indorsing it, the transfer vests in the transferee such title as the transferor had therein, and the transferee acquires, in addition, the right to have the indorsement of the transferor. But for the purpose of determining whether the transferee is a holder in due course, the negotiation takes effect as of the time when the indorsement is actually made.

Sec. 50. Where an instrument is negotiated back to a prior party, such party may, subject to the provisions of this Act, reissue and further negotiate the same. But he is not entitled to enforce payment thereof against any intervening party to whom he was personally liable. [Id.]

Art. 5935. **Rights of the holder.—**

Sec. 51. The holder of a negotiable instrument may sue

thereon in his own name and payment to him in due course discharges the instrument.

Sec. 52. A holder in due course is a holder who has taken the instrument under the following conditions:

1. That it is complete and regular upon its face;
2. That he became the holder of it before it was overdue, and without notice that it had been previously dishonored, if such was the fact;
3. That he took it in good faith and for value;
4. That at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it.

Sec. 53. Where an instrument payable on demand is negotiated an unreasonable length of time after its issue, the holder is not deemed a holder in due course.

Sec. 54. Where the transferee receives notice of any infirmity in the instrument or defect in the title of the person negotiating the same before he has paid the full amount agreed to be paid therefor, he will be deemed a holder in due course only to the extent of the amount theretofore paid by him.

Sec. 55. The title of a person who negotiates an instrument is defective within the meaning of this Act when he obtained the instrument, or any signature thereto, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud.

Sec. 56. To constitute notice of an infirmity in the instrument or defect in the title of the person negotiating the same, the person to whom it is negotiated must have had actual knowledge of the infirmity or defect, or knowledge of such facts that his action in taking the instrument amounted to bad faith.

Sec. 57. A holder in due course holds the instrument free from any defect of title of prior parties, and free from defenses available to prior parties among themselves, and may enforce payment of the instrument for the full amount thereof against all parties liable thereon.

Sec. 58. In the hands of any holder other than a holder in due course, a negotiable instrument is subject to the same defenses as if it were non-negotiable. But a holder who derives his title through a holder in due course, and who is not himself a party to any fraud or illegality affecting the instrument, has all the rights of such former holder in respect of all parties prior to the latter.

Sec. 59. Every holder is deemed prima facie to be a holder in due course; but when it is shown that the title of any person who has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title as holder in due course. But the last-mentioned rule does not apply in favor of a party who be-

came bound on the instrument prior to the acquisition of such defective title. [Id.]

Art. 5936. Liabilities of parties.—

Sec. 60. The maker of a negotiable instrument by making it engages that he will pay it according to its tenor, and admits the existence of the payee and his then capacity to indorse.

Sec. 61. The drawer by drawing the instrument admits the existence of the payee and his then capacity to endorse; and engages that on due presentment the instrument will be accepted or paid, or both, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it. But the drawer may insert in the instrument an express stipulation negating or limiting his own liability to the holder.

Sec. 62. The acceptor by accepting the instrument engages that he will pay it according to the tenor of his acceptance; and admits;

1. The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the instrument; and

2. The existence of the payee and his then capacity to indorse.

Sec. 63. A person placing his signature upon an instrument otherwise than as maker, drawer or acceptor, is deemed to be an indorser, unless he clearly indicates by appropriate words his intention to be bound in some other capacity.

Sec. 64. Where a person, not otherwise a party to an instrument, places thereon his signature in blank before delivery he is liable as indorser, in accordance with the following rules:

1. If the instrument is payable to the order of a third person, he is liable to the payee and to all subsequent parties.

2. If the instrument is payable to the order of the maker or drawer, or is payable to bearer, he is liable to all parties subsequent to the maker or drawer.

3. If he signs for the accommodation of the payee, he is liable to all parties subsequent to the payee.

Sec. 65. Every person negotiating an instrument by delivery or by a qualified indorsement, warrants:

1. That the instrument is genuine and in all respects what it purports to be;

2. That he has a good title to it;

3. That all prior parties had capacity to contract;

4. That he has no knowledge of any fact which would impair the validity of the instrument or render it valueless.

When the negotiation is by delivery only, the warranty extends in favor of no holder other than the immediate transferee.

The provisions of subdivision three of this section do not apply to persons negotiating public or corporation securities, other than bills and notes.

Sec. 66. Every indorser who indorses without qualification, warrants to all subsequent holders in due course:

1. The matters and things mentioned in subdivision one, two and three of the next preceding section; and
2. That the instrument is at the time of his indorsement valid and subsisting.

In addition, he engages that on due presentment, it shall be accepted or paid, or both, as the case may be, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it.

Sec. 67. Where a person places his indorsement on an instrument negotiable by delivery he incurs all the liabilities of an indorser.

Sec. 68. As respects one another, indorsers are liable *prima facie* in the order in which they indorse; but evidence is admissible to show that as between or among themselves they have agreed otherwise. Joint payees or joint indorsees who indorse are deemed to indorse jointly and severally.

Sec. 69. Where a broker or other agent negotiates an instrument without indorsement he incurs all the liabilities prescribed by section sixty-five of this Act, unless he discloses the name of his principal, and the fact that he is acting only as agent. [Id.]

Art. 5937. Presentment for payment.—

Sec. 70. Presentment for payment is not necessary in order to charge the person primarily liable on the instrument; but if the instrument is, by its terms, payable at a special place, and he is able and willing to pay it there at maturity, such ability and willingness are equivalent to a tender of payment upon his part. Except as herein otherwise provided, presentment for payment is necessary in order to charge the drawer and indorsers.

Sec. 71. Where the instrument is not payable on demand, presentment must be made on the day it falls due. Where it is payable on demand, presentment must be made within a reasonable time after its issue, except that in the case of a bill of exchange, presentment for payment will be sufficient if made within a reasonable time after the last negotiation thereof.

Sec. 72. Presentment for payment, to be sufficient, must be made:

1. By the holder, or by some person authorized to receive payment on his behalf;
2. At a reasonable hour on a business day;
3. At a proper place as herein defined;
4. To the person primarily liable on the instrument or if he is absent or inaccessible, to any person found at the place where the presentment is made.

Sec. 73. Presentment for payment is made at the proper place:

1. Where a place of payment is specified in the instrument and it is there presented;

2. Where no place of payment is specified, but the address of the person to make payment is given in the instrument and it is there presented;

3. Where no place of payment is specified and no address is given and the instrument is presented at the usual place of business or residence of the person to make payment;

4. In any other case if presented to the person to make payment wherever he can be found, or if presented at his last known place of business or residence.

Sec. 74. The instrument must be exhibited to the person from whom payment is demanded, and when it is paid must be delivered up to the party paying it.

Sec. 75. Where the instrument is payable at a bank, presentment for payment must be made during banking hours, unless the person to make payment has no funds there to meet it at any time during the day, in which case presentment at any hour before the bank is closed on that day is sufficient.

Sec. 76. Where a person primarily liable on the instrument is dead, and no place of payment is specified, presentment for payment must be made to his personal representative if such there be, and if, with the exercise of reasonable diligence, he can be found.

Sec. 77. Where the persons primarily liable on the instrument are liable as partners, and no place of payment is specified, presentment for payment may be made to any one of them even though there has been a dissolution of the firm.

Sec. 78. Where there are several persons, not partners, primarily liable on the instrument, and no place of payment is specified, presentment must be made to them all.

Sec. 79. Presentment for payment is not required in order to charge the drawer where he has no right to expect or require the drawee or acceptor to pay the instrument.

Sec. 80. Presentment for payment is not required in order to charge an indorser where the instrument was made or accepted for his accommodation and he has no reason to expect that the instrument will be paid if presented.

Sec. 81. Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, presentment must be made with reasonable diligence.

Sec. 82. Presentment for payment is dispensed with:

1. Where after the exercise of reasonable diligence presentment as required by this Act cannot be made;

2. Where the drawee is a fictitious person;

3. By waiver of presentment, express or implied.

Sec. 83. The instrument is dishonored by non-payment when:

1. It is duly presented for payment and payment is refused or cannot be obtained; or

2. Presentment is excused and the instrument is overdue and unpaid.

Sec. 84. Subject to the provisions of this Act, when the instrument is dishonored by non-payment, an immediate right of recourse to all parties secondarily liable thereon accrues to the holder.

Sec. 85. Every negotiable instrument is payable at the time fixed therein without grace. When the day of maturity falls upon Sunday, or a holiday, the instrument is payable on the next succeeding business day. Instruments falling due (or becoming payable) on Saturday are to be presented for payment on the next succeeding business day, except that instruments payable on demand may, at the option of the holder, be presented for payment before twelve o'clock noon on Saturday when that entire day is not a holiday.

Sec. 86. Where the instrument is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run, and by including the date of payment.

Sec. 87. Where the instrument is made payable at a bank it is equivalent to an order to the bank to pay the same for the account of the principal debtor thereon.

Sec. 88. Payment is made in due course when it is made at or after the maturity of the instrument to the holder thereof in good faith and without notice that his title is defective. [Id.]

Art. 5938. Notice of dishonor.—

Sec. 89. Except as herein otherwise provided, when a negotiable instrument has been dishonored by non-acceptance or non-payment, notice of dishonor must be given to the drawer and to each indorser, and any drawer or indorser to whom such notice is not given is discharged.

Sec. 90. The notice may be given by or on behalf of the holder, or by or on behalf of any party to the instrument who might be compelled to pay it to the holder, and who upon taking it up would have a right to reimbursement from the party to whom the notice is given.

Sec. 91. Notice of dishonor may be given by an agent either in his own name or in the name of any party entitled to give notice, whether that party be his principal or not.

Sec. 92. Where notice is given by or on behalf of the holder it enures for the benefit of all subsequent holders and all prior parties who have a right of recourse against the party to whom it is given.

Sec. 93. Where notice is given by or on behalf of a party entitled to give notice, it enures for the benefit of the holder and all parties subsequent to the party to whom notice is given.

Sec. 94. Where the instrument has been dishonored in the

hands of an agent, he may either himself give notice to the parties liable thereon, or he may give notice to his principal. If he give notice to his principal, he must do so within the same time as if he were the holder, and the principal upon the receipt of such notice himself the same time for giving notice as if the agent had been an independent holder.

Sec. 95. A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the instrument does not vitiate the notice unless the party to whom the notice is given is in fact misled thereby.

Sec. 96. The notice may be in writing or merely oral and may be given in any terms which sufficiently identify the instrument, and indicate, that it has been dishonored by non-acceptance or non-payment. It may in all cases be given by delivering it personally or through the mails.

Sec. 97. Notice of dishonor may be given either to the party himself or to his agent in that behalf.

Sec. 98. When any party is dead, and his death is known to the party giving notice, the notice must be given to a personal representative, if there be one, and if with reasonable diligence he can be found. If there be no personal representative, notice may be sent to the last residence or last place of business of the deceased.

Sec. 99. Where the parties to be notified are partners, notice to any one partner is notice to the firm even though there has been a dissolution.

Sec. 100. Notice to joint parties who are not partners must be given to each of them, unless one of them has authority to receive such notice for the others.

Sec. 101. Where a party has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, notice may be given either to the party himself or to his trustee or assignee.

Sec. 102. Notice may be given as soon as the instrument is dishonored; and unless delay is excused as hereinafter provided, must be given within the time fixed by this Act.

Sec. 103. Where the person giving and the person to receive notice reside in the same place, notice must be given within the following times:

1. If given at the place of business of the person to receive notice, it must be given before the close of business hours on the day following.

2. If given at his residence, it must be given before the usual hours of rest on the day following.

3. If sent by mail, it must be deposited in the post office in time to reach him in usual course on the day following.

Sec. 104. Where the person giving and the person to receive notice reside in different places, the notice must be given within the following times:

1. If sent by mail, it must be deposited in the post office in time to go by mail the day following the day of dishonor, or if there be no mail at a convenient hour on that day, by the next mail thereafter.

2. If given otherwise than through the post office, then within the time that notice would have been received in due course of mail, if it had been deposited in the post office within the time specified in the last subdivision.

Sec. 105. Where notice of dishonor is duly addressed and deposited in the post office, the sender is deemed to have given due notice, notwithstanding any miscarriage in the mails.

Sec. 106. Notice is deemed to have been deposited in the post office when deposited in any branch post office or in any letter box under the control of the post-office department.

Sec. 107. Where a party receives notice of dishonor, he has, after the receipt of such notice, the same time for giving notice to antecedent parties that the holder has after the dishonor.

Sec. 108. Where a party has added an address to his signature, notice of dishonor must be sent to that address; but if he has not given such address, then the notice must be sent as follows:

1. Either to the post office nearest to his place of residence, or to the post office where he is accustomed to receive his letters or

2. If he live in one place, and have his place of business in another, notice may be sent to either place; or

3. If he is sojourning in another place, notice may be sent to the place where he is so sojourning.

Where the notice is actually received by the party within the time specified in this Act, it will be sufficient, though not sent in accordance with the requirements of this section.

Sec. 109. Notice of dishonor may be waived, either before the time of giving notice has arrived, or after the omission to give due notice, and the waiver may be express or implied.

Sec. 110. Where the waiver is embodied in the instrument itself, it is binding upon all parties; but where it is written above the signature of an indorser, it binds him only.

Sec. 111. A waiver of protest, whether in the case of a foreign bill of exchange or other negotiable instrument is deemed to be a waiver not only of a formal protest, but also of presentment and notice of dishonor.

Sec. 112. Notice of dishonor is dispensed with when, after the exercise of reasonable diligence, it can not be given to or does not reach the parties sought to be charged.

Sec. 113. Delay in giving notice of dishonor is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, notice must be given with reasonable diligence.

Section 114. Notice of dishonor is not required to be given to the drawer in either of the following cases:

1. Where the drawer and drawee are the same person;
2. When the drawee is a fictitious person or person not having capacity to contract;
3. Where the drawer is the person to whom the instrument is presented for payment;
4. Where the drawer has no right to expect or require that the drawee or acceptor will honor the instrument;
5. Where the drawer has countermanded payment.

Sec. 115. Notice of dishonor is not required to be given to an indorser in either of the following cases:

1. Where the drawee is a fictitious person or a person not having capacity to contract, and the indorser was aware of the fact at the time he indorsed the instrument;
2. Where the indorser is the person to whom the instrument is presented for payment;
3. Where the instrument was made or accepted for his accommodation.

Sec. 116. Where due notice of dishonor by non-acceptance has been given, notice of a subsequent dishonor by non-payment is not necessary, unless in the meantime the instrument has been accepted.

Sec. 117. An omission to give notice of dishonor by non-acceptance does not prejudice the rights of a holder in due course subsequent to the omission.

Sec. 118. Where any negotiable instrument has been dishonored it may be protested for non-acceptance or non-payment, as the case may be; but protest is not required except in the case of foreign bills of exchange. [Id.]

Art. 5939. **Discharge of negotiable instruments.**—

Sec. 119. A negotiable instrument is discharged:

1. By payment in due course by or on behalf of the principal debtor;
2. By payment in due course by the party accommodated, where the instrument is made or accepted for accommodation;
3. By the intentional cancellation thereof by the holder;
4. By any other act which will discharge a simple contract for the payment of money;
5. When the principal debtor becomes the holder of the instrument at or after maturity in his own right.

Sec. 120. A person secondarily liable on the instrument is discharged:

1. By any act which discharges the instrument;
2. By the intentional cancellation of his signature by the holder;
3. By the discharge of a prior party;
4. By a valid tender of payment made by a prior party;
5. By a release of the principal debtor, unless the holder's

right of recourse against the party secondarily liable is expressly reserved;

6. By any agreement binding upon the holder to extend the time of payment, or to postpone the holder's right to enforce the instrument, unless made with the assent of the party secondarily liable, or unless the right of recourse against such party is expressly reserved.

Sec. 121. Where the instrument is paid by a party secondarily liable thereon, it is not discharged; but the party so paying it is remitted to his former rights as regards all prior parties, and he may strike out his own and all subsequent indorsements, and again negotiate the instrument, except:

1. Where it is payable to the order of a third person, and has been paid by the drawer; and

2. Where it was made or accepted for accommodation, and has been paid by the party accommodated.

Sec. 122. The holder may expressly renounce his rights against any party to the instrument, before, at or after its maturity. An absolute and unconditional renunciation of his rights against the principal debtor made at or after the maturity of the instrument discharges the instrument. But a renunciation does not affect the rights of a holder in due course without notice. A renunciation must be in writing, unless the instrument is delivered up to the person primarily liable thereon.

Sec. 123. A cancellation made unintentionally, or under mistake or without the authority of the holder, is inoperative; but where an instrument or any signature thereon appears to have been cancelled the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake without authority.

Sec. 124. Where a negotiable instrument is materially altered without the assent of all parties liable thereon, it is avoided, except as against a party who has himself made, authorized or assented to the alteration, and subsequent indorsers.

When an instrument has been materially altered and is in the hands of a holder in due course, not a party to the alteration, he may enforce payment thereof according to its original tenor.

Sec. 125. Any alteration which changes:

1. The date;
2. The sum payable, either for principal or interest;
3. The time or place of payment;
4. The number or the relations of the parties;
5. The medium of currency in which payment is to be made;

Or which adds a place of payment where no place of payment is specified, or any other change or addition which alters the effect of the instrument in any respect, is a material alteration. [Id.]

BILLS OF EXCHANGE.

| | Article | | Article |
|---------------------------------|---------|---------------------------|---------|
| Form and interpretation..... | 5940 | Acceptance for honor..... | 5944 |
| Acceptance..... | 5941 | Payment for honor..... | 5945 |
| Presentment for acceptance..... | 5942 | Bills in a set..... | 5946 |
| Protest..... | 5943 | | |

Art. 5940. Form and interpretation.—

Sec. 126. A bill of exchange is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to order or to bearer.

Sec. 127. A bill of itself does not operate as an assignment of the funds in the hands of the drawee available for the payment thereof, and the drawee is not liable on the bill unless and until he accepts the same.

Sec. 128. A bill may be addressed to two or more drawees jointly, whether they are partners or not; but not to two or more drawees in the alternative or in succession.

Sec. 129. An inland bill of exchange is a bill which is, or on its face purports to be, both drawn and payable within this State. Any other bill is a foreign bill. Unless the contrary appears on the face of the bill, the holder may treat it as an inland bill.

Sec. 130. Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person, or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or a promissory note.

Sec. 131. The drawer of a bill and any indorser may insert thereon the name of a person to whom the holder may resort in case of need, that is to say in case the bill is dishonored by non-acceptance or non-payment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not as he may see fit. [Id.]

Art. 5941. Acceptance.—

Sec. 132. The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer. The acceptance must be in writing and signed by the drawee. It must not express that the drawee will perform his promise by any other means than the payment of money.

Sec. 133. The holder of a bill presenting the same for acceptance may require that the acceptance be written on the bill and, if such request is refused, may treat the bill as dishonored.

Sec. 134. Where an acceptance is written on a paper other than the bill itself, it does not bind the acceptor except in favor of a person to whom it is shown and who, on the faith thereof, receives the bill for value.

Sec. 135. An unconditional promise in writing to accept a bill before it is drawn is deemed an actual acceptance in favor

of every person who upon the faith thereof, receives the bill for value.

Sec. 136. The drawee is allowed twenty-four hours after presentment, in which to decide whether or not he will accept the bill; but the acceptance if given, dates as of the day of presentation.

Sec. 137. Where a drawee to whom a bill is delivered for acceptance destroys the same, or refuses within twenty-four hours after such delivery, or within such other period as the holder may allow, to return the bill accepted or non-accepted to the holder, he will be deemed to have accepted the same.

Sec. 138. A bill may be accepted before it has been signed by the drawee, or while otherwise incomplete, or when it is overdue, or after it has been dishonored by a previous refusal to accept, or by non-payment. But when a bill payable after sight is dishonored by non-acceptance and the drawee subsequently accepts it, the holder in the absence of any different agreement, is entitled to have the bill accepted as of the date of the first presentment.

Sec. 139. An acceptance is either general or qualified. A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn.

Sec. 140. An acceptance to pay at a particular place is a general acceptance, unless it expressly states that the bill is to be paid there only and not elsewhere.

Sec. 141. An acceptance is qualified, which is:

1. Conditional, that is to say, which makes payment by the acceptor dependent on the fulfillment of a condition therein stated;
2. Partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn;
3. Local, that is to say, an acceptance to pay only at a particular place;
4. Qualified as to time;
5. The acceptance of some one or more of the drawees, but not of all.

Sec. 142. The holder may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance, he may treat the bill as dishonored by non-acceptance. Where a qualified acceptance is taken the drawer and indorsers are discharged from liability on the bill, unless they have expressly or impliedly authorized the holder to take a qualified acceptance, or subsequently assent thereto. When the drawer or an indorser receives notice of a qualified acceptance, he must, within a reasonable time, express his dissent to the holder, or he will be deemed to have assented thereto. [Id.]

Art. 5942. Presentment for acceptance.—

Sec. 143. Presentment for acceptance must be made:

1. Where the bill is payable after sight, or in any other

case, where presentment for acceptance is necessary in order to fix the maturity of the instrument; or

2. Where the bill expressly stipulates that it shall be presented for acceptance; or

3. Where the bill is drawn payable elsewhere than at the residence or place of business of the drawee.

In no other case is presentment for acceptance necessary in order to render any party to the bill liable.

Sec. 144. Except as herein otherwise provided, the holder of a bill which is required by the next preceding section to be presented for acceptance must either present it for acceptance or negotiate it within a reasonable time. If he fails to do so, the drawer and all indorsers are discharged.

Sec. 145. Presentment for acceptance must be made by or on behalf of the holder at a reasonable hour, on a business day and before the bill is overdue, to the drawee or some person authorized to accept or refuse acceptance on his behalf, and;

1. Where a bill is addressed to two or more drawees who are not partners, presentment must be made to them all, unless one has authority to accept or refuse acceptance for all, in which case presentment may be made to him only.

2. Where the drawee is dead, presentment may be made to his personal representative.

3. Where the drawee has been adjudged a bankrupt or an insolvent or has made an assignment for the benefit of creditors, presentment may be made to him or to his trustee or assignee.

Sec. 146. A bill may be presented for acceptance on any day on which negotiable instruments may be presented for payment under the provisions of sections seventy-two and eighty-five of this Act. When Saturday is not otherwise a holiday, presentment for acceptance may be made before twelve o'clock, noon, on that day.

Sec. 147. Where the holder of a bill drawn payable elsewhere than at the place of business or the residence of the drawee has not time with the exercise of reasonable diligence to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused and does not discharge the drawers and indorsers.

Sec. 148. Presentment for acceptance is excused and a bill may be treated as dishonored by non-acceptance, in either of the following cases:

1. Where the drawee is dead, or has absconded, or is a fictitious person or a person not having capacity to contract by bill.

2. Where, after the exercise of reasonable diligence, presentment cannot be made.

3. Where, although presentment has been irregular, acceptance has been refused on some other ground.

Sec. 149. A bill is dishonored by non-acceptance:

1. When it is duly presented for acceptance and such an acceptance as is prescribed by this Act is refused or cannot be obtained; or

2. When presentment for acceptance is excused and the bill is not accepted.

Sec. 150. Where a bill is duly presented for acceptance and is not accepted within the prescribed time, the person presenting it must treat the bill as dishonored by non-acceptance or he loses the right of recourse against the drawer and indorsers.

Sec. 151. When a bill is dishonored by non-acceptance, an immediate right of recourse against the drawers and indorsers accrues to the holder and no presentment for payment is necessary. [Id.]

Art. 5943. **Protest.**—

Sec. 152. Where a foreign bill appearing on its face to be such is dishonored by non-acceptance, it must be duly protested for non-acceptance, and where such a bill which has not previously been dishonored by non-acceptance is dishonored by non-payment, it must be duly protested for non-payment. If it is not so protested, the drawer and indorsers are discharged. Where a bill does not appear on its face to be a foreign bill, protest thereof in case of dishonor is unnecessary.

Sec. 153. The protest must be annexed to the bill, or must contain a copy thereof and must be under the hand and seal of the notary making it, and must specify:

1. The time and place of presentment;

2. The fact that presentment was made and the manner thereof;

3. The cause or reason for protesting the bill;

4. The demand made and the answer given, if any, or the fact that the drawee or acceptor could not be found.

Sec. 154. Protest may be made by:

1. A notary public; or

2. By any respectable resident of the place where the bill is dishonored, in the presence of two or more credible witnesses.

Sec. 155. When a bill is protested, such protest must be made on the day of its dishonor, unless delay is excused as herein provided. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting.

Sec. 156. A bill must be protested at the place where it is dishonored, except that when a bill drawn payable at the place of business, or residence of some person other than the drawee, has been dishonored by non-acceptance, it must be protested for non-payment at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary.

Sec. 157. A bill which has been protested for non-acceptance may be subsequently protested for non-payment.

Sec. 158. Where the acceptor has been adjudged a bank-

rupt or an insolvent, or has made an assignment for the benefit of creditors, before the bill matures, the holder may cause the bill to be protested for better security against the drawer and indorsers.

Sec. 159. Protest is dispensed with by any circumstances which would dispense with notice of dishonor. Delay in noting or protesting is excused when delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, the bill must be noted or protested with reasonable diligence.

Sec. 160. When a bill is lost or destroyed or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof. [Id.]

Art. 5944. **Acceptance for honor.—**

Sec. 161. Where a bill of exchange has been protested for dishonor by non-acceptance or protested for better security, and is not overdue, any person not being a party already liable thereon, may, with the consent of the holder, intervene and accept the bill supra protest for the honor of any party liable thereon, or for the honor of the person for whose account the bill is drawn. The acceptance for honor may be for the part only of the sum for which the bill is drawn; and where there has been an acceptance for honor for one party, there may be a further acceptance by a different person for the honor of another party.

Sec. 162. An acceptance for honor supra protest must be in writing, and indicate that it is an acceptance for honor, and must be signed by the acceptor for honor.

Sec. 163. Where an acceptance for honor does not expressly state for whose honor it is made, it is deemed to be an acceptance for the honor of the drawer.

Sec. 164. The acceptor for honor is liable to the holder and to all parties to the bill subsequent to the party for whose honor he has accepted.

Sec. 165. The acceptor for honor, by such acceptance engages that he will on due presentation pay the bill according to the terms of his acceptance, provided it shall not have been paid by the drawee, and provided also, that it shall have been duly presented for payment and protested for non-payment and notice of dishonor given him.

Sec. 166. Where a bill payable after sight is accepted for honor, its maturity is calculated from the date of the noting for non-acceptance and not from the date of the acceptance for honor.

Sec. 167. Where a dishonored bill has been accepted for honor supra protest or contains a reference in case of need, it must be protested for non-payment before it is presented for payment to the acceptor for honor or referee in case of need.

Sec. 168. Presentment for payment to the acceptor for honor must be made as follows:

1. If it is to be presented in the place where the protest for non-payment was made, it must be presented not later than the day following its maturity.

2. If it is to be presented in some other place than the place where it was protested, then it must be forwarded within the time specified in section one hundred and four.

Sec. 169. The provisions of section eighty-one apply where there is delay in making presentment to the acceptor for honor or referee in case of need.

Sec. 170. When the bill is dishonored by the acceptor for honor it must be protested for non-payment by him. [Id.]

Art. 5945. Payment for honor.—

Sec. 171. Where a bill has been protested for non-payment, any person may intervene and pay it supra protest for the honor of any person liable thereon or for the honor of the person for whose account it was drawn.

Sec. 172. The payment for honor supra protest in order to operate as such and not as a mere voluntary payment must be attested by a notarial act of honor which may be appended to the protest or form an extension to it.

Sec. 173. The notarial act of honor must be founded on a declaration made by the payer for honor or by his agent in that behalf declaring his intention to pay the bill for honor and for whose honor he pays.

Sec. 174. Where two or more persons offer to pay a bill for the honor of different parties, the person whose payment will discharge most parties to the bill is to be given the preference.

Sec. 175. Where a bill has been paid for honor, all parties subsequent to the party for whose honor it is paid are discharged, but the payer for honor is subrogated for, and succeeds to, both the rights and duties of the holder as regards the party for whose honor he pays and all parties liable to the latter.

Sec. 176. Where the holder of a bill refuses to receive payment supra protest, he loses his right of recourse against any party who would have been discharged by such payment.

Sec. 177. The payer for honor, on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonor, is entitled to receive both the bill itself and the protest. [Id.]

Art. 5946. Bills in a set.—

Sec. 178. Where a bill is drawn in a set, each part of the set being numbered and containing a reference to the other parts, the whole of the parts constitutes one bill.

Sec. 179. Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is as between such holders the true owner of the bill. But nothing in this section affects the rights of a person who

in due course accepts or pays the part first presented to him.

Sec. 180. Where the holder of a set indorses two or more parts to different persons he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed, as if such parts were separate bills.

Sec. 181. The acceptance may be written on any part and it must be written on one part only. If the drawee accepts more than one part, and such accepted parts are negotiated to different holders in due course, he is liable on every such part as if it were a separate bill.

Sec. 182. When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereon.

Sec. 183. Except as herein otherwise provided where any one part of a bill drawn in a set is discharged by payment or otherwise the whole bill is discharged. [Id.]

PROMISSORY NOTES AND CHECKS.

Art. 5947. Promissory notes and checks.—

Sec. 184. A negotiable promissory note within the meaning of this Act is an unconditional promise in writing made by one person to another signed by the maker engaging to pay on demand, or at a fixed or determinable future time, a sum certain in money to order or to bearer. Where a note is drawn to the maker's own order, it is not complete until indorsed by him.

Sec. 185. A check is a bill of exchange drawn on a bank payable on demand. Except as herein otherwise provided, the provisions of this act applicable to a bill of exchange payable on demand apply to a check.

Sec. 186. A check must be presented for payment within a reasonable time after its issue or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay.

Sec. 187. Where a check is certified by the bank on which it is drawn, the certification is equivalent to an acceptance.

Sec. 188. Where the holder of a check procures it to be accepted or certified the drawer and all indorsers are discharged from liability thereon.

Sec. 189. A check of itself does not operate as an assignment of any part of the funds to the credit of the drawer with the bank, and the bank is not liable to the holder, unless and until it accepts or certifies the check.

GENERAL PROVISIONS.

Art. 5948. General provisions.—

Sec. 190. This act may be cited as the Uniform Negotiable Instruments Act.

Sec. 191. In this Act, unless the context otherwise requires:

“Acceptance” means an acceptance completed by delivery or notification.

“Action” includes counter-claim and set-off.

“Bank” includes any person or association of persons carrying on the business of banking, whether incorporated or not.

“Bearer” means the person in possession of a bill or note which is payable to bearer.

“Bill” means bill of exchange, and “note” means negotiable promissory note.

“Delivery” means transfer of possession, actual or constructive, from one person to another.

“Holder” means the payee or indorsee of a bill or note, who is in possession of it, or the bearer thereof.

“Indorsement” means an indorsement completed by delivery.

“Instrument” means negotiable instrument.

“Issue” means the first delivery of the instrument, complete in form, to a person who takes it as a holder.

“Person” includes a body of persons, whether incorporated or not.

“Value” means valuable consideration.

“Written” includes printed, and “Writing” includes print.

Sec. 192. The person “primarily” liable on an instrument is the person who by the terms of the instrument is absolutely required to pay the same. All other parties are “secondarily” liable.

Sec. 193. In determining what is a “reasonable time” or an “unreasonable time,” regard is to be had to the nature of the instrument, the usage of trade or business (if any) with respect to such instruments, and the facts of the particular case.

Sec. 194. Where the day, or the last day, for doing an act herein required or permitted to be done falls on Sunday or on a holiday, the act may be done on the next succeeding secular or business day.

Sec. 195. The provisions of this Act do not apply to negotiable instruments made and delivered prior to the taking effect hereof.

Sec. 196. In any case not provided for in this Act the rules of law and equity including the law merchant shall govern.
[Id.]

TITLE 99.

NOTARIES PUBLIC.

| | Article | | Article |
|---|---------|------------------------------|---------|
| Governor shall appoint..... | 5949 | Notaries' records | 5955 |
| List furnished county clerk..... | 5950 | Copies of records | 5956 |
| To qualify | 5951 | Removal | 5957 |
| Clerk to notify Secretary of State..... | 5952 | Office to become vacant..... | 5958 |
| Bond and oath..... | 5953 | Effect of vacancy..... | 5959 |
| Authority of notary..... | 5954 | Seal | 5960 |

Art. 5949. [6002] [3503] Governor shall appoint.—The Governor shall appoint, with the advice and consent of the Senate, a convenient number of notaries public for each organized county, and not to exceed six notaries public for each unorganized county in this State, who shall hold their office for two years from the first day of June after their appointment at a regular session of the Legislature. The Governor, with such advice and consent may also appoint additional notaries public at any special session of the Legislature, who shall hold their office until the first day of June succeeding the next regular session of the Legislature after their appointment. [Acts 1881, p. 94; Acts 1885, p. 17; G. L., Vol. 9, pp. 186, 637; Acts 1903, p. 158; Acts 1st C. S. 1913, p. 2.]

Art. 5950. [6014] [3515] List furnished county clerk.—The Secretary of State shall furnish each county clerk a printed list of all notaries public so appointed and qualified; and said clerk shall preserve said list for public inspection and post a copy thereof on the courthouse door. [Acts 1881, p. 84, Sec. 12; G. L., Vol. 9, p. 186.]

Art. 5951. [6015] [3516] To qualify.—When a notary is appointed, the Secretary of State shall forward the commission to the county clerk of the county where the party resides. Said clerk shall immediately notify said party to appear before him within ten days, pay for his commission, and qualify according to law. If said party be absent from the county, or sick at the time of the reception of said commission by the clerk, he shall have ten days from his return to said county in which to appear and qualify. [Id. Sec. 13.]

Art. 5952. [6016] [3517] Clerk to notify Secretary of State.—The clerk receiving the commission shall indorse thereon the day on which notice was given, and, if the party pay the State fee for commission and qualify according to law, the said clerk shall notify the Secretary of State of his qualification, giving date of same, and remit the fee to said officer. If the party fails to qualify and pay the fee within the limited time, the appointment shall be void, and the clerk shall certify on the back of the commission that the party has failed to qualify, and return it to the Secretary of State. [Id. Sec. 14.]

Art. 5953. [6003] [3504] Bond and oath.—Any person appointed a notary public, before entering his official duties, shall execute a bond for one thousand dollars, to be approved by the county clerk of his county, payable to the Governor, conditioned

for the faithful performance of the duties of his office; and shall also take and subscribe the official oath, which shall be indorsed on said bond, with the certificate of the officer administering the same; said bond shall be recorded in the office of the county clerk, and deposited in said office, and shall not be void on the first recovery, and may be sued on in the name of the party injured from time to time until the whole amount thereof has been recovered. [Id. Sec. 2.]

Art. 5954. [6008-6010-6012] **Authority of notary.**—Notaries Public shall have the same authority to take acknowledgments or proofs of written instruments, protests instruments permitted by law to be protested, administer oaths, and take depositions, as is now or may hereafter be conferred by law upon county clerks. [Acts 1881, p. 94; G. L. Vol. 9, p. 186.]

Art. 5955. [6011] [3512] **Notaries' records.**—Each notary public shall keep a well bound book, in which shall be entered the date of all instruments acknowledged before him, the date of such acknowledgments, the name of the grantor or maker, the place of his residence or alleged residence, whether personally known or introduced, and, if introduced, the name and residence or alleged residence of the party introducing him; if the instrument be proved by a witness, the residence of such witness, whether such witness is personally known to him or introduced; if introduced, the name and residence of the party introducing him; the name and residence of the grantee; if land is conveyed or charged by such instrument, the name of the original grantee shall be kept, and the county where the land is situated. The book herein required to be kept, and the statements herein required to be entered shall be an original public record, open to inspection by any citizen at all reasonable times. Each notary public shall give a certified copy of any record in his office to any person applying therefor on payment of all fees thereon. [Id.]

Art. 5956. [6013] [3514] **Copies of records.**—Copies of all records, declarations, protests, and other official acts of notaries public may be certified by the county clerk with whom they are deposited, and shall have the same authority as if certified by the notary by whom they were originally made. [Id. Sec. 11.]

Art. 5957. [6004] [3505] **Removal.**—Any notary public who shall be guilty of any wilful neglect of duty or malfeasance in office may be removed from office in the manner provided by law. [Id. Sec. 3.]

Art. 5958. [6005] [3506] **Office to become vacant.**—Whenever any notary public shall remove permanently from the county for which he was appointed, or an ex officio notary public from his precinct, his office shall thereupon be deemed vacant. [Id.]

Art. 5959. [6007-6009] **Effect of vacancy.**—Whenever the office of notary public shall be vacated by resignation, removal

or death, the county clerk of the county where said notary resides shall obtain and deposit in his office the record books and all public papers belonging in the office of said notary. The seal of any notary vacating his office may be sold by the owner thereof to any qualified notary public in the county. [Id.]

Art. 5960. [6006] [3507] Seal.—Each notary public shall provide a seal of office, whereon shall be engraved in the center a star of five points, and the words, “Notary Public, County of _____, Texas”, around the margin (the blank to be filled with the name of the county for which the officer is appointed), and he shall authenticate all his official acts therewith. [Id. Sec. 5; Acts 1889, p. 121; G. L. Vol. 9, p. 1149.]

TITLE 100.

OFFICERS—REMOVAL OF.

| | Article |
|--|---------|
| By impeachment | 5961 |
| Impeachment | 5962 |
| Trial by Senate | 5963 |
| Removed by address | 5964 |
| Judges removed by Supreme Court | 5965 |
| Jurisdiction of Supreme Court | 5966 |
| State Officers appointed by Governor | 5967 |
| Convictions work removal | 5968 |
| Appeal supersedes order of removal | 5969 |
| By district judge | 5970 |
| Cause to be in writing | 5971 |
| "Incompetency" | 5972 |
| "Official misconduct" | 5973 |
| Articles apply to cities | 5974 |
| Failure to give bond | 5975 |
| Proceedings | 5976 |
| Requisites of petition | 5977 |
| General issue submitted | 5978 |
| Citation | 5979 |
| Time to answer | 5980 |
| How trial conducted | 5981 |
| How suspended | 5982 |
| Appeal or writ of error | 5983 |
| Against district attorneys | 5984 |
| Criminal district attorney | 5985 |
| Not retroactive | 5986 |
| Precedence on appeal | 5987 |
| Notary public | 5988 |
| Public weigher | 5989 |
| District clerk removed | 5990 |
| Mayor and aldermen | 5991 |
| Alderman | 5992 |
| Against mayor | 5993 |
| Procedure | 5994 |
| Not to apply to all cities | 5995 |
| Nepotism | 5996 |
| Suits by Attorney General | 5997 |

Art. 5961. [6017] [3518] By impeachment.—The Governor, Lieutenant Governor, Secretary of State, Attorney General, State Treasurer, Commissioner of the General Land Office, Comptroller, Commissioner of Insurance, Banking Commissioner, Judges of the Supreme Court, of the Court of Criminal Appeals, of the Courts of Civil Appeals, of the district courts, of the criminal district courts, and all other State officers and heads of State departments or institutions of any kind, and all members, regents, trustees, commissioners having control or management of any State institution or enterprise, shall be removed from office or position by impeachment in the manner provided in the Constitution and in this title, the remedy by impeachment as herein provided for being cumulative of all other remedies with respect to the impeachment or removal of public officers. [Const. Art. 15, Secs. 1, 2; Acts 3rd C. S. 1917, p. 102.]

Art. 5962. Impeachment.—The power of impeachment shall be vested in the House of Representatives. If the House shall be in session at a regular or called session of the Legislature when it is desired to present articles of impeachment, or to make any investigation pertaining to a contemplated impeachment, it may proceed without further call or action at its pleasure and may continue to meet and proceed for such purposes until such time as the matters under consideration, pertaining to impeachments, may be disposed of. If the House shall be in session at a regular or called session of the Legislature, at the time it undertakes any investigation pertaining to impeachments, and the legislative session shall expire by limitation, or it shall in conjunction with the Senate, decide to adjourn in so far as legislative matters are concerned, before said investigation has been completed and before such impeachment matters have been finally disposed of, it may continue such investigation through committees, or by itself, and may continue in session for such purposes, or may adjourn the

House to such time as it may desire for reconvention for the final disposition of such matters, and, in the meantime, it may continue such investigations through committees or agents. The members of such committees and the members of the House and Senate, when either shall be sitting for impeachment purposes, and when not in session for legislative purposes, shall receive the per diem fixed for members of the Legislature during legislative sessions or out of the contingent funds of the respective Houses, and the agents of the House or Senate or of such committees shall be paid as may be provided in the resolutions providing therefor, out of said contingent funds.

If the House be not in session when the cause for impeachment may arise or be discovered, or when it is desired to institute any investigation pertaining to a contemplated impeachment, the House may be convened for the purpose of impeachment in the following manner:

1. By proclamation of the Governor; or
2. By proclamation of the Speaker of the House, which proclamation shall be made only when petitioned in writing by not less than fifty members of the House; or
3. By proclamation in writing signed by a majority of the members of the House.

Such proclamation shall be published in at least three daily newspapers of general circulation, and a copy thereof shall be furnished in person or by registered mail to each member of the House who may be within the State and accessible, by the Speaker of the House, or under his direction, or, in case the same is issued under the authority of subparagraph 3, as above, by the members signing the same or some one or more of them designated by such signers for such purpose. Such proclamation shall in general terms, state the cause for which it is proposed to convene the House, and shall fix the time for the convention thereof. Two-thirds of the members of the House, upon such convention, shall constitute a quorum to do business, but a smaller number may adjourn from day to day and compel the attendance of absent members. The House, when so convened, may proceed in the manner, and shall have all the powers, pertaining to impeachments and investigations with respect thereto given it by the Constitution and by the terms of this law. The members of the House when so convened, shall receive the same mileage and per diem pay as is provided for members of the Legislature when in legislative session, and the members of the committees of the House, when so convened and serving upon such committees when the House itself is not in session, shall receive the said per diem pay, to be paid out of the appropriations then existing, or which thereafter may be made, for the per diem pay of members of the Legislature, and the agents of the House so convened or of such committees acting when the House itself is

not in session shall receive such pay as may be provided for in the resolutions of such House out of the appropriations then existing, or thereafter to be made, to defray the contingent expenses of the House or to pay the mileage and per diem of members.

The House, at any time when considering impeachment matters or making investigations pertaining thereto, shall have the power itself, or through committees, to send for persons and papers and to compel the giving of testimony, and to punish for contempt, to the same extent as the district courts of the State.

Any committee of the House, acting under the terms of this law, shall have and exercise all the powers which may be conferred upon it by the House. [Id.]

Art. 5963. Trial by Senate.—All officers, agents or employes against whom articles of impeachment may be preferred by said House shall be tried by the Senate sitting as a court of impeachment in the manner provided by Article XV of the Constitution of Texas.

If the Senate be in session, at a regular or called session of the Legislature when articles of impeachment are preferred against any officer, agent or employee by the House, it shall receive such articles from the House and as soon as practicable, organize a court of impeachment and dispose of such matters. If the session in which such articles are preferred and presented shall, for legislative purposes expire by limitation, or by adjournment in so far as legislative purposes are concerned, before the matters presented by such articles shall have finally been disposed of by the Senate, the Senate shall continue in session, for such purpose, so long as may be necessary to dispose of such matters, or may adjourn to some day certain, when it shall reconvene for the purpose of disposing of such matters and thereupon such matters shall be considered and disposed of as expeditiously as possible.

If the Senate be not in session at a regular or called session of the Legislature when articles of impeachment may be preferred by the House, the House shall cause a certified copy of such articles of impeachment to be delivered, by personal agent or registered mail, to the Governor and each member of the Senate who may be within the State and accessible, and a copy thereof shall be delivered to the Lieutenant Governor and the President Pro Tempore of the Senate. Thereupon the Senate shall be convened for the purpose of considering and disposing of such articles of impeachment in the following manner:

1. By proclamation of the Governor; or if the Governor shall fail to issue such proclamation within ten days after such articles of impeachment are preferred by the House then,

2. By proclamation of the Lieutenant Governor; or if the Lieutenant Governor shall fail to issue such proclamation within fifteen days from the date upon which articles of impeachment were preferred by the House then,

3. By proclamation of the President Pro Tempore of the Senate; or, if the President Pro Tempore of the Senate shall fail to issue such proclamation within twenty days from the date upon which such articles of impeachment were perferred by the House then,

4. By proclamation in writing signed by a majority of the members of the Senate.

Such proclamation, in either case, shall be in writing, shall state in general terms the purpose for which the Senate is to be convened, shall fix the date for the convening thereof for such purposes, which shall not be later than twenty days from the issuance of the proclamation, and shall be filed in the office of the Secretary of State as a public record. Such proclamation, in either case, shall be published in at least three daily newspapers of general circulation, and a copy thereof shall be sent by registered mail to each member of the Senate by, or under the direction of the author or authors thereof. Upon the day fixed for the convening of the Senate for such purposes it shall be the duty of each member of the Senate to be in attendance thereupon, and upon such date the Senate shall convene. Two-thirds of the members of the Senate, upon such convention, shall constitute a quorum to do business, but a smaller number may adjourn from day to day and compel the attendance of absent members, and the Senate at such a session may compel the attendance of any absent member whether a quorum is present or not .

The Senate so convened shall continue in session until such matters are finally disposed of, or it may from time to time, adjourn to a day certain when the consideration of such matters shall be resumed and disposed of.

The Senate, at any time, shall have and exercise all the powers itself, or through committees or agents, which is or may be conferred upon it by law as in other cases when it is in session. It may send for persons, papers, records, books, etc., and compel the giving of testimony, and punish for contempt to the same extent as the district courts.

Members of the Senate when so convened, and the Lieutenant Governor when acting, shall receive the same mileage and per diem as is provided for members of the Legislature; the same, together with the pay of all agents, appointees, employees and other expenses incident to such impeachment trial, shall be paid from such appropriations as have been or shall be made for the contingent expenses of the Legislature or for the mileage and per diem of members. [Id.]

Art. 5964. [6018-19-20-21] **Removed by address.** — The judges of the Supreme Court, Court of Criminal Appeals, Courts of Civil Appeals, district courts and criminal district courts, the Commissioner of Agriculture, Commissioner of Insurance, and Banking Commissioner shall be removed from office by the Governor on the address of two-thirds of each

house of the Legislature, for wilful neglect of duty, incompetency, habitual drunkenness, oppression in office, breach of trust, or other reasonable cause which shall not be sufficient ground for impeachment. The cause for such removal shall be stated at length in such address, and entered on the journals of each house. The officer so intended to be removed shall have notice of the cause assigned for his removal, and shall be admitted to a hearing in his own defense before any vote for such address shall be heard. The vote in all such cases shall be taken by yeas and nays and entered on the journals of each house respectively. [Acts 1876, p. 226; G. L. Vol. 8, p. 1062.]

Art. 5965. [6022-3] Judges removed by Supreme Court.—The Supreme Court may remove any judge of the district court or of any criminal district court who is incompetent to discharge the duties of his office, or who shall be guilty of partiality or oppression, or other official misconduct, or whose habits and conduct are such as to render him unfit to hold such office, or who shall negligently fail to perform his duties as judge, or who shall fail to execute in a reasonable measure the business of his court. [Const. Art. 15, Sec. 6.]

Art. 5966. [6024-5-6] Jurisdiction of Supreme Court.—The Supreme Court shall have original jurisdiction to hear and determine the cases aforesaid when presented in writing, upon the oaths taken before some judge of a court of record, of not less than ten lawyers practicing in the courts held by such judge, and licensed to practice in the Courts of Civil Appeals. Such presentment shall be founded either upon the knowledge of the person making it, or upon the written oaths of credible witnesses as to facts. The Supreme Court may issue all needful process, and prescribe all needful rules to give effect to the preceding article. Such cases shall have precedence and be tried as soon as practicable.

Art. 5967. [6027] [3528] State officers appointed by Governor.—All State officers appointed by the Governor, or elected by the Legislature, where the mode of their removal is not otherwise provided by law, may be removed by him for good and sufficient cause, to be spread on the records of his office, and to be reported by him to the next session of the Legislature thereafter. [Id.]

Art. 5968. [6028] [3529] Convictions work removal.—All convictions by a petit jury of any county officers for any felony, or for any misdemeanor involving official misconduct, shall work an immediate removal from office of the officer so convicted. Each such judgment of conviction shall embody within it an order removing such officer. [Id.]

Art. 5969. [6029] [3530] Appeal supersedes order of removal.—When an appeal is taken from such judgment by the officer removed, such appeal shall have the effect of superseding such judgment, unless the court rendering such judgment shall deem it to the public interest to suspend such officer from the

office pending such appeal; and in that case the court shall proceed as in other cases of the suspension of officers from office as provided herein. [Id.]

Art. 5970. [6030] By district judge.—All district and county attorneys, county judges, commissioners, clerks of the district and county courts and single clerks in counties where one clerk discharges the duties of district and county clerk, county treasurer, sheriff, county surveyor, assessor, collector, constable, cattle and hide inspector, justice of the peace and all county officers now or hereafter existing by authority either of the Constitution or laws, may be removed from office by the judge of the district court for incompetency, official misconduct or becoming intoxicated by drinking intoxicating liquor, as a beverage, whether on duty or not; provided such officer shall not be removed for becoming intoxicated when it appears upon the trial of such officer that such intoxication was produced by drinking intoxicating liquors upon the direction and prescription of a duly licensed practicing physician of this State. [Acts 1923, p. 235.]

Art. 5971. [6031] [3532] [3391] Cause to be in writing.—In every case of removal from office for the causes named in the preceding article, the cause or causes thereof shall be set forth in writing, and the truth of said cause or causes be found by a jury. [Const. Art. 5, Sec. 24.]

Art. 5972. [6032] [3533] [3392] “Incompetency.”—By “incompetency” as used herein is meant gross ignorance of official duties, or gross carelessness in the discharge of them; or an officer may be found to be incompetent when, by reason of some serious physical or mental defect, not existing at the time of his election, he has become unfit or unable to discharge promptly and properly the duties of his office. [R. S. 1879.]

Art. 5973. [6033] [3534] [3393] “Official misconduct.”—By “official misconduct,” as used herein with reference to county officers, is meant any unlawful behavior in relation to the duties of his office, wilful in its character, of any officer intrusted in any manner with the administration of justice, or the execution of the laws; and includes any wilful or corrupt failure, refusal or neglect of an officer to perform any duty enjoined on him by law. [R. S. 1879.]

Art. 5974. [6034] [3535] [3394] Articles apply to cities.—The two preceding articles shall apply also to mayors and aldermen. [R. S. 1879.]

Art. 5975. [6040] [3541] [3400] Failure to give bond.—All county officers who are required to give official bonds, who shall fail to execute their bonds within the time prescribed by law, or who, when required in accordance with law to give a new bond or additional bond or security, and shall fail to do so, may also be removed from office for such failure by the district judge, on the matter being brought before him in the

manner hereinafter provided for bringing such matters before the court. [Id.]

Art. 5976. [6041] [3542] [3401] **Proceedings.**—The proceedings for the removal of said officers may be commenced, either in term time or vacation, by first filing a petition in the district court of the county where the officer resided, by a citizen of the State who has resided for six months in the said county where he proposes to file such petition, and who is not himself at the time under indictment in said county. [Id.]

Art. 5977. [6042] [3543] [3402] **Requisites of petition.**—The petition shall be addressed to the district judge of the court in which it is filed, and shall set forth in plain and intelligible words the cause or causes alleged as the grounds of removal, giving in each instance, with as much certainty as the nature of the case will admit of, the time and place of the occurrence of the alleged acts; the petition shall in every instance be sworn to at or before the filing of the same by at least one of the parties filing the same, and the proceedings shall be conducted in the name of "The State of Texas," upon the relation of the person filing the same. [Id.]

Art. 5978. [6043] [3544] [3403] **General issue submitted.**—In these cases, the judge shall not submit special issues to the jury, but shall, under a proper charge applicable to the facts of the case, instruct the jury to find from the evidence whether the cause or causes of removal set forth in the petition are true in point of fact or not; and, when there are more than one distinct cause of removal alleged, the jury shall by their verdict say which cause they find sustained by the evidence before them, and which are not sustained. [R. S. 1879.]

Art. 5979. [6044-5-6-52] **Citation.**—After such petition is filed, the person or persons so filing the same shall make a written application to the district judge for an order for a citation and a certified copy of the said petition to be served on the officer against whom the petition is filed, requiring him at a certain day named, which day shall be fixed by the judge, to appear and answer to the said petition; and until such order is granted and entered upon the minutes of the court (if application is made during term time) no action whatever shall be had thereon; and, if the judge shall refuse to issue the order so applied for, then the petition shall be dismissed at the cost of the relator, and no appeal or writ of error shall be allowed from such action of the judge. If the application for said citation is made to the judge in vacation, he shall indorse his action, whatever it may be, on such petition, and shall order it spread on the minutes of the court at the next ensuing term. Upon the order being granted during term time, also spread upon the minutes, the clerk shall issue the citation, accompanied with a certified copy of the petition. The clerk may demand of the relator security for costs as in other cases. [Id.]

Art. 5980. [6047] [3548] [3407] **Time to answer.**—In no

case whatever shall the period fixed by the judge in his order in which the officer is to answer, be less than five days from the date of such service, to be computed as time is computed in other suits. [Id.]

Art. 5981. [6048] [3549] [3408] **How trial conducted.**—The trial and all the proceedings connected therewith shall be conducted as far as it is possible in accordance with the rules and practice of the court in other civil cases. [Id.]

Art. 5982. [6049] [3550] [3409] **How suspended.**—At any time after the issuance of the order for the citation, as herein provided, the district judge may, if he sees fit, suspend temporarily from office, the officer against whom the petition is filed, and appoint for the time being some other person to discharge the duties of the office; but in no case shall such suspension take place until after the person so appointed shall execute a bond in such sum as the judge may name, with at least two good and sufficient sureties, and on such conditions as the judge may see fit to impose, to pay the person so suspended from office all damages and costs that he may sustain by reason of such suspension from office, in case it should appear that the cause or causes of removal are insufficient or untrue. [Id.]

Art. 5983. [6050-51] **Appeal or writ of error.**—An appeal or writ of error to the Court of Civil Appeals may be sued out by either party from the final judgment in these cases as in other civil cases. If the party has not been temporarily suspended from office, no other bond when an appeal is taken or writ of error sued out by him, shall be necessary than a bond for all the costs that have or may accrue in the district and Courts of Civil Appeals. [Id.]

Art. 5984. [6053] [3554] **Against district attorneys.**—Proceedings under this title may be commenced against any district attorney either in the county of his residence or the county where the alleged cause of removal occurred, if in a county of his judicial district. [Id.]

Art. 5985. [6054] [3555] **Criminal district attorney.**—Under the name of "district attorney," as used in this chapter, is included any criminal district attorney and the judge of each criminal district court shall have the same power as to his removal and proceed in the same manner as the district judges of the State have in reference to all county officers. [Id.]

Art. 5986. [6055] [3556] [3415] **Not retroactive.**—No officer shall be prosecuted or removed from office for any act he may have committed prior to his election to office. [Id.]

Art. 5987. [6056-7] **Precedence on appeal.**—In these cases, an appeal may be taken or writ of error be made returnable to the Court of Civil Appeals, and such cause shall have precedence of the ordinary business of the court and be decided with all convenient dispatch. When so decided, unless the judgment be for some cause set aside or suspended, the man-

date of the court shall issue within five days after the judgment of the court is rendered. [R. S. 1879.]

Art. 5988. [6058-9] **Notary public.**—Any notary public indicted for and convicted of any wilful neglect of duty or official misconduct shall be removed from office. The order for his removal shall in each instance be embodied in the judgment of the court. [Acts 1876, p. 29.]

Art. 5989. [6060] [3561] [3420] **Public weigher.**—Any public weigher who is incompetent or shall be guilty of official misconduct shall be removed by the Governor, who shall keep a record of such removal, and report the same with his reasons therefor to the next legislature. [Acts 1875, p. 162; G. L. Vol. 8, p. 534; Acts 1919, p. 126.]

Art. 5990. [6063-4] **District clerk removed.**—The clerk of the district court may also be removed by information or by indictment and conviction by a petit jury. When so removed, the order for his removal shall be embodied in the judgment of conviction. [Const. Art. 5, Sec. 9; R. S. 1879.]

Art. 5991. [6065] [3566] [3425] **Mayor and aldermen.**—The mayor and aldermen of any incorporated town or city may be removed from office for official misconduct, wilful violation of any ordinance of such town or city, habitual drunkenness, incompetency, or for such other cause as may be prescribed by the ordinances of such town or city. [Acts 1875, p. 63, G. L. Vol. 8, p. 435.]

Art. 5992. [6066-7] **Alderman.**—When written sworn complaint charging any alderman with any act or omission which may be cause for his removal shall be presented to the mayor, he shall file the same and cause the alderman so charged to be served with a copy of such complaint, and shall set a day for the trial of the case, and notify the alderman so charged and the other aldermen of such town or city to appear on such day. The mayor and aldermen of such town or city, except the aldermen against whom complaint is made, shall constitute a court to try and determine the case. [Id.; Sec. 2.]

Art. 5993. [6068-9] **Against mayor.**—When any such complaint is made against the mayor of any incorporated town or city it shall be presented to an alderman of such town or city, who shall file the same, and cause such mayor to be served with a copy thereof, and shall set a day for a trial of the case, and notify the mayor and other aldermen to appear on such day. A majority of the aldermen shall constitute a court to try and determine the complaint against the mayor, and they shall select one of their number to preside during such trial. [Id.]

Art. 5994. [6070-1-2] **Procedure.**—The rules governing other proceedings and trials in the courts of justices of the peace shall govern. If two-thirds of the members of the court present, upon the trial of the case, find the defendant guilty of the charges contained in the complaint, and find that such charges are sufficient cause for removal from office, the presiding officer of the court shall enter judgment, removing such

mayor or aldermen from office and declaring such office vacant. If the defendant be found not guilty, judgment shall be entered accordingly. Any municipal officer so removed shall not be eligible to re-election to the same office for two years from the date of such removal. [Id.]

Art. 5995. [6073] [3574] Not to apply to all cities.—The provisions of this title as to municipal officers shall not apply to any town or city except such as are incorporated under the general laws of this State. [Id.]

Art. 5996. [6074-75] Nepotism.—Whoever violates any provision of the Penal Code relating to nepotism and the inhibited acts connected therewith shall be removed from his office, clerkship, employment or duty, as therein mentioned. Such removal from office shall be made in conformity to the provisions of the Constitution of this State concerning removal from office in all cases to which they may be applicable. All other removals from office under the provisions of this law shall be by quo warranto proceedings. All removals from any such position, clerkship, employment or duty aforesaid shall be summarily made, forthwith, by the appointing power in the particular instance, whenever the judgment of conviction in a criminal prosecution in the particular case shall become final; provided, that, if such removal be not so made within thirty days after such judgment of conviction shall become final, the person holding such position, clerkship or employment, or performing such duty, may be removed therefrom as herein provided with reference to removal from office. [Acts 1909, p. 85.]

Art. 5997. [6076-77] Suits by Attorney General.—All quo warranto proceedings mentioned shall be instituted by the Attorney General in any district court of Travis County or in the district court of the county in which the defendant resides; the district or county attorney of the county in which such suit may be filed shall assist the Attorney General therein whenever he shall so direct. [Id.]

TITLE 101.
OFFICIAL BONDS.

| | | | |
|---------------------------|---------|---|--------------------------|
| | Article | | Article |
| Sureties | 5998 | { | Sureties relieved |
| Depository of bonds | 5999 | | Requiring new bond |
| Bond to be recorded | 6000 | | Suit on bond |
| | | | 6001 6002 6003 |

Art. 5998. Sureties.—The official bond of each officer shall be executed by him with two or more good and sufficient sureties or a solvent surety company authorized to do business in this State.

Art. 5999. Depository of bonds.—The bond of each officer who is required by law to give an official bond payable to the Governor or to the State shall be deposited with the Comptroller by the officer who approves the same, except that of the Comptroller which shall be deposited with the Secretary of State.

Art. 6000. [6078] [3575] [3434] Bond to be recorded.—All official bonds of county officers that are required by law to be approved by the commissioners court, and which have been so approved, shall be made payable to the county judge and safely kept and recorded by the county clerk in a book kept for that purpose.

Art. 6001. [6079-80-81-82] Sureties relieved.—Any surety on any official bond of any county officer may apply to the commissioners court to be relieved from his bond, and the county clerk shall thereupon issue a notice to said officer, with a copy of the application, which shall be served upon said officer by the sheriff or any constable of the county, and said officer so notified shall upon such service cease to exercise the functions of his office, except to preserve any records or property in his charge, and in case of a sheriff or constable, to keep prisoners, preserve the peace and execute warrants of arrest, and his office shall become vacant unless he give a new bond within twenty days from the time of receiving such notice. If a new bond is given and approved, the former sureties shall be discharged from any liability for the misconduct of the principal after the approval of the new bond. [Acts 1876, p. 132; G. L. Vol. 8, p. 963.]

Art. 6002. [6083-4-5] Requiring new bond.—When the commissioners court becomes satisfied that the bond of any county officer which has been approved by said court is from any cause insufficient, they shall require a new bond or additional security to be given. Said court shall cause said officer to be cited to appear at a term of their court not less than five days after service, and shall take such action as they deem best for the public interest, and their decision shall be final and no appeal shall lie therefrom. [Acts 1876, p. 54; G. L. Vol 8, p. 890.]

Art. 6003. Suit on bond.—No official bond shall be void upon first recovery but may be sued upon in separate actions until exhausted.

TITLE 102.

OIL AND GAS.

| Article | Article | | |
|----------------------------------|---------|--|------|
| Casing | 6004 | Officers fees | 6028 |
| Abandoned wells | 6005 | Rules and regulations | 6029 |
| Illumination | 6006 | Supervisor and employees | 6030 |
| Penalties | 6007 | Duties of supervisor | 6031 |
| Gas to be confined | 6008 | Tax | 6032 |
| Disposition of penalty | 6009 | Certificate of compliance | 6033 |
| Water in wells | 6010 | Books and records | 6034 |
| Suits and penalties | 6011 | Report to commission | 6035 |
| May plug or shut in | 6012 | Penalty | 6036 |
| Petition to restrain waste | 6013 | Rates and charges | 6037 |
| "Waste" | 6014 | Hearing, notice | 6038 |
| Prevention of waste | 6015 | Reimbursement, when | 6039 |
| Confining gas in wells | 6016 | Exchange of facilities | 6040 |
| Penalty | 6017 | Grades of oil carried | 6041 |
| Pipe line carriers | 6018 | Powers not limited | 6042 |
| Control of | 6019 | Publication of tariffs | 6043 |
| Powers of carrier | 6020 | Monthly reports | 6044 |
| Injury to roads, etc | 6021 | Discrimination prohibited | 6045 |
| Eminent domain | 6022 | Rules for prevention of waste | 6046 |
| Jurisdiction | 6023 | Penalty | 6047 |
| Powers | 6024 | Transportation of crude petroleum | 6048 |
| Attendance of witnesses | 6025 | Salary of expert and other ex- penses | 6049 |
| Criminating testimony | 6026 | | |
| Witness fees | 6027 | | |

Art. 6004. [7847] Casing.—The owner or operator of any well being drilled for oil or gas shall, before drilling into the oil or gas bearing rock, incase such well with good and sufficient wrought iron or steel casing, in such manner as shall exclude all surface or fresh water from the lower part of such well from penetrating the oil or gas bearing rock. Should any well be drilled through the first into a lower oil or gas bearing rock, the same shall be cased in such manner as will exclude all fresh water above the last oil or gas bearing rock penetrated. [Acts 1899, p. 68.]

Art. 6005. [7848] Abandoned wells.—The owner or operator of any such well, when about to abandon or cease operating the same and before drawing the casing therefrom, shall securely fill such well with rock, sediment, or with mortar, composed of two parts sand and one part cement or other suitable material, to the depth of two hundred feet above the top of the first oil or gas bearing rock, and also in such manner as shall prevent the gas and oil from escaping therefrom. If the owner or operator of any such well shall fail to or shall inefficiently comply with the provisions of this article, then the owner of the land upon which the well is situated shall forthwith comply therewith. If all the persons hereinbefore named shall fail to or inefficiently fill such well in the manner hereinbefore described, then it shall be lawful for any person, after written demand therefor to any of said persons, to enter the premises where such well is situated, take possession thereof and fully comply with the provisions of this article. The reasonable cost and expenses thereof shall forthwith be paid by the owner or operator of the well, and on his default by the owner of the land. The amount of such reasonable cost and expense shall forthwith be a lien upon the fixtures and machinery and leasehold interest of the owner and operator of said well, as upon the title and interest of the land

owner in the land upon which said well is situated, and may be recovered and enforced against said owner or operator, in the order named, in any court of competent jurisdiction. [Id.]

Art. 6006. [7850] Illumination.—No person, co-partnership or corporation shall use natural gas for illuminating purposes by what are known as flambeau lights. Nothing herein shall prohibit the use of "Jumbo" burners or any other burners consuming no more gas than such "Jumbo" burners, but the person, co-partnership, or corporation, consuming such gas and using such burners in the open air, shall inclose the same in glass globes or lamps; and any one using such gas in the open air, or in or around derricks, shall turn off said gas not later than eight o'clock in the morning of each day such lights are burning or used, and shall not turn on or relight the same between the hours of eight o'clock a. m. and five o'clock p. m. [Id.]

Art. 6007. [7851] Penalties.—Any person, co-partnership, or corporation violating any provision of the three preceding articles shall be liable to a penalty of one hundred dollars, to be recovered with the costs of suit in a civil action in the name of the State of Texas, in the county in which the act shall be committed or omitted. Such suit may be brought at the instance of any resident of the State of Texas, without security or liability of cost. [Id.]

Art. 6008. [7849] Gas to be confined.—Any person, co-partnership, or corporation in possession, either as owner, lessee, agent or manager, of any well producing natural gas, in order to prevent the said gas from wasting by escape, shall within ten days after penetrating the gas bearing rock in any well, shut in and confine the gas in said well until and during such time as the gas therein shall be utilized for light or fuel or power; provided, that this shall not apply to any well that is operated for oil. Any person violating the provisions of this article shall be liable to a penalty of not less than three hundred dollars for each offense, to be recovered with the costs of suit in a civil action in the name of the State of Texas, in the county in which the act shall be committed or omitted. Each day such violation continues shall be a separate offense. Such suit may be brought at the instance of any resident of this State without security or liability of cost. [Acts 1899, p. 68; Acts 1913, p. 212.]

Art. 6009. [7849-7851] Disposition of penalty.—The amount of any penalty recovered under any preceding article of this title when collected shall be paid, one-half into the school fund of the county in which said suit is brought, and one-half to said person at whose instance such suit shall be brought. [Id.]

Art. 6010. [7852] Water in wells.—If any person or persons in this State, in boring any well or wells, for oil or gas, shall pierce any cap-rock or other geological formation in such manner as to cause a flow of salt water or fresh water injurious to any oil well already bored, or to any oil or gas deposits, and

which shall or may probably result in the injury of such oil or gas field, or to such gas or oil wells already bored, such person or persons shall, if the flow of water cannot be cased off, immediately abandon all work upon such well and plug and fill the same in such manner and with such materials as will stop the flow of said water; and it shall be unlawful for any well owner, or person boring any such well, to remove the casing from the well drilled until the flow of water shall be stopped, either by casing off or plugging such well. The provisions of this article shall only apply where such cap rock or other formation is pierced at a depth below the horizon at which oil or gas has already been discovered. [Acts 1905, p. 228.]

Art. 6011. [7854] Suits and penalties.—Any person or persons, co-partnership, corporation or association of persons, violating any provision of the preceding article, shall be liable to a penalty of not less than five hundred nor more than five thousand dollars, to be recovered with the costs of suit in a civil action brought in the name of the State of Texas in the county in which the act complained of shall have been committed or omitted. Such suit may be brought at the instance of any resident of this State, without security or liability for costs. The amount of said penalty when collected shall be paid into the school fund of the county in which said suit is brought. Such suit may be brought at the instance of either the district attorney or the county attorney of the county in which the act was committed or omitted. [Id.]

Art. 6012. May plug or shut in.—If the owner of any such well shall neglect or refuse to cause said well to be plugged, or shut in, as herein provided, for a period of twenty days after a written notice to do so, which notice may be served personally upon such owner, or may be posted at a conspicuous place at or near the well, it shall be lawful for the owner or operator of any adjacent or neighboring lands to enter upon the premises where said well is situated and cause the same to be plugged if it be an abandoned well, or shut in if not abandoned, pursuant to the provisions hereof. The reasonable cost and expense incurred in so doing shall be paid by the owner of said well, and may be recovered as debts of like amount are by law recoverable. [Acts 1913, p. 212.]

Art. 6013. Petition to restrain waste.—In addition to the penalties provided in this title, it shall be the duty of any district judge, whether in term time or vacation, to hear and determine any petition which may be filed to restrain the waste of natural gas in the violation of this law, and to issue such mandatory or restraining orders as may in his judgment be necessary. Such petition may be filed by any citizen of this State, and the same need allege no further financial interest than the petitioner possesses in common with all citizens of the State in the natural resources thereof. [Id.]

Art. 6014. "Waste."—Natural gas and crude oil or petroleum shall not be produced in this State in such manner and under

such conditions as to constitute waste. The term "waste" in addition to its ordinary meaning shall include: (a) escape of natural gas in commercial quantities into the open air from a stratum recognized as a natural gas stratum; but this is not intended to have application to gas pockets in high points in strata recognized as oil strata; (b) drowning with water of a gas stratum capable of producing gas in commercial quantities; (c) underground waste; (d) the permitting of any natural gas well to wastefully burn; (e) the wasteful utilization of such gas; (f) burning flambeau lights except when casing head gas is used in same; provided not more than four may be used in or near the derrick of a drilling well; and (g) the burning of gas for illuminating purposes between eight o'clock a. m. and five o'clock p. m. unless the use is regulated by meter. [Acts 1919 p. 285.]

Art. 6015. Prevention of waste.—All operators, contractors, or drillers, pipe line companies, or gas distributing companies, drilling for or producing crude oil or natural gas or piping oil or gas for any purpose shall use every possible precaution in accordance with the most approved methods to stop and prevent waste of oil and gas or both, in drilling and producing operations, storage or in piping or distributing, and shall not wastefully utilize oil or gas, or allow same to leak or escape from natural reservoirs, wells, tanks, containers or pipes. [Id.]

Art. 6016. Confining gas in wells.—Whenever natural gas in such quantities, in a gas bearing stratum known to contain natural gas in such quantities, is encountered in any well drilled for oil or gas in this State, such gas shall be confined to its original stratum until such time as the same can be produced and utilized without waste and all such strata shall be adequately protected from infiltrating waters. [Id.]

Art. 6017. Penalty.—Any person, firm, corporation or any officer, agent or employee thereof directly or indirectly violating any provision of the three preceding articles shall be subject to a penalty of not more than five thousand dollars to be recovered by suit brought in the name of the State of Texas by any district or county attorney on the direction of the Railroad Commission. Every day that such violation continues shall be a separate offense. [Id.]

Art. 6018. Pipe line carriers.—Every person, firm, corporation, limited partnership, joint stock association or association of any kind whatever;

1. Owning, operating or managing any pipe line or any part of any pipe line within the State of Texas for the transportation of crude petroleum to or for the public for hire, or engaged in the business of transporting crude petroleum by pipe line; or

2. Owning, operating or managing any pipe line or any part of any pipe line for the transportation of crude petroleum, to or for the public for hire, and which said pipe line is constructed or

maintained upon, over or under any public road or highway, or in favor of whom the right of eminent domain exists; or

3. Owning, operating or managing any pipe line or any part of any pipe line or pipe lines for transportation to or for the public for hire, of crude petroleum, and which said pipe line or pipe lines is or may be constructed, operated or maintained across, upon, along, over or under the right of way of any railroad, corporation or other common carrier required by law to transport crude petroleum as a common carrier; or

4. Owning, operating or managing or participating in ownership, operation or management, under lease, contract of purchase, agreement to buy or sell, or other agreement or arrangement of any kind whatsoever, any pipe line or pipe lines, or part of any pipe line, for the transportation from any oil field or place of production within this State to any distributing, refining or marketing center or reshipping point thereof, within this State, of crude petroleum bought of others;

Is hereby declared to be a common carrier and subject to the provisions of this law. The provisions of this law shall not apply to those pipe lines which are limited in their use to the wells, stations, plants and refineries of the owner and which are not a part of the pipe line transportation system of any common carrier as above defined; nor shall such provisions apply to any property of such a common carrier which is not a part of or necessarily incident to its pipe line transportation system. [Acts 1917, p. 48.]

Art. 6019. Control of.—It is declared that the operation of common carrier pipe lines is a business in which the public is interested, and is subject to regulation by law. The business of purchasing, or of purchasing and selling crude petroleum, using in connection with such business a pipe line of the class subject to this law to transport the crude petroleum so bought or sold, shall not be conducted, unless such pipe line so used is a common carrier within the purview of this law, and subject to the jurisdiction herein conferred upon the Railroad Commission. [Id.]

Art. 6020. Powers of carrier.—The right to lay, maintain and operate pipe lines, together with telegraph and telephone lines incidental to and designed for use only in connection with the operation of such pipe lines along, across or under any public stream or highway in this State, is hereby conferred upon all said common carrier pipe lines. Any person, firm, limited partnership, joint stock association, or corporation may acquire such right by filing with said Commission a written acceptance of the provisions of this law expressly agreeing that in consideration of the rights so acquiring it shall be and become a common carrier pipe line, subject to the duties and obligations conferred or imposed by this law.

Art. 6021. Injury to roads, etc.—The right to run pipe lines, telegraph and telephone lines along, across or over any public road or highway can only be exercised upon condition that the

traffic thereon be not interfered with, and that such road or highway be promptly restored to its former condition of usefulness, and the restoration thereof to be subject also to the supervision of the commissioners court or other proper local authority. In the exercise of the privileges herein conferred, such pipe lines shall compensate the county or road district, respectively, for any damage done to such public road. Nothing herein shall be construed to grant any pipe line company the right to use any public street or alley of any incorporated or unincorporated city or town, except by express permission from the governing body thereof. [Id.]

Art. 6022. Eminent domain.—Every person, firm, corporation, limited partnership, joint stock association, or association of any kind whatsoever owning, operating or managing any pipe line, or any part of any pipe line within this State for the transportation of crude petroleum that is declared by this title to be a common carrier, shall have the right and power of eminent domain in the exercise of which he, it or they may enter upon and condemn the lands, rights of way, easements and property of any person or corporation necessary for the construction, maintenance or operation of his, its or their common carrier pipe line; and shall have the right to lay his, its or their pipes or pipe lines under any railroad, railroad right of way, street railroad, canal or stream in this State; and along and under any street or alley in any incorporated city or town in this State with the consent and under the direction of the governing body of such city or town; and across and under any public road, provided that no pipes or pipe lines shall be laid parallel with and on any public highway closer than fifteen feet from the improved section thereof except with the approval and under the direction of the commissioners court of the county in which such public highway is located; and such other rights in the matter of laying pipes and pipe lines as are conferred by Article 1497, subject to the conditions, limitations and restrictions therein stated. [Acts 1919, p. 273.]

Art. 6023. Jurisdiction.—Power and authority are hereby conferred upon the Railroad Commission of Texas, over all common carrier pipe lines conveying oil or gas in Texas, and over all oil and gas wells in Texas, and over all persons, associations or corporations owning or operating pipe lines in Texas, and over all persons, associations and corporations owning or engaged in drilling or operating oil or gas wells in Texas; and all such persons, associations and corporations and their pipe lines, oil and gas wells are subject to the jurisdiction conferred by law upon the Commission, and the Commission is authorized and empowered to make all necessary rules and regulations for the government and regulation of such persons, associations and corporations and their operations, and the Attorney General shall enforce the provisions of this title by injunction or other adequate remedy and as otherwise provided by law. The word "Commission," as used in this title, shall mean the Railroad

Commission of Texas. The word "Commissioner" shall mean any member of the Railroad Commission.

Art. 6024. Powers.—In all matters pertaining to the discharge of its duties and the enforcement of its powers and authority as provided by the terms of this title, the Commission shall institute suits, hear and determine complaints, require the attendance of witnesses, pay their expenses out of the fund herein created, and sue out such writs and process as may be necessary for the enforcement of its orders, and punish for contempt or disobedience of its orders as the district court may do.

Art. 6025. Attendance of witnesses.—If any witness fails or refuses to obey a subpoena from the Commission, or a Commissioner, the Commission or Commissioner may issue an attachment for such witness as in civil cases, and compel him to attend before the Commission or any Commissioner thereof, and give his testimony upon such matter as may be lawfully required of him, and to bring with him and produce on examination such records, books, vouchers, memoranda, true copies thereof, prints and such other matter as may be required, if any, in such subpoena.

Art. 6026. Criminating testimony.—If a witness fails or refuses to attend on being summoned, or to answer any question propounded to him, or to produce any record or data required to be produced by such subpoena, the claim that any such testimony may tend to criminate the person giving it shall not excuse such witness from testifying or producing such records and data, but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

Art. 6027. Witness fees.—Each witness who shall appear before the Commission or a Commissioner at a place outside the county of his residence shall receive for his attendance three dollars per day and three cents per mile traveled by the nearest practicable route, in going to and returning from the place of meeting of said Commission or Commissioner, which shall be ordered paid, upon the presentation of proper vouchers, sworn to by such witness and approved by the Commission or chairman thereof, provided, that no witness shall be entitled to any witness fees or mileage who is directly or indirectly interested in any public utility involved in or concerning which, in any way, the investigation or hearing on account of which he is summoned, shall relate, or who is in anywise interested in any stock, bond, mortgages, security or earnings of any such utility, or who shall be the agent, attorney or employee of such utility, or any officer thereof, when summoned at the instance of such utility. No witness furnished with free transportation shall receive pay for the distance he may have traveled on such free transportation.

Art. 6028. Officer's fees.—The sheriff or constable executing any process issued by the Commission or any Commissioner

thereof under the provisions of this title shall receive such compensation as the Commission may allow.

Art. 6029. Rules and regulations.—The Commission shall make and enforce rules and regulations for the conservation of oil and gas :

1. To prevent the waste of oil and gas in drilling and producing operations and in the storage, piping and distribution thereof.

2. To require dry or abandoned wells to be plugged in such way as to confine oil, gas and water in the strata in which they are found and to prevent them from escaping into other strata.

3. For the drilling of wells and preserving a record thereof.

4. To require such wells to be drilled in such manner as to prevent injury to the adjoining property.

5. To prevent oil and gas and water from escaping from the strata in which they are found into other strata.

6. To establish rules and regulations for shooting wells and for separating oil from gas.

7. To require records to be kept and reports made by oil and gas drillers, operators and pipe line companies and by its inspectors.

8. It shall do all things necessary for the conservation of oil and gas whether here especially enumerated or not, and shall establish such other rules and regulations as will be necessary to carry into effect this law and to conserve the oil and gas resources of the State. [Acts 1919, p. 285.]

Art. 6030. Supervisor and employees.—The Commission shall employ a pipe line expert who shall be the supervisor for the Commission in enforcing its rules and regulations. The Commission may appoint such deputy supervisors as may be necessary and may increase the salary of the supervisor to a sum not exceeding \$5,000.00 per annum and may fix the salaries of the deputies at not exceeding \$3,600.00 per annum, and shall employ such other assistants as may be necessary.

Art. 6031. Duties of supervisor.—The supervisor and his deputies shall supervise the plugging of all abandoned wells and the shooting of wells and conform to the rules and regulations of the Commission, dealing with the production and conservation of oil and gas. The supervisor shall gather information, and assist the Commission in the performance of its duties under this title. [Id.]

Art. 6032. Tax.—There is hereby levied a tax of one-twentieth of one per cent of the market value of crude petroleum produced within this State, which shall be in addition to and collected in the same manner as the present gross receipts production tax on crude petroleum. Producers of crude petroleum are hereby required to make reports of production in the same manner and under the same penalties as for the gross production tax. The tax thus collected shall be paid into the State Treasury as other revenue, and shall be paid out on warrants as other State funds. Any yearly excess of the tax over and above the requirements of the Commission shall become a part of the general rev-

enue of the State and any deficiency shall be made up out of the general revenue of the State.

Art. 6033. Certificate of compliance.—Owners or operators of gas wells shall, before connecting with any oil or gas pipe lines, secure from the Commission a certificate showing compliance with the oil and gas conservation laws of the State and conservation orders of the Commission. Pipe line companies shall not connect with oil or gas wells until the owners or operators thereof shall furnish certificates from the Commission that the conservation laws of the State have been complied with, provided this law shall not prevent a temporary connection with any well or wells in order to take care of production and prevent waste until opportunity shall have been given the owner or operator of said well to secure certificate showing compliance with the conservation laws of the State. [Acts 1919, p. 285.]

Art. 6034. Books and records.—All owners and operators of oil and gas wells shall keep books, showing accurately the amount of stock sold and unsold and amount of promotion money paid, amount of oil and gas produced and disposed of, with the price for which the same was sold, together with the receipts from the sale or transfer of leases or other property, and the disbursements made in connection with or for the benefit of such business; which books shall be kept open for the inspection of the Commission or any accredited representative thereof, and of any stockholder or shareholder or royalty owner in said business, and shall report such information to the Commission for its information when required by the Commission to do so. [Acts 1919, p. 287; Acts 2nd C. S. 1919, p. 79.]

Art. 6035. Report to Commission.—Any person, firm, partnership, joint stock association, corporation or other organization, domestic or foreign, operating wholly or partially within this State, acting as principal or agent for another, for the purpose of drilling, owning or operating any oil or gas well, or owning or controlling leases of oil and mineral rights or the transportation of oil or gas by pipe line, shall immediately file with the Commission the name of the company or organization, giving the name and post-office address of the organization, the plan under which it was organized, and the names and post-office addresses of the trustee or trustees thereof, and the names and post-office addresses of the officers and directors. [Id.]

Art. 6036. Penalty.—Any person, firm, corporation or any officer, agent or employe thereof directly or indirectly violating any provision of the three preceding articles shall be subject to a penalty of not more than five thousand dollars to be recovered by suit brought in the name of the State of Texas by any district or county attorney on the direction of the Commission. Every day that such violation continues shall be a separate offense. [Id.]

Art. 6037. Rates and charges.—The Commission shall establish and enforce rates of charges and regulations for gathering, transporting, loading and delivering crude petroleum by such common carriers in this State, and for the use of storage facili-

ties necessarily incident to such transportation, and prescribe and enforce rules and regulations for the government and control of such common carriers in respect to their pipe lines and receiving, transferring and loading facilities, and it shall also exercise such power upon petition by any person showing a substantial interest in the subject. [Acts 1917, p. 48.]

Art. 6038. Hearing, notice.—No order establishing or prescribing rates, rules and regulations shall be made except after hearing and at least ten days and not more than thirty days notice to the person, firm, corporation, partnership, joint stock association, or association, owning or controlling and operating the pipe line or pipe lines affected. [Id.]

Art. 6039. Reimbursement, when.—If any rate shall be filed by a pipe line and complaint against same or petition to reduce same shall be filed by a shipper, and such complaint be sustained, in whole or in part, all shippers who shall have paid the rates so filed by the pipe line shall have the right to reparation or reimbursement of all excess in transportation charges so paid over and above the proper rate as finally determined on all shipments made after the date of the filing of such complaint. [Id.]

Art. 6040. Exchange of facilities.—Every common carrier as above defined shall exchange crude petroleum tonnage with each like common carrier and the Commission is authorized to require such connections and facilities for the interchange of such tonnage to be made at every locality reached by both pipe lines whenever a necessity therefor exists and subject to such rates and regulations as may be made by the Commission; and any such common carrier under like rules and regulations shall be required to install and maintain facilities for the receipt and delivery of crude petroleum of patrons at all points on such pipe line. [Id.]

Art. 6041. Grades of oil carried.—No carrier shall be required to receive or transport any crude petroleum except such as may be marketable under rules and regulations to be prescribed by the Commission, and the Commission shall make rules for the ascertainment of the amount of water and other foreign matter in oil tendered for transportation, and for deduction therefor and for the amount of deduction to be made for temperature, leakage and evaporation. [Id.]

Art. 6042. Powers not limited.—Particular powers herein granted to the Commission shall not be construed to limit the general powers conferred by law, and until set aside or vacated by some order or decree of a court of competent jurisdiction, all orders of the Commission as to any matter within its jurisdiction shall be accepted as prima facie evidence of their validity. [Id.]

Art. 6043. Publication of tariffs.—Such common carriers of crude petroleum shall make and publish their tariffs under such rules and regulations as the Commission may prescribe, and the Commission shall require them to make reports, and may investi-

gate their books and records kept in connection with such business. [Id.]

Art. 6044. Monthly reports.—The Commission shall require of such common carrier pipe lines duly verified monthly reports of the total quantities of crude petroleum owned by such pipe lines and of that held by them in storage for others, as also of their unfilled storage capacity, but no publicity shall be given by the Commission as to stock of crude petroleum on hand of any particular pipe line; but the Commission in its discretion may make public the aggregate amounts held by all pipe lines making such reports, and of their aggregate storage capacity. [Id.]

Art. 6045. Discrimination prohibited.—No such common carrier in its operations as such shall discriminate between or against shippers in regard to facilities furnished or service rendered or rates charged under the same or similar circumstances in the transportation of crude petroleum; nor shall there be any discrimination in the transportation of crude petroleum produced or purchased by itself directly or indirectly. In this connection the pipe line shall be considered as a shipper of the crude petroleum produced or purchased by itself directly or indirectly and handled through its facilities. No such carrier in such operations shall directly or indirectly charge, demand, collect or receive from any one a greater or less compensation for any service rendered than from another for a like and contemporaneous service; provided, this shall not limit the right of the Commission to prescribe rates and regulations different from or to some places from other rates or regulations for transportation from or to other places, as it may determine; nor shall any carrier be guilty of discrimination when obeying any order of the Commission. When there shall be offered for transportation more crude petroleum than can be immediately transported, the same shall be equitably apportioned. The Commission may make and enforce general or specific regulations in this regard. No such common carrier shall at any time be required to receive for shipment from any person, firm, corporation or association of persons, exceeding three thousand barrels of petroleum in any one day. [Id.]

Art. 6046. Rules for prevention of waste.—The Commission, when necessary, shall make and enforce rules and regulations either general in their nature or applicable to particular oil fields for the prevention of actual waste of oil or operations in the field dangerous to life or property. [Id.]

Art. 6047. Penalty.—Any common carrier as herein defined who shall violate any provision of this law, or who shall fail to perform any duty herein imposed, or any valid order of the Commission when not stayed or suspended by order of court, shall be subject to a penalty of not less than one hundred nor more than one thousand dollars for each offense, recoverable in the name of the State. Such penalty may also be recovered by and for the use of any person, corporation or association of persons

against whom there shall have been an unlawful discrimination as herein defined; such suit to be brought in the name of and for the use of the party aggrieved. [Id.]

Art. 6048. Transportation of crude petroleum.—Subject to the provisions of the law and the rules or regulations which may be prescribed by the Commission, every such common carrier shall receive and transport crude petroleum delivered to it for transportation and shall so receive and transport same and perform its other duties with respect thereto without discrimination. [Id.]

Art. 6049. Salary of expert and other expenses.—The salary of the expert for the Commission and all other employees shall be paid out of the fund created under Article 6032, by monthly warrants drawn by the Comptroller on the State Treasurer. All other expenses incurred in the administration and enforcement of the provisions of this subdivision shall be paid out of the same fund by like warrants issued upon duly verified statements of the persons entitled, with the approval of the chairman.

NATURAL GAS.

| Classification | Article | | Article |
|--------------------------|---------|----------------------------|---------|
| May enjoin gas pipe line | 6051 | Appeal from orders | 6059 |
| Utility office | 6052 | Utility tax | 6060 |
| Regulation of utilities | 6053 | Report to Governor | 6061 |
| Orders, etc. reviewed | 6054 | Penalties | 6062 |
| To refund excess charges | 6055 | Receiver | 6063 |
| Operator's reports | 6056 | Duties of pipe line expert | 6064 |
| Discrimination | 6057 | Employees of Commission | 6065 |
| Appeal from city control | 6058 | Expenditures limited | 6066 |

Art. 6050. Classification.—The term “gas utility” and “public utility” or “utility,” as used in this subdivision, means and includes persons, companies and private corporations, their lessees, trustees, and receivers, owning, managing, operating, leasing or controlling within this State any wells, pipe lines, plant, property, equipment, facility, franchise, license, or permit for either one or more of the following kinds of business:

1. Producing or obtaining, transporting, conveying, distributing or delivering natural gas: (a) for public use or service for compensation; (b) for sale to municipalities or persons or companies, in those cases referred to in paragraph 3 hereof, engaged in distributing or selling natural gas to the public; (c) for sale or delivery of natural gas to any person or firm or corporation operating under franchise or a contract with any municipality or other legal subdivision of this State; or, (d) for sale or delivery of natural gas to the public for domestic or other use.

2. Owning or operating or managing a pipe line for the transportation or carriage of natural gas, whether for public hire or not, if any part of the right of way for said line has been acquired, or may hereafter be acquired by the exercise of the right of eminent domain; or if said line or any part thereof is laid upon, over or under any public road or highway of this State, or street or alley of any municipality, or the right of way of any

railroad or other public utility; including also any natural gas utility authorized by law to exercise the right of eminent domain.

3. Producing or purchasing natural gas and transporting or causing the same to be transported by pipe lines to or near the limits of any municipality in which said gas is received and distributed or sold to the public by another public utility or by said municipality, in all cases where such business is in fact the only or practically exclusive agency of supply of natural gas to such utility or municipality, is hereby declared to be virtual monopoly and a business and calling affected with a public interest, and the said business and property employed therein within this State shall be subject to the provisions of this law and to the jurisdiction and regulation of the Commission as a gas utility.

Every such gas utility is hereby declared to be affected with a public interest and subject to the jurisdiction, control and regulation of the Commission as provided herein. [Acts 3rd C. S. 1920, p. 18.]

Art. 6051. May enjoin gas pipe line.—The operation of gas pipe lines for buying, selling, transporting, producing or otherwise dealing in natural gas is a business which in its nature and according to the established method of conducting the business is a monopoly and shall not be conducted unless such gas pipe line so used in connection with such business be subject to the jurisdiction herein conferred upon the Commission. The Attorney General shall enforce this provision by injunction or other remedy. [Id.]

Art. 6052. Utility office. — Every gas utility as defined herein shall have an office in one of the counties of this State in which its property or some part thereof is located and shall keep in said office all books, accounts, papers, records, vouchers and receipts which the Commission shall require. No books, accounts, papers, records, receipts, vouchers or other data required by the Commission to be so kept shall be at any time removed from this State except upon such conditions as the Commission may prescribe. [Id.]

Art. 6053. Regulation of utilities.—The Commission after due notice shall fix and establish and enforce the adequate and reasonable price of gas and fair and reasonable rates of charges and regulations for transporting, producing, distributing, buying, selling and delivering gas by such pipe lines in this State; and shall establish fair and equitable rules and regulations for the full control and supervision of said gas pipe lines and all their holdings pertaining to the gas business in all their relations to the public, as the Commission may from time to time deem proper; and establish a fair and equitable division of the proceeds of the sale of gas between the companies transporting or producing the gas and the companies distributing or selling it; and prescribe and enforce rules and regulations for the government and control of such pipe lines in respect to

their gas pipe lines and producing, receiving, transporting and distributing facilities; and regulate and apportion the supply of gas between towns, cities, and corporations, and when the supply of gas controlled by any gas pipe line shall be inadequate, the Commission shall prescribe fair and reasonable rules and regulations requiring such gas pipe lines to augment their supply of gas, when in the judgment of the Commission it is practicable to do so; and it shall exercise its power, whether upon its own motion or upon petition by any person, corporation, municipal corporation, county, or commissioner's precinct showing a substantial interest in the subject, or upon petition of the Attorney General, or of any county or district attorney in any county wherein such business or any part thereof may be carried on. [Id.]

Art. 6054. Orders, etc. reviewed.—All orders and agreements of any company or corporation, or any person or persons controlling such pipe lines establishing and prescribing prices, rates, rules and regulations and conditions of service, shall be subject to review, revision and regulation by the Commission on hearing after notice as provided for herein to the person, firm, corporation, partnership or joint stock association owning or controlling or operating the gas pipe line affected. [Id.]

Art. 6055. To refund excess charges.—If any rate or charge for gas or for service or for meter rental or any other purpose pertaining to the operation of said business shall be made or promulgated by any person, firm or corporation owning or operating any gas pipe line, or in the event of an inadequate supply of gas or inadequate service in any respect, and complaint against same shall be filed by any person authorized by the preceding article to file such petition and such complaint is sustained in whole or in part, all persons and customers of said gas pipe line shall have the right to reparation or reimbursement of all excess in charges so paid over and above the proper rate or charge as finally determined by the Commission from and after the date of the filing of such complaint. [Id.]

Art. 6056. Operator's reports.—The Commission may require of all persons or corporations operating, owning or controlling such gas pipe lines sworn reports of the total quantities of gas distributed by such pipe lines and of that held by them in storage, and also of their source of supply, the number of wells from which they draw their supply, the amount of pressure maintained, and the amount and character and description of the equipment employed, and such other matters pertaining to the business as the Commission may deem pertinent. [Id.]

Art. 6057. Discrimination.—No such pipe line public utility shall discriminate in favor of or against any person, place or corporation, either in apportioning the supply of natural gas or in its charges therefor; nor shall any such utility directly or indirectly charge, demand, collect or receive from any one a greater or less compensation for any service rendered than from

another for a like and contemporaneous service; provided this shall not limit the right of the Commission to prescribe different rates and regulations for the use of natural gas for manufacturing and similar purposes, or to prescribe rates and regulations for service from or to other or different places, as it may determine. [Id.]

Art. 6058. Appeal from city control.—When a city government has ordered any existing rate reduced, the gas utility affected by such order may appeal to the Commission by filing with it on such terms and conditions as the Commission may direct, a petition and bond to review the decision, regulation, ordinance, or order of the city, town or municipality. Upon such appeal being taken the Commission shall set a hearing and may make such order or decision in regard to the matter involved therein as it may deem just and reasonable. The Commission shall hear such appeal de novo. Whenever any local distributing company or concern, whose rates have been fixed by any municipal government, desires a change of any of its rates, rentals or charges, it shall make its application to the municipal government where such utility is located and such municipal government shall determine said application within sixty days after presentation unless the determination thereof may be longer deferred by agreement. If the municipal government should reject such application or fail or refuse to act on it within said sixty days, then the utility may appeal to the Commission as herein provided. But said Commission shall determine the matters involved in any such appeal within sixty days after the filing by such utility of such appeal with said Commission or such further time as such utility shall in writing agree to, but the rates fixed by such municipal government shall remain in full force and effect until ordered changed by the Commission. [Id.]

Art. 6059. Appeal from orders.—If any gas utility or other party at interest be dissatisfied with the decision of any rate, classification, rule, charge, order, act or regulation adopted by the Commission, such dissatisfied utility or party may file a petition setting forth the particular cause of objection thereto in a court of competent jurisdiction in Travis County against the Commission as defendant. Said action shall have precedence over all other causes on the docket of a different nature and shall be tried and determined as other civil causes in said court. Either party to said action may have the right of appeal; and said appeal shall be at once returnable to the appellate court, and said action so appealed shall have precedence in said appellate court of all causes of a different character therein pending. If the court be in session at the time such right of action accrues, the suit may be filed during such term and stand ready for trial after ten days notice. In all trials under this article the burden of proof shall rest upon the plaintiff, who must show by clear and satisfactory evidence that the rates, regulations, or-

ders, classifications, acts or charges complained of are unreasonable and unjust to it or them. [Id.]

Art. 6060. Utility tax.—Every gas utility subject to the provisions of this subdivision on or before the first day of January and quarterly thereafter, shall file with the Commission a statement, duly verified as true and correct by the president, treasurer or general manager if a company or corporation, or by the owner or one of them if an individual or co-partnership, showing the gross receipts of such utility for the quarter next preceding or for such portion of said quarterly period as such utility may have been conducting any business, and at such time shall pay into the State Treasury at Austin a sum equal to one-fourth of one per cent of the gross income received from all business done by it within this State during said quarter. [Id.]

Art. 6061. Report to Governor.—The Commission shall on December 1st of each year make a full detailed report to the Governor, who shall transmit the same to the next succeeding session of the Legislature, showing:

1. The proceedings of said Commission to such time with respect to the gas utilities defined herein.

2. The receipts of gross income taxes from all sources, indicating the sources.

3. The expenditures made under and in accordance with this subdivision, the nature of such expenditures, including in addition to other items of expenditures, the names, titles, nature of employment, salaries of and payments made to all persons employed for any purpose under the terms of this subdivision with statement of traveling and other expenses incurred by each of said persons and approved by the Commission. [Id.]

Art. 6062. Penalties.—Any public utility as herein defined violating any provision of this subdivision or failing to perform any duty herein imposed or to comply with any valid order of the Commission when not stayed or suspended by order of the court, shall be subject to a penalty payable to the State of not less than one hundred nor more than one thousand dollars for each offense, each violation to constitute a separate offense, and each day that such failure continues shall constitute a separate offense. An additional penalty of a like amount together with reasonable attorney's fees may also be recoverable by and for the use of any person, corporation or association of persons against whom there shall have been unlawful discrimination as herein defined; such suit to be brought in the name of and for the use of the party aggrieved. [Id.]

Art. 6063. Receiver.—Whenever any person, firm or corporation, owning, operating or controlling such gas pipe line shall violate any provision hereof or any rule or regulation of the Commission, the Commission shall, whenever in its judgment the public interests require it, apply to any court of this State having jurisdiction for a receivership of such concern guilty of such violation. Such receiver shall control and manage the property of

such gas pipe line under the direction of the court as provided by law in receivership matters. The grounds for appointment of receiver provided for in this article shall be in addition to other grounds provided by law. [Id.]

Art. 6064. Duties of pipe line expert.—The supervisor shall likewise assist the Commission in the performance of its duties under this subdivision under the direction of the Commission, under such rules and regulations as it may prescribe. [Id.]

Art. 6065. Employees of Commission.—The Commission may employ and appoint, from time to time, such experts, assistants, accountants, engineers, clerks and other persons as it deems necessary to enable it at all times to inspect and audit all records or receipts, disbursements, vouchers, prices, pay rolls, time cards, books and official records, to inspect all property and records of the utilities subject to the provisions hereof, and to perform such other services as may be directed by the Commission or under its authority. Such persons and employees of the Commission shall be paid for the service rendered such sums as the Commission may fix. The number of employees and appointees employed or appointed under this subdivision and the sums of money paid to them for their services shall be subject to the approval of the Board of Control, and no employment or appointment hereunder shall be valid without such approval. [Id.]

Art. 6066. Expenditures limited.—The salary and expense of the expert and his assistants, and the salaries, wages, fees and expenses of every other person employed or appointed by the Commission under the provisions of this subdivision, and all other expenses, costs, and charges, including witness fees and mileage, incurred by or under authority of the Commission or a Commissioner, in administering and enforcing the provisions of this subdivision or in exercising any power and authority hereunder shall be paid out of the gas utilities fund provided for by Article 6060, by the State Treasurer on the warrants of the Comptroller of Public Accounts on order or voucher approved by the Commission or the chairman thereof. If the amount or total of such gross receipts charge collected shall not be sufficient, during any quarterly period, to pay such salaries, costs, charges, fees and expenses, then the deficit shall be paid by the State Treasurer out of the general revenue not otherwise appropriated. Any surplus remaining in the gas utilities fund, after paying all such salaries, costs, fees and charges after deducting such amounts as may be contracted to be paid and incurred and such as may be reasonably estimated by the Commission for its use, shall be paid over to the general revenue fund at the end of such quarterly period. The expenses authorized in this article shall never exceed in any one calendar year the sum of twenty thousand dollars.

TITLE 103.**PARKS.****1. STATE PARKS BOARD.**

Art. 6067. Creating Board.—There is hereby created a State Parks Board of five members to be appointed by the Governor, whose terms shall be six years from date of appointment, but in appointing the first board he shall appoint one member for two years, two for four years and two for six years. They shall serve without compensation, but shall be reimbursed for necessary traveling expenses and hotel bills out of State funds, except where localities pay such expenses. [Acts 2nd C. S. 1923, p. 58.]

Art. 6068. To solicit park sites.—The said Board shall solicit donations to the State of tracts of land, large or small, to be used by the State for the purpose of public parks, and said board is hereby authorized to accept in behalf of the State the title to any such tract or tracts of land, subject to the approval of the Legislature. [Id.]

Art. 6069. Duty of Board.—Said Board shall make investigations of any tract or tracts of land, of any size whatsoever, in the State with a view of determining whether the same is suitable for public park purposes, and, the terms on which it can be acquired; and shall report the result of their investigations, together with their recommendations and findings to each regular session of the Legislature, for such action as the Legislature may take. The purpose of this law being to initiate a movement looking to the establishment eventually of a system of State Parks for the benefit of the people, secured either by donation or purchase, or established on any land owned by the State available for such purpose. The said Board is especially directed to inspect the Davis Mountains in Jeff Davis County, to determine the feasibility of same as a park that might be made a National Park. If said Board should conclude that the Davis Mountains area is feasible as a great park, they are hereby authorized to outline the said park; take options or easements and outline a policy to finance the said Davis Mountains area as a park. Any options, easements or tentative deals that are made in regard to said Davis Mountains Park shall be subject to the action of the Legislature and shall not be binding on the State until the Legislature shall approve of the action of said Parks Board. [Id.]

Art. 6070. Traveling expenses.—Any locality desiring to do so may pay the expenses of said Board on any trip to such locality to inspect land and investigate in such locality in order to ascertain whether there is a suitable site there for a State Park; but if the expenses of the Board are so paid, no money shall be paid out of the State Treasury for traveling expenses or hotel bills of said board for such trip. [Id.]

2. SAN JACINTO STATE PARK.

Art. 6071. [6395] **Establishing State Park.**—The lands owned and acquired by the State, called the San Jacinto battlefield, shall be known and styled, "The San Jacinto State Park," and, with the exception, reservations and limitations herein mentioned, the said San Jacinto State Park shall be under the care and direction of the State Board of Control. Said Board and the commissioners shall jointly endeavor to improve, preserve and protect the lands and property within and connected with said San Jacinto State Park. [Acts 1907, p. 104.]

Art. 6072. [6396] **Commissioners.**—The Governor shall biennially appoint three resident citizens of the State, who shall be known as "San Jacinto State Park Commissioners," who shall serve without compensation and whose duties shall be to advise with and assist the Board of Control in the improvement, care and preservation of the lands now owned and hereafter acquired by the State, known as the San Jacinto battlefield. One or more of said commissioners may, in the discretion of the Governor, be selected from the patriotic organization known as San Jacinto Chapter, Daughters of the Republic of Texas, or from any kindred organization. [Id., Sec. 6.]

Art. 6073. [6397] **Duties of the commissioners.**—It shall be the duty of said commissioners, acting with the advice and consent of the Board of Control, to cause to be erected upon a site by them selected a keeper's cottage and other necessary buildings; to arrange for or employ a keeper who shall reside upon the grounds and who shall be clothed with all the powers and authority of a peace officer of the county for the purposes of caring for and protecting the property of the State; to provide the necessary teams, implements and other utensils for the use of such keeper and other employes in the work of beautifying, improving and protecting said grounds; to cause to be erected around, about and upon said grounds such fences as shall, in the judgment of the commissioners and the Board, serve the best interests of the State in the care and protection of its property; to provide for and outline a plan, diagram and design of the work to be done from time to time, copies of which shall be kept in the office of the Board for reference, and to do any and all things necessary to be done, with the intent and purpose of beautifying, improving and protecting the State's interest therein. [Id., Sec. 7.]

3. GONZALES STATE PARK.

Art. 6074. **Establishing park.**—The State accepts title to the ground tendered by the City of Gonzales, and dedicates it as a public State park in commemoration of the historic events that have occurred at Gonzales, and agrees to beautify and protect the same; which said ground shall be under the care and direction of the State Board of Control, and shall be styled "Gonzales State Park." [Acts 1913, p. 242.]

Art. 6075. Commissioners.—The Governor shall biennially appoint three resident citizens of the State, who shall be known as “Gonzales State Park Commissioners,” who shall advise with and assist the Board of Control in the improvement, care and preservation of the said land. One or more of said commissioners may, in the discretion of the Governor, be selected from the patriotic organization known as Gonzales Chapter, Daughters of the Republic of Texas, or from any kindred organization. Said commissioner shall serve without compensation. [Id.]

4. WASHINGTON STATE PARK.

Art. 6076. Washington State Park.—The lands situated in Washington County and which were acquired by the State and on which the first capitol of Texas stood, shall be known as “The Washington State Park.” [Acts 1923, p. 123.]

Art. 6077. Commissioners.—The Governor shall biennially appoint for a term of two years five resident citizens of this State, who shall constitute “The Washington State Park Commission.” The duties of said commissioners, acting with the advice and consent of the Board of Control, shall be the same as that provided by law for the San Jacinto State Park, as far as applicable. [Id.]

5. COUNTY PARKS.

Art. 6078. Tax for parks.—Each commissioners court is authorized to levy and collect a tax not to exceed five cents on each \$100 of assessed valuation of the county for the purchase and improvement of lands for use as county parks which shall consist of not more than one hundred acres, and shall not exceed more than four in any one county. No such tax shall be levied and collected until the proposition is submitted to and ratified by the property tax-paying voters of the county at a general or special election called for that purpose, provided, a two-thirds majority of the property taxpaying voters of such county, at an election held for such purpose shall determine in favor of said tax. If said court desires to establish two or more of such county parks they shall locate them in widely separated portions of the county. Said court shall have full power and control over any and all such parks and may levy and collect an annual tax sufficient in their judgment to properly maintain such parks and build and construct pavilions and such other buildings as they may deem necessary, lay out and open driveways and walks, pave the same or any part thereof, set out trees and shrubbery, construct ditches or lakes, and make such other improvements as they may deem proper. Such parks shall remain open for the free use of the public under such reasonable rules and regulations as said court may prescribe. [Acts 1915, p. 102.]

Art. 6079. Privileges and concessions.—No person, firm or association of persons shall have the right to offer for sale or

barter, exhibit anything or conduct any place of amusement where a fee is charged within said parks without first obtaining the consent of the commissioners court or its duly authorized agent, paying for such privilege or concession the sum agreed upon with said court or its duly authorized agent. All revenue from the sale of such privileges or concessions shall go into a fund for the maintenance of said parks. [Id.]

6. CITY PARKS.

Art. 6080. City parks.—The governing body of any incorporated city may purchase, improve and maintain land for use as city parks. Such parks shall not exceed two in number for each two thousand inhabitants. If such body establishes more than one of such parks, it shall locate them in widely separated parts of the city. Such body is authorized to levy and collect a tax not to exceed five cents on each one hundred dollars of its assessed valuation for the purchase and improvement of lands for use as such parks, and may levy and collect a like annual tax to properly maintain such parks. Said body shall have full power and authority over all such parks, and may build and construct such building as they may deem necessary, lay out and open driveways and walks, pave any part thereof, construct ditches or lakes, set out trees and shrubs, and make such other improvements as they may deem proper. Such parks shall remain open for the free use of the public under such reasonable rules as said body may prescribe. [Acts 1917, p. 149.]

Art. 6081. Concessions in city park.—No person, firm or association of persons shall have the right to offer for sale or barter, exhibit anything or conduct any place of amusement where a fee is charged within said parks without first obtaining the consent of the governing body, or its authorized agent, paying for such privilege or concession the sum agreed upon with said body or its agent. All revenue from the sale of such rights, privileges or concessions shall go into a fund for the maintenance of said parks. [Id.]

TITLE 104.

PARTITION.

1. PARTITION OF REAL ESTATE.

| | Article | | Article |
|-----------------------------------|---------|---|---------|
| Joint owner may compel..... | 6082 | Shall proceed to partition..... | 6092 |
| Petition | 6083 | May cause survey..... | 6093 |
| Citation and service..... | 6084 | Shall divide real estate..... | 6094 |
| Where defendant is unknown..... | 6085 | Report of commissioners..... | 6095 |
| Court shall determine, what..... | 6086 | Property incapable of division..... | 6096 |
| Appointment of commissioners..... | 6087 | Objections to report..... | 6097 |
| Writ of partition..... | 6088 | Partition not prejudicial..... | 6098 |
| Service of writ of partition..... | 6089 | Each party shall hold in severalty..... | 6099 |
| May appoint surveyor..... | 6090 | Decree shall vest title..... | 6100 |
| Return of writ..... | 6091 | | |

Art. 6082. [6096] [3606] Joint owner may compel.—Any joint owner or claimant of any real estate or of any interest therein or of any mineral, coal, petroleum, or gas lands, whether held in fee or by lease or otherwise, may compel a partition thereof between the other joint owners or claimants thereof in the manner provided in this chapter. [Acts 1917, p. 295.]

Art. 6083. [6097] [3607] [3466] Petition.—Such joint owner or claimant may file his petition in the district court of the county in which the real estate, or any part thereof, sought to be partitioned, is situated, which petition shall state:

1. The names and residence, if known, of each of the other joint owners, or joint claimants, of such property.

2. The share or interest which the plaintiff and the other joint owners, or joint claimants, of same own or claim so far as known to the plaintiff.

3. The land sought to be partitioned shall be so described as that the same may be distinguished from any other and the estimated value thereof stated.

Art. 6084. [6098] [3608] [3467] Citation and service.—Upon the filing of a petition for partition, the clerk shall issue citation for each of the joint owners, or joint claimants, named therein, as in other cases, and such citations shall be served in the manner and for the time provided for the service of citations in other cases.

Art. 6085. [6099] [3609] Where defendant is unknown.—If the plaintiff, his agent or attorney, at the commencement of any suit, or during the progress thereof, for the partition of land, shall make affidavit that an undivided portion of the land described in the plaintiff's petition in said suit is owned by some person unknown to affiant, the clerk of the court shall issue a citation to the proper officer, which shall contain a brief statement of the nature of the suit, and a description of the interest of the unknown owner or owners, commanding such officer to summon such unknown owner or owners by making publication of the citation in some newspaper in the county where the writ issued, if there be a newspaper published in said county, but if not, then in the nearest county where a newspaper is published, for four successive weeks previous to the return day of such

process. When such notice is given, and no appearance is entered within the time prescribed for pleading, the court shall appoint an attorney to defend in behalf of such owner or owners, and proceed as in other causes where service is made by publication. It shall be the special duty of the court in all such cases to see that its decree protects the rights of the unknown parties thereto. The judge of the court shall fix the fee of the attorney so appointed, which shall be entered and collected as costs against said unknown owner or owners. [Acts 1879, p. 46; G. L., Vol. 8, p. 1346.]

Art. 6086. [6100] [3610] [3468] Court shall determine, what.—Upon the hearing of the cause, the court shall determine the share or interest of each of the joint owners or claimants in the real estate sought to be divided, and all questions of law or equity affecting the title to such land which may arise.

Art. 6087. [6101] [3611] [3469] Appointment of commissioners.—The court shall determine before entering the decree of partition whether the property, or any part thereof, is susceptible of partition; and, if the court determines that the whole, or any part of such property is susceptible of partition, then the court for that part of such property held to be susceptible of partition shall enter a decree directing the partition of such real estate, describing the same, to be made in accordance with the respective shares or interests of each of the parties entitled thereto, specifying in such decree the share or interest of each party, and shall appoint three or more competent and disinterested persons as commissioners to make such partition in accordance with such decree and the law, a majority of which commissioners may act. [Acts 1905, p. 95.]

Art. 6088. [6102] [3612] [3470] Writ of partition.—The clerk shall issue a writ of partition, directed to the sheriff or any constable of the county, commanding such sheriff or constable to notify each of the commissioners of their appointment as such, and shall accompany such writ with a certified copy of the decree of the court directing the partition. [R. S. 1879.]

Art. 6089. [6103] [3613] [3471] Service of writ of partition.—The writ of partition shall be served by reading the same to each of the persons named therein as commissioners, and by delivering to any one of them the accompanying certified copy of the decree of the court. [Id.]

Art. 6090. [6104] [3614] [3472] May appoint surveyor.—The court may, should it be deemed necessary, appoint a surveyor to assist the commissioners in making the partition, in which case the writ of partition shall name such surveyor, and shall be served upon him by reading the same to him. [Id.]

Art. 6091. [6105] [3615] [3473] Return of writ.—A writ of partition, unless otherwise directed by the court, shall be made returnable to the first day of the next term of the court from whence the same issues; and the officer serving it shall indorse thereon the time and manner of such service. [Id.]

Art. 6092. [6106] [3616] [3474] **Shall proceed to partition.**—The commissioners, or a majority of them, shall proceed to partition the real estate described in the decree of the court, in accordance with the directions contained in such decree and with the provisions of this chapter. [Id.]

Art. 6093. [6107] [3617] [3475] **May cause survey.**—If the commissioners deem it necessary, they may cause to be surveyed the real estate to be partitioned into several tracts or parcels. [Id.]

Art. 6094. [6108-9] **Shall divide real estate.**—The commissioners shall divide the real estate to be partitioned into as many shares as there are persons entitled thereto, as determined by the court, each share to contain one or more tracts or parcels, as the commissioners may think proper, having due regard in the division to the situation, quantity and advantages of each share, so that the shares may be equal in value, as nearly as may be, in proportion to the respective interests of the parties entitled. The commissioners shall then proceed by lot to set apart to each of the parties entitled one of said shares, as determined by the decrees of the court. [Id.]

Art. 6095. [6110] [3620] [3478] **Report of commissioners.**—When the commissioners have completed the partition, they shall report the same in writing and under oath to the court, which report shall show:

1. The property divided, describing the same.
2. The several tracts or parcels into which the same was divided by them, describing each particularly.
3. The number of shares and the land which constitutes each share, and the estimated value of each share.
4. The allotment of each share.
5. The report shall be accompanied by such field-notes and maps as may be necessary to make the same intelligible. [Id.]

Art. 6096. [6111] [3621] [3479] **Property incapable of division.**—Should the court be of the opinion that a fair and equitable division of the real estate, or any part thereof, can not be made, it shall order a sale of so much as is incapable of partition, which sale shall be for cash, or upon such other terms as the court may direct, and shall be made as under execution, or by private sale through a receiver, if the court so order, and the proceeds thereof shall be returned into court and be partitioned among the persons entitled thereto, according to their respective interests. [Acts 1905, p. 95.]

Art. 6097. [6112] [3622] [3480] **Objections to report.**—Either party to the suit may file objections to any report of the commissioners in partition, and in such case a trial of the issues thereon shall be had as in other cases. If the report be found to be erroneous in any material respect, or unequal and unjust, the same shall be rejected, and other commissioners shall be appointed by the court, and the same proceedings had as in the first instance. [R. S. 1879.]

Art. 6098. [6113] [3623] [3481] Partition not prejudicial.—When a partition is made between a joint owner who holds an estate for a term of years or for life with others who hold equal or greater estates, such partition shall not be prejudicial to those entitled to the reversion or remainder of such estates. [Id.]

Art. 6099. [6114] [3624] [3482] Each party shall hold in severalty.—When any partition is made, each party to whom a share has been allotted shall hold the same in severalty under the same conditions and covenants that it was held before such partition was made. No warranty, lease or right whatsoever shall be impaired or affected by such partition. [Id.]

Art. 6100. [6115] [3625] [3483] Decree shall vest title.—The decree of the court confirming the report of the commissioners in partition, when a partition has been made shall vest the title in each party to whom a share has been allotted, to such share as against the other parties to such partition suit, their heirs, executors, administrators or assigns, as fully and effectually as the deed of such parties could vest the same, and shall have the same force and effect as a full warranty deed of conveyance from such other parties and each of them. [Id.]

2. PARTITION OF PERSONAL PROPERTY.

| | | | |
|---------------------------------------|---------|-------------------------------|---------|
| | Article | | Article |
| Part owners may compel partition..... | 6101 | Decree of court executed..... | 6104 |
| Suit begun in what court..... | 6102 | Property sold | 6105 |
| Value ascertained | 6103 | | |

Art. 6101. [6116] [3626] [3484] Part owners may compel partition.—Part owners of personal property may be compelled to make partition between them in the manner hereinafter provided. [Acts Dec. 24, 1851, p. 20; G. L. Vol. 3, p. 898.]

Art. 6102. [6117] [3627] [3485] Suit begun in what court.—Suit for partition shall be commenced in the court having jurisdiction of the value of such property, in the same manner as other civil suits are commenced, and the several owners or claimants of such property shall be cited as in other cases. [Id.]

Art. 6103. [6118] [3628] [3486] Value ascertained.—The separate value of each article of such personal property, and the allotment in kind to which each owner is entitled, shall be ascertained by the court, with or without a jury. [Id.]

Art. 6104. [6119] [3629] [3487] Decree of court executed.—When partition in kind of personal property is ordered by the judgment of the court, a writ shall be issued in accordance with such judgment, commanding the sheriff or constable of the county where the property may be to put the parties forthwith in possession of the property allotted to each respectively. [Id.]

Art. 6105. [6120-21] Property sold.—When personal property will not admit of a fair and equitable partition, the court shall ascertain the proportion to which each owner thereof is entitled, and order the property to be sold, and execution shall be issued to the sheriff or any constable of the county where the property may be, describing such property and commanding

such officer to sell the same as in other cases of execution, and pay over the proceeds of sale to the parties entitled thereto, in the proportion ascertained by the judgment of the court. [Id.]

3. MISCELLANEOUS PROVISIONS.

| | | | |
|----------------------------|---------|---------------------------|---------|
| | Article | | Article |
| Construction of title..... | 6106 | Pay of commissioners..... | 6108 |
| Pleading and practice..... | 6107 | Costs | 6109 |

Art. 6106. [6122] [3632] [3490] Construction of title.— No provision of this title shall affect the mode of proceeding prescribed by law for the partition of estates of decedents among the heirs and legatees, nor preclude partition in any other manner authorized by the rules of equity; which rules shall govern in proceedings under this title in all things not provided for in this title. [R. S. 1879.]

Art. 6107. [6123] [3633] [3491] Pleading and practice.— The same rules of pleading, practice and evidence which govern in other civil causes shall govern in suits for partition, when not in conflict with any provision of this title. [Id.]

Art. 6108. [6124] [3634] [3492] Pay of commissioners.— The commissioners in partition and the surveyor, if any has been appointed, shall receive for their services three dollars each per day for each day they are engaged in making and returning such partition, to be taxed and collected as other costs in the case. [Id.]

Art. 6109. [6125] [3635] [3493] Costs.— The court shall adjudge the costs in a partition suit to be paid by each party to whom a share has been allotted in proportion to the value of such share. [Id.]

TITLE 105.

PARTNERSHIPS AND JOINT STOCK COMPANIES.

| Chapter | Page | Chapter | Page |
|-----------------------------|------|--|------|
| 1 Partnerships Limited..... | 1742 | 2 Unincorporated Joint Stock Companies | 1745 |

CHAPTER ONE.

PARTNERSHIP—LIMITED.

| Article | Article | | |
|--|---------|--|------|
| Limited partnerships authorized..... | 6110 | Suits by and against..... | 6123 |
| General and special partners..... | 6111 | Capital of special partner..... | 6124 |
| General partners only to act..... | 6112 | Reduction of special partner's capital | 6125 |
| Formation of such partnerships..... | 6113 | Powers of special partner..... | 6126 |
| Certificate to be acknowledged..... | 6114 | Partners to account..... | 6127 |
| Filing and recording certificate..... | 6115 | Assignments by partnership..... | 6128 |
| Affidavit of general partner..... | 6116 | Assignments contemplating insolvency | 6129 |
| Prerequisites indispensable..... | 6117 | Concurrence by special partner..... | 6130 |
| Terms to be published..... | 6118 | Partnership creditors preferred..... | 6131 |
| Publisher's affidavit..... | 6119 | Dissolution before time agreed on..... | 6132 |
| Renewal of partnership..... | 6120 | | |
| Certain alterations a dissolution..... | 6121 | | |
| Firm name..... | 6122 | | |

Art. 6110. [6126] [3583] Limited partnerships authorized.
 —Limited partnerships for the transaction of any mercantile, mechanical, manufacturing or other business, except banking or insurance, may be formed by two or more persons, upon the terms, with the rights and powers, and subject to the conditions and liabilities herein prescribed. [Act May 12, 1846, p. 279; P. D. 4717 et seq.; G. L. Vol. 2, p. 1585.]

Art. 6111. [6127] [3584] General and special partners.—Such partnerships may consist of one or more persons, who shall be called the general partners, and who shall be jointly and severally responsible as general partners now are by law; and of one or more persons who shall contribute in actual cash payments a specific sum as capital to the common stock, who shall be called special partners, and who shall not be liable for the debts of the partnership beyond the fund so contributed by him or them to the capital. [Id.]

Art. 6112. [6128] [3585] General partners only to act.—The general partners only shall be authorized to transact business and sign for the partnership and to bind the same. [Id.]

Art. 6113. [6129] [3586] Formation of such partnerships.
 —The persons desirous of forming such partnership shall make and severally sign a certificate, which shall contain:

1. The name or firm under which the partnership is to be conducted.
2. The general nature of the business intended to be transacted.
3. The names of all the general and special partners interested therein, distinguishing which are general and which are special partners, and their respective places of residence.
4. The amount of capital which each special partner shall have contributed to the common stock.
5. The period at which the partnership is to commence, and the period at which it is to terminate. [Id.]

Art. 6114. [6130] [3587] **Certificate to be acknowledged.**—The certificate shall be acknowledged by the several persons signing the same, before any officer authorized to take acknowledgments for record, and such acknowledgment shall be made and certified in the same manner as the acknowledgment of the conveyances of land. [Id.]

Art. 6115. [6131] [3588] **Filing and recording certificate.**—The certificate so acknowledged and certified shall be filed in the office of the clerk of the county in which the principal place of business of the partnership shall be situated, and shall also be recorded by him at large in a book to be kept for that purpose, open to public inspection. If the partnership shall have places of business situated in different counties, the certificate and acknowledgment thereof shall be filed and recorded in like manner in the office of the county clerk of every such county. [Id.]

Art. 6116. [6132] [3589] **Affidavit of general partner.**—At the time of filing the original certificate with the evidence of the acknowledgment thereof, as before directed, an affidavit of one or more of the general partners shall also be filed in the same office, stating that the sums specified in the certificate to have been contributed by each of the special partners, to the common stock, have been actually and in good faith paid in cash. [Id.]

Art. 6117. [6133] [3590] **Prerequisites indispensable.**—No such partnership shall be deemed to have been formed until a certificate shall have been made, acknowledged, filed and recorded, nor until an affidavit shall have been filed as above directed; and, if any false statement be made in such certificate or affidavit, all the persons interested in such partnership shall be liable for all the engagements thereof as general partners. [Id.]

Art. 6118. [6134] [3591] **Terms to be published.**—The partners shall publish the terms of the partnership when registered for at least six weeks immediately after such registry, in such newspapers as shall be designated by the clerk in whose office such registry shall be made; and if such publication be not made the partnership shall be deemed general. [Id.]

Art. 6119. [6135] [3592] **Publisher's affidavit.**—An affidavit of the publication of such notice by the publisher of the newspapers in which the same shall be published may be filed with the clerk directing the same, and shall be evidence of the facts therein contained. [Id.]

Art. 6120. [6136] [3593] **Renewal of partnership.**—Every renewal or continuance of such partnership beyond the time originally fixed for its duration shall be certified, acknowledged and recorded, and an affidavit of a general partner be made and filed, and notice given in the manner herein required for its original formation; and every such partnership which shall be otherwise renewed or continued shall be deemed a general partnership. [Id.]

Art. 6121. [6137] [3594] **Certain alterations a dissolution.**

—Every alteration which shall be made in the names of the partners, in the nature of the business, or in the capital or shares thereof, or in any other matter specified in the original certificate, shall be deemed a dissolution of the partnership; and every such partnership which shall in any manner be carried on after any such alteration shall have been made shall be deemed a general partnership, unless renewed as a special partnership according to the provisions of the preceding article. [Id.]

Art. 6122. [6138] [3595] **Firm name.**—The business of the partnership shall be conducted under a firm in which the names of the general partners only shall be inserted, without the addition of the word “company,” or any other general term; and if the name of any special partner be used in such firm, with his privity, he shall be deemed a general partner. [Id.]

Art. 6123. [6139] [3596] **Suits by and against.**—Suits in relation to the business of the partnership may be brought and conducted by and against the general partners, in the same manner as if there were no special partners. [Id.]

Art. 6124. [6140] [3597] **Capital of special partner.**—No part of the sum which any special partner shall have contributed to the capital stock shall be withdrawn by him, or paid or transferred to him in the character of dividends, profits or otherwise, at any time during the continuance of the partnership; but any partner may annually receive lawful interest on the sum so contributed by him, if the payment of such interest shall not reduce the original amount of such capital; and if, after the payment of such interest, any profits shall remain to be divided he may also receive his portion of such profits. [Id.]

Art. 6125. [6141] [3598] **Reduction of special partner's capital.**—If it shall appear that by the payment of interest or profits to any special partner the original capital has been reduced, the partner receiving the same shall be bound to restore the amount necessary to make good his share of the capital, with interest. [Id.]

Art. 6126. [6142] [3599] **Powers of special partner.**—A special partner may from time to time examine into the state and progress of the partnership concerns, and may advise as to their management. [Id.]

Art. 6127. [6143] [3600] **Partners to account.**—The general partners shall be liable to account to each other, and to the special partners, for the management of the concern, both in law and equity, as other partners are by law. [Id.]

Art. 6128. [6144] [3601] **Assignments by partnership.**—Every sale, assignment or transfer of any property or effects of the partnership made by such partnership when insolvent, or in contemplation of insolvency, or after, or in contemplation of insolvency of any partner, with the intent of giving a preference to any creditor of such partnership, or insolvent partner, over other creditors of such partnership, and every judgment confessed, lien created, or security given, by any such partnership

under the like circumstances and with like intent, shall be void as against the creditors of such partnership. [Id.]

Art. 6129. [6145] [3602] Assignments contemplating insolvency.—Every such sale, assignment, or transfer of any of the property or effects of a general or special partner made by such general or special partner when insolvent, or in contemplation of insolvency, or after, or in contemplation of the insolvency of the partnership, with the intent of giving to any creditor of his own, or of the partnership, a preference over the creditors of the partnership, and every judgment confessed, lien created, or security given, by any such partner under like circumstances and with like intent, shall be void as against the creditors of the partnership. [Id.]

Art. 6130. [6146] [3603] Concurrence by special partner.—Every special partner who shall violate any provision of the two preceding articles, and who shall concur in or assent to any such violation of the partnership by any individual partner, shall be liable as a general partner. [Id.]

Art. 6131. [6147] [3604] Partnership creditors preferred.—In case of the insolvency or bankruptcy of the partnership, no special partner shall, under any circumstances, be allowed to claim as creditor until the claims of all other creditors of the partnership shall be satisfied. [Id.]

Art. 6132. [6148] [3605] Dissolution before time agreed on.—No dissolution of such partnerships by the acts of the parties shall take place previous to the time specified in the certificate of its formation, or in the certificate of its renewal, until a notice of such dissolution shall have been filed and recorded and published once in each week for four weeks in a newspaper printed in each of the counties where the partnership may have a place of business, if there be such papers, and if there be no newspapers published in such county, then in a newspaper published in the nearest county where there is one. [Id.]

CHAPTER TWO.

UNINCORPORATED JOINT STOCK COMPANIES.

| | Article | | Article |
|---------------------------|---------|------------------------------|---------|
| Suit in company name..... | 6133 | Joint Liability | 6136 |
| Service of citation..... | 6134 | Individual liability | 6137 |
| Judgment | 6135 | This chapter cumulative..... | 6138 |

Art. 6133. [6149] Suit in company name.—Any unincorporated joint stock company or association, whether foreign or domestic, doing business in this State, may sue or be sued in any court of this State having jurisdiction of the subject matter in its company or distinguishing name; and it shall not be necessary to make the individual stockholders or members thereof parties to the suit. [Acts 1907, p. 240.]

Art. 6134. [6150] Service of citation.—In suits against such companies or associations, service of citation may be had on the president, secretary, treasurer or general agent of such unincorporated companies. [Id.]

Art. 6135. [6151] **Judgment.**—In suits by or against such unincorporated companies, whatever judgment shall be rendered shall be as conclusive on the individual stockholders and members thereof as if they were individually parties to such suits. [Id.]

Art. 6136. [6152] **Joint liability.**—Where suit shall be brought against such company or association, and the only service had shall be upon the president, secretary, treasurer or general agent of such company or association, and judgment shall be rendered against the defendant company, such judgment shall be binding on the joint property of all the stockholders or members thereof, and may be enforced by execution against the joint property; but such judgment shall not be binding on the individual property of the stockholders or members, nor authorize execution against it. [Id.]

Art. 6137. [6153] **Individual liability.**—In a suit against such company or association, in addition to service on the president, secretary, treasurer or general agent of such companies or association, service of citation may also be had on any and all of the stockholders or members of such companies or associations; and, in the event judgment shall be against such unincorporated company or association, it shall be equally binding upon the individual property of the stockholders or members so served, and executions may issue against the property of the individual stockholders or members, as well as against the joint property; but executions shall not issue against the individual property of the stockholders or members until execution against the joint property has been returned without satisfaction. [Id.]

Art. 6138. [6154] **This chapter cumulative.**—The provisions of this chapter shall not affect nor impair the right allowed unincorporated joint stock companies and associations to sue in the individual names of the stockholders or members, nor the right of any person to sue the individual stockholders or members; but the provisions of this chapter shall be construed as cumulative merely of other remedies now existing under the law. [Id.]

TITLE 106.

PATRIOTISM AND THE FLAG.

| | | | |
|---------------------------|---------|-----------------------------|---------|
| | Article | | Article |
| Protecting the flag..... | 6139 | State Tree | 6143 |
| Definition | 6140 | Home Guard | 6144 |
| Prima facie evidence..... | 6141 | Texas Historical Board..... | 6145 |
| Exceptions | 6142 | | |

Art. 6139. Protecting the flag.—Whoever shall in any manner, for exhibition or display, place or cause to be placed, any word, figure, mark, picture, design, drawing or any advertisement of any nature upon any flag of the United States of America or State flag of this State, or shall expose or cause to be exposed to public view any such flag upon which, after this law takes effect shall have been printed, painted or otherwise placed, or to which shall be attached, appended, affixed or annexed any word, figure, mark, picture, design or drawing, or any advertisement of any nature, or who shall, after this law takes effect, expose to public view, manufacture, sell, expose for sale, give away, or have in possession for sale, or to give away, or for use for any purpose, any article or substance being an article of merchandise, or receptacle of merchandise or article or thing for carrying or transporting merchandise, upon which, after this law takes effect, shall have been printed, painted, attached or otherwise placed, a representation of any such flag to advertise, call attention to, decorate, mark or distinguish the article or substance on which so placed, or who shall publicly mutilate, deface, defy, or defile, trample upon or cast contempt, either by words or act, upon such flag, shall forfeit a penalty of fifty dollars for each such offense. Such penalty shall be recovered with costs in a civil suit brought by and in the name of any citizen of this State. Such penalty when collected, less the reasonable cost and expense of suit and recovery, to be certified by the county attorney of the county in which the offense is committed, shall be paid into the State Treasury. Two or more penalties may be sued for and recovered in the same suit. [Acts 3rd C. S. 1917, p. 81.]

Art. 6140. Definition.—The word “flag,” as used in this title, shall include any flag, standard, color, ensign or any picture or representation of either made of any substance or represented on any substance, and of any size, evidently purporting to be, either of, said flag, standard, color or ensign of the United States of America, or a picture or representation, of either upon which shall be shown the colors, the stars and stripes in any number of either, or by which the person seeing the same without deliberation may believe the same to represent the flag, colors, standard or ensign of the United States of America. [Id.]

Art. 6141. Prima facie evidence.—The possession by one, other than a public officer, as such, of any such flag on which shall be anything made unlawful at any time, by this title, or of

any article or substance or thing on which shall be anything made unlawful at any time by this title, shall be presumptive evidence that the same is in violation of this law. [Id.]

Art. 6142. Exceptions.—The preceding article shall not apply to any act permitted by the statutes of the United States, or by the United States Army and Navy regulations, nor to any newspaper, periodical, book, pamphlet, circular, certificate, diploma, warrant or commission of appointment to office, ornamental picture, article of jewelry, or stationery for use in correspondence, on any of which shall be printed, painted, or placed said flag, disconnected from any advertisement. [Id.]

Art. 6143. State tree.—The pecan tree shall be the State Tree. [Acts 1919, p. 155.]

Art. 6144. Home Guard.—Whenever a state of war shall exist between the United States and another nation there may be organized and maintained without expense to this State, with the consent and under the direction of the county judge of any county, a Home Guard composed of adult citizens of the United States and of such county. Such Guard shall be organized to conform as nearly as practicable to the organization of military units, and shall at all times be subject to call to duty and to orders of the sheriff of such county. Each Guard shall be authorized to carry on and about his person pistols and other weapons as may be necessary when called to actual duty by the sheriff. Counties, cities and towns may through their lawful governing bodies appropriate from their public treasuries moneys to provide arms and ammunition for such Guard under such rules as they may prescribe, and those receiving arms from the county shall return all guns and ammunition to the county judge when not on duty. Such Guard may engage in drill at such time and place as the community officers may prescribe, and may be uniformed so as not to conflict with Section 125, Act of Congress, approved June 3, 1916. [Acts 3rd C. S. 1917, p. 79.]

Art. 6145. Texas Historical Board.—The Governor shall appoint five patriotic citizens of this State, to serve without compensation, who shall constitute the Texas Historical Board. Two of the members of said Board shall serve for a period of two years and three shall serve for four years from the date of their qualification by taking the official oath. The Governor shall, at the time of making the appointments, designate which members shall serve for two years and which shall serve for four years. The Board shall select one member as chairman and another as secretary and may adopt such rules and regulations for its control and guidance as may be necessary to carry out the purposes for which it was created, and shall hold such meetings at such times and places as may be designated by it. Said Board shall gather data relating to the history of Texas from the earliest time to the present and submit to the Legislature at each regular session, for such action as it may deem

necessary, such data and such recommendations as it may see fit looking to the preservation of historic relics, and marking of historic spots, the purchase of historic grounds and the erection of fitting monuments in memory of the heroes and the heroic achievements that consecrated, sanctified, and made immortal the glorious and resplendent pages of Texas history. [Acts 2nd C. S. 1923, p. 62.]

TITLE 107.

PAWNBROKERS AND LOAN BROKERS.

1. Pawnbrokers.

| | Article | | Article |
|-------------------------|---------|-----------------------------------|---------|
| Pawnbroker | 6146 | Report of sales | 6154 |
| Bond | 6147 | Expenses | 6155 |
| Register | 6148 | Owner entitled to surplus | 6156 |
| Pawn ticket | 6149 | Payment to county treasurer | 6157 |
| Failure to redeem | 6150 | Suit for surplus | 6158 |
| How notice given | 6151 | Suit upon bond | 6159 |
| Advertisement | 6152 | May sue officer | 6160 |
| Hours of sale | 6153 | Common law shall govern | 6161 |

Art. 6146. [6155] [3636] [3494] **Pawnbroker.**—A pawnbroker is one who pursues the business of lending money upon interest and receiving upon deposit any personal property as security for the payment of such loan and interest.

Art. 6147. [6156-7] **Bond.**—No person shall pursue the business of a pawnbroker without first having given bond, with at least two good sureties in the sum of one thousand dollars, payable to the State of Texas, and approved by and filed with the county clerk of the county in which such person proposes to pursue said business, conditioned that he will faithfully comply with each requirement of the law governing such business. A new bond shall be given in the same manner as the first every twelve months during the continuance of such business. Such bond shall be recorded and safely kept in the office of the county clerk of the county in which such pawnbroker pursues such business, the recording fee to be paid by such pawnbroker. [Acts 1874, p: 153; G. L. Vol. 8, p. 155.]

Art. 6148. [6158] [3639] [3497] **Register.**—Each pawnbroker shall keep a well bound book, to be kept open for inspection in which he shall register all his transactions as a broker at the time the same occurs. Such register shall show—

1. An accurate description of the article pawned.
2. From whom received.
3. The time and the amount for which the article is pawned; its probable value and the rate of interest agreed upon.
4. The final disposition made of such property, and if sold to whom sold and the amount for which each article was sold. [Id.]

Art. 6149. [6159] [3640] [3498] **Pawn ticket.**—The broker shall give to the party pledging a ticket corresponding to the entry on the book of registry. [Id.]

Art. 6150. [6160] [3641] [3499] **Failure to redeem.**—If any article deposited with such broker as a pawn shall not be redeemed at or before the time agreed upon, the broker shall sell the same at public auction to the highest bidder for cash, at his usual place of business, after giving at least five days' notice of such sale. [Id.]

Art. 6151. [6161] [3642] [3500] **How notice given.**—Such notice of sale shall be given by posting or written or printed advertisements at not less than three public places in the county

where such sale is to take place, one of which places shall be the courthouse of such county. [Id.]

Art. 6152. [6162] [3643] [3501] **Advertisement.**—Such advertisements of sale shall state the time and place of such sale, and shall contain a full description of each article to be sold, and the name of the person depositing the same, and a copy thereof shall be filed in the office of the clerk of the county court of the county where such sale takes place. [Id.]

Art. 6153. [6163] [3644] [3502] **Hours of sale.**—All sales made by a pawnbroker shall be made between the hours of ten o'clock A. M. and four o'clock P. M., and no sales shall be made upon Sunday or upon a legal holiday. [Id.]

Art. 6154. [6164] [3645] [3503] **Report of sales.**—When a sale has been made the pawnbroker shall, within five days thereafter, file with the county clerk of the county where such sale was made, a report in writing and under oath, showing—

1. The time and place of such sale.
2. The notice given thereof.
3. A full description of the property sold and by whom deposited.

4. By whom purchased and the amount for which each article was sold.

5. The amount due the broker, principal, interest and expenses upon each article sold.

6. The amount of surplus of the proceeds of sale of each article, if any, after deducting the amount due the broker of principal, interest and expenses. [Id.]

Art. 6155. [6165] [3646] [3504] **Expenses.**—The expenses shall be such expenses as have been agreed upon by the parties to the contract, or if there be no agreement in regard thereto, then the reasonable expenses of the sale only, such as reasonable auctioneer's commissions, shall be allowed and deducted. [Id.]

Art. 6156. [6166] [3647] [3505] **Owner entitled to surplus.**—The owner or depositor of the property so sold shall be entitled upon demand to receive from such broker the surplus of the proceeds of such sale at any time within thirty days after such sale, and if no demand therefor be made within thirty days after such sale such surplus shall become the property of the county where such sale was made. [Id.]

Art. 6157. [6167] [3648] [3506] **Payment to county treasurer.**—Should there be any surplus of the proceeds of any sale made by a broker, he shall, at the expiration of thirty days from the day of such sale, pay such surplus to the county treasurer of the county where such sale was made, or he shall file with such county treasurer the receipt of the owner or depositor of the property sold, for such surplus, at the expiration of said thirty days. [Id.]

Art. 6158. [6168] [3649] [3507] **Suit for surplus.**—Suit may be brought upon the bond of the pawnbroker by the county,

or by any party entitled to the surplus of any sale made by him, and upon recovery judgment shall be rendered against such pawnbroker and the sureties upon his bond for the amount of such surplus, together with ten per cent per month on such amount for each month or fraction of a month that such surplus has been illegally withheld by such pawnbroker. [Id.]

Art. 6159. [6169] [3650] [3508] **Suit upon bond.**—Any person injured by the failure of a pawnbroker to comply faithfully with his contract, or with any requirement of law governing the business of pawnbrokerage, may sue upon the bond of such pawnbroker and recover such damages as he may prove himself entitled to, not to exceed the penalty of such bond. [Id.]

Art. 6160. [6170] [3651] [3509] **May sue officer.**—Any person injured by the failure, refusal or neglect of any officer whose duty it is to comply with any provision of the law governing pawnbrokerage, shall have a right of action against such officer so failing, refusing or neglecting, for the recovery of all damages resulting from such failure, refusal or neglect. [Id.]

Art. 6161. [6171] [3652] [3510] **Common law shall govern.**—The rules of the common law shall govern the civil liability of pawnbrokers, except when inconsistent with any statute. [Id.]

2. LOAN BROKERS.

| | | | |
|---------------------|---------|-------------------------|---------|
| | Article | | Article |
| "Loan Broker" _____ | 6162 | Wife to join _____ | 6164 |
| Register _____ | 6163 | Usurious contract _____ | 6165 |

Art. 6162. **"Loan broker".**—A "loan broker" is a person, firm or corporation who pursues the business of lending money and taking as security for the payment of such loan and interest an assignment of wages, or an assignment of wages with power of attorney to collect the same, or other order for unpaid chattel mortgage or bill of sale upon household or kitchen furniture. [Acts 1915, p. 48.]

Art. 6163. **Register.**—Each loan broker shall keep a well bound book in which he shall register all his transactions as a broker at the time same occur, which shall be kept open for inspection, and the broker shall give to the borrower a ticket showing the amount of cash actually received and the amount paid back by the borrower to the loan broker on each payment, such tickets to correspond with the entry on said register. Said register shall show:

1. The articles of property securing the loan, if the same be secured by chattel mortgage or bill of sale on household or kitchen furniture;

2. The assignment of wages, or the assignment of wages with power of attorney to collect the same, or other order for unpaid wages given as security, giving the name of the person receiving the money, and the person by whom such person is employed, or by whom it is expected that he will be employed,

and in whose service it is expected that he shall earn the salary or wages;

3. The amount of money received by the borrower;

4. The amount to be received back by the loan broker, and the time in which he is to receive back such payment; and

5. The rate of interest or discount agreed upon. [Id.]

Art. 6164. Wife to join.—Each assignment, mortgage, power of attorney to collect or other transfer of the salary or wages of a married man, and each bill of sale or chattel mortgage upon furniture of a married man shall be void unless the same be made and given with the consent of the wife, and such consent shall be evidenced by the wife joining in the assignment, mortgage, power of attorney to collect or other transfer of salary or wages, and the signing of her name thereto and by her separate acknowledgment thereof, taken and certified to by a proper officer, substantially in the mode provided by law for the acknowledgment by the wife of a conveyance of the homestead. [Id.]

Art. 6165. Usurious contract.—All contracts for usury or unlawful interest collected and received are contrary to public policy and shall be void. [Id.]

TITLE 108.

PENITENTIARIES.

1. PRISON COMMISSION.

| | Article | | Article |
|--|---------|--------------------------------|---------|
| Prison system | 6166 | Organization | 6173 |
| Policy of prison system | 6167 | Prison properties | 6174 |
| Prison commissioners: appoint- ment | 6168 | Inventories | 6175 |
| Oath and bond | 6169 | Accounts | 6176 |
| Salary | 6170 | Auditor | 6177 |
| Acts forbidden | 6171 | May examine witnesses | 6178 |
| Powers | 6172 | Suits for debt | 6179 |
| | | Removal of commissioners | 6180 |

Art. 6166. [6173] Prison system.—The prison system of this State, as referred to in this title, shall include the State penitentiary at Huntsville, which is designated as the headquarters of the prison system, and such other penitentiaries as may be established, and all farms or camps where State prisoners are or may be kept or worked, together with all property of every character belonging thereto or connected therewith. [Acts 4th C. S. 1910, p. 143.]

Art. 6167. [6172-4] Policy of prison system.—The prison system shall be so managed and conducted that the convicts therein shall have humane treatment and shall be given opportunity, encouragement and training in the matter of reformation. No convict's labor shall be sold to any contractor or lessee nor shall he be worked on any farm not owned or leased by the State, or otherwise upon shares. [Id. Acts 1st C. S. 1917, p. 49.]

Art. 6168. [6175] Prison commissioners: appointment.—The Board of Prison Commissioners, hereinafter called the Board, shall be composed of three members, who may occupy free of rent the residence houses belonging to the State at Huntsville, and shall reside in said city. With the advice and consent of the Senate, the Governor shall biennially appoint one commissioner to serve for a term of six years, the classification to remain as constituted by law. [Const., Art. 16, Sec. 58.]

Art. 6169. [6176] Oath and bond.—Each commissioner shall first take and subscribe to the official oath, and within ten days after his appointment execute a bond with two or more sureties, in the sum of fifty thousand dollars payable to the Governor, and conditioned that he will faithfully execute the duties of his office. The Attorney General shall prepare the form of such bond, and the Secretary of State shall determine the sufficiency of the sureties thereon. The Attorney General, upon notice of default or failure to perform the duties of such commissioner as contemplated by law, shall bring suit in Travis County for the forfeiture and collection of said bond. [Acts 4th C. S. 1910, p. 143.]

Art. 6170. [6177] Salary.—Each member of the board shall receive as compensation for his services three hundred dollars per month, to be paid at the end of each month; and in addition thereto he shall be allowed all reasonable and necessary

traveling expenses actually incurred when traveling on business of the prison system, to be paid, together with said salary, out of the funds of the prison system. Such expense accounts shall be itemized and sworn to in duplicate and approved by the Board, and one copy shall be kept with the records of the Board, and one copy filed with the Comptroller. [Id.]

Art. 6171. [6178] **Acts forbidden.**—Each commissioner shall devote his entire time to the discharge of the duties of said office, and shall not engage in any other occupation or business during his term of office, nor be directly or indirectly connected with or interested in any contract, sale or purchase of any property or thing whatsoever which may be made during his term of office, and in which either the State or the prison system is interested. A violation of any provision of this article shall be sufficient ground for his removal from office. [Id.]

Art. 6172. [6179] **Powers.**—Said board shall be vested with the exclusive management and control of the prison system, and shall be held responsible for the proper care, treatment, feeding, clothing and management of the prisoners confined therein, and at all times for the faithful enforcement of the spirit, intent and purpose of the laws and rules governing said system. The Board shall be held responsible for maltreatment of prisoners, and, if permitted, it shall be grounds for removal from office. [Id.]

Art. 6173. [6180-1-2-96] **Organization.**—The commissioners shall select one of their number as chairman. Minutes of all proceedings shall be kept in a well bound book. The Board shall appoint all necessary officers, physicians, chaplains, teachers, and clerical help needed in conducting said prison system, including a secretary of the Board; and shall require all appointees charged with handling any funds of the system or State to execute bond in such amount as it may fix payable to the Board for the use and benefit of the State, conditioned for the faithful performance of their duties. All guards shall be at least twenty-one years old, of good moral character and not addicted to the use of intoxicating liquors, and able to read and write and speak English, and shall have such other qualifications as the Board may fix. The Board shall require all officers and employes to take and subscribe to the official oath. The Board shall fix the salaries of each officer and employe upon such a basis as his labor and ability entitle him to, such salaries to be paid at the end of each month. It shall pay to guards not less than forty nor more than sixty dollars per month, and shall promulgate an equitable schedule of salaries between said amounts, based on the length of service, efficiency and ability of such guards; and shall furnish such guards free board and lodging. The Board shall have the authority at all times to discharge any officer or employe for any dereliction in duty, or whenever it may deem it for the best interests of the service. [Id. Acts 4th C. S. 1918, p. 153.]

Art. 6174. [6183-87] Prison properties.—The board shall have power to purchase with such funds as may be at their disposal, any machinery, tools or supplies needed for the benefit of the prison system; and may establish such factories as they may deem practicable and that may afford useful and proper employment to the convicts, under such regulations, conditions and restrictions as may be deemed best for the welfare of the convicts and the State. The Board shall have power to sell and dispose of all farm products and the products of all factories connected with the prison system, and all personal and movable property, at such prices and on such terms as it may deem best; and with the approval of the Governor it may lease any real estate or other fixed property and appurtenances belonging thereto upon such terms as it may deem best. In the purchase or sale of any machinery or equipment exceeding in value five thousand dollars, the Board shall advertise in the manner it may prescribe, for bids for such property in at least three daily papers in this State having a general circulation, and shall give all such bids received to the public press at least thirty days before any such contract is let. [Acts 4th C. S. 1910, p. 143; Acts 1919, p. 260.]

Art. 6175. [6191] Inventories.—On the first of each January the Board shall cause to be made a full and complete inventory of all lands, buildings, machinery, tools, live stock, and all other property of every description, belonging to the prison system, setting opposite each item the book and actual value of the same. They shall keep an accurate account with each industry and farm separately and for the prison system as a whole, showing the losses, profits, and net earnings of each industry and farm; and on the first of each January they shall report the same to the Governor. Such report shall include the rules and regulations in force for the management of the prison system and the methods of dealing with the convicts, and the Governor shall have a sufficient number of copies of such report published to give general publicity thereto. [Acts 4th C. S. 1910, p. 143.]

Art. 6176. [6188-92] Accounts.—The board shall cause to be kept correct and accurate accounts of each financial transaction of the prison system, including all receipts and disbursements of every character. One of the members of the Board shall receive and receipt for all money paid to the Board from every source whatsoever, and shall sign all vouchers or warrants authorizing the payment or disbursement of any sum on account of the prison system; and no money shall be paid out on any account of the prison system except upon a warrant or voucher signed by him. He shall keep full and correct accounts with each industry, department and farm, and with all firms, persons or corporations having financial transactions with the system. He shall have power to require all necessary reports from any department, officer or employe at stated intervals. On the first Monday of each month the Board shall remit to the State Treasurer, to be deposited to the credit of the general revenue fund, all

money received by it as such from whatever source during the preceding month and belonging to the prison system. [Id.]

Art. 6177. [6193] Auditor.—The Comptroller, the Attorney General and the State Treasurer shall annually appoint a permanent auditor for the prison system, who shall hold his office for a term of one year, subject to discharge as herein provided. He shall audit all accounts, vouchers, payrolls and all other business transactions of the prison system, and check all property, material and supplies received and disposed of by or distributed within the prison system, and shall make a full report thereof to the Governor on the first day of each January. During the term of his services, he shall be paid monthly a salary of two hundred dollars per month and all actual and necessary traveling expenses, to be paid at the end of each month, such traveling expenses to be evidenced by an itemized sworn statement by the auditor filed with the Board. Said auditor may be discharged at any time by one or a majority of the officers who appointed him, for any incompetency, neglect, failure or refusal to perform the duties of his office, or for any wrongful conduct that said officers deem to render him unfitted for said office. If he is discharged or resigns, his successor shall be appointed by a majority of said officers. [Id.]

Art. 6178. [6194] May examine witnesses.—Each member of the Board in the performance of his duties is authorized to administer oaths, to summon and examine witnesses, and take such other steps as he deems necessary to ascertain the truth of any matter about which he may have the right to inquire. [Id.]

Art. 6179. Suits for debt.—The Board is authorized, subject to the approval of the Governor, to bring and maintain suits for the collection and enforcement of all demands and debts owing to said Board. Such suits may be maintained in the county in which the residence of members of said Board is fixed by law. In such suits the defendants are authorized to plead and urge by way of offset and counter-claim any valid and lawful claims and demands which they may have against the Board. No bond for costs, appeal bond, supersedeas bond, writ of error bond or other bond or security shall at any time be required of the Board or any member thereof in any civil suit of any kind filed or brought by or against it or them, in its or their official capacity as such, except such suits as may be brought against it or them by the State. Nothing in this article shall authorize any civil suit of any kind whatsoever to be brought or prosecuted against said Board or any member thereof as such, except by way of offset or counter claim as herein provided. [Acts 1st C. S., p. 53; Acts 1923, p. 167.]

Art. 6180. [6195] Removal of commissioners.—If any member of the Board shall be guilty of malfeasance or non-feasance in office, or shall become incapable or unfit to discharge his official duties, or shall wilfully fail, refuse or neglect

to discharge the duties of his office, such member may be removed from office in either of the following ways:

1. By the Governor in the manner provided by law.
2. By suit brought by the Attorney General in the name of the State on the relation of the Governor in the District Court of Travis or Walker County, or in the county of residence of the defendant. The Attorney General shall bring such suit when directed by the Governor to do so, provided the Governor accompanies such direction with charges and evidence showing the defendant is subject to removal as provided herein. Upon the application of the Attorney General, in the name of the State, the district judge before whom such suit is pending may immediately suspend the defendant from office, and such order of suspension shall be effective until set aside by the court on the motion of the defendant. Such motion of the defendant, on his demand, shall have preference over all other causes pending in such court. But if the judgment of the trial court be one of removal from office, the defendant shall be forthwith suspended from office pending any appeal of the case. If so suspended, and the suit finally results in his favor, the defendant shall be entitled to recover all the compensation which would have accrued to him had he not been suspended from office, and in such case judgment shall be rendered against the State that the defendant recover such compensation, determining the amount thereof. On receipt of a duly certified copy of such judgment, the Comptroller shall issue a warrant upon the Treasury for the full amount of such judgment. Whenever the defendant is so suspended, the district judge at the time of making such order of suspension, shall appoint for the duration of such suspension some other qualified person to perform the duties of the officer suspended, and such appointee shall receive the same compensation as his predecessor. The suit shall be a civil action to be tried as other civil cases with the right to appeal and review as in other civil cases. The courts shall have authority to issue all necessary writs to effectuate any judgment of removal or order of suspension rendered hereunder. Such suits shall have precedence over all other cases in trial courts and in appellate tribunals. [Acts 4th C. S. 1910, p. 143; Acts 1st C. S. 1921, p. 61.]

2. REGULATIONS AND DISCIPLINE.

| | | | |
|------------------------------------|------|------------------------------------|------|
| Intent of law | 6181 | Conditions of labor | 6193 |
| Board may make rules | 6182 | Commutation and parole | 6194 |
| Admission of convicts | 6183 | Commutation of life sentence | 6195 |
| Classification of convicts | 6184 | Discharge of convicts | 6196 |
| Female convicts | 6185 | Prison register | 6197 |
| Instruction and recreation | 6186 | Reward for escaped convict | 6198 |
| Religious services | 6187 | Gambling forbidden | 6199 |
| Food and clothing | 6188 | Employed on public works | 6200 |
| Physical condition | 6189 | Visitors admitted | 6201 |
| Medical and dental attention | 6190 | Supervising Board | 6202 |
| Monthly reports to Board | 6191 | Board of Pardons | 6203 |
| Death record | 6192 | | |

Art. 6181. [6216] Intent of law.—The various provisions of this title, are designed to secure to the convicts humane treatment, suitable moral instruction, to provide for their

health, and to extend to them such comforts and privileges as may be consistent with their situation, and at the same time to require of them a due attention to their various duties and a strict observance of the discipline, rules and regulations of the prison. [Acts 4th C. S. 1910, p. 143.]

Art. 6182. [6189] Board may make rules.—The board may at any time issue such orders and prescribe such rules and regulations for the government of the prison system, not inconsistent with the law, as it may deem proper, or to provide such details not embraced herein, and for such contingencies as may at any time arise concerning the management of the prison system, or its proper and effective operation. Such rules and regulations shall be made with a view of carrying out the general principles on which the penal laws are founded, and for which the prison system is established, and shall be binding on all under-officers, employes, and all persons whomsoever in any way connected with the State prisons, or its management, or its prisoners within and without the walls. The Board shall have all laws, rules and regulations of the prison printed in pamphlet form for the information and guidance of all connected with the management of the prison system; and such parts of said rules as relate to the duties of subordinate officers and prisoners shall be printed in suitable form and posted in conspicuous places about the prison, or wherever prisoners may be confined, for the information of all concerned. All officers, employes and guards having supervision of prisoners shall be furnished with a copy of the law, rules and regulations governing the prison system, and shall give a receipt therefor; and the Board shall from time to time require examination of such officers, employes and guards as will ascertain their knowledge of such law, rules and regulations; and any such officer, employe or guard who shall fail to familiarize himself with the law, rules and regulations of the prison system shall be dismissed from the service. [Id.]

Art. 6183. [6201-22] Admission of convicts.—The board shall make proper provisions for the safe and speedy transportation of convicts from the county where convicted to the prison system, at the least expense to the State, by the sheriffs of the respective counties, or by other reliable and competent parties under the direction of the Board. The Board may order that convicts be sent direct to a State farm or to Huntsville. On the arrival of a convict at the prison system, he shall be required to make a brief statement of his life history, showing where he has resided, the names and post-office address of his near relatives, and such other facts as will tend to show his past habits and character. The Board shall verify said statements as far as practicable by correspondence or otherwise, and shall preserve the record and information so obtained. The prison physician shall examine each convict as to his mental and physical condition to determine the character of labor of which he is capable, and to detect and restrict infectious or con-

tagious diseases, and file said report with the Board. Each convict shall be furnished with a copy of the prison rules and such other information and encouragement as will enable him to conform to the rules. Each convict shall be carefully searched, and if money be found on his person or received by him at any time, the Board shall take charge of same, placing it to his credit, and the same may be expended for the convict's benefit on his written order, under such restrictions as prescribed by law or the prison rules. [Id. Acts 1st C. S. 1917, p. 50.]

Art. 6184. [6208] Classification of convicts.— Convicts shall have every opportunity and encouragement for moral reform, the Board, in addition to the requirements of this title, shall provide every reasonable and practicable means for the encouragement of such reforms. To this end they shall provide for the classification of all convicts as follows:

1. Young men, first offenders, those appearing to be corrigible, or less vicious than others, and likely to observe the laws and maintain themselves by honest industry after their discharge.

2. Those appearing to be less corrigible, or more vicious, but content to work and reasonably obedient to prison discipline so as not to seriously interfere with the productiveness of their labor, or with the labor or conduct of those with whom they may be employed.

3. Those appearing to be incorrigible or so insubordinate or so vicious in their nature as to seriously interfere with the labor and moral development of those with whom they must come in contact.

The Board shall make rules for the promotion and reduction of the convicts from one class to another, and shall transfer them from one class to another, from time to time, as they may seem to merit promotion or reduction. The convicts in each class shall be kept in or upon different or separate prisons or farms. Any prisoner, upon entering the prison system, shall be assigned to one of its institutions according to his class, as hereinbefore provided, and shall be entered in said institution in a neutral grade which shall be known as grade No. 2, and in which he shall be furnished with a suitable uniform designated for that grade. The Board shall adopt rules for a higher grade which shall be known as grade No. 1, as a reward for obedience to prison discipline and good conduct, and shall provide a suitable uniform for this grade; and they shall provide for a lower grade as a punishment for misconduct and violation of prison discipline, which grade shall be known as No. 3, and in which the prisoner shall be clothed in stripes. The uniforms for grades Nos. 1 and 2 shall not be stripes. The Board shall provide rules for promotion of prisoners from any grade to another for good conduct and obedience to prison discipline, and for demotion of prisoners for misconduct and violation of prison discipline. The Board shall provide specifically for the extension

or denial of privileges for the various grades herein provided. White and negro convicts shall not be worked together when it can be avoided, and shall be kept separately when not at work. [Acts 4th C. S. 1910, p. 143.]

Art. 6185. [6209-10-11-12] Female convicts.—The board shall provide reasonable rules for the government of female convicts, and shall:

1. Keep them separate and apart from the male convicts, and where practicable, at a separate farm or prison.

2. Separate the white and negro female convicts, and select and place over them matrons who shall give their personal attention to the welfare of such convicts. Such matrons shall reside at the place where the female convicts are kept.

3. Provide such labor for them as they can reasonably perform, as the prison physician shall determine, or in his absence the matron shall pass upon their physical condition.

4. Employ none but married men as guards, and provide houses for such guards and their families.

5. Permit any child born in the penitentiary or infant admitted with its mother, to remain with its mother until three to six years of age, in the discretion of and as prescribed by the Board. [Id. Acts 1st C. S. 1917, p. 51.]

Art. 6186. [6203] Instruction and recreation.—The board shall provide at each prison, farm and camp where convicts are kept or worked, schools for instruction of prisoners in elementary branches of the English language and industrial education, and such other instruction as they may prescribe, and shall provide suitable recreation for the convicts at reasonable hours, including music; and they shall employ such number of competent teachers to instruct the convicts as they may deem necessary. The Board shall make reasonable rules and regulations whereby the convicts may attend such schools, and shall prescribe and furnish them suitable books and other reading matter, and may establish and operate among the convicts a circulating library, and may adopt such other means of distributing among the convicts good and wholesome literature as in their judgment will best enable the convicts to avail themselves of the same. All teachers herein provided for shall, as far as practicable, be taken from the convicts, and such teachers may be excused from further labors. The chaplain shall be ex officio librarian of the penitentiary, passing upon all library books, and direct such other work as may be prescribed for such library management. [Acts 4th C. S. 1910, p. 143.]

Art. 6187. [6204] Religious services.—The board shall provide for religious services at prisons, farms and camps where convicts are kept or worked. They shall employ such chaplains as may be necessary to afford all convicts an opportunity to attend at least two religious services each month, said chaplains to devote their entire time to religious and moral training and education of the prisoners under their care, teaching them the principles and practice of every Christian and moral duty; pro-

vided, that chaplains may also be teachers as provided for in this chapter. [Id.]

Art. 6188. [6205-19] **Food and clothing.**—Suitable clothing of substantial material, uniform make and reasonable fit, and such footwear as will be substantial and comfortable, shall be furnished the convicts; and no convict shall be allowed to wear other clothing than that furnished by the prison authorities, except in case of extra meritorious conduct only, the Board may allow the convict to wear citizen underwear. Sufficient food of wholesome quality and variety and wholesomely prepared shall be furnished to all convicts, and such provisions shall be made for serving the food to convicts as will tend to encourage and elevate them. Every officer charged with the preparation and serving of food to the convicts shall post in the dining room each Monday morning for the coming week the bill of food for that week, and the rules promulgated by the Board shall prescribe the quality, kind and variety of food to be furnished. Convicts shall not be allowed spirituous, vinous or malt liquors, except upon the prescription of the physician. The Board shall provide for training convicts as cooks. [Id.]

Art. 6189. [6221] **Physical condition.**—Convicts who have been reported by the physician or other officer in charge as in a condition of health which requires their removal to some other place shall be accordingly removed. [Id.]

Art. 6190. [6225-6] **Medical and dental attention.**—The Board shall provide for competent medical attention for all convicts, and shall establish rules whereby all physicians shall be required to keep a record of all cases of sickness, accident or injury which they treat. The physicians so employed shall be reputable practicing physicians of not less than two years experience in practice. Each physician employed in the prison system shall, at the end of each month, file with the Board a written sworn report stating the name, race and sex of each convict treated or examined by him during said month, the malady or disease with which each was afflicted, and, if any shall be suffering with wounds or injuries inflicted by accident or some individual, he shall state the nature and extent of said injuries, by whom and by what means inflicted, or how the same occurred, and all such other information concerning said matters and the condition of each convict treated or examined by him during said months, as he may possess. The Board shall also provide a competent dentist or dentists, whose duty it shall be to care for the teeth of the convicts. Such dentist or dentists shall, at the direction of the Board, visit the various places where convicts are kept or worked, at such intervals as may be prescribed. [Id.]

Art. 6191. [6206] **Monthly reports to Board.**—The board shall require, at the end of each month, reports showing fully the condition and treatment of the prisoners, and the changes in prison population during the month, including itemized statements of all different items of food, clothing and utensils used

and on hand in each of the units of the prison system, and such other matters as they may require. [Id.]

Art. 6192. [6223] Death record.—The board shall make such rules and regulations as it may deem necessary and proper regarding reports of death of convicts to relatives and friends, and with respect to the delivery of the bodies to relatives and friends. The Board shall cause to be kept a record of the deaths of the convicts and the disposition of the bodies. [Id. Acts 1st C. S. 1917, p. 52.]

Art. 6193. [6214-15-20.] Conditions of labor.—Convicts shall be kept at work under such rules as the Board may fix. No greater amount of labor shall be required of any convict than his physical health and strength will reasonably permit, nor shall any convict be placed at such labor as the prison physician may pronounce him unable to perform. No convict upon his admission to prison shall be assigned to any labor until having first been examined by the prison physician. No prisoner shall be required to work more than nine hours per day, except that the Board shall be authorized to work the prisoners on the farms of the prison system in accordance with the following plan:

During the months of December, January, and February, nine hours; during March, April, July, August and November, ten hours; during May, June, September and October, eleven hours.

The Board is further authorized to work convicts on the farms such time in addition to that stipulated above, as may be agreed on by convicts who are desirous of shortening their terms.

No convict shall be worked on Sundays except in cases of emergency or extreme necessity; provided the Board shall be authorized to work convicts on Sunday at labor that is necessary to be performed, such as cooks, waiters, lot men, and men attending to stock, and men engaged in the necessary operation of machinery.

In addition to the commutation for good behavior allowed by law, convicts shall be allowed the following deductions from their sentences: for each hour worked in excess of nine hours a day, an equal amount of time; for each nine hours of over time, one day; and for each Sunday or each hour on Sunday, two days for one day or two hours for one hour; provided, the Board may forfeit such deductions in whole or in part for misconduct or violation of the prison rules. The hours of labor shall be computed from the time of arriving at the place of work, where the distance is not greater than one mile and a half from the prison building, till the time for stopping work, exclusive of the intermission allowed for dinner, which shall not be less than one hour.

Life term convicts who are worked over or extra time, who by reason of the nature of the sentence can not earn commutation, shall have entered and shown on their records as a credit the amount of over time worked, which shall be counted as time served on their sentences in addition to the actual time served, on the same rate as convicts serving a term of years, which

shall be reckoned in the consideration of their cases when applying for pardon or parole.

Any officer or employe violating any provision of this article shall be dismissed from the service. [Id.]

Art. 6194. [6217] Commutation and parole.—In order to encourage prison discipline, a distinction may be made in the treatment of convicts so as to extend to all such as are orderly, industrious and obedient, comforts and privileges according to their deserts. The rewards to be bestowed for good conduct shall consist of such relaxation of strict prison rules and extension of social privileges as may not be inconsistent with proper discipline. Commutation of time for good conduct shall be granted by the Board, and the following deductions shall be made from the term or terms of sentences when no charge of misconduct has been sustained against a convict, viz: two days per month off the first year of sentence; three days per month off the second year of sentence; four days per month off the third year of sentence; five days per month off the fourth year of sentence; six days per month off the fifth year of sentence; seven days per month off the sixth year of sentence; eight days per month off the seventh year of sentence; nine days per month off the eighth year of sentence; ten days per month off the ninth year of sentence; fifteen days per month off the tenth year and all succeeding years of sentence. A convict under two or more cumulative sentences shall be allowed commutation as if they were all one sentence. For each sustained charge of misconduct in violation of any rule known to the convict, in any year of the term, the commutation allowed for one month of such year may be forfeited; for any sustained charge of escape, or attempt to escape, mutinous conduct, or other serious misconduct, all the commutation which shall have accrued in favor of the convict up to that day shall be forfeited, unless in case of escape the convict voluntarily returns without expense to the State, such forfeiture may be set aside by the Board. For extra meritorious conduct on the part of any convict, he shall be recommended to the favorable consideration of the Governor for increased commutation or pardon; and, if any convict has escaped and been captured, part or all of his good time thereby forfeited may be restored by the Board, if in their judgment his subsequent conduct entitles him thereto. [Acts 4th C. S. 1910, p. 143.]

Art. 6195. [6218] Commutation of life sentence.—Life or long term convicts who have actually served fifteen years and have no sustained charges of misconduct, and have a good prison record, and who shall be favorably recommended to the Governor, may receive at the hands of the Governor a reasonable commutation of sentence; and, if a life sentence is commuted to a term of years, then such convict shall have the benefit of the ordinary commutation, as if originally sentenced for a term of years, except as the Governor shall otherwise direct. [Id.]

Art. 6196. [6227] **Discharge of convicts.**—When a convict is discharged, he shall be furnished with a written or printed discharge from the Board, signed by the chairman with the seal of the Board affixed, giving his name, date of sentence, from what county sentenced, the amount of commutation received, the trade he has learned, his proficiency in same, and such other description as may be practicable. He shall be furnished with a suit of clothing of good quality and fit, two suits of underwear, one pair of shoes and a hat, one shirt, \$5.00 in money in addition to any money which he may have to his credit with the Board, and redeemable and non-transferable railroad transportation to the place from which he was sentenced or to such place as he may desire, provided, that the same be not a greater distance from the place where he is released than the place from which he was sentenced. [Id. Acts 1st C. S. 1917, p. 50.]

Art. 6197. [6207] **Prison register.**—The board shall keep a register of all convicts, showing the number of each, giving the aliases, name, age, height, color of hair, color of eyes, complexion, marks on person, sex, nativity, residence, county where convicted, offense of which convicted, date of sentence, date of receipt, previous occupation and habits, if known, and may adopt such other means of identification as they may deem proper and necessary. They shall keep a record of the general conditions and conduct of each convict, noting all punishments, forfeitures, bad conduct, changes and incidents of importance that may occur during his confinement; and, to the end that complete records may be kept, they may require from all under-officers such monthly and other reports as they may deem proper. They shall issue discharges to such convicts as are entitled thereto by expiration of sentence or otherwise. [Acts 4th C. S. 1910, p. 143.]

Art. 6198. [6229] **Reward for escaped convict.**—The board, with the Governor's approval, may offer such reward for the apprehension of an escaped convict as may be fixed by the Board, to be paid as directed by it. [Id.]

Art. 6199. [6230] **Gambling forbidden.**—No gambling shall be permitted at any prison, farm or camp where convicts are kept or worked. Any officer or employe engaging in or knowingly permitting gambling at any such prison, farm or camp shall be immediately dismissed from the service. [Id.]

Art. 6200. [6231] **Employed on public works.**—The board, by and with the consent of the Governor, shall have the power to work convicts on public works, when they can not employ them on the State farms or within the walls by reason of some unforeseen calamity, such as failure of crops, or the destruction of crops by wind or flood. When convicts are worked on public works owned by the State, or a subdivision of the State, the humane provisions of this title shall be strictly complied with. Convict labor may be utilized in construction or maintenance work on any road designated by the State Highway Department as forming a part of the system of State highways,

upon such terms as may be agreed upon by said Department and the Board and approved by the Governor. [Id. Acts 1917, p. 421.]

Art. 6201. [6228] Visitors admitted.—The Governor and all other members of the executive and judicial departments of the State, and members of the legislature, shall be admitted into the prisons, camps and other places where prisoners are kept or worked, at all proper hours, for the purpose of observing the conduct thereof, and may hold conversation with the convicts, apart from all prison officers. Other persons may visit the penitentiary under such rules and regulations as may be established. [Id.]

Art. 6202. Supervising board.—The Penitentiary Supervisory Board shall consist of three persons, citizens of this State over thirty years of age, one of whom shall be a woman. The Governor shall biennially appoint one such member with the advice of the Senate, to serve for a term of six years, the classification to remain as constituted by law. The Supervisory Board shall meet once every three months at a place to be selected by the chairman, and shall visit the main penitentiary and the State prison farms at least once every three months. It shall not be necessary for all of the members to pay such visit, but a visit by any member shall be sufficient. On such visit to the penitentiary system, they shall make an investigation of the treatment of the convicts in said prison with reference to the character of punishment inflicted, food, clothing, sanitation, health, spiritual and educational training, segregation and classification, and such other matters concerning the general welfare of the convicts as they deem necessary. They shall make a quarterly report to the Governor and the Prison Board as to conditions as they find them in the penitentiary system, together with their recommendations, and they shall report all prison officials or employes who are found to be derelict in their duty, or who have acted in the handling of said prisoners in violation of law. Such reports shall be furnished to each session of the legislature, and they may be printed through such media as the Supervisory Board may see fit. They shall have access to the main penitentiary or any farm or camp at any time and shall not be required to give any notice of any proposed visit, and shall be admitted upon their request, and shall have the right to inspect any part of the system. They shall have power to administer oaths and take testimony of prison officials, employes, and convicts and such other persons as they deem necessary. They shall have the right to engage the services of a stenographer at the expense of the State to take such testimony, and to make out reports. The members of the Penitentiary Supervisory Board shall each receive five dollars per day and necessary traveling expenses while actually engaged in the performance of their duties hereunder. [Acts 1st C. S. 1921, p. 228.]

Art. 6203. [6086-7-8] Board of Pardons.—The Governor is

hereby authorized to appoint two qualified voters of this State, to be known as the Board of Pardon Advisors, who shall perform such duties as he may direct, consistent with the Constitution, as he may deem necessary in disposing of all applications for pardon. Said Board shall be given a room in the Capitol, properly furnished with necessary furniture and file cases, and provided with such stationery and other appliances which may be necessary for the speedy and proper dispatch of the business for which it is organized. Said Board shall make a thorough examination of each application which the Governor may refer to it, and report its recommendation thereon to him. It shall spend such time each year as may be necessary in personally looking into the condition of such convicts as it may desire, or as may be designated by either the Governor, the superintendent of penitentiaries, or either of his assistants, or by the prison physician, or by the prison commissioners, giving special attention to the cases of those of long service who may be so designated and who have no means for getting a proper petition before the Governor, to the end that the Board may have before it such data as will enable it to judge the condition of such convicts. All cases shall be taken up, considered and acted upon by said Board in the regular order of reference by the Governor, except when it appears to said Board there is extraordinary emergency in any case. Said Board shall be required to keep a record in which shall be entered every case sent it by the Governor, giving the docket number of the convict, his name, when and where convicted, his sentence, his offense, when received from the Governor, the action taken by said Board, and the date of said action. [Acts 1905, p. 68; Acts 2nd C. S. 1919, p. 25.]

TITLE 109.

PENSIONS.

1. STATE AND COUNTY PENSIONS.

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| | Article | | Article |
| Tax | 6204 | Proof in case of disability | 6216 |
| To whom granted | 6205 | Pensions denied to whom | 6217 |
| Remarriage no bar (In 6205) | 6206 | Fees limited | 6218 |
| Should insufficiency exist (In 6205) | 6207 | Fees of county judge | 6219 |
| Application requirements | 6208 | Persons not entitled to | 6220 |
| Proof, how made | 6209 | Appropriation, how allotted | 6221 |
| Out of county | 6210 | Perpetuation of evidence | 6222 |
| Widow's application | 6211 | Statement filed | 6223 |
| Proof by affidavit | 6212 | Widow may establish identity | 6224 |
| Soldier must have served honor- | | Examination of record | 6225 |
| ably | 6213 | Shall strike from roll | 6226 |
| What constitutes indigency | 6214 | Mortuary warrant | 6227 |
| Payments; affidavit; warrant | 6215 | Mothers' pension | 6228 |

Art. 6204. [6267] **Tax.**—There shall be levied and collected in the same manner and at the same time that other taxes are levied and collected for the year 1925, and annually thereafter, an ad valorem tax of seven cents on the one hundred dollars valuation thereof on all property owned in the State on the first day of January of the year 1925, and of every year thereafter and on all property sent out of the State prior to the first day of January of any of said years, for the purpose of evading the payment of taxes thereon, and afterwards returned to the State, except so much thereof as may be exempted by the Constitution and laws of this State or of the United States which valuation shall be made in the manner prescribed by law for the assessment, levy and collection of other State and county taxes, which said tax so levied and collected, shall be paid into the treasury of the State of Texas, in the same manner as other State taxes, and shall constitute a special fund for the payment of pensions provided for in Section 51 of Article 3 of the State Constitution, in the manner and under the rules and regulations prescribed herein and prescribed in existing law not repealed hereby and as may be hereafter prescribed by law. Which said fund is hereby expressly appropriated by the Legislature of the State of Texas for the purpose herein stated. This Act shall not affect or release the liability of any person for taxes, penalties, interest or costs accruing under prior laws or the right to collect or enforce collection thereof by suit or otherwise. [Acts 1925, p. 222.]

Art. 6205. [6267a] **To whom granted.**—Out of the fund to be created under the provisions of Article 6267 as amended there shall be paid an annual pension of twenty-five dollars per month, the same to be paid quarterly on the first day of September, December, March, and June of each year to every indigent or disabled Confederate soldier or sailor who came to Texas prior to January 1, 1910, and to their widows, in indigent circumstances and who have been bona fide residents of this State since January 1, 1910, and who were married to such soldiers or sailors prior to January 1, 1910, and to indigent and disabled soldiers who under the Special Laws of the State of Texas during the war between the states served in organizations for the protection of

the frontier against Indian raiders or Mexican marauders and to indigent or disabled soldiers of the militia of the State of Texas who were in active service during the war between the states and to the widows of such soldiers who are in indigent circumstances and who were married to such soldiers prior to January 1, 1910, provided that the word "widow" as used in this article shall not apply to women born since the year 1861, and all soldiers and sailors and widows of soldiers and sailors eligible under the above conditions shall be entitled to be placed upon the pension rolls and participate in the distribution of the pension fund of this State under any existing law or laws hereafter passed by the Legislature; and the fact of remarriage since the death of the soldier or sailor shall not bar his surviving widow from receiving a pension hereunder if she be now a widow and in indigent circumstances, if she shall have been the wife of such soldier or sailor at the time of his death and left by him as his widow; and provided that in the event such fund provided for in Article 6204 shall prove insufficient to pay in full said pension there shall not thereby be created a deficiency outstanding as a valid claim against the State of Texas, and each pensioner shall receive, except as herein or in other law or laws otherwise provided for, his or her pro rata according to the amount of such fund collected for the year. [Id. p. 222.]

Article 6206 and 6207 embraced in previous articles.

Art. 6208. [6268] **Application requirements.**—Persons entitled to a pension under this title shall make application for same in writing and under oath to the county judge of his or her county. Such application shall state the name, age, residence of the applicant, and occupation, if any, his or her physical condition, and every fact necessary to entitle the applicant to the pension. If the applicant is such a soldier or sailor as is prescribed herein, he shall state in his application the company and regiment in which he was enlisted; if he served in an organization for the protection of the frontier against Indian raids or Mexican marauders, he shall name and identify such organization; if he were an officer commissioned by the President of the Confederate States or by the Governor, or other proper authority of this State, in the army, navy, militia or frontier organization, he shall state the date of his commission and his rank therein; and if detailed directly under the provisions of the conscript law for duty in the armories or shops of the Confederate Government or for any other labor necessary for the maintenance of the army in the field, or if he served in the Confederate Navy, he shall state the time of service in each case. Each applicant shall state in his application what property and income he possesses, and furnish the testimony of at least two credible witnesses who personally know that he enlisted in the service and performed the duties as claimed by him. If he cannot secure the testimony of two witnesses, he may furnish documents or other evidence of his service. [Acts 1909, p. 231; Acts 1913, p. 282; Acts 1917, p. 413.]

Art. 6209. [6268] Proof, how made.—Proof shall be made under oath and in writing before the county judge of the county where the applicant resides. Should the applicant or witnesses, because of circumstances beyond the control of the applicant, be unable to appear before the county judge, then such proof may be made before any officer authorized to administer oaths. When the proof is made before any other officer, the county judge shall certify that the applicant and witnesses are of trustworthy character and entitled to credit and that the officer before whom the proof is made is duly qualified and authorized by law to administer oaths and take affidavits; he shall also certify to the citizenship of the applicant, and that the applicant has been a bona fide resident of the county for a period of six months next before the date of said application. The officer taking the proof shall administer the oath to each applicant and witness before they sign the affidavit. [Acts 1909, p. 231.]

Art. 6210. [6268] Out of county.—If it is necessary for the applicant to go outside of the county and State for proof to establish his application, such proof may be submitted in the form of affidavits and accompanied by certificates from the county judge of the county where made, that the witnesses are of trustworthy character and entitled to credit. [Id.]

Art. 6211. [6268-69] Widow's application.—No widow shall be entitled to a pension should her husband, if living, be for any reason debarred. If the applicant is the widow of a soldier or sailor, who, if living would be entitled to a pension, she shall make oath that she is in fact the widow of such soldier or sailor and, as near as possible, state the facts showing her to be entitled to receive a pension under the provisions of this title in the same manner as required of a soldier or sailor. In case such widow cannot make such proof, she may comply with the provisions of the succeeding article. [Id.]

Art. 6212. [6270] Proof by affidavit.—The widow of a Confederate soldier or sailor, entitled to a pension may make affidavit to the county judge:

1. That she is in fact the widow of a Confederate soldier or sailor.

2. That her said husband rendered valuable service to the Confederacy, as such, that he did not desert, and was either killed or died, or was honorably discharged from the army.

3. That she has made diligent search for information as to the number of regiment and company in which her deceased husband served, and has been unable to secure the same.

The affidavit shall be filed with the county clerk, and the county judge may take such other evidence as he may deem necessary; and, if in his judgment he finds that she is the widow of a Confederate soldier or sailor, that all witnesses to the said fact are dead, or their whereabouts unknown to said widow and are unascertainable, he may upon his own motion, recommend to the Comptroller the grant of a pension to such widow; and,

if he is satisfied that she is entitled to a pension under the provisions of this title he may grant it. [Id.]

Art. 6213. [6271] **Soldier must have served honorably.**—Every Confederate soldier applying for a pension under this title shall have served honorably from the date of his enlistment until the close of the war, or until he was discharged or paroled in some military organization regularly mustered into the army or navy of the Confederate States until the surrender. The county judge shall reduce the evidence of witnesses examined by him to writing at the expense of the applicant at the rate of five cents per hundred words. The applicant may have such evidence written by his attorney, or such person as may be employed to secure the pension; and the county judge shall certify to the written statement of the evidence when taken before him. The application, affidavit and certified statement of the evidence shall be forwarded to the Comptroller. [Id.]

Art. 6214. [6272] **What constitutes indigency.**—To constitute indigency within the meaning of this title, neither the applicant, nor his wife if married, nor both together, nor the widow, if the applicant be a widow, shall own property, real or personal, exceeding in value one thousand dollars, exclusive of homestead, and if its assessed value be not in excess of two thousand dollars, and exclusive of household goods and wearing apparel; and such applicant shall not have an income, annuity, or emoluments of office or wages for services in excess of three hundred dollars per year, nor in receipt of aid or of a pension from any State of the United States or from any other public source, nor an inmate of the Confederate Home or other public institution at the expense of the State. Only the indigent under the foregoing definition, shall be entitled to a pension under this title. [Acts 1909, p. 231; Acts 1913, p. 282; Acts 1917, p. 412; Acts 1923, p. 202.]

Art. 6215. [6273] **Payments; affidavit; warrant.** — The payment of such pension shall begin on the first day of March and September of each year, payable at the end of each quarter and on and after the first of each quarter. The pensioner shall make affidavit, or, in case of old age, infirmities, or physical disabilities, preventing him or her from appearing before some one authorized to administer oaths, make statement in writing as to his or her claim or rights, in the presence of two credible witnesses who are in no wise related to the applicant, stating the county of his or her residence, postoffice address, and that he or she is the identical person to whom a pension has been granted under this law, and that the conditions which existed at the time of making his or her application and on which the pension was originally granted, still exist, which affidavit shall be supported by the affidavit of some other credible person to the same fact, and shall be filed with the Comptroller who shall draw his warrant to the amount of such pension on the Treasurer, to be paid out of money in the Treasury appropriated to this purpose. [Acts 1909, p. 231; Acts 1915, p. 158.]

Art. 6216. Proof in case of disability.—If the pensioner, on account of old age, infirmity, or physical disability, shall make a statement in writing in the presence of two credible witnesses, as hereinbefore provided, it shall be sufficient for one of such witnesses, in whose presence the statement was made, to make affidavit stating that said statement was made and signed in his or her presence and that the statements contained therein are within the knowledge of affiant, true and correct, and when such affidavit has been made by such proven person and approved by the Comptroller, he shall draw his warrant for the amount of such pension in the same manner as if the oath had been made by the pensioner. [Id.]

Art. 6217. [6274] Pensions denied to whom.—No application shall be allowed, nor shall any aid be given or pension paid, to any soldier or sailor, or the widow of any soldier or sailor under the provisions of this title, where any such soldier or sailor deserted his command or voluntarily abandoned his post of duty, or the said service during the said war, nor shall any application be allowed, nor any aid given, nor any pension paid, to any widow of a soldier or sailor who has been divorced from such soldier or sailor, nor to any widow who voluntarily without cause abandoned such soldier or sailor, being her husband, and continued to live separately from him up to the time of his death, nor to a soldier or sailor who served as a substitute for another, nor to the widow of a substitute. [Acts 1909, p. 231.]

Art. 6218. [6276] Fees limited.—No person shall receive a greater fee than five dollars to secure a pension for another, and any contract for a larger sum shall be unlawful. [Id.]

Art. 6219. [6277] Fees of county judge.—A county judge shall be allowed a fee of two dollars for hearing an application and taking proof therein, said fee to be paid by the applicant, and before hearing of application is had thereon; and all fees received by such county judge shall be reported as other fees of office and be otherwise controlled by the law regulating the fee of county judges. Said fee of two dollars shall be the only fee allowed to the county judge for all the work performed by him in securing a pension. [Id.]

Art. 6220. [6278] Persons not entitled to.—No person shall, while confined in any asylum of this State, at the expense of the State, or while confined in the State penitentiary, receive a pension, and any person having been granted a pension who shall afterwards be confined in an asylum of this State, at the expense of the State, or who shall be confined in the State penitentiary shall, while an inmate of such asylum or penitentiary, forfeit his pension, and no pensioner who leaves this State for a period of over six months shall draw a pension while so absent; provided, that any person who has been granted a pension under this law, and who is thereafter admitted as an inmate of the Confederate Home or is thereafter admitted as an inmate of the Confederate Womans' Home of this State, shall thereafter

be entitled to receive pension payments of the amount of one-half of the pension that such person would be entitled to receive if not an inmate of such Home, [Acts 1921, p. 144.]

Art. 6221. [6279] Appropriation, how allotted.—On the first day of September and on the first day of March of each year, the Comptroller shall first allot to each blind, maimed, and totally disabled soldier or sailor or the blind and totally disabled widow of a soldier or sailor the sum of eight and one-third dollars per month for each year, and the remainder of said appropriation shall be equally prorated among the pensioners who are in indigent circumstances only, and whose claim to pensions have been established and filed; and the Comptroller shall issue his warrants for the amounts due said pensioners in the manner provided by law at the end of each quarter. All such pensions shall begin on the first day of the quarter next succeeding the filing and establishment of such application. After the apportionment is made, the Comptroller may fill any vacancies created by death or other causes, at any time between the first day of March and the first day of September each year. [Acts 1909, p. 231; Acts 1913, p. 282; Acts 1917, pp. 387-411.]

Art. 6222. [6280] Perpetuation of evidence.—Any Confederate veteran, soldier, or sailor, who may be entitled to a pension under the pension laws of Texas, who may be desirous of establishing such right by the evidence of any person who may be cognizant of such facts as would prove and establish such right, may cause such person to go before the county judge, or any notary public of the county of his residence of such person, and make affidavit to such fact. [Acts 1909 p. 215.]

Art. 6223. [6281] Statement filed.—Such affidavit shall be filed with the Secretary of State, and by him recorded in a book to be kept for such purpose, a properly certified copy of which shall be admitted and used in evidence at any future time, to prove and establish the right of the soldier or sailor in whose behalf, or at whose instance, the same may have been made to such pensioner as may be provided by law. [Id.]

Art. 6224. [6282] Widow may establish identity.—The widow of any soldier or sailor who may be entitled to a pension as such, under the laws of this State, shall be entitled to establish her identity and right to such pension in the same way and manner as herein provided for soldiers and sailors. [Id.]

Art. 6225. [6283] Examination of record.—The Comptroller shall examine and pass on all pension claims, keep a correct record of all approved claims, with the name, disability, service, residence and amount paid, and furnish the county judge with suitable blanks for use of claimants. He shall make a written report to the Governor on the first day of September of each year, showing the number of pensioners, the number of claims allowed for the past year, and the amounts paid, together with such other information as the Governor may ask. All records, books, claims or other matters pertaining to pensions

shall be kept open to inspection and under the charge and direction of the Governor, and all rulings made by the Comptroller shall be subject to revision and change by the Governor. [Acts 1909, p. 231.]

Art. 6226. [6284] **Shall strike from roll.**—When it comes to the knowledge of the Comptroller that any person has been granted a pension through fraud or perjury, or that any one on the pension roll has acquired property or annuity, emolument or favor of the heirs or legal representatives of the deceased pensioner had such conditions existed at the date of said application, he shall strike the name of such person from the pension roll. [Id.]

Art. 6227. **Mortuary warrant.**—Whenever any pensioner who has been regularly placed upon the pension rolls under the provisions of law relating thereto, shall die and proof thereof shall be made to the Comptroller within forty days from the date of such death, by the affidavit of the doctor who attended the pensioner during the last illness, or the undertaker who conducted the funeral, or made arrangements therefor, the Comptroller shall issue a mortuary warrant for an amount not exceeding sixty-five dollars, payable out of the pension fund, in favor of the heirs or legal representatives of the deceased pensioner, or in favor of the person or persons owning the accounts (proof of the existence and justice of such accounts to be made to said Comptroller under oath and in such form as he may require) for the purpose of paying the funeral expenses of the deceased pensioner. In such cases where a warrant for the pension for the quarter during which the pensioner died has been issued, the same shall be returned to the Comptroller, who shall mark the same "canceled" and file it before the mortuary warrant herein provided for shall issue. Where such warrant for the pension has not been issued, the same shall not be issued, but the mortuary warrant herein provided for shall take the place thereof. [Acts 1923, p. 26.]

Art. 6228. **Mothers' pension.**—Any widow who has been a bona fide resident of this State for five years, and who is the mother of a child or children under the age of sixteen years, and who is unable to support them and to maintain her home, may present a sworn petition for assistance to the commissioners court of the county wherein she has resided for the preceding two years. Such petition shall show:

1. Her name, the date of the death of her husband, the names of her children, their sex, the dates and places of their birth and the time and place of her marriage.

2. Her residence and the length of time that she has been a resident of this State, the length of time she has lived at said residence and the address of her place of abode for the previous five years, and the date as near as possible, when she moved in and when she left said place of residence.

3. All the property belonging to her and to each of her child-

ren, including any future or contingent interest which she or any of them may have.

4. The efforts made by her to support her children.

5. The name, relationship and addresses of all her husband's relatives that may be known.

A copy of said petition and a notice of the time and place it will be presented to said court must be served on or mailed to the county judge of said county at least five days before the time the court shall be requested in said petition to meet and consider the same. When service is complete, said court shall examine under oath all who desire to be heard, and may, in its discretion, issue subpoenas for witnesses; or the court may refer said matter to a commissioner to be appointed by it to hear said witnesses. Said commissioner shall make a report to the court setting forth the facts as proven before him. If the court concludes that unless relief is granted the mother will be unable to properly support and educate her children and that they may become a public charge, it may make an order directing a payment to her, monthly, out of the county funds for the support of said children, twelve dollars for one such child; eighteen dollars for two children; and four dollars additional for each other child. Said allowance shall be discontinued as to any said child who reaches the age of sixteen. Said court shall have the right to refuse any application for allowance under this article, and its action in so doing shall be final. Said court shall see that any widow receiving any such allowance is properly caring for her children, and that they are sufficiently clothed and fed. When it is found that she is not properly caring for her children or that she is an improper guardian for such children, or when the court shall find that she no longer needs such relief, it shall thereupon revoke at any time with or without notice, any order made pursuant to this article. [Acts 1917, p. 313.]

2. CITY PENSIONS.

| | Article | | Article |
|----------------------------|---------|----------------------------------|---------|
| Board of trustees | 6229 | Death benefits, widow, etc..... | 6237 |
| Membership in | 6230 | Death benefits, father, etc..... | 6238 |
| Payments to fund | 6231 | Investigations | 6239 |
| Conduct of meetings | 6232 | Medical examination | 6240 |
| Custody of fund | 6233 | Who are members | 6241 |
| Who may share in fund..... | 6234 | Use of public funds..... | 6242 |
| Retirement pensions | 6235 | Awards exempt, etc..... | 6243 |
| Disability pensions | 6236 | | |

Art. 6229. Board of trustees.—In all incorporated cities and towns having a population of over ten thousand according to the preceding Federal census, having a fully or partially paid fire department or police department, the mayor, two aldermen or commissioners, two citizens of said city or town to be designated by the mayor, the chief of police, the chief of the fire department and their successors, shall constitute a board of trustees of the Firemen, Policemen and Fire Alarm Operator's Pension Fund, to provide for the disbursement of the same and to designate the beneficiaries thereof. The board shall be known as the Board of Firemen, Policemen and Fire Alarm Operator's Pension Fund,

Trustees of _____, Texas. The board shall hold its office until the next general election in such city for municipal officers. Said board shall organize by choosing one member as chairman and by appointing a secretary. Such board shall have charge of and administer said fund and shall order payments therefrom in pursuance of the provisions of this law. It shall report annually to the governing body of such city or town the condition of the said fund and the receipts and disbursements on account of the same with a complete list of the beneficiaries of said fund and the amounts paid them. [Acts 1919, p. 10.]

Art. 6230. Membership in.—Each fully paid fireman, policeman and fire alarm operator and other persons herein designated as members of either of said departments, in the employment of such city or town, who desires himself or his beneficiaries, to participate in said fund, shall file a written statement with the city clerk of his desire to participate in said fund, and authorize said city or town to deduct one per cent of his wages each month to form a part of the fund known as the Firemen, Policemen and Fire Alarm Operators' Pension Fund. [Id.]

Art. 6231. Payments to fund.—There shall be deducted for such fund from the wages of each fireman, policeman and fire alarm operator, and other persons herein designated as members of either of said departments, one per cent of the wages earned by such employes when they have filed application therefor. Any donations made to such fund and rewards received by any member of either of said departments, and all funds received from any source for such fund shall be deposited in like manner to the credit of such fund. [Id.]

Art. 6232. Conduct of meetings.—The board shall hold regular monthly meetings and other meetings upon call of its chairman. It shall issue orders signed by the president or chairman and secretary to the persons entitled thereto, of the amount of money ordered paid to such persons from such fund by said board which order shall state for what purpose such payment is to be made; it shall keep a record of its proceedings, which record shall be a public record; it shall at each monthly meeting send to the city treasurer a written list of persons entitled to payment from the fund, stating the amount of such payment, and for what granted, which list shall be certified to and signed by the president or chairman and secretary of such board, attested under oath. The treasurer shall enter a copy of said list upon the book to be kept for that purpose, which book shall be known as the Record Fireman, Policeman and Firm Alarm Operator's Pension Fund Board of _____, Texas, and the said board shall direct payment of the amounts named therein to the persons entitled thereto out of said fund. No money of said fund shall be disbursed for any purpose without a vote of a majority of the board, which shall be a no and yes vote entered upon the proceedings of the board. [Id.]

Art. 6233. Custody of fund.—The treasurer of said city or

town shall be ex-officio treasurer of said fund. All money for said fund shall be paid over to and received by the treasurer for the use of said fund, and the duties thus imposed upon such treasurer shall be additional duties for which he shall be liable under his oath and bond as such city or town treasurer, but he shall receive no compensation therefor. [Id.]

Art. 6234. **Who may share in fund.**—Any person who at the establishment of said fund, or thereafter shall have been duly appointed and enrolled in the fire department, police department or fire alarm operator's department of any such city or town, to which application is made for participation in said fund by such person and who has filed his written application within thirty days after the organization of such board, or who shall file his application within thirty days after becoming a member of either of such departments and who shall have allowed said deductions from his salary, as well as the beneficiaries hereinafter named, shall be entitled to participate in said fund. [Id.]

Art. 6235. **Retirement pensions.**—Whenever any member of said departments who shall have contributed a portion of his salary, as provided herein, shall have served twenty years or more in either of said departments, he may be entitled to be retired from said service upon application, and shall, if the board approves, be entitled to be paid from such funds a monthly pension of one-half of the salary received by him at the time of his retirement. [Id.]

Art. 6236. **Disability pensions.**—Whenever any member of the fire department, police department or fire alarm operator's department of any such city or town, and who is a contributor to said fund as provided, shall become so permanently disabled through injury received, or disease contracted, in the line of duty, as to incapacitate him for the performance of duty, or shall for any cause, through no fault of his own, become so permanently disabled as to incapacitate him for the performance of duty, and shall make written application therefor approved by a majority of the board, he shall be retired from service and be entitled to receive from said fund one-half of the monthly wages received by him as a member of either of said departments, at the time he became so disabled, to be paid in regular monthly installments. [Id.]

Art. 6237. **Death benefits, widow, etc.**—In case of the death before or after retirement of any member of the fire department, police department or fire alarm operator's department of any city or town, resulting from disease contracted, or injury received while in the line of duty, or from any other cause through no fault of his own, and who at the time of his death or retirement was a contributor to said fund, leaving a widow or child or children under sixteen years of age, the widow shall be entitled to receive from said fund an amount not exceeding one-fourth of the monthly wages received by such member immediately preceding his death, and the children of said deceased under sixteen

years of age shall receive in the aggregate one-fourth of such monthly wages to be equally divided between them. When any child shall reach sixteen years of age, then such child shall no longer participate in the division of said wages of said deceased, but the same shall be paid to his remaining children, if any, under sixteen years of age, in equal parts, until they respectively become sixteen years of age. In no case shall the amount paid to any one family exceed the amount of one-half the wages earned by the deceased immediately prior to the time of his death. Upon the re-marriage of any widow or the marriage of any child granted such pension, such pension shall cease. No widow or child of any such member resulting from any marriage contract subsequent to the date of retirement of said member, shall be entitled to a pension under this law. [Id.]

Art. 6238. Death benefits, father, etc.—If any member of the fire department, police department, or fire alarm operator's department dies from injuries received or disease contracted while in the line of duty, or from any cause through no fault of his own, who was a contributor to said fund and entitled to participate in said fund himself, leaves no wife or child, but who shall leave surviving him a dependent father, mother, brother or sister, wholly dependent upon said person for support, such dependent father, mother, sister and brother shall be entitled to receive in the aggregate one-half of the wages earned by said deceased immediately prior to his death, to be equally divided between those who are wholly dependent on said deceased, so long as they are wholly dependent. The board shall have authority to determine the facts as to the dependency of said parties and each of them, and as to how long the same exists, and may at any time upon the request of any contributor to such fund, reopen any award made to any of said parties and discontinue such pension as to all or any of them as it may deem proper, and the findings of said board in regard to such matter and as to all pensions granted under this law shall be final upon all parties seeking a pension as a dependent of said deceased, or otherwise, until such award of the trustees shall have been set aside or revoked. [Id.]

Art. 6239. Investigations.—The board shall consider all cases for the retirement and pension of the members of the fire, police and fire alarm operator's department rendered necessary or expedient under the provisions of this law, and all applications for pensions by widows and children and of dependent relatives, and the said trustees shall give written notice to persons asking a pension to appear before said board and offer such sworn evidence as he or they may desire. Any person who is a member of either of said departments and who is a contributor to said fund may appear either in person or by attorney and contest the application for participation in said fund by any person claiming to be entitled to participate therein, and may offer testimony in support of such contest. The president or chairman of said

board shall have authority to issue process for witnesses and administer oaths to said witnesses and to examine any witness as to any matter affecting retirement or a pension under the provisions of this law. Such process for witness shall be served by any member of the police, fire and fire alarm operator's department and upon the failure of any witness to attend and testify, he or she may be compelled to attend and testify, as in any judicial proceeding. [Id.]

Art. 6240. **Medical examination.**—Said board may cause any person receiving any pension under the provisions of this law, who has served less than twenty years, to appear and undergo a medical examination, as a result of which the board shall determine whether the relief in said case shall be continued, increased, decreased or discontinued. If any person receiving relief under the provisions of this law, after due notice, fails to appear and undergo such examination, the board may reduce or entirely discontinue such relief. [Id.]

Art. 6241. **Who are members.**—All fire, police and fire alarm operators and superintendents in the employ of any such city or town, who have filed their application for participation in said fund, and have contributed a portion of their salary, as provided for other members of such departments, are hereby declared to be members of the fire, police, and fire alarm operator's department of such city or town, and they and their beneficiaries shall have the same rights and privileges as are herein granted to other members of such departments of such cities. [Id.]

Art. 6242. **Use of public funds.**—No funds shall be paid out of the public treasury of any such incorporated city or town, in carrying out any of the provisions of this law, except on a majority vote of the voters of such city or town. [Id.]

Art. 6243. **Awards exempt.**—No amount awarded to any person under the provisions of this law shall be liable for the debts of any such person; shall not be assignable and shall be exempt from garnishment or other legal process. [Id.]

TITLE 110.

PRINCIPAL AND SURETY.

| | | | |
|--|---------|--|---------|
| | Article | | Article |
| May require suit brought..... | 6244 | Rights of surety | 6248 |
| Discharged by failure to sue..... | 6245 | Execution against a co-surety..... | 6249 |
| May have question of suretyship tried | 6246 | Officer has same rights as surety..... | 6250 |
| Levy first on property of princi- pal | 6247 | Surety not to be sued alone..... | 6251 |
| | | Who is surety | 6252 |

Art. 6244. [6329] [3811] May require suit brought.—Any person bound as surety upon any contract for the payment of money or the performance of any act, when the right of action has accrued, may require by written notice, the creditor or obligee forthwith to institute suit upon such contract. [Acts 1858, p. 112; P. D. 4783; G. L. Vol. 4, p. 984.]

Art. 6245. [6330] [3812] Discharged by failure to sue.—If the creditor or obligee, not being under legal disability, shall fail to bring his suit to the first term of the court thereafter, or to the second term showing good cause for the delay and prosecute the same to judgment and execution, the surety giving such notice shall be discharged from all liability thereon. [Id.]

Art. 6246. [6331] [3813] May have question of suretyship tried.—When any suit is brought against two or more defendants upon any contract, any one or more of the defendants being surety for the other, the surety may cause the question of suretyship to be tried and determined upon the issue made for the parties defendant at the trial of the cause, or at any time before or after the trial or at a subsequent term. Such proceedings shall not delay the suit of the plaintiff. [Id.]

Art. 6247. [6332] [3814] Levy first on property of principal.—If the finding of such issue be in favor of the surety, the court shall make an order directing the sheriff before he levies on the property of the surety to first levy the execution upon the property of the principal situate in the county in which the judgment was rendered, if so much property of the principal can be found as will in the opinion of the sheriff be sufficient to make the amount of the execution; otherwise the levy shall be made on so much property of the principal as may be found, if any, and upon so much of the property of the surety as may be necessary to make the amount of the execution; and the clerk shall make a memorandum of such order on the execution. [Id.]

Art. 6248. [6333] [3815] Rights of surety.—When any person, being surety in any undertaking whatever, shall be compelled to pay any judgment, or any part thereof, or shall make any payment which is applied upon such judgment by reason of such suretyship, the said judgment shall not be discharged by such payment, but shall remain in force for the use of such surety, and shall be considered as assigned to such surety, together with all the rights of the creditor thereunder to the extent of such payment with the interest thereon; and such surety shall be entitled to have execution thereon in the name

of the creditor for the use of such surety against the principal debtor for the full amount of such payment, interest and costs, which execution shall be issued upon the application of such surety to the clerk, or court, as the case may be, and shall be levied, collected and returned as in other cases. [Id.]

Art. 6249. [6334] [3816] **Execution against a co-surety.**—If there be more than one surety and one or more of them has failed to pay his proportionate part of the judgment, execution may issue, as provided in the preceding article, against the principal for the use of the surety who has paid more than his proportionate part for the whole amount paid by him and interest thereon, and also against his co-sureties, for their proportionate part of the excess so paid by him and interest thereon. [Id.]

Art. 6250. [6335] [3817] **Officer has same rights as surety.**—If an officer shall be compelled to pay any judgment, or any part thereof, by reason of any default of such officer, except for failing to pay over any money collected, or for wasting property levied on, such officer shall be entitled to have execution therefor against the principal defendant in such judgment as provided in the case of a surety. [Id.]

Art. 6251. [6336] [3818] **Surety not to be sued alone.**—No surety shall be sued, unless his principal is joined with him, or unless a judgment has previously been rendered against his principal, except in the cases otherwise provided for in the laws relating to parties to suits. [Id.]

Art. 6252. [6337] [3819] **Who is surety.**—The remedy provided for sureties by this title extends to endorsers, guarantors, drawers of bills which have been accepted, and every other suretyship, whether created by express contract, or by operation of law. [Id.]

TITLE 111.

QUO WARRANTO.

| | Article | Article |
|--------------------------|---------|--|
| Quo Warranto, when | 6253 | Proceedings as in civil cases.....6256 |
| Joinder of parties | 6254 | Judgment of court.....6257 |
| Citation to issue | 6255 | Remedy cumulative.....6258 |

Art. 6253. [6398] [4343] **Quo Warranto, when.**—If any person shall usurp, intrude into or unlawfully hold or execute, or is now intruded into, or now unlawfully holds or executes, any office or franchise, or any office in any corporation created by the authority of this State, or any public officer shall have done or suffered any act which by law works a forfeiture of his office, or any association of persons shall act within this State as a corporation without being legally incorporated, or any corporation does or omits any act which amounts to a surrender or a forfeiture of its rights and privileges as such, or exercises power not conferred by law; or if any railroad company doing business in this State shall charge an extortionate rate for the transportation of any freight or passengers, or refuse to draw or carry the cars of any other railroad company over its lines as required by the laws of this State, the Attorney General, or district or county attorney of the proper county or district, either of his own accord or at the instance of any individual relator, may present a petition to the district court of the proper county, or any judge thereof in vacation, for leave to file an information in the nature of a quo warranto in the name of the State of Texas. If such court or judge is satisfied that there is probable ground for the proceeding, he shall grant such leave and order the information to be filed and process to issue. [Acts 1879, S. S. p. 43; G. L. Vol. 9, p. 75.]

Art. 6254. [6399] [4344] **Joinder of parties.**—When it appears to the court or judge that the several rights of divers parties to the same office or franchise may properly be determined on one information, the court or judge may give leave to join all such persons in the same information in order to try their respective rights to such office or franchise. [Id.]

Art. 6255. [6400] [4345] **Citation to issue.**—When such information is filed, the clerk shall issue citation as in civil suits, commanding the defendant to appear at the return term of said court to answer the relator in an information in the nature of a quo warranto. If the information is filed in vacation, the citation shall be returnable on the first day of the next succeeding term; if in term time, it may be made returnable on any day of the same term, not less than five days after the date of the writ, as shall be directed by the court. [Id.]

Art. 6256. [6401] [4346] **Proceedings as in civil cases.**—Every person or corporation who shall be cited as hereinbefore provided shall be entitled to all the rights in the trial and investigation of the matters alleged against him, as in cases of trial of civil cases in this State. Either party may prosecute an

appeal or writ of error from any judgment rendered, as in other civil cases and the appellate court shall give preference to such case, and hear and determine the same as early as practicable. [Id. Sec. 4, Acts 1921, p. 220.]

Art. 6257. [6402] [4347] Judgment of court.—If any person or corporation against whom any such proceeding is filed shall be adjudged guilty as charged, the court shall give judgment of ouster against such person or corporation from the office or franchise, and may fine such person or corporation for usurping, intruding into or unlawfully holding and executing such office or franchise and shall give judgment in favor of the relator for costs of the prosecution. [Acts 1879, S. S. p. 43; G. L. Vol. 9, p. 75.]

Art. 6258. [6403] [4348] Remedy cumulative.—The remedy and mode of procedure hereby prescribed shall be construed to be cumulative of any now existing. [Id.]

TITLE 112.

RAILROADS.

| Chapter | Page | Chapter | Page |
|-----------------------------------|------|---|------|
| 1 Charter and amendments..... | 1784 | 9 Collecting debts, etc..... | 1826 |
| 2 Public offices and books..... | 1788 | 10 Liability for injuries to employes | 1831 |
| 3 Officers and by-laws..... | 1791 | 11 Railroad Commission..... | 1834 |
| 4 Stock and stockholders..... | 1793 | 12 Stocks and bonds..... | 1859 |
| 5 Meetings of directors, etc..... | 1796 | 13 Miscellaneous railroads..... | 1864 |
| 6 Rights of way..... | 1797 | 14 Union depot corporations..... | 1871 |
| 7 Other rights..... | 1802 | 15 Viaducts | 1872 |
| 8 Duties and liabilities..... | 1806 | | |

CHAPTER ONE.

CHARTER AND AMENDMENTS.

| | Article | | Article |
|--|---------|--|---------|
| Incorporation | 6259 | Period of existence | 6267 |
| Who may build | 6260 | Manner of renewing | 6268 |
| Stock, subscription and payment..... | 6261 | Sale or conveyance under special law | 6269 |
| Articles of incorporation | 6262 | Shall take subject to lien..... | 6270 |
| Shall be submitted to Attorney General | 6263 | May amend articles, etc..... | 6271 |
| Shall be filed | 6264 | When shall not amend..... | 6272 |
| Beginning of existence | 6265 | May project, etc., by amendment..... | 6273 |
| May proceed to act..... | 6266 | Branch line requirements | 6274 |

Art. 6259. [6405] [4350] [4099] **Incorporation.**— Any number of persons, not less than ten, being subscribers to the stock of any contemplated railroad, may be formed into a corporation for the purpose of constructing, owning, maintaining and operating such railroad by complying with the requirements of this chapter. [Acts 1876, p. 141; G. L. Vol. 8, p. 977.]

Art. 6260. [6406] **Who may build.**—No corporation, except one chartered under the laws of Texas, shall be authorized or permitted to construct, build, operate, acquire, own or maintain any railways within State. [Acts 1903, p. 90.]

Art. 6261. [6407] [4351] [4100] **Stock, subscription and payment.**—No railroad corporation shall be formed until stock to the amount of one thousand dollars for every mile of the road intended to be built shall be in good faith subscribed, and five per cent of the amount subscribed paid to the directors of such proposed company. [Acts 1876, p. 141; G. L. Vol. 8, p. 977.]

Art. 6262. [6408] [4352] [4101] **Articles of incorporation.**—The persons proposing to form a railroad corporation shall adopt and sign articles of incorporation, which shall contain:

1. The name of the proposed corporation.
2. The places from and to which it is intended to construct the proposed railroad, and the intermediate counties through which it is proposed to construct the same. Local suburban railways may be constructed for any distance less than ten miles from the corporate limits of any city or town, in addition to such mileage as they may have within the same; and in such case the general direction shall be given from the beginning point.
3. The place at which shall be established and maintained the principal business office of the proposed corporation.
4. The time of the commencement and the period of the continuation of the proposed corporation.

5. The amount of the capital stock of the corporation.
6. The names and places of residence of the several persons forming the association for incorporation.
7. The names of the members of the first board of directors, and in what officers or persons the government of the proposed corporation and the management of its affairs shall be vested.
8. The number and amount of shares in the capital stock of the proposed corporation. [Acts 1889, p. 17; G. L. Vol. 9, p. 1045.]

Art. 6263. [6409] [4353] [4102] **Shall be submitted to Attorney General.**—The articles of incorporation, when so prepared, adopted and signed, shall be submitted to the Attorney General, and, if he finds them to be in accordance with the provisions of this chapter and not in conflict with the laws of the United States, or of this State, he shall attach thereto a certificate to that effect. [Acts 1876, p. 141; G. L. Vol. 8, p. 977.]

Art. 6264. [6410] [4354] [4103] **Shall be filed.**—When said articles have been so examined and certified, the same shall be filed in the office of the Secretary of State, accompanied by an affidavit signed and sworn to by at least three of the directors named in such articles, which affidavit shall state that the amount of one thousand dollars for every mile of such proposed road has been in good faith subscribed, and that five per cent of the amount subscribed has been actually paid to the directors named in such articles; and the Secretary of State shall cause such articles, together with said affidavit, to be recorded in his office, and shall attach a certificate of the fact of such record to said articles and return the same to such corporation. [Id.]

Art. 6265. [6411] [4355] [4104] **Beginning of existence.**—The existence of such corporation shall date from the filing of the articles of incorporation in the office of the Secretary of State, and the certificate of the Secretary of State under the seal of the State, shall be evidence of such filing. [Id.]

Art. 6266. [6412] [4356] [4105] **May proceed to act.**—When the articles of incorporation have been so filed and recorded, the persons named as incorporators therein shall thereupon become a body corporate, and authorized to carry into effect the objects of such articles, in accordance with the provisions of this title. [Id.]

Art. 6267. [6413] [4357] [4106] **Period of existence.**—No railroad corporation shall be formed to continue more than fifty years, but such corporation may be renewed from time to time for periods not longer than fifty years. [Id.]

Art. 6268. [6414] [4358] [4107] **Manner of renewing.**—The manner of renewing a railroad corporation which has expired by lapse of time shall be as follows:

1. By a resolution in writing adopted by a majority of three-fourths of the stockholders of the company at a regular meeting of the stockholders, specifying the period of time for which the corporation is renewed.

2. Those desiring a renewal of the corporation shall purchase the stock of those opposed thereto at its current value.

3. The resolution, when adopted, shall be certified to by the president of the company; and he shall state in his certificate thereto that it was adopted by a majority vote of three-fourths of all the stockholders of said company at a regular meeting of such stockholders, and that the stockholders desiring such renewal have purchased the stock of those who oppose such renewal, and such certificate shall be attested by the secretary of the company under the seal of the company.

4. Said resolution and certificate shall be filed and recorded in the office of the Secretary of State, and the renewal of said corporation shall date from said filing. [Id.]

Art. 6269. [6415] [4359] **Sale or conveyance under special law.**—Whenever a line of railway or any railway properties within this State are by special law authorized to be sold and conveyed, the persons contemplating the purchase thereof may be formed into a corporation for the purpose of acquiring, owning, maintaining and operating such railway by complying, as far as applicable with the requirements of this chapter. In the formation of such corporation, the requirements of Article 6261 and so much of Article 6264 as relates to the affidavit may be dispensed with, and words applicable to the case of a purchaser may be used and substituted when necessary or proper, in the articles of incorporation or elsewhere, in lieu of words applicable to the building or construction of a railway. When such corporation has been formed it shall have the power to purchase, acquire, own, maintain and operate such railway and the properties pertaining thereto, and all other rights, powers and privileges given by the laws of this State to railway companies. Any proposed extension or branch lines may be provided for and included in the original articles of incorporation, or the same may, by amendment thereto at any time thereafter, be projected and provided for by such company. [Acts 1891, p. 128; G. L. Vol. 10, p. 130.]

Art. 6270. [6416] [4360] **Shall take subject to lien.**—Any company organized under the preceding article shall take the property so purchased subject to all incumbrances, judgments, claims, suits, claims for damages and for right of way against the old company and subject to all debts and claims for damages accruing against any receiver who may have been appointed for the old company to the same extent that such property would have been liable in the hands of the railroad company from which it was purchased; and such new company may be made a party to every suit pending against the company from which it is purchased, or which may be pending against any receiver of such company, to enforce any right against such new company; and the new company may be sued to enforce any such rights, without joining the old company, or the receiver; and, in case any judgment has been rendered against the old company, or against a receiver for such company, and for which the

property is liable, execution may be issued on such judgment against such property in the possession of the new company without any suit therefor. When a corporation is formed under the provisions of the preceding article, service of process may be had upon any agent of such corporation in any county where suit may be pending. Such service shall bind each railroad operated or owned under such charter, in the same manner as if it were one railroad. [Id.]

Art. 6271. [6417-18-19] [4108] May amend articles, etc.— Any railroad corporation may amend or change its articles or act of incorporation in the manner following:

1. Such amendment or change shall be in writing and signed by the president and board of directors of the corporation and attested by the secretary under the seal of the corporation.

2. It shall be submitted to the Attorney General as in the case of original articles of incorporation and examined and certified by him in the same manner.

3. It shall then be filed and recorded in the office of the Secretary of State.

4. In the case of a corporation created by a special act of the legislature, the said amendment or change, together with the original charter and such amendments and changes as have been made by special act of the legislature, shall be filed and recorded in the office of the Secretary of State.

5. Such amendment or change shall be in force from the date of the filing of the same in the office of the Secretary of State in accordance with the provisions of this chapter. [Acts 1876, p. 142; G. L. Vol. 8, p. 978.]

Art. 6272. [6420] [4364] [4111] When shall not amend.— Where, by the special act or articles of incorporating any railroad company, any privileges, rights or benefits are conferred upon said corporation, such as it could not claim, exercise or receive under this title or the general laws, then the said corporation shall not be permitted so to amend or change its charter or articles of incorporation as to relieve it from any of the requirements of such special act or acts conferring said privileges, rights or benefits. [Id.]

Art. 6273. [6421] [4365] May project, etc., by amendment.—Any railroad company may, by its original articles of incorporation or by its amendments to its charter, project and provide for the location, construction, owning and operating of branch lines from any point on its main line, or from points on its branch line, constructed or projected, to other points making an angle of at least twenty-five degrees in the general course from the main line, if the branch commence from the same, or from the branch line, if it commences at a point on the same; provided, that the same may commence at the terminus of a branch line and continue in its general course; and, may by amendment to its charter, provide for the continuation in its general course of the main line. [Id. Acts 1901, p. 258.]

Art. 6274. [6422] [4366] [4114] **Branch line requirements.**—Any such corporation making such amendment to its charter shall complete and put in good running order at least ten miles of its said branch line in said amendment proposed within one year from the filing of such amendment, and an additional extent of at least twenty miles each succeeding year until the entire extent of the projected branch line is completed. [Id.]

CHAPTER TWO.

PUBLIC OFFICES AND BOOKS.

| Article | Article | | |
|--|---------|-----------------------------------|------|
| To keep offices in Texas..... | 6275 | President shall report | 6282 |
| Where no contract | 6276 | Books open to inspection..... | 6283 |
| Shops, etc. | 6277 | Penalty for failure | 6284 |
| Officers to keep offices in Texas..... | 6278 | Duties of Attorney General..... | 6285 |
| Forfeiture | 6279 | Change of general offices prohib- | |
| To do repair work in Texas..... | 6280 | ed | 6286 |
| Books | 6281 | Domicile of the corporation..... | 6287 |

Art. 6275. [6423] [4367] **To keep offices in Texas.**—Every railroad company chartered by this State, or owning or operating any line of railway within this State, shall keep and maintain permanently its general offices within this State at the place named in its charter for the location of its general offices. If no certain place is named in its charter where its general offices shall be located and maintained, then said railroad company shall keep and maintain its general offices at such place within this State where it contracts or agrees to locate its general office for a valuable consideration. [Acts 1889, p. 130; G. L. Vol. 9, p. 1158.]

Art. 6276. [6423] [4367] **Where no contract.**—If said railroad company has not contracted or agreed for a valuable consideration to maintain its general offices at any certain place within this State, then such general offices shall be located and maintained at such place on its line in this State as said railroad company may designate to be on its line of railway. [Id.]

Art. 6277. [6423] [4367] **Shops, etc.**—Such railroads shall keep and maintain their machine shops and roundhouses, or either, at such place or places as they may have contracted to keep them for a valuable consideration received; and if said general offices and shops and roundhouses, or either are located on the line of railroad in a county which has aided such railroad by an issue of bonds in consideration of such location being made, then said location shall not be changed; and this shall apply as well to a railroad that may have been consolidated with another as to those which have maintained their original organization. [Id.]

Art. 6278. [6424] [4368] **Officers to keep offices in Texas.**—Railroad companies shall keep and maintain at the place within this State where its general offices are located the office of its president, or vice-president, secretary, treasurer, local treasurer, auditor, general freight agent, traffic manager, general manager, general superintendent, general passenger and ticket agent, chief engineer, superintendent of motive power and ma-

chinery, master mechanic, master of transportation, fuel agent, general claim agent; and each one of its general offices shall be so kept and maintained by whatever name it is known, and the persons who perform the duties of said general offices, by whatever name known, shall keep and maintain their offices at the place where said general offices are required to be located and maintained; and the persons holding said general offices shall reside at the place and keep and maintain their offices at the place where said general offices are required by law to be kept and maintained. If the duties of any of the above named offices are performed by any person, but his position is called by a different name, said railroad company shall maintain said offices at the place where its general Texas offices are kept and maintained, as required by this chapter. The name of the general offices shall not be understood to allow the railroad company to have any of the offices usually known as general offices at any other place than the one at which it is required to keep its general offices; and each railroad is hereby required to have and maintain its general offices at the place named herein. Where the principal shops of a company are situated on its line in the State, at a place other than where its general offices are located, the superintendent of motive power and machinery, master mechanic, either or both, may have his office and residence at such place where such principal shops are located; provided, that the Railroad Commission of Texas, where it is made to appear that any officer, other than the general officers of any company, can more conveniently perform his duties by residing at some place on the line in Texas other than the place where the general offices are situated, may by an order entered on its record, authorize any such officer to so reside and keep his office at such place. [Id. Acts 1899, p. 177.]

Art. 6279. [6425] [4369] **Forfeiture.**—Each railroad company chartered by this State, or owning, operating, or controlling any line of railroad within this State, which shall violate any provision of this chapter shall forfeit the charter by which it operates its railroad in Texas to the State of Texas. The Attorney General shall, upon the application of an interested party, or on his own motion, proceed at once against every offending railroad company owning, operating or controlling any line of railway within this State and violating any provision of this law, by quo warranto to forfeit the charter of such railroad company. In addition to forfeiting the charter to that part of the railroad situated within this State, such offending railroad company shall be subject to a penalty of five thousand dollars for each day it violates any provision of this chapter; such penalty to be recovered by suit in the name of the State of Texas to be filed by the Attorney General. Any money recovered from any railroad company under the provisions of this law shall be paid into the State Treasury and become a part of the available public free school fund. A judgment of the court forfeiting the charter of a railroad company shall allow six

months from the date of the judgment within which to comply with this law, and if it shall comply, within said time no forfeiture shall occur; but if it fails to so comply, then the judgment shall be final.

Art. 6280. [6426 to 6428] **To do repair work in Texas.**—All railroad corporations operating in, and having their repair shops within this State, are required to repair, renovate or rebuild in this State all defective or broken cars, coaches, locomotives or other equipment owned or leased by said corporation in this State, when such rolling stock is within this State, and shall be prohibited from sending or removing any such rolling stock out of this State to be repaired, renovated or rebuilt, when the same is in a defective or broken condition, and within this State, when such railway shall have, or be under obligation to have proper facilities in this State to do such work. This article does not apply to companies having less than sixty continuous miles of railroad in operation in this State, nor in case of strike, fire or other unforeseen casualties and emergencies; and is not to be construed to require a violation of the Federal safety appliance law; and no railway shall be required to haul such disabled equipment a greater distance for repairs at a point within this State than would be necessary to reach their repair shops in another State. [Acts 1909, p. 73.]

Art. 6281. [6429] [4370] **Books.**—The principal business of said corporation shall be conducted, and stock transferred and claims for damages settled and adjusted at the public or general offices of said railroad companies in Texas, established as provided for in this chapter, by duly authorized officers and agents of said corporations. At said offices there shall be kept for the inspection of stockholders of such corporation, books in which shall be recorded:

1. The amount of capital stock subscribed.
2. The names of the owners of the stock and the amounts owned by them respectively.
3. The amount of stock paid and by whom.
4. The transfer of stock with the date of the transfer.
5. The amount of its assets and liabilities.
6. The names and places of residence of each of its officers.

[Acts 1885, p. 67; G. L. Vol. 9, p. 687.]

Art. 6282. [6430] [4371] **President shall report.**—The president or superintendent of every railroad company doing business in this State shall report annually under oath to the Comptroller or Governor the true status of said railroad and such other matters and things as may be inquired about by said Comptroller or Governor. [Id. Const. Art. 10, Sec. 3.]

Art. 6283. [6431-2] **Books open to inspection.**—The books of such corporation, kept at its public office shall at all reasonable business hours be open to the inspection of each stockholder, and to any officer or agent of the State whose duty it may be to inspect such books. The legislature may, by committee or otherwise, examine the books of any railroad corpora-

tion at such times and as often as may by said legislature be deemed necessary. [Id.]

Art. 6284. [6433] [4374] **Penalty for failure.**—If said railroad or other corporation shall fail or refuse to comply with any provision of the three preceding articles, it shall be liable to pay to the State of Texas, the sum of one thousand dollars for each month that said railroad or other corporation shall fail or refuse to comply therewith, said sum to be recovered by the State. An honest mistake in the entries in its books shall not subject a railroad company to such penalties. [Acts 1885, p. 67; G. L. Vol. 9, p. 687.]

Art. 6285. [6434] [4375] **Duties of Attorney General.**—The Attorney General shall bring suit against said corporation, and prosecute it to judgment for any violation of any provision of this chapter. [Id.]

Art. 6286. [6435] [4376] **Change of general offices prohibited.**—No railroad company shall change the location of its general offices, machine shops or roundhouses, save with the consent and approval of the Railroad Commission of Texas, and this shall apply also to receivers and to purchasers of the franchises and properties of railroad companies and to new corporations formed by such purchasers or their assigns. The Commission shall not consent to, or approve of, any removal or change of location in conflict with the restrictions of the first article of this chapter. No consent or approval of the Commission shall be required before the return of general offices, machine shops or roundhouses to previous locations when ordered or required under judgments in suits now pending in trial or appellate courts. [Acts 1915, p. 35.]

Art. 6287. [6437] [4378] [4120] **Domicile of the corporation.**—The public office of a railroad corporation shall be considered the domicile of such corporation. [Acts 1876, p. 150; G. L. Vol. 8, p. 986.]

CHAPTER THREE.

OFFICERS AND BY-LAWS.

| | | | |
|------------------------|--------------|----------------------|--------------|
| Board of directors | Article 6288 | False dividend | Article 6291 |
| Election of directors | 6289 | False representation | 6292 |
| Other officers elected | 6290 | By-laws | 6293 |

Art. 6288. [6338-39-45] **Board of directors.**—All the corporate powers of every railroad corporation shall be vested in and be exercised by the legally constituted board of directors. Every such corporation shall have a board of directors of not less than seven nor more than nine persons, each of whom shall be a stockholder in said corporation. A majority of said directors shall be resident citizens of this State, and shall so remain resident citizens during their continuance as such directors. [Acts 1876, p. 144; G. L. Vol. 8, p. 980.]

Art. 6289. [6440-41-42-43-44] **Election of directors.**—These rules shall govern the election of the board of directors:

1. It shall require a majority in value of the stock of such corporation to elect any member of such board.

2. Such board shall be elected by the stockholders of the corporation at their regular annual meeting in each year, in the manner prescribed by this title and the by-laws of such corporation, and shall hold their office until their successors are elected.

3. In all such elections, each stockholder shall have the right to vote in person or by proxy for the number of shares of stock owned by him for as many persons as there are directors to be elected, or to cumulate such shares and give one candidate as many votes as the number to be elected multiplied by the number of his shares of stock shall equal, or to distribute them on the same principle among as many candidates as he may see fit. Such directors shall not be elected in any other manner.

4. The by-laws of the corporation shall prescribe the manner and time of electing directors, and the mode of filling a vacancy in such office. Such provisions in such by-laws shall not be changed except at a regular annual meeting of the stockholders, and by a majority in value of the stockholders of such corporation.

5. If an election of directors shall not be made on the day designated by said by-laws for such purpose, the stockholders shall meet and hold an election for directors in such manner as said by-laws shall provide. [Id.]

Art. 6290. [6446-47] Other officers elected.—There shall be a president of the corporation who shall be chosen from and by the board of directors, and such other officers as said by-laws may designate, who may be appointed or elected, and who shall perform such duties and be required to give such security for the faithful performance thereof as required by said by-laws. It shall require a majority of the directors to appoint or elect any officer of the corporation. [Id.]

Art. 6291. [6448] [4389] [4133] False dividend.—If the directors of any railroad company shall declare and pay any dividend when the company is insolvent, or any dividend the payment of which would render it insolvent, they shall jointly and severally be liable for all debts of the company then existing, and for all that shall be thereafter contracted so long as they shall respectively continue in office. If any of the directors shall be absent at the time of making such dividend, or shall object thereto, and shall within thirty days thereafter, or after their return if absent, file a certificate of their absence or objection in writing with the clerk of the company and with the clerk of the county in which the principal office of said company is located, they shall be exempt from said liability. [Acts 1853, p. 55; G. L. Vol. 3, p. 1339; P. D. 4886.]

Art. 6292. [6449] [4390] [4134] False representation.—If any certificate or report made, or public notice given, by the officers of any such company, in pursuance of the provisions of this title, shall be false in any material representation, all

officers who signed the same shall be jointly and severally liable for all the debts of the company contracted while they are officers or stockholders thereof. [Id.]

Art. 6293. [6450-52] By-laws.—Every railroad corporation shall have the power to make such by-laws as it may think proper for the government of such company, the same not being inconsistent with the charter of such company or the laws. In the enactment of a by-law, the stockholders of the corporation shall be entitled to one vote for each share of stock held by them, and a stockholder may vote in person or by written proxy. No by-laws shall be enacted, altered, amended, added to, repealed or suspended, except at a regular annual meeting of the stockholders and by a majority vote of two-thirds in value of all the stock of the corporation. [Acts 1857, p. 25; G. L. Vol. 4, p. 897; P. D. 4911.]

CHAPTER FOUR.

STOCK AND STOCKHOLDERS.

| | | | |
|--|---------|--------------------------------|---------|
| | Article | | Article |
| Railroad stock is personal estate..... | 6294 | Decrease of capital stock..... | 6302 |
| Directors may require payment..... | 6295 | Statement to stockholders..... | 6303 |
| Sale of unpaid stock..... | 6296 | Loans and interest..... | 6304 |
| Books accessible..... | 6297 | Removal of officers..... | 6305 |
| Use of corporate funds..... | 6298 | Issuance of stock..... | 6306 |
| Liability of stockholders..... | 6299 | Fictitious dividends void..... | 6307 |
| Who not liable..... | 6300 | Penalty..... | 6308 |
| Increasing capital stock..... | 6301 | | |

Art. 6294. [6453] [4394] [4138] Railroad stock is personal estate.—The stock of a railroad corporation shall be deemed personal estate, and transferable in the manner prescribed by the by-laws of the corporation; but no such transfer shall be valid until the same shall have been made on the stock and transfer books of the company; nor shall any share be transferable until all previous calls thereon have been paid. [Acts 1876, p. 145; G. L. Vol. 8, p. 981.]

Art. 6295. [6454] [4395] [4139] Directors may require payment.—The directors of such corporation may require the subscribers to the capital stock of the corporation to pay the amount by them respectively subscribed, in such manner and in such installments as the directors may deem proper. [Id.]

Art. 6296. [6455] [4396] [4140] Sale of unpaid stock.—If any stockholder shall neglect to pay any installment as required by a resolution or order of the board of directors, the said board shall be authorized to advertise said stock for sale by publication once a week for thirty days in some newspaper published on the line of said road, if there be one, and, if not, in some newspaper published in the State having a general circulation in the State; which notice shall name the stock to be sold and the time and place of such sale; and all stocks so sold shall be sold at the public office or place of business of such company, and between the hours of ten o'clock a. m. and four o'clock p. m. and to the highest bidder for cash, the proceeds of such sale to be credited to the delinquent stockholder. [Id.]

Art. 6297. [6456] [4397] [4141] Books accessible.—All

stockholders shall at all reasonable hours have access to and may examine all books, records and papers of such corporation. [Id.]

Art. 6298. [6457] [4398] [4142] **Use of corporate funds.**—It shall be unlawful for any railroad corporation to use any of the funds thereof in the purchase of its own stock, or that of any other corporation, or to loan any of its funds to any director or other officer thereof, or to permit them or any of them, to use the same for other than the legitimate purposes of the corporation. [Id.]

Art. 6299. [6458] [4399] [4143] **Liability of stockholders.**—Each stockholder of a railroad corporation shall be held individually liable to the creditors of such corporation to an amount not exceeding the amount unpaid on the stock held by him, for all debts and liabilities of such corporation until the whole amount of the capital stock of such corporation so held by him shall have been paid. [Id.]

Art. 6300. [6459] [4400] [4144] **Who are not liable.**—No person holding stock in any railroad corporation as executor, administrator, guardian or trustee, and no person holding such stock as collateral security, shall be personally subject to any liability as a stockholder of such corporation; but the estate or person owning such stock, shall be considered as holding the same and liable as a stockholder accordingly. [Id.]

Art. 6301. [6460 to 6464] **Increasing capital stock.**—If the capital stock of a railroad corporation shall be found insufficient for constructing and operating its road, such corporation may increase its capital stock from time to time, subject to the following conditions:

1. Such increase shall be sanctioned by a vote in person or by written proxy of two-thirds in amount of all the stock of such corporation at a meeting of such stockholders called by the directors of the corporation for such purpose.

2. Written notice of such meeting shall be given to each stockholder, served personally or by depositing same in a post office directed to his post-office address, postage prepaid; and also by advertising the same in some newspaper published in each county through or into which the said road shall run, or be intended to run, if any is published therein. Such notice shall state the time and place of the meeting, the object thereof, and the amount to which it is proposed to increase such capital stock, and shall be served or published at least sixty days prior to the day appointed for such meeting.

3. The stock may be increased to any amount required for the purposes mentioned in this article, not exceeding the amount mentioned in the notice so given.

4. Every order or resolution increasing such stock shall be recorded in the office of the Secretary of State, and such increase shall not take effect until such order or resolution has been so recorded. [Id.]

Art. 6302. Decrease of capital stock.—A railroad corporation may, in the same manner prescribed in this chapter for an increase of capital stock, decrease its capital stock in any amount which shall not reduce the same to less than one thousand dollars for every mile of its road as planned and described in its charter. But no such decrease shall prejudice the rights of any creditor of such corporation in any claim or cause of action such creditor may have against the company or any stockholder or director thereof. If such decrease relates to or affects any part of the stock that has actually been subscribed or issued, then such decrease shall not become effective until full proof is made by affidavit of the directors to the Secretary of State of the financial condition of such corporation, giving therein all its assets and liabilities, with names and post-office addresses of all creditors and amount due each, and where the proposed decrease affects any part of the subscribed or issued stock as aforesaid the Secretary of State may require as a condition precedent to the filing of such certificate of decrease that the debts of the corporation be paid or reduced. [Acts 1915, p. 262.]

Art. 6303. [6465-6] Statement to stockholders.—At the regular annual meeting of the stockholders, the president and directors shall exhibit a full, distinct and accurate statement of the affairs of the corporation to the stockholders. Such president and directors shall furnish similar statements at any special meeting of stockholders when they may require the same. [Acts 1876, p. 145; G. L. Vol. 8, p. 981.]

Art. 6304. [6467] [4408] [4152] Loans and interest.—At any regular annual meeting of stockholders, or at a special meeting called for the purpose, the stockholders may, by a majority in value of all the stock of such corporation, determine the amount of loans which may be negotiated by such company for the construction of its railway and its equipment, and fix the rate of interest which may be paid, and provide for the security of such loans. [Id.]

Art. 6305. [6468] [4409] [4153] Removal of officers.—The stockholders may, by a two-thirds vote in value of all the stock, at any regular or special meeting of the stockholders, remove the president or any director or other officer of such corporation, and elect others instead in accordance with the by-laws of such corporation and this title. [Id.]

Art. 6306. [6469] [4410] [4154] Issuance of stock.—No railroad corporation shall issue any stock except for money, labor or property actually received and applied to the purpose for which such corporation was organized; nor shall it issue any shares of stock in said company except at its par value and to actual subscribers who pay or become liable to pay the par value thereof. [Id. P. D. 4921.]

Art. 6307. [6470] [4411] [4155] Fictitious dividends void.—All fictitious dividends and other fictitious increase of the capital stock or indebtedness of any such corporation shall be void. [Id.]

Art. 6308. [6471] [4412] [4156] **Penalty.**—Every officer or director of a railroad company, who shall violate or consent to the violation of either of the two preceding articles, shall become personally liable to the stockholders and creditors of such company for the full par value of such illegal stock, or for the full amount of such fictitious dividends, increase of stock, or indebtedness. [P. D. 4921.]

CHAPTER FIVE.

MEETING OF DIRECTORS AND STOCKHOLDERS.

| | | | |
|-------------------------------------|---------|--------------------------------|---------|
| | Article | | Article |
| Annual meeting of directors..... | 6309 | Special meetings | 6313 |
| Annual meeting of stockholders..... | 6310 | Proxy dated | 6314 |
| Joint meetings | 6311 | What stock shall not vote..... | 6315 |
| Quorum | 6312 | | |

Art. 6309. [6472] [4413] [4157] **Annual meeting of directors.**—The directors of every railroad company shall hold one meeting annually at their office in this State, public notice of which shall be given at least thirty days before said meeting, said notice to be published in some daily newspaper published in this State. [Const. Art. 10, Sec. 3; Acts 1885, p. 67; G. L. Vol. 9, p. 687.]

Art. 6310. [6473] [4414] [4158] **Annual meeting of stockholders.**—The stockholders of every railroad corporation shall hold at least one meeting annually at the public office or place of business of such corporation in this State; and the board of directors shall cause public notice to be given of the time and place of such meeting for thirty days previously thereto as provided in the preceding article. [Acts 1876, p. 144; G. L. Vol. 8, p. 980.]

Art. 6311. [6474] [4415] [4159] **Joint meetings.**—Said annual meeting of the board of directors and of the stockholders may be called to meet and may be held at the same time and place, in which case one notice shall answer the purpose of both meetings; provided, it be so stated in such notice. [Id.]

Art. 6312. [6475] [4416] [4160] **Quorum.**—A majority of the directors of any railroad corporation shall constitute a quorum to transact business, and a majority in value of two-thirds of all the stock owned by such corporation shall constitute a quorum of the stockholders to transact business. [Id.]

Art. 6313. [6476-7-8] **Special meetings.**—A special meeting of the stockholders may be called at any time during the interval between the regular annual meetings of such stockholders by the directors, or by the stockholders owning not less than one-fourth of all the stock of such company. Notice of the time and place of such meeting shall be given for at least thirty days prior to the time fixed for such meeting, in the same manner as is required in the case of a regular annual meeting; and such notice shall specify the purpose or purposes for which the said special meeting is called; and no other business shall be transacted at such special meeting, except that specified in

such notice. If at any such special meeting so called a majority, in value, of the stockholders, equal to two-thirds of the stock of such corporation shall not be represented in person or by proxy, such meeting shall be adjourned from day to day, not exceeding three days without transaction of any business; and if within said three days two-thirds in value of such stock shall not be represented at such meeting, then the meeting shall be adjourned and another meeting called, and notice thereof given as heretofore provided. [Id.]

Art. 6314. [6479] [4420] [4164] **Proxy dated.**—Every proxy from a stockholder shall be dated within six months previous to the meeting of the stockholders at which it is proposed to vote by virtue thereof, and if not dated within such time, shall not be voted. [P. D. 4908.]

Art. 6315. [6480] [4421] [4165] **What stock shall not vote.**—Stock issued within thirty days before any stockholders meeting shall not entitle the holder to vote thereat except at the first stockholders meeting under their articles or act of incorporation for organization; nor shall any stock be voted upon except in proportion to the amount paid thereon, or secured to be paid by good security in addition to the subscription and stock.

CHAPTER SIX.

RIGHT OF WAY.

| Article | Article |
|-------------------------------------|-----------------------------------|
| Right to construct | Navigable waters |
| Right of way over public lands..... | Streets, etc. |
| Lineal survey | Other cases |
| Width of road | May cross other railways..... |
| Streams of water | Intersections..... |
| Crossings | May take material |
| Where made | Value and damages to be paid..... |
| Thirty days for completion..... | When corporation and owner dis- |
| Distance from place | agree |
| Failure, etc. | Entry only for survey |
| Intersections | Practice in case specified..... |
| Crossings of public roads..... | Right of way construed |
| Culverts or sluices | Right of way reserved..... |

Art. 6316. [6481] [4422] [4166] **Right to construct.**—Any railroad corporation shall have the right to construct and operate a railroad between any points within this State, and to connect at the State line with railroads of other States. [Const. Art. 10, Sec. 1.]

Art. 6317. [6482] [4423] [4167] **Right of way over public lands.**—Every such corporation shall have the right of way for its line of road through and over any lands belonging to this State, and to use any earth, timber, stone or other material upon any such land necessary to the construction and operation of its road through or over said land.

Art. 6318. [6483] [4424] [4168] **Lineal survey.**—Every railroad corporation shall have the right to cause such examination and survey for its proposed railway to be made as may be necessary to the selection of the most advantageous route, and for such purpose may enter upon the lands or waters of any person or corporation, but subject to responsibility for all dam-

ages that may be occasioned thereby. [Acts 1876, p. 147; G. L. Vol. 8, p. 983.]

Art. 6319. [6484] [4425] [4169] **Width of road.**—Such corporation shall have the right to lay out its road not exceeding two hundred feet in width, and to construct the same; and for the purpose of cuttings and embankments to take as much more land as may be necessary for the proper construction and security of its railway, and to cut down any standing trees that may be in danger of falling upon or obstructing the railway, making compensation as provided by law. [Id.]

Art. 6320. [6485] [4426] [4170] **Streams of water.**—Such corporation shall have the right to construct its road across, along, or upon any stream of water, water course, street, highway, plank road, turnpike, or canal when the route of said railway shall intersect or touch; but such corporation shall restore the stream, water course, street, highway, plank road, turnpike, or canal thus intersected or touched, to its former state, or to such state as not to unnecessarily impair its usefulness, and shall keep such crossing in repair.

Art. 6321. [6486-87] **Crossings.**—All railway corporations in this State, which have or may fence their right of way, may be required to make openings or crossings through their fence and over their roadbed along their right of way every one and one-half miles thereof. If such fence shall divide any inclosure, at least one opening shall be made in said fence within such inclosure. Such crossings shall not be less than thirty feet in width, and shall be made and kept in such condition as to admit of the free and easy passage of vehicles and domesticated animals. [Acts 1887, p. 39; G. L. Vol. 9, p. 837.]

Art. 6322. [6488-89] **Where made.**—Such crossings shall be made at such times and places as may be demanded by any two or more citizens of the State who either live or own land within five miles of the place where such crossings may be demanded. Such demand shall be made in writing, of the nearest local agent of such railway company to the place where such crossing or crossings are demanded, and shall state when and where such crossing is desired. [Id.]

Art. 6323. [6490] [4431] **Thirty days for completion.**—No railway company shall be required to complete such crossing as may be demanded under this chapter in a shorter time than thirty days from the day on which such demand is first made, nor shall they be required to make any crossings where they have already left such crossings, in each one and one-half miles of their road, except inside of inclosures, as provided in Article 6321. [Id.]

Art. 6324. [6491] [4432] **Distance from place.**—Any railway company, upon such demand, shall be deemed to have complied therewith upon making such crossings within four hundred yards of the place where they are demanded, within the time herein allowed. [Id.]

Art. 6325. [6492] [4433] **Failure, etc.**—Whenever any

railroad company shall fail or refuse to comply with the requirements of this chapter, after demand is made in accordance therewith, such railway company shall pay to each person who made such demand the sum of five hundred dollars for each month they shall so fail or refuse to comply with such demand, the same to be recovered by suit. [Id.]

Art. 6326. [6493] [4434] **Intersections.**—Nothing in this chapter shall be construed to affect the law requiring railroad companies to provide proper crossings at intersection of all roads and streets. [Id.]

Art. 6327. [367-6494] **Crossings of public roads.**—Every railroad company in this State shall place and keep that portion of its roadbed and right of way, over or across which any public county road may run, in proper condition for the use of the traveling public, and in case of its failure to do so for thirty days after written notice given to the section boss of the section where such work or repairs are needed by the overseer of such public road, it shall be liable to a penalty of ten dollars for each week such railroad company may fail or neglect to comply with the requirements of this article. Such penalty shall go to the road and bridge fund of the county in which the suit is brought; and the county attorney, upon the making of an affidavit of the facts by any person, shall at once institute against the company violating any provision of this article suit in the proper court to recover such penalty or penalties, and his wilful failure or refusal to do so shall be sufficient cause for his removal from office, unless it is evident that such suit could not have been maintained. The proceedings under this article shall be conducted in the same manner as civil suits. The county attorney attending to such suits shall be entitled to a fee in each case of ten dollars, to be taxed as costs; provided, that when two or more penalties are sought to be recovered in the same suit, but one such fee shall be allowed. Such suits shall be conducted in the name of the county, and if the county be cast in the suit no costs shall be charged against it. [Acts 1885, p. 45; G. L. Vol. 9, p. 665.]

Art. 6328. [6495] [4436] [4171] **Culverts or sluices.**—In no case shall any railroad company construct a roadbed without first constructing the necessary culverts or sluices as the natural lay of the land requires, for the necessary draining thereof. [Acts 1876, p. 147; G. L. Vol. 8, p. 983.]

Art. 6329. [6496] [4437] [4172] **Navigable waters.**—This chapter shall not be construed to authorize the erection of any bridge or any other obstruction across or over any stream or water navigable by steamboats or sail vessels at the place where any bridge or other obstruction may be proposed to be placed so as to prevent the navigation of such stream or water. [Id.]

Art. 6330. [6497] [4438] [4173] **Streets, etc.**—This chapter shall not be construed to authorize the construction of any railroad upon or across any street, alley, square or highway of

any incorporated city or town without assent of the governing body of said city or town. [Id.]

Art. 6331. [6498] [4439] [4174] **Other cases.**—In case of the construction of any railway along the highways, plank roads, turnpikes, or canals, such railroad corporation shall either first obtain the consent of the lawful authorities having control or jurisdiction of the same or condemn the same under the provisions of law. [Id.]

Art. 6332. [6499] [4440] [4175] **May cross other railways.**—Such corporation shall have the right to cross, intersect, join and unite its railway with any other railway before constructed at any point on its route and upon the grounds of such other railway corporation, with the necessary turnouts, sidings and switches, and other conveniences in furtherance of the objects of its connection. [Id.]

Art. 6333. [6500-01] **Intersections.** — Every corporation whose railway is or shall be intersected by any new railway shall unite with the corporation owning such railway in forming intersections and connections and grant to such new railway facilities therefor. If the corporations cannot agree upon the amount of compensation for any such crossings, intersection or connection, or the points and manner of the same, their differences shall be adjusted in the manner provided by law. [Id.]

Art. 6334. [6502] [4443] [4178] **May take material.**—Any railroad corporation may enter upon and take from any land adjacent to its road, earth, gravel, stone or other materials, except fuel and wood, necessary for the construction of its railway, paying, if the owner of such land and the corporation can agree thereto, the value of such material taken and the amount of damages occasioned to any such land or appurtenances, and, if such owner and corporation cannot agree, then the value of such material and the damages occasioned to such real estate may be ascertained, determined and paid in the manner provided by law. [Id.]

Art. 6335. [6503] [4444] [4179] **Value and damages to be paid.**—The value of such material and the damages to such real estate shall in all cases be ascertained, determined and paid before such corporation can enter upon and take such material. [Id.]

Art. 6336 [6504] [4445] [4180] **When corporation and owner disagree.**—If any railroad corporation shall at any time be unable to agree with the owner for the purchase of any real estate, or material thereon, required for the purpose of its incorporation or the transaction of its business, for its depots, station buildings, machine and repair shops, for the construction of reservoirs for the water supply, or for the right of way, or for a new or additional right of way, for change, or relocation or road bed, to shorten the line, or any part thereof, or to reduce its grades, or any of them, or for double tracking its railroad or constructing and operating its tracks, which is hereby authorized and permitted, or for any other lawful purpose con-

nected with or necessary to the building, operating or running its road, such corporation may acquire such property by condemnation thereof. The limitation in width prescribed by Article 6319 shall not apply to real estate or any interest therein, required for the purposes herein mentioned, other than right of way, and shall not apply to right of way when necessary for double tracking or constructing or adding additional railroad tracks, and real estate, or any interest therein, to be acquired for such other purposes, or any of them, need not adjoin or abut on the right way, and no change of the line through any city or town, or which shall result in the abandonment of any station or depot, shall be made, except upon written order of the Railroad Commission of Texas, authorizing such change. No railroad corporation shall have the right under this law to condemn any land for the purposes mentioned in this article situated more than two miles from the right of way of such railroad corporation. [Id. Acts 1901, p. 46; Acts 1919, p. 280.]

Art. 6337. [6505] [4446] [4181] **Entry only for survey.**—No railroad company shall enter upon, except for a lineal survey, any real estate whatever, the same being private property, for the purpose of taking and condemning the same, or any material thereon, for any purpose whatever, until the said company shall agree with and pay the owner thereof all damages that may be caused to the lands and property of said owner by the condemnation of said real estate and property, and by the construction of such road. [P. D. 4922.]

Art. 6338. [6531] [4472] **Practice in case specified.**—When any railroad company is sued for any property occupied by it for railroad purposes, or for damages thereto, the court in which such suit is pending may determine all matters in dispute between the parties, including the condemnation of the property, upon petition or cross bill, asking such remedy by defendant, but the plea for condemnation shall be an admission of the plaintiff's title to such property. [Acts 1889, p. 18; G. L. Vol. 9, p. 1046.]

Art. 6339. [6532] [4473] [4206] **Right of way construed.**—The right of way secured by condemnation to any railway company in this State shall not be construed to include the fee simple estate in lands, either public or private, nor shall the same be lost by forfeiture or expiration of the charter, but shall remain subject to an extension of the charter or the grant of a new charter over the same way without a new condemnation. [Acts 1861, p. 12; G. L. Vol. 5, p. 348.]

Art. 6340. [6533] [4474] [4207] **Right of way reserved.**—The right of way is hereby reserved to any railroad company incorporated by the laws of this State, to the extent of one hundred feet on each side of said road, or roads that cross over or extend through any lands granted, or that may be granted to any railroad company by the Legislature, with the right to take from the lands so granted such stone, timber and earth as such road may need in the construction of its line of road.

CHAPTER SEVEN.

OTHER RIGHTS OF RAILROAD CORPORATIONS.

| | Article | | Article |
|--|---------|---|---------|
| Some rights | 6341 | Terminus on coast destroyed | 6348 |
| Shall alienate lands, etc..... | 6342 | Abandonment, change, or relocation of line | 6349 |
| Apply to all companies..... | 6343 | Change in city | 6350 |
| Right to erect buildings, etc..... | 6344 | Eminent domain | 6351 |
| Right to borrow money, issue bonds, etc. | 6345 | Certain changes validated | 6352 |
| Mortgage by resolution..... | 6346 | Hearing of application | 6353 |
| May pay bonds with stock..... | 6347 | | |

Art. 6341. [6535-6-7-8-41-43] **Some rights.**—Railroad corporations shall have the following other rights:

1. To have succession, and in their corporate name may sue and be sued, plead and be impleaded.
2. To have and use a seal, which it may alter at pleasure.
3. To receive and convey persons and property on its railway by the power and force of steam, or by any mechanical power.
4. To regulate the time and manner in which passengers and property shall be transported, and the compensation to be paid therefor, subject to the provisions of law.
5. Of eminent domain for the purposes prescribed in this title.
6. To purchase, hold and use all such real estate and other property as may be necessary for the construction and use of its railway, stations and other accommodations necessary to accomplish the objects of its incorporation, and to convey the same when no longer required for the use of such railway.
7. To take, hold and use such voluntary grants of real estate and other property as shall be made to it in aid of the construction and use of its railway, and to convey the same when no longer required for the uses of such railway, in any manner not incompatible with the terms of the original grant. [Acts 1876, p. 142; G. L. Vol. 8, p. 978.]

Art. 6342. [6539] [4480] **Shall alienate lands, etc.**—All lands acquired by railroad companies under the provisions of this chapter, or any general laws, shall be alienated by said companies, one-half in six years and one-half in twelve years, from the issuance of patents to the same, and all lands so acquired by railroad companies, and not alienated as herein required, shall be forfeited to the State and become a part of the public domain and liable to location and survey as other unappropriated lands. All lands purchased by or donated to a railroad corporation, except such as are used for depot purposes, reservation for the establishment of machine shops, turnouts and switches, shall be alienated and disposed of by said company in the same manner and time as is required when lands have been received from the State. [Id.]

Art. 6343. [6540] [4481] [4214] **Apply to all companies.**—The two preceding articles shall apply to such corporations as are prohibited by their acts of incorporation from purchasing or receiving donations of land, as well as those corporations that are not so prohibited. [Id.]

Art. 6344. [6542] [4483] [4216] **Right to erect buildings, etc.**—Such corporation shall have the right to erect and maintain all necessary and convenient buildings and stations, fixtures and machinery for the accommodation and use of passengers, freights and business interests, or which may be necessary for the construction or operation of its railway; but no railway company shall have the power, either by its own employes or other persons, to construct any buildings along the line of their railroad to be occupied by their employes or others except at their respective depot stations and section houses, and at such places shall construct only such buildings as may be necessary for the transaction of their legitimate business operations, and for shelter of their employes, nor shall they use, occupy or cultivate any part of the right of way over which their respective roads may pass, with the exception aforesaid, for any other purpose than the construction and keeping in repair their respective railways. [Id.]

Art. 6345. [6544] [4486] [4219] **Right to borrow money, issue bonds, etc.**—Such corporation shall have the right, from time to time, to borrow such sums of money as may be necessary for constructing, completing, improving or operating its railway, and to issue and dispose of its bonds for any amount so borrowed, and to mortgage its corporate property and franchise to secure the payment of any debt contracted by such corporation for the purposes aforesaid, subject, however, to other provisions of law. [Id.]

Art. 6346. [6645-6] **Mortgage by resolution.**—No mortgage by such corporation shall be valid, unless authorized by a resolution adopted by a vote of two-thirds of all the stock of such company, after notice in the manner provided in this title for increasing the capital stock of such corporation. When any such resolution has been so adopted it shall be recorded in the office of the Secretary of State, and no such resolution shall take effect until so recorded. [Id.]

Art. 6347. [6547] [4489] [4222] **May pay bonds with stock.**—The directors shall be empowered, in pursuance of any such resolution, to confer on any holder of any bond for money so borrowed as aforesaid, the right to convert the principal of such bond into the stock of such corporation at any time not exceeding ten years after the date of such bond, under such regulations as the by-laws of such corporation may provide. [Id.]

Art. 6348. [6548] [4490] **Terminus on coast destroyed.**—Any railway company in this State having a terminus on the coast, the said terminus being a county site, and the same having been destroyed by storms and cyclones, and when said county site has been removed back from the coast near the line of said railway, it shall be lawful for said railway to remove and take up its track from its original terminus on the coast to a point opposite or near said new county site; provided, said railway company make its terminus at and build its road to said new county site. [Acts 1887, p. 6; G. L. Vol. 9, p. 804.]

Art. 6349. Abandonment, change, or relocation of line.—When any railroad in this State whether incorporated under State or Federal charter desires to abandon, change or relocate any portion of its line of railroad within this State adjacent to but not within an incorporated city of fifty thousand or more inhabitants according to the preceding Federal census, it shall present a petition therefor to the Railroad Commission of Texas showing that portion of its line sought to be changed, relocated or abandoned and the situation of the new relocated line, with the reasons justifying the same; thereupon said Commission shall set down said application for hearing and give public notice thereof of not less than ten days in the locality where such change is desired by publishing notice in a newspaper of general circulation published nearest thereto, setting out substantially what such contemplated change may be; and if after such hearing said Commission shall be of the opinion that it is to the public interest to permit such change, relocation or abandonment of said line, it shall enter its order approving same and thereupon said railroad corporation or receivers of any railroad shall be empowered to make such change, relocation or abandonment; provided that nothing contained herein shall be construed to authorize said Commission to permit any railroad corporation or receivers of any railroad to abandon such substantial part of its line as shall amount to impairment of its charter contract or deprive any city or town of railroad facilities. Provided, said Commission shall not exercise the power herein granted unless and until said railroad corporation or receivers of any railroad shall have obtained the permission of the commissioners court of the county for such change, relocation or abandonment, which permission shall be evidenced by the duly authenticated order of such court which shall accompany the petition of such railroad corporation or receivers of any railroad to said Commission. [Acts 4th C. S. 1918, p. 45.]

Art. 6350. Change in city.—When any railroad corporation or receiver of any railroad in the State desires to change, relocate or abandon any part of its line within any city containing fifty thousand or more inhabitants, according to the preceding Federal census, it shall present its petition therefor to the governing body of such city, said petition to be also supported by the names of not less than five hundred resident citizens who shall be property owners in said city, showing the reasons therefor, the part of the line sought to be changed, relocated or abandoned, and the new location or arrangements proposed for operation; whereupon such governing body if of the opinion that the same is for the public interest, shall enter its order permitting such change, relocation or abandonment of said line. Thereupon the said railroad corporation or receivers of any railroad shall present its petition to the Railroad Commission of Texas praying for authority to make such change, relocation or abandonment, with a description of that portion of its lines;

providing that no change shall be made that will seriously affect the charter obligations of any railroad company sought to be changed, relocated or abandoned, together with a description of the changed or relocated line, or arrangement for the new operation, which petition shall be accompanied by the order of the governing legislative authority of the city as aforesaid approving same; whereupon said Commission shall set down such application for public hearing upon not less than ten days' notice, and if upon such hearing said Commission shall be of the opinion that the public interest will be conserved by the granting of such petition, it shall enter its order to that effect and thereupon such railroad corporation or receivers of any railroad shall have full power to make such change, relocation or abandonment of its line. No application to alter, change or relocate railway tracks, as contemplated by this article, shall be acted upon by the governing body of such city until thirty days after the petition of citizens provided for herein shall have been filed with said body and publication thereof has been made for two consecutive weeks in a newspaper of general circulation within the limits of said city, prior to action had thereon. [Id.]

Art. 6351. Eminent domain.—When any railroad corporation or receivers of any railroad shall have been empowered under the provisions of this law to change, relocate or abandon its line of railroad in this State, it shall have full power to acquire by condemnation or otherwise all lands for right of way, depot grounds, shops, roundhouses, water supply sites, sidings, switches, spurs or any other lawful purposes connected with or necessary to the building, operating or running of its road as changed, relocated or abandoned; provided, however, that all property so acquired is hereby declared to be for and is charged with public use so far as the same may be necessary. [Id.]

Art. 6352. Certain changes validated.—All changes, relocations and abandonments of parts of their lines by railroad corporations or receivers of any railroad in or adjacent to any city having a population according to the preceding Federal census of fifty thousand inhabitants or over, heretofore made with the permission of the Railroad Commission of Texas and authorized by its written order, are hereby validated and made legal as fully as if made hereunder, and such permission or written order of the said Commission, given prior hereto, shall be full power and authority to a railroad corporation or receivers of any railroad to make such change, relocation or abandonment of parts of its line; providing that this law shall not affect any right or rights for damages that any person, firm or corporation may have, or may have had or shall have for damages caused by any such removal, change or abandonment. [Id.]

Art. 6353. Hearing of application.—Whenever the governing body of any city containing fifty thousand inhabitants or more shall present to the Railroad Commission of this State its application for any change or relocation of any tracks of any railroad corporation or receivers of any railroad in such way as to

better serve the public interest, said Commission shall set down such application for a hearing after giving ten days notice to such railroad corporation or receivers of any railroad, whose tracks are sought to be changed or relocated and after such a hearing may make its order directing such change or relocation if in the opinion of said Commission such change or relocation would be to the best interest of all parties concerned. No application to alter, change or relocate railway tracks, as contemplated by this article shall be determined upon by said governing body until thirty days after publication of the proposed change or relocation of said railway tracks shall have been made in the official newspaper of said city. [Id.]

CHAPTER EIGHT.

RESTRICTIONS, DUTIES AND LIABILITIES

| Article | Article | | |
|---|---------|--|------|
| Road to pass through county seat..... | 6354 | No risk assumed..... | 6388 |
| Shall survey twenty-five miles..... | 6355 | Provision for employes..... | 6389 |
| Subsequent mileage..... | 6356 | Sixteen hours..... | 6390 |
| Train regulations..... | 6357 | Penalties..... | 6391 |
| Action on abandonment..... | 6358 | Carrying mail..... | 6392 |
| Effect of preceding articles..... | 6359 | Freight depots..... | 6393 |
| Refusal to transport..... | 6360 | Storage..... | 6394 |
| Double-decked cars for animals..... | 6361 | Passenger depots..... | 6395 |
| Rates of freight; penalty..... | 6362 | Water closets..... | 6396 |
| Overcharge..... | 6363 | Separate closets..... | 6397 |
| Delivery on payment of charges..... | 6364 | Penalties..... | 6398 |
| Refusal to deliver freight..... | 6365 | Switch cars..... | 6399 |
| Confiscating or converting freight..... | 6366 | Cattle-guards..... | 6400 |
| Penalty..... | 6367 | Johnson grass and thistle..... | 6401 |
| Badge..... | 6368 | Killing stock..... | 6402 |
| Baggage..... | 6369 | Report of animals killed..... | 6403 |
| Signs at cross-roads..... | 6370 | Consolidation of railway corpora- tions..... | 6404 |
| Bell and whistle..... | 6371 | Map and profile of road..... | 6405 |
| Headlights..... | 6372 | Contract of connecting lines..... | 6406 |
| Switch lights..... | 6373 | Freight and passengers from con- necting lines..... | 6407 |
| Derailing switches on sidings..... | 6374 | What are connecting lines..... | 6408 |
| Penalty..... | 6375 | Terms, etc..... | 6409 |
| Using tracks to make or repair cars..... | 6376 | Water craft freight..... | 6410 |
| Forming passenger trains..... | 6377 | Penalty..... | 6411 |
| Brakes and brakemen..... | 6378 | Trustee for connecting lines..... | 6412 |
| Air brake inspection..... | 6379 | Refusal to interchange..... | 6413 |
| Full crew..... | 6380 | Service for express business..... | 6414 |
| Ash pans..... | 6381 | Ticket agent..... | 6415 |
| Brakes..... | 6382 | Passenger fare..... | 6416 |
| Improved couplers..... | 6383 | Separate coaches..... | 6417 |
| Drawbar of engine..... | 6384 | Failure to build and equip..... | 6418 |
| May refuse rolling stock..... | 6385 | Neglect to make annual report..... | 6419 |
| Rolling stock..... | 6386 | | |
| Penalty..... | 6387 | | |

Art. 6354. [6549] [4491] [4223] **Road to pass through county seat.**—No railroad hereafter constructed in this State shall pass within a distance of three miles of any county seat without passing through the same and establishing and maintaining a depot therein, unless prevented by natural obstacles, such as streams, hills or mountains; provided, such town or its citizens shall grant the right of way through its limits and sufficient ground for ordinary depot purposes. [Const. Art. 10, Sec. 9.]

Art. 6355. [6550] [4492] [4224] **Shall survey twenty-five miles.**—Every railroad company organized under this title shall make an actual survey of its route or line for a distance of twenty-five miles on its projected route, and shall designate the

depot grounds along said first twenty-five miles before the roadbed is begun. No railroad company shall change its route or depot grounds after the same have been so designated. [Acts 1876, p. 142; G. L. Vol. 8, p. 978.]

Art. 6356. [6551] [4493] [4225] **Subsequent mileage.**—Every such corporation shall, on completion of the first twenty-five miles of its roadbed, make a survey of the next twenty-five miles, and of each subsequent twenty-five miles as the preceding twenty-five miles shall be completed, and every subsequent twenty-five miles shall be controlled by the provisions applicable to the first twenty-five miles of the road. [Id.]

Art. 6357. [6552] [4494] [4226] **Train regulations.**—Every such corporation shall start and run their cars for the transportation of passengers and property at regular times to be fixed by public notice, and shall furnish sufficient accommodation for the transportation of all such passengers and property, as shall, within a reasonable time previous thereto, offer or be offered for transportation at the place of starting and at junctions of other roads and at sidings and stopping places established for or receiving and discharging way passengers and freight and shall take, transport and discharge such passengers and property at, from and to such places, on the due payment of the tolls, freight or fare legally authorized therefor. Failure on the part of railroad companies to comply with the requirements of this article shall be deemed an abuse of their rights and privileges and such abuse shall at once be corrected and regulated by the Railroad Commission. No railroad corporation nor any manager or receiver of any railroad shall ever abandon operation of its trains over said railroad or any part thereof, and if any railroad corporation, manager or receiver has or may hereafter abandon operation of its trains over its said railroad, or part thereof, the Railroad Commission of Texas shall at once issue its order directing said railroad corporation, manager or receiver to at once resume operation of its trains over said road or part thereof, in accordance with the orders, rules and regulations of the said Commission. [P. D. 4893; Acts 1st C. S. 1903, p. 21; Acts 4th C. S. 1918, p. 189.]

Art. 6358. [6552] [4494] [4226] **Action on abandonment.**—If any railroad corporation, manager or receiver shall attempt to abandon any railroad, or part thereof, by failing to operate its trains or to resume operation of its trains over its said road, or part thereof, if the operation of trains has been abandoned, the Railroad Commission shall report the same to the Attorney General who shall at once file a suit in behalf of the State against said railroad corporation, manager or receiver in any district court of Travis County, or of any county through which said railroad may pass, for the purpose of determining whether or not said railroad corporation, manager or receiver has failed or refused to carry out the purpose of this law, and if the court shall determine that said corporation, manager or receiver has so failed or refused, said court shall

appoint a receiver for the purpose of operating said railroad and carrying out the purposes of this law. The said receiver shall have no connection directly or indirectly with said railroad corporation, manager or receiver prior to the time of his appointment, but shall be a good business man well qualified to perform the duties of said receiver.

Said receiver shall collect freight and passenger rates as prescribed by said Commission and shall do and perform any and all things necessary in the operation of said trains over said road and shall report to the said court at such times as the decree of the court may prescribe, all his acts as such receiver. [Id.]

Art. 6359. Effect of preceding articles.—This law shall be considered cumulative of all laws of this State now in force on this subject when not in conflict herewith, but when in conflict herewith, this law shall control; but the provisions hereof shall not apply to railroads to which the right of eminent domain is not granted under the laws of this State. [Id.]

Art. 6360. [6554] [4496] [4227] Refusal to transport.—In case of the refusal by such corporation or their agents so to take and transport any passengers or property, or to deliver the same, or either of them, at the regularly appointed time, such corporation shall pay to the party aggrieved all damages which shall be sustained thereby, with costs of suit; and in case of the transportation of property shall in addition pay to such party special damages at the rate of five per cent per month upon the value of the same at the time of shipment, for the negligent detention thereof beyond the time reasonably necessary for its transportation. In suits against such corporation under this law, the burden of proof shall be on such corporation to show that the delay was not negligent. [Acts 1887, p. 116; G. L. Vol. 9, p. 914.]

Art. 6361. [6555] Double-decked cars for animals.—All railroad companies operating any railroad, or any part thereof, within this State, are required to provide cars with double decks for the shipment of sheep, goats, hogs and calves; the said cars must be in every way as large as those now in use upon the respective roads of this State; the distance between the floor and the second deck shall be the same as the distance between the second deck and the roof; the floor of the second deck shall be so constructed as to protect the animals beneath; and said cars must be furnished by the railroad company to any person who shall offer to ship at one time, hogs, sheep, goats or calves, in carload lots. [Acts 1887, p. 57; Sen. Jour. 1895, p. 483; G. L. Vol. 9, p. 855.]

Art. 6362. [6556] Rates of freight; penalty.—It shall be unlawful for any railroad company to charge more for shipping a double-decked carload of sheep, goats, hogs or calves than is charged for shipping a carload of other cattle or horses the same distance, and in the same direction; and any railroad company that shall fail or refuse to furnish double-decked cars of

the dimensions prescribed in the preceding article to any person who may wish to ship as much as a double-decked carload of sheep, hogs, goats, or calves, or shall charge more for shipping a double-decked carload of sheep, hogs, goats or calves, than for shipping a carload of other cattle or horses for the the same distance and in the same direction, shall be liable to pay to the owner or shipper of said sheep, hogs, goats, or calves, the sum of five hundred dollars as liquidated damages; provided, that if any railroad companies shall transport sheep, hogs, goats, and calves, on single-decked cars at one-half the price per carload charged for shipping horses, or other cattle, then the penalties prescribed in this article for failure to provide double-decked cars shall be inoperative. [Id.]

Art. 6363. [6557] **Overcharge.**—It shall be unlawful for any railroad company in this State, its officers, agents or employes, to charge and collect or to endeavor to charge and collect from the owner, agent or consignee of any freight, goods, wares and merchandise, of any kind or character whatsoever, a greater sum for transporting said freight, goods, wares and merchandise than is specified in the bill of lading. [Acts 1899, p. 70.]

Art. 6364. [6558] **Delivery on payment of charges.**—Any railroad company, its officers, agents or employes, having possession of any goods, wares and merchandise, of any kind or character whatsoever, shall deliver the same to the owner, his agent or consignee, upon payment of the freight charges, as shown by the bill of lading. [Id.]

Art. 6365. [6559] **Refusal to deliver freight.**—If any railroad company, its officers, agents or employes shall refuse to deliver to the owner, agent or consignee, any freight, goods, wares and merchandise, of any kind or character whatsoever, upon the payment, or tender of payment, of the freight charges due as shown by the bill of lading, the said railroad company shall be liable in damages to the owner of said freight, goods, wares and merchandise, to an amount equal to the amount of freight charges, for every day said freight, goods, wares and merchandise is held after payment, or tender of payment, of the charges due as shown by the bill of lading. [Id.]

Art. 6366. **Confiscating or converting freight.**—No railroad company or receiver thereof, in this State shall confiscate, or otherwise convert to its own use, any carload shipment or substantial portion of any such carload shipment of any article or commodity of freight traffic received by it, or them, for transportation and delivery, without the express consent of the owner or consignee thereof, and the acts of the agents, officers and employes of such carrier or receiver within the apparent scope of their duties or authority with respect to such conversion or confiscation shall be deemed to be the acts of such railway company, receiver or other carrier. The provisions of this article shall not apply to conversion of freight where the same has been damaged or intermingled with other

freight in wrecks, nor to refused or unclaimed freight, the delivery of which the railroad is unable to effect. [Acts 1917, p. 386.]

Art. 6367. Penalty.—In addition to all other remedies or penalties that may be provided by law therefor, the violation of any provision of the preceding article shall subject the railway company, or receiver or other common carrier so offending to a penalty of not less than one hundred and twenty-five nor more than five hundred dollars in favor of the State of Texas, and a further penalty of twice the amount of the purchase price of the converted shipment in favor of the owner or consignee thereof. [Id]

Art. 6368. [6560-1] Badge.—Every conductor, baggage master, engineer, brakeman or other servant of such railroad corporation employed in a passenger train, or at its stations for passengers, shall wear upon his hat or cap a badge which shall indicate his office and the initial letters or the style of the corporation by which he is employed. No conductor or collector without such badge shall demand or be entitled to receive from any passenger any fare, toll ticket, or exercise any power of his office, and no other of the said officers or servants, without such badge, shall have any authority to meddle or interfere with the passengers, their baggage or property.

Art. 6369. [6562] [4505] [4230] Baggage.—A check shall be affixed to every package or parcel of baggage when taken for transportation by the agent or servant of such corporation, and a duplicate thereof given to the passenger or person delivering the same on his behalf; and, if such check be refused on demand, the corporation shall pay to such passenger the sum of ten dollars, to be recovered in an action of debt; and further, no fare or toll shall be collected or received from such passenger; and, if such passenger shall have paid his fare, the same shall be refunded by the conductor in charge of the train.

Art. 6370. [6563] [4506] [4231] Signs at cross-roads.—Such corporation shall erect at all points where its road shall cross any first or second class public road, at a sufficient elevation from such public road to admit of the free passage of vehicles of every kind, a sign with large and distinct letters placed thereon, to give notice of the proximity of the railroad and warn persons of the necessity of looking out for the cars; and any company neglecting or refusing to erect such signs shall be liable in damages for all injuries occurring to persons or property from such neglect or refusal. [P. D. 4890.]

Art. 6371. [6564] [4507] [4232] Bell and whistle.—A bell of at least thirty pounds weight and a steam whistle shall be placed on each locomotive engine, and the whistle shall be blown and the bell rung at a distance of at least eighty rods from the place where the railroad shall cross any public road or street, and such bell shall be kept ringing until it shall have crossed such public road, or stopped; and each locomotive engine approaching a place where two lines of railway cross each

other shall, before reaching such railway crossing be brought to a full stop; and the corporation operating such railway shall be liable for all damages which shall be sustained by any person by reason of any such neglect. The full stop at such crossings may be discontinued when the railroads crossing each other shall put into full operation at such crossing an interlocking switch and signal apparatus and shall keep a flagman in attendance at such crossing. [Acts 1883, p. 28; G. L. Vol. 9, p. 334; Acts 1893, p. 87; G. L. Vol. 10, p. 517.]

Art. 6372. [6565-6] **Headlights.**—Every railroad corporation or receiver or lessee thereof, operating any line of railroad in this State, shall equip all locomotive engines used in the transportation of trains over said railroad with electric or other headlights of not less than fifteen hundred candle power, measured without the aid of a reflector. This article shall not apply to locomotive engines regularly used in the switching of cars or trains. Any railroad company or the receiver or lessee thereof doing business in the State of Texas, which shall violate any provision of this article, shall be liable to the State of Texas for a penalty of not less than one hundred nor more than one thousand dollars for each offense. Such suit may be brought in the name of the State in Travis County or in any county in or through which such line of railroad may run, by the Attorney General, or by the county or district attorney in any county in or through which such line of railroad may be operated; and such suit shall be subject to the provisions of Article 6477. [Acts 1907, p. 54.]

Art. 6373. [6567] **Switch lights.**—Every railway corporation operating any line of railway in this State shall place and maintain good and sufficient switch lights on all their main line switches connected with the main line, and keep the same lighted from sunset until sunrise. This article shall not apply to railways which have all their locomotives equipped with electric headlights, nor on railroad lines or divisions on which no trains are regularly run or operated at night. [Acts 1905, p. 77.]

Art. 6374. [6568] **Derailing switches on sidings.**—Every railroad corporation operating any line of railway in Texas shall place and maintain good and safe derailing switches on all of their sidings connecting with the main line of such railway and upon which siding cars are left standing. No derailing switches shall be required where the siding connects with the main line on an upgrade in the direction of the main line of one half of one per cent or over, nor on inside tracks at terminal points where regular switching crews are employed. [Id.]

Art. 6375. [6569] **Penalty.** — Any railway corporation which shall wilfully violate any provision of the two preceding articles shall be liable to the State of Texas for a penalty of not less than one hundred nor more than one thousand dollars for each offense. Such penalty shall be recovered and suits there-

for be brought by the Attorney General, or under his direction, in the name of the State of Texas, in Travis County, or in any county through which such railway may run or be operated, and such suits shall be subject to the provisions of Article 6477. [Acts 1905, p. 77.]

Art. 6376. Using tracks to make or repair cars.—No firm, corporation or receiver operating any railroad, machine shop or other concern engaged in repairing or manufacturing cars within this State, shall use any tracks not equipped with derailing devices upon which to repair or manufacture cars; such derailing devices to be provided with private locks, to be kept locked at all times when tracks are in use. Nothing herein shall be construed to prohibit temporary repairs to cars on tracks other than where cars are regularly repaired or manufactured. Any firm, corporation or receiver operating any railroad, machine shop or other concern engaged in repairing or manufacturing cars in this State, who shall violate this law shall forfeit and pay a penalty to the State of Texas of not less than fifty nor more than two hundred dollars. Each day such violation shall exist shall be a separate offense. [Acts 1913, p. 334.]

Art. 6377. [6570] [4508] [4233] Forming passenger trains.—In forming a passenger train, baggage or freight, or merchandise, or lumber cars shall not be placed in rear of passenger cars; and if they or any of them shall be so placed and any accident happen to life or limb, the officer or agent who so directed or knowingly suffered such arrangement and the conductor and engineer of the train shall each be held guilty of intentionally causing the injury, and be punished accordingly. [P. D. 4896.]

Art. 6378. [6571] 4517] [4234] Brakes and brakemen.—Every such company shall have a good and sufficient brake upon the hindmost car on all trains transporting passengers and merchandise, and also keep stationed there at all times a trusty and faithful brakeman, under a penalty of not exceeding one hundred dollars for each offense, to be recovered by suit in the name of the State. [P. D. 4907.]

Art. 6379. Air brake inspection.—The air brakes and air brake attachment on each train in this State must be inspected by a competent inspector before such train leaves its division terminal. This article shall not apply to tram roads engaged in hauling logs to saw mills, nor to railroads under forty miles in length. Any corporation or receiver who operates or causes to be operated any such train without such inspection shall forfeit and pay to the State of Texas a penalty of not less than fifty nor more than one hundred dollars, to be recovered by suit. Each operation of any such train without such inspection first having been so made shall be a separate offense. [Acts 1911, p. 106.]

Art. 6380. [6572 to 76] Full crew.—No railroad company or receiver of any railroad company doing business in this State

shall run over its road, or part of its road, outside of the yard limits:

1. Any passenger train with less than a full passenger crew consisting of four persons: one engineer, one fireman, one conductor and one brakeman.

2. Any freight train, gravel train or construction train with less than a full crew consisting of five persons: one engineer, one fireman, one conductor and two brakemen.

3. Any light engine without a full train crew consisting of three persons: one engineer, one fireman and one conductor.

4. The provisions of this article shall not apply to nor include any railroad company or receiver thereof, of any line of railroad in this State, less than twenty miles in length; and nothing in subdivisions one and two hereof shall apply in case of disability of one or more of any train crew while out on the road between division terminals, or to switching crews in charge of yard engines, or which may be required to push trains out of the yard limits.

Any such company or receiver which shall violate any provision of this article shall be liable to this State for a penalty of not less than one hundred nor more than one thousand dollars for each offense. Suit for such penalty shall be brought in Travis County or in any county in or through which such line of railroad may run, by the Attorney General, or under his direction, or by the county or district attorney in any county in or through which such railroad may be operated. Such suits shall be subject to the provisions of Article 6477. [Acts 1909, p. 179.]

Art. 6381. [6577 to 6580] **Ash pans.**—No common carrier engaged in moving commerce in this State by railroad shall use in moving such commerce in this State any locomotive not equipped with an ash pan which can be dumped or emptied and cleaned without the necessity of any employe going under such locomotive. This article shall not apply to any locomotive upon which an ash pan is not necessary by reason of the use of oil, electricity or other such agency in such locomotive. Any such common carrier which shall violate the provisions of this article shall be liable to this State for a penalty of not less than one hundred nor more than one thousand dollars for each offense. Such penalty shall be recovered and suit brought in the name of this State in Travis County or in any county into or through which such carrier may be operating a line of railroad. Such suit may be brought by the Attorney General or under his direction, or by the county or district attorney in any such county. The same compensation shall be allowed the attorney bringing such suit as provided in Article 6477. "Common carrier" as used in this article shall include the receiver or other person or corporation charged with the duty of managing and operating the business of a common carrier. [Acts 1909, p. 67.]

Art. 6382. [6709] **Brakes.**—No railroad engaged in intra-

state commerce within this State shall use on its lines in moving intrastate traffic within said State any locomotive engine not equipped with a power driving wheel brake and appliances for operating the train brake system, or run any train in such traffic that has not sufficient number of cars in it so equipped with power or train brakes that the engineer on the locomotive drawing such train can control its speed without requiring brakemen to use the common hand brake for that purpose, nor run any train in such traffic that has not all of the power or train brakes in it used and operated by such engineer, nor run any train in such traffic that has not at least seventy-five per centum of the cars in it equipped with power or train brakes; and for the purpose of fully carrying into effect the objects of this and the five succeeding articles, the Commission may from time to time, after full hearing by public order, increase the minimum percentage of cars in any train which shall be equipped with power or train brakes; and after such minimum percentage has been so increased, it shall be unlawful for any common carrier to run any train in such traffic which does not comply with such increased minimum percentage. [Acts 1909, p. 64.]

Art. 6383. [6710] **Improved couplers.**—No common carrier engaged in commerce as aforesaid shall haul or permit to be hauled or used on its line of railroad within this State, any locomotive, tender, car or similar vehicle employed in moving intrastate traffic within this State which is not equipped with couplers, coupling automatically by impact, and which can be coupled and uncoupled without the necessity of men going between the ends of locomotives, tenders, cars and similar vehicles. [Id.]

Art. 6384. [6711] **Drawbar of engine.**—No common carrier engaged in commerce as aforesaid shall use in moving intrastate traffic within this State any locomotive, tender, car or similar vehicle, any drawbar of which, when measured perpendicularly from the level of the tops of the track rails upon which such locomotive, tender, car or similar vehicle is standing to the center of such drawbar more than thirty-four and one-half inches in height. [Id.]

Art. 6385. [6712] **May refuse rolling stock.**—When any person, firm, company, corporation or receiver engaged in commerce as aforesaid shall have equipped a sufficient number of its locomotives, tenders, cars and similar vehicles so as to comply with the provisions of this title, it may lawfully refuse to receive from connecting lines of road or shippers, any locomotives, tenders, cars, or similar vehicles not equipped with such power or train brakes as will work and readily interchange with the brakes in use on its own locomotives, tenders, cars and similar vehicles as required by law.

Art. 6386. [6713] **Rolling stock.**—No common carrier, engaged in commerce as aforesaid, shall use in moving intrastate traffic within this State any locomotive, tender, cars, or similar vehicle which is not provided with sufficient and secure grab irons, hand holds and foot stirrups. [Id.]

Art. 6387. [6714] **Penalty.**—Every such common carrier, whether a co-partnership, a corporation, a receiver or an individual or association of individuals, violating any of the provisions of the five preceding articles shall be liable to the State of Texas for a penalty of not less than two hundred nor more than one thousand dollars for each offense. Such penalty shall be recovered and suit brought in the name of the State of Texas, in Travis County, or in any county into or through which such line of railroad may run, by the Attorney General or under his direction, or by the County or district attorney in the county in which the suit is brought, and the attorney bringing such suit shall receive a fee of fifty dollars for each penalty recovered and collected by him, and ten per cent of the amount collected, to be paid by the State, and the fees and compensation so allowed shall not be accounted for under the general fee law.

Art. 6388. [6646] **No risk assumed.**—Any employe of any common carrier engaged in any intrastate commerce, as provided in the six preceding articles who may be injured or killed shall not be held to have assumed the risk of his employment, or to have been guilty of contributory negligence, if the violation by such common carrier of any provision of said articles contributed to the injury or death of such employe. [Id.]

Art. 6389. [6581-2-3] **Provision for employes.**—Every person, corporation, or receiver, engaged in constructing or repairing railroad cars, trucks or other railroad equipment, shall erect and maintain a building or shed at every station or other point where as many a five men are regularly employed on such repair work, the building or shed to cover a sufficient portion of its track so as to provide that all men regularly employed in the construction and repair of cars, trucks, or other railroad equipment shall be sheltered and protected from inclement weather. The provisions of this article shall not apply at points where less than five men are regularly employed in the repair service, nor at division terminals, nor other points where it is necessary to make light repairs only on cars, nor to cars loaded with time or perishable freight, nor to cars when trains are being held for the movement of said cars. Any person, corporation or receiver who shall violate any provision of this article shall pay to the State a penalty of not less than fifty nor more than one hundred dollars. Each ten days of such failure or refusal to so comply shall be considered a separate infraction authorizing the recovery of a separate penalty. Suit for recovery of penalty hereunder shall be brought by the Attorney General or by the county or district attorney of the county in which suit is brought, and the county or district attorney, as the case may be, shall receive a fee of ten per cent upon each penalty recovered and collected by him, and said fee shall be over and above the fees allowed under the general fee bill. [Acts 4th C. S. 1910, p. 123.]

Art. 6390. [6584] **Sixteen hours.**—It shall be unlawful for any railroad company, or receiver of any railroad company, operating any line of railroad in whole or in part in this State, or

any officer or agent of such railroad company or receiver to require or permit any conductor, engineer, fireman or brakeman to be or remain on duty for a longer period than sixteen consecutive hours; and whenever any such conductor, engineer, fireman or brakeman shall have been continuously on duty for sixteen hours, he shall be relieved and shall not be required or permitted again to go on duty until he has had at least ten consecutive hours off duty; and no such conductor, engineer, fireman or brakeman who has been on duty sixteen hours in the aggregate in any twenty-four hour period shall be required or permitted to continue or again go on duty without having had at least eight consecutive hours off duty. [Acts 1909, p. 180.]

Art. 6391. [6585] **Penalties.**—Any railroad company, or receiver of any railroad, operating a line of railroad in whole or in part in this State, or any officer or agent of such railroad or receiver who shall violate any provision of the preceding article shall be liable to a penalty to the State of not to exceed five hundred dollars for each violation. Suit for such penalty shall be brought in the name of the State in Travis County, or in any county into or through which such railroad may run, and may be brought either by the Attorney General, or under his direction, or by the county attorney or district attorney of any county or judicial district into or through which such railroad may pass, and such attorney bringing any such suit shall be entitled to one-third of any penalty recovered therein. In all prosecutions under this and the preceding article against any railroad company, or receiver of any railroad company, such company or receiver shall be deemed to have had knowledge of all acts of all of its officers and agents. The provisions of this and the preceding article shall not apply in any case of casualty or unavoidable accident, or the Act of God; nor where the delay was the result of a cause not known to the carrier or its officer or agent in charge of any conductor, engineer, fireman or brakeman at the time such conductor, engineer, fireman or brakeman left a terminal, and which act could not have been foreseen; nor to crews of wrecking or relief trains. [Id.]

Art. 6392. [6588] [4518] [4235] **Carrying mail.**—Every such corporation shall, when applied to by the Postmaster General, convey the mail of the United States on its road or roads; and in case such corporation shall not agree as to the rate of transportation therefor, and as to the time, rate of speed, manner and condition of conveying the same, the Governor shall appoint three commissioners, who, or a majority of them, after fifteen days written notice to the corporation of the time and place of meeting, shall determine and fix the prices, terms and conditions aforesaid; but such price shall not be less for conveying such mails in the regular passenger trains than the amount which such corporation would receive as freight on a like weight of merchandise transported in their merchandise trains and fair compensation for the post-office car; and if the Postmaster General shall require the mail to be carried at other hours, or at a

higher speed than the passenger train be run at, the corporation shall furnish an extra train for the mail, and be allowed an extra compensation for the expenses and wear and tear thereof and for the service, to be fixed as aforesaid. [P. D. 4903.]

Art. 6393. [6589] [4519] [4236] **Freight depots.**—Railroad companies shall erect at each depot, station, or place established by such company for the reception and delivery of freight, suitable buildings or inclosures to protect produce, goods, wares, and merchandise and freight of every description from damage by exposure to weather, stock or otherwise; in default of which such railroad company shall be liable to the owner of such produce, goods, wares or merchandise for the amount of damages or loss sustained by reason of such improper exposure, together with all costs and expenses of recovering the same, including necessary attorneys' fees. [P. D. 4923.]

Art. 6394. [6590] [4520] [4237] **Storage.**—Railroad companies shall in no case be allowed to charge storage upon freight received by them for delivery, unless the owner or consignee thereof neglect to remove it from the depot of the company within three days after notice of its reception; which notice may be given by posting the same on the depot door; and, after the expiration of such time, the company may remove and store said freight at the expense of the owner or consignee, and said freight shall be held liable for the freight and charges due thereon. [P. D. 4923.]

Art. 6395. [6591] [4521] [4238] **Passenger depots.**—Every railroad company doing business in this State shall keep its depots or passenger houses in this State lighted and warmed, and opened to the ingress and egress of all passengers who are entitled to go therein, for a time not less than one hour before the arrival and after the departure of all trains carrying passengers on such railroad; and every such railroad company, for each failure or refusal to comply with any provision of this article shall forfeit and pay to the State of Texas, the sum of fifty dollars, and shall be liable to the party injured for all damages by reason of such failure. [Acts 1891, p. 29; Sen. Jour. 1895, p. 483, No. 89; G. L. Vol. 10, p. 31.]

Art. 6396. [6592] **Water closets.**—All railroad and railway corporations operating a line of railway in this State for the transportation of passengers thereon are required to construct and maintain, and keep in a reasonably clean and sanitary condition, suitable and separate water closets or privies for both male and female persons at each passenger station on its line of railway, either within its passenger depot or in connection therewith, or within a reasonable and convenient distance therefrom, at such station for the accommodation of its passengers who are received and discharged from its cars thereat, and of its patrons and employes who have business with such railroads and corporations at such stations. [Acts 1905, p. 324; Acts 1909, p. 175.]

Art. 6397. [6593] **Separate closets.**—They shall keep said

water closets and depot grounds adjacent thereto well lighted at such hours in the night time as its passengers and patrons at such stations may have occasion to be at the same, either for the purpose of taking passage on its trains, or waiting for the arrival thereof, or after leaving the same for at least thirty minutes before the schedule time for the arrival of its train and after the arrival thereof at said station. [Id.]

Art. 6398. [6594] **Penalties.**—Any railroad or railway corporation which fails, neglects or refuses to comply with the provisions of the two preceding articles shall forfeit and pay to the State of Texas the sum of fifty dollars for each week it so fails and neglects. The county attorney of the county in which such station is located, and in case there is no such county attorney, then the attorney of the district including said county, shall, upon credible information furnished him, institute suits in the name of the State of Texas against such defaulting railroad or railway corporation for the recovery of said penalties; and, in case of said recovery, the said attorney shall be entitled to one-fourth the amount thereof as commission for his said services, and the remainder thereof shall be paid into the road and bridge fund of said county. The State shall in no event be liable for any costs in such suit. [Id.]

Art. 6399. [6595] [4522] [4239] **Switch cars.**—When a company constructs a switch on its road for the accommodation of freighters, they shall be bound to furnish a sufficient number of cars for the transportation of freight therefrom when requested to do so, and in default shall be subject to the same penalties as in other cases of neglect of the like character.

Art. 6400. [6596 to 6600] **Cattle-guards.**—Every railroad company whose railroad passes through a field or inclosure, shall place a good and sufficient cattle-guard or stop at the points of entering such field or inclosure, and keep them in good repair. If such field or inclosure shall be enlarged or extended, or the owner of any land over which a railway runs shall clear and open a field so as to embrace the track of a railway, such railroad company shall place good and sufficient cattle-guards or stops at the margins of such extended inclosures or fields or such new fields and keep the same in repair. Such cattle-guards or stops shall be so constructed and kept in repair as to protect such fields and inclosures from the depredations of stock of every description. If such company fails to construct and keep in repair such cattle-guards and stops, the owner of such inclosure or field may have such cattle-guards and stops placed at the proper places and kept in repair, and may recover the costs thereof from such railroad company, unless it be shown that said enlargement or extension was made capriciously and with intent to annoy and molest such company. If any company neglects to construct the proper cattle-guards and stops and keep the same in repair as required in this article, such company shall be liable to the party injured by such neglect for

all damages that may result from such neglect, to be recovered by suit. [Acts 1860, p. 64; G. L., Vol. 4, p. 1426; P. D. 4925.]

Art. 6401. [6601-2] **Johnson grass and thistle.**—If any railroad or railway company or corporation doing business in this State shall permit any Johnson grass or Russian thistle to mature or go to seed upon any right of way owned, leased or controlled by it, any person owning, leasing or controlling land contiguous to said right of way shall recover twenty-five dollars by suit from such company or corporation, and any additional sum as he may have been damaged by reason of said grass or said thistle being permitted to so mature or go to seed; provided that any person owning or controlling land contiguous to said right of way who permits any said grass or thistle to mature or go to seed upon said land shall have no right to such recovery. [Acts 1901, p. 283.]

Art. 6402. [6603] [4528] [4245] **Killing stock.**—Each railroad company shall be liable to the owner for the value of all stock killed or injured by the locomotives and cars of such railroad company in running over their respective railways. Such liability shall also exist in counties and subdivisions of counties which adopt the stock law prohibiting the running at large of horses, mules, jacks, jennets and cattle. If said company fence its road it shall only be liable for injury resulting from a want of ordinary care. [Acts 1905, p. 226; P. D. 4926.]

Art. 6403. **Report of animals killed.**—Whenever an animal is killed or found dead upon the railroad or right of way of any railroad company in this State, the section foreman of the railroad where said animal is killed or found dead, shall make a description of such animal, stating its kind, the marks and brands, color and apparent age, and any other description that may serve to identify said animal, which description must be made before said animal is buried or otherwise disposed of, and shall send same to the county clerk of the county in which said animal is found or killed within ten days from the date of finding or killing, which description shall be by said county clerk filed and kept of record in his office without exacting any fees from said section foreman for filing same. A certified copy of said report so filed may be introduced in evidence in any case wherein the killing, death or value of said animal is in question. [Acts 1915, p. 126.]

Art. 6404. [6604-5-6] **Consolidation of railroad corporations.**—“Railroad corporation,” or “other corporation,” as used in this article shall mean any corporation, company, person or association of persons, who own or control, manage or operate any line of railroad in this State. No railroad corporation or other corporation, or the lessees, purchasers or managers of any railroad corporation, shall consolidate the stocks, property, works or franchises of such corporation with, or lease or purchase the stocks, property, works or franchises of any railroad corporation owning or having under its control or management a competing or parallel line; nor shall any officer, agent, man-

ager, lessee or purchaser of such railroad corporation act or become an officer, agent, manager, lessee or purchaser of any other corporation in leasing or purchasing any parallel or competing line. No railroad company organized under the laws of this State shall consolidate, by private or judicial sale or otherwise, with any railroad company organized under the laws of any other State, or of the United States. [Acts 1887, p. 137; G. L. Vol. 9, p. 935; Const. Art 10, Sec. 6.]

Art. 6405. [6607] [4532] [4248] Map and profile of road.—Every such corporation shall, within a reasonable time after their road shall be located, cause to be made:

1. A map and profile thereof, and of the land taken or obtained for the use thereof, and file the same in the office of the Railroad Commission. Every such map shall be drawn on a scale and on paper to be designated by the Railroad Commission and certified and signed by the president of the corporation.

2. A certificate specifying the line upon which it is proposed to construct the railroad and the grades and curves, certified and signed and filed as aforesaid.

3. Any railroad company failing or refusing to comply with any provision of this article shall forfeit to the State of Texas any sum not less than five hundred nor more than one thousand dollars; and each day such railroad company fails or refuses to comply with the provisions of this law shall be a separate offense. [Acts 1893, p. 169; G. L. Vol. 10, p. 599.]

Art. 6406. [6675] [4579] Contract of connecting lines.—Any two connecting railroads may enter into a contract whereby any part or all the passengers, freight or cars, empty or loaded, hauled or transported by one and destined to points on or beyond the line of the other, shall be delivered to, received and transported by the other, which contract, however, shall be submitted to the Commission for examination and approval, and when so approved shall be binding, but if said contract be not approved by the Commission, the same shall be void. Any connecting line delivering freight to the owner or consignee of such freight may be sued by the owner thereof in the county where the freight is delivered for any damage that may be done to such freight in its transportation. [Acts 1891, p. 55; G. L. Vol. 10, p. 57.]

Art. 6407. [6608] [4535] [4251] Freight and passengers from connecting lines.—All railway companies doing business in this State shall be and they are hereby required to receive from all railway companies with which they may connect at the State line of this State, or at any place within this State, or at any or all places where they may cross the line of any other railway doing business, or operating a line of railway in this State, all freights and passengers coming to it from such connecting line, and destined to points on its line, or to points beyond its line or any other line of railway with which said line may connect or cross, and shall transport the same over its said line to destination, if on its line, or to the next connecting or cross line

in the direction of destination, if beyond its line, without delay or discrimination in favor of or against the line from which such freight or passengers are received, and upon the same terms and conditions with those made by such line for like or similar service against any other railway in or out of this State with which it does business; provided, however, that the words "without delay or discrimination," as used herein, are hereby declared to mean that the freight received for transportation as herein required shall be shipped in the order in which it is received, giving preference in all cases to live stock and other perishable freight in the order received; and the charges for the business required by this article to be interchanged shall be no greater pro rata per cent per mile for freight, and no greater rate per mile for passengers and baggage, than is charged to any other line for transporting like freight and passengers and baggage, or than it accepts for itself when transported wholly on its own line, no matter on what part the line or in what direction the transporting is done. [Acts 1887, p. 110; G. L. Vol. 9, p. 908.]

Art. 6408. [6609] [4536] [4252] What are connecting lines.—Whenever any two or more railroads doing business in this State shall connect with each other by crossing each other's tracks or otherwise so as to form a continuous or connected line from one point in the State to another point in this State, such lines so crossing are hereby declared to be connecting lines; and when such connecting lines receive from any other railway or transportation line passengers or freight for transportation over the combined line at a rate or division agreed upon between themselves and such other railway or transportation line from which the business is received as aforesaid, then, in every such case, it shall be the duty of such connecting railways forming such through line, and of either or both of them, to receive from every other railway or transportation line with which they or either of them may connect by crossing of track or otherwise, all passengers or freight that may be destined to points on either of the lines making up such combined line, and transport the same to the point of destination, if on such combined lines, or either of them, or to the next connection or crossing in the direction of the destination of such freight or passengers, without delay or discrimination, and at no greater rate than is paid, and on the same conditions as is or shall be required by such combined line for like or similar services from any other railway or transportation line with which they or either of them shall interchange business. [Id.]

Art. 6409. [6610] [4537] [4253] Terms, etc.—Every railroad, or person, or corporation, operating a railway for the carriage of freight and passengers in this State shall receive freight, passengers and baggage for transportation to or into this State, or through any part thereof, from every other connecting railway, upon the same terms and conditions as to the division of charges for carrying or transporting the same upon a mileage, or any other basis, and upon terms and conditions as

to bills of lading, way bills, tickets, coupon tickets and baggage checks, that any such person or corporation or transportation line may receive or contract to receive from any other person or corporation engaged in like business in this State; and, where railroads within this State receive goods for transportation into their warehouses or depots, they shall forward them in the order in which they are received, the first received to be the first forwarded, without giving the preference to one over another; and in case of failure to do so they shall be liable for all loss occurring while the goods remain, and for all damage occasioned or in anywise resulting from delay; provided that the trip or voyage shall be considered as having commenced from the time of the signing of bill of lading, and as having ended upon the arrival of freight at point of destination, and written notices served upon the consignee that it is ready for delivery upon payment of freight and charges. If the consignee of the goods fails to receive them promptly after such notice is served, the liability of the railroads thereafter shall be the same as that of warehousemen. [Acts 1885, p. 67; G. L. Vol. 9, p. 687.]

Art. 6410. [6611] **Water craft freight.**—Each railway company doing business in this State shall be required to receive from all steamships, steamboats and other water craft and vessels, at their usual places for receiving such freights at the several ports on the coast of Texas, and on the inland waterways in this State, all freights and passengers coming to it from such steamships, steamboats and other water craft and vessels, and destined to points on its line or to points beyond its line, or any other line of railway with which said line may connect or cross, and shall transport the same over its said line to destination, if on its line, or to the connecting or cross line in the direction of destination, if beyond its line, without delay or discrimination in favor of or against such steamship line, steamboat owner or company, or the owner of any other water craft or other vessels from whom such freight or passengers are received, and upon the same terms and conditions with those made by such railway company for like or similar service with any other person, steamboat company, steamship company or owners, or any other water craft or vessel, with which it does business at such points or stations as aforesaid. [Acts 1899, p. 101.]

Art. 6411. [6612-13] **Penalty.**—If any railroad company doing business in this State shall fail or refuse to interchange business with any steamship line or company or with any steamboat line or company, or any other water craft or vessel on the same terms and conditions, or for the same compensation or pro rata that it interchanges business with any other steamship line or company, steamboat line or company, or any other water craft or vessel, it shall be deemed guilty of discrimination within the meaning of this chapter; and shall, for every such offense, forfeit and pay to the State of Texas a penalty of not less than five hundred nor more than five thousand dollars, to be collected in

the manner and in the courts as prescribed for the collection of other penalties in Article 6477, and in addition thereto shall forfeit and pay to the corporation, person or persons aggrieved thereby, the sum of one thousand dollars as penal damages for each act of discrimination or violation of this law which may be recovered in the name of the corporation, person or persons so suing. Nothing in this article shall be so construed as to prevent the recovery of any damages by an aggrieved person, firm, or corporation accruing by reason of the violation of this article. This and the preceding article shall not have the effect to relieve or waive any right of action by the State, or any other person, firm or corporation for any right, penalty or forfeiture which has arisen, or may arise, under any law of this State. All penalties accruing under said articles shall be cumulative of each other, and a suit for or recovery of one shall not be a bar to the recovery of any other penalty. [Id.]

Art. 6412. [6414] [4538] [4254] Trustee for connecting lines.—Every railway which may interchange business with any other connecting railway under the provisions of this chapter, or otherwise, is hereby declared to be a trustee for such connecting railway to the extent of all sums of money received by it for the joint business interchanged between them, and which may properly belong to such other railway. Such sums of money shall be due and payable from one connecting line to the other once every ninety days; and each connecting railway shall have a lien upon the property and franchises of the connecting railways to the extent of the balance due each quarter, which lien shall be superior to all other liens upon said property and franchises, save and except laborers liens as already provided by law, and may be enforced in any court of this State having jurisdiction by law of the subject matter and the parties. [Acts 1887, p. 110; G. L. Vol. 9, p. 908.]

Art. 6413. [6615] [4539] [4255] Refusal to interchange.—If any railway company doing business in this State shall fail or refuse to interchange business with any other railway company, or shall fail or refuse to interchange business on the same terms or for the same pro rata that it interchanges business with any other railway company in this State, or shall fail or refuse to honor or receive the tickets, coupon tickets, way bills or baggage checks of any connecting railway upon the same terms and conditions that it receives or honors the tickets, coupon tickets, way bills, or baggage checks of any other railway company, or shall violate in any manner any other provision of this and the three preceding articles, such railway company shall be deemed guilty of discrimination within the meaning of this title, and shall forfeit and pay to the person or corporation aggrieved thereby the sum of one thousand dollars as penal damages for each act of discrimination or violation of this law, which may be recovered in the name of the person or corporation so suing. Nothing in this article shall be so construed as to prevent the recovery of any other damages by any

aggrieved person, firm or corporation, occurring by reason of the violation of this or the three preceding articles. [Acts 1887, p. 112; G. L. Vol. 9, p. 910.]

Art. 6414. [6616-17] Service for express business.—Every railroad company operating a railroad within this State shall furnish reasonable and equal facilities and accommodations, and upon reasonable and equal rates, to all corporations and persons engaged in the the express business, for the transportation of themselves, agents, servants, merchandise and other property, and for the use of their cars, depots, buildings and grounds and for exchanges at points of junction with other roads. Any railroad company which shall fail to comply with the provisions hereof shall be liable to the aggrieved party, in an action for damages; and such railway company, in addition to liability to said action for damages, shall be subject to a writ of mandamus, to be issued by any court of competent jurisdiction, to compel compliance with the provisions of this article. The said writ of mandamus shall issue at the instance of any party or corporation aggrieved by a violation hereof, and any violation of said writ shall be punishable as a contempt. [Id.]

Art. 6415. [6637-38] Ticket agent.—Each railroad company doing business in this State, or the receiver of any such railroad company, through their duly authorized officers, shall provide each agent who may be authorized to sell tickets, or other evidences, entitling the holder to travel upon any such railroad, with a certificate setting forth the authority of such agent to make such sale. Such certificate shall be duly attested by the corporate seal of such railroad company, or the signature of the receiver, if any there be, of such railroad company, or by the signature of the officer whose name is signed upon the tickets or coupons which such agent may be authorized to sell. Each such ticket agent shall keep said certificate posted in a conspicuous place in his office, and upon demand shall exhibit it to any person desiring to purchase a ticket, or to any officer of the law. [Acts 1893, p. 97; Acts 1903, p. 162; G. L. Vol. 10, p. 527.]

Art. 6416. [6618] [4542] Passenger fare.—The passenger fare upon all railroads in this State shall be three cents per mile, with an allowance of baggage to each passenger not to exceed one hundred pounds in weight; provided, however, that, where the fare is paid to the conductor, the rate shall be four cents per mile, except from stations where no tickets are sold, and that the minimum charges in no case shall be less than twenty-five cents; and provided, further that when the passenger fare does not end in five or naught, the nearest sum so ending shall be the fare; provided, that in no case shall children under ten years of age be charged a higher rate of fare than two cents per mile. Railroads shall be required to keep their ticket offices open for half an hour prior to the departure of trains, and upon failure to do so they shall not charge more than three cents per mile. [Acts 1883, p. 70; G. L. Vol. 9, p. 376.]

Art. 6417. [6746 to 6753] Separate coaches.—

1. Every railway company, street car company, and interurban railway company, lessee, manager, or receiver thereof, doing business in this State as a common carrier of passengers for hire, shall provide separate coaches or compartments, as hereinafter provided, for the accommodation of white and negro passengers, which separate coaches or compartments shall be equal in all points of comfort and convenience.

2. "Negro" defined.—The term "negro" as used herein, includes every person of African descent as defined by the statutes of this State.

3. "Separate coach" defined.—Each compartment of a railroad coach divided by good and substantial wooden partitions with a door therein shall be deemed a separate coach within the meaning of this law, and each separate coach shall bear in some conspicuous place appropriate words in plain letters indicating the race for which it is set apart; and each compartment of a street car or interurban car divided by a board or marker placed in a conspicuous place, bearing appropriate words in plain letters indicating the race for which it is set apart, shall be sufficient as a separate compartment within the meaning of this law.

4. Penalty.—Any railway company, street car company, or interurban railroad company, lessee, manager or receiver thereof, which shall fail to provide its cars bearing passengers with separate coaches or compartments, as above provided for, shall be liable for each failure to a penalty of not less than one hundred nor more than one thousand dollars, to be recovered by suit in the name of the State; and each trip run with such train or street car or interurban car without such separate coach or compartment shall be deemed a separate offense.

5. Exceptions.—This article shall not apply to any excursion train or street car or interurban car as such for the benefit of either race, nor to such freight trains as carry passengers in cabooses, nor be so construed as to prevent railroad companies from hauling sleeping cars, dining or cafe cars or chair cars attached to their trains to be used exclusively by either race, separately but not jointly, or to prevent nurses from traveling in any coach or compartment with their employer, or employes upon the train or cars in the discharge of their duty.

6. Law to be posted.—Every railroad company carrying passengers in this State shall keep this law posted in a conspicuous place in each passenger depot and each passenger coach provided in this law.

7. Duty of conductor.—Conductors of passenger trains, street cars, or interurban lines provided with separate coaches shall have the authority to refuse any passenger admittance to any coach or compartment in which they are not entitled to ride under the provisions of this law, and the conductor in charge of the train or street car or interurban car shall have authority,

and it shall be his duty, to remove from a coach or street car, or interurban car, any passenger not entitled to ride therein under the provisions of this law. [Acts 1891, p. 44; Acts 1907, p. 58; G. L. Vol. 10, p. 46.]

Art. 6418. [6633-4] Failure to build and equip.—If any railroad corporation organized under this title shall not within two years after its articles of association shall be filed and recorded as provided in this title, begin the construction of its road, and construct, equip and put in good running order at least ten miles of its proposed road, and, if any such railroad corporation, after the first two years, shall fail to construct, equip and put into good running order at least twenty additional miles of its road each and every succeeding year until the entire completion of its line, such corporation shall, in either of such cases, forfeit its corporate existence, and its powers shall cease as far as relates to that portion of said road then unfinished, and shall be incapable of resumption by any subsequent act of incorporation. The provisions of this article shall not apply to or in any manner affect railway companies incorporated for the construction and operation of urban, suburban and belt railroads for a distance of less than ten miles, as provided in Chapter 1 of this title; provided, that all such companies shall, within twelve months from the date of their charter, complete a portion of their road and commence and continue the running of the cars thereon. This article shall apply as well to branch lines as to main lines of railroads. [Acts 1876, pp 143, 149 G. L. Vol. 8, pp. 979, 985; Acts 1879, S. S. p. 47; G. L. Vol 9, p. 79; Acts 1889, p. 17; G. L. Vol. 9, p. 1045.]

Art. 6419. [6636] [4560] [4280] Neglect to make annual report.—Any railroad corporation which shall neglect to make the annual report required by this title to the Comptroller or Governor and which has been notified by the Comptroller or Governor of such failure and shall still neglect to make such report within three months after such notice shall forfeit its charter.

CHAPTER NINE.

COLLECTION OF DEBTS AND RIGHTS OF EMPLOYES.

| | Article | | Article |
|----------------------------------|---------|--|---------|
| Subject to execution | 6420 | Unpaid stock subscriptions | 6426 |
| Road sold for debts | 6421 | Old directors to be trustees | 6427 |
| New corporation how formed | 6422 | Suits not to abate | 6428 |
| Jurisdiction | 6423 | Law not to apply to State loans, etc. | 6429 |
| Sale under deed of trust | 6424 | Reducing wages | 6430 |
| Judgment, execution, etc. | 6425 | Discharged employe | 6431 |

Art. 6420. [6619] [4543] [4259] Subject to execution.—The rolling stock and all other movable property belonging to any railroad company or corporation shall be considered personal property. Its real and personal property or any part thereof shall be liable to execution and sale in the same manner as the property of individuals, and no such property shall be exempt from execution and sale. [Const. Art. 10, Sec. 4.]

Art. 6421. [6624] [4549] [4260] Road sold for debts.—In

case of the sale of the property and franchises of a railroad company, whether by virtue of an execution, order of sale, deed of trust, or any other power, or by a receiver acting under judgment heretofore or to be hereafter rendered by any court of competent jurisdiction, the purchaser or purchasers at such sale, and associates, if any, shall acquire full title to such property and franchises, with full power to maintain and operate the railroad and other property incident to it, under the restrictions imposed by law; provided, that said purchaser or purchasers, and associates, if any, shall not be deemed to be the owners of the charter of the railroad company and corporations under the same, nor vested with the powers, rights, privileges and benefits of such charter ownership as if they were the original corporators of said company, unless the purchaser or purchasers, and associates, if any, shall agree to take and hold said property and franchises charged with and subject to the payment of all subsisting liabilities and claims for death and for personal injuries sustained in the operation of the railroad by the company, and by any receiver thereof, and for loss of and damage to property sustained in the operation of the railroad by the company and by any receiver thereof, and for the current expenses of such operation, including labor, supplies and repairs; provided that all such subsisting claims and liabilities shall have accrued within two years prior to the beginning of the receivership resulting in the sale of said property and franchises or within two years prior to the sale, if said property and franchises be sold otherwise than under receivership proceedings, unless suit was pending on such claims and liabilities when the receiver was appointed or when the sale was made, in which event claims and liabilities on which suits were so pending shall be protected hereby as though accruing within the two years; such agreement to be evidenced by a written instrument signed and acknowledged by said purchaser or purchasers and associates, if any, and filed in the office of the Secretary of State. Such charter, together with the powers, rights and privileges and benefits thereof, shall pass to said purchaser or purchasers and associates, if any, subject to the provisions and limitations imposed and to be imposed by law. The amount of stock and bonds which may be held against said property and franchises, after the sale thereof, as well as the manner of issuance of such stock and bonds shall be fixed, determined and regulated by the Railroad Commission of Texas at its discretion save that the total incumbrance secured by the lien on said property and franchises shall not exceed the amount allowed by Article 6521. [Acts 1910, 4th C. S. p. 120.]

Art. 6422. [6625] [4550] New corporation, how formed.—
In case of a sale of the property and franchises of a railroad company within this State the purchaser or purchasers thereof and associates, if any, may form a corporation under the first chapter of this title, for the purpose of acquiring, owning,

maintaining and operating the road so purchased, as if such road were the road intended to be constructed by the corporation; and, when such charter has been filed, the new corporation shall have the powers and privileges then conferred by the laws of this State upon chartered railroads, including the power to construct and extend. The property and franchises so purchased shall be charged with and subject to the payment of all subsisting liabilities and claims for death and personal injuries sustained in the operation of the railroad by the sold out company and by any receiver thereof and for loss of and damage to the property sustained in the operation of the railroad by the sold out company and by any receiver thereof and for the current expenses of such operation including labor, supplies and repairs, provided that all such subsisting claims and liabilities shall have accrued within two years prior to the beginning of the receivership resulting in the sale of such property and franchises, or within two years prior to the sale, if said property and franchises be sold otherwise than under receivership proceedings, unless suit was pending on such claims and liabilities when the receiver was appointed, or when the sale was made; in which event claims and liabilities on which suits were so pending shall be protected hereby as though accruing within two years; and provided, that by such purchase and organization no right shall be acquired in conflict with the present Constitution and laws, in any respect, nor shall the main track of any railroad once constructed and operated be abandoned or moved. The amount of stock and bonds which may be issued by said new corporation, as well as the manner of their issuance, shall be fixed, determined and regulated by the Railroad Commission of Texas at its discretion, save that the total encumbrance secured by lien on said property and franchises shall not exceed the amount allowed by Article 6521 of the Revised Statutes of Texas. This and the preceding article shall not be construed to in anywise repeal or impair the provisions of Chapter 12 of this Title except in so far as the same may be changed thereby. [Acts 1889, p. 19; Acts 4th C. S. 1910, p. 120; G.L. Vol. 9, p. 1047.]

Art. 6423. [6626] [4551] Jurisdiction.—No railway company availing itself of any of the privileges herein provided shall claim to be under the jurisdiction of the Federal courts by reason thereof; and any railway company which may avail itself of the said privileges which shall claim to be subject to the jurisdiction of the Federal courts in pursuance of this article shall ipso facto forfeit its reorganization and be remanded to the same condition as it was prior to said reorganization. [Id.]

Art. 6424. [6627] [4552] [4261] Sale under deed of trust.—Whenever a sale of the roadbed, track, franchise and chartered rights and privileges of any railroad company is made by virtue of any deed of trust or power the same shall be made at the time and place mentioned in the deed of trust or power

and in accordance with the provisions of the same as to notice, and in other respects; and if the same be not specified, such sale shall not be made as hereinafter provided for sales under execution or order of sale. [P. D. 4913.]

Art. 6425. [6628] [4553] [4262] Judgment, execution, etc.—Whenever judgment is rendered against any railroad company, execution shall issue thereon and be levied and collected as in other civil causes, except that when the roadbed, track, franchise and chartered powers and privileges of said railroad company is levied upon, the levy and sale must take place in the county where the principal office of such company is situated, and the entire roadbed, track, franchise and chartered powers and privileges of such company shall be levied upon and sold. The provisions of this article shall be observed so far as they are applicable in all cases where, by any decree of a competent court, a sale of the roadbed, track, franchise and chartered powers and privileges of any railroad company is directed to be made. [P. D. 4914.]

Art. 6426. [6629] [4554] [4263] Unpaid stock subscriptions.—The sale of the roadbed, track, franchise and chartered rights, as herein provided, shall not be held to pass or convey to the purchaser any right or claim to recover from the former stockholders of said company any sums which may remain due upon their subscriptions of stock, but the said stockholders shall continue liable to pay the same in discharge and liquidation of the debts due by the sold out company, as hereinafter provided. [P. D. 4915.]

Art. 6427. [6630] [4555] [4264] Old directors to be trustees.—Whenever a sale of the roadbed, track, franchise and chartered powers and privileges is made as hereinbefore provided (unless other persons shall be appointed by the legislature or by some court of competent authority), the directors or managers of the sold out company at the time of the sale, by whatever name they may be known in law, shall be trustees of the creditors and stockholders of the sold out company, and shall have full power to settle the affairs of the sold out company, collect and pay outstanding debts, and divide among the stockholders the money and other property that shall remain after the payment of the debts and other necessary expenses; and the persons so constituted trustees shall have authority to sue by the name of the trustees of such sold out company, and may be sued as such, and shall be jointly and severally responsible to all creditors and stockholders of such company, to the extent of its property and effects that shall come to their hands. [P. D. 4916.]

Art. 6428. [6631] [4556] [4265] Suits not to abate.—No suit pending for or against any railroad company at the time that the sale may be made of its roadbed, track, franchise and chartered privileges shall abate, but the same shall be continued in the name of the trustees of the sold out company. [Id.]

Art. 6429. [6632] [4557] [4266] Law not to apply to State

loans, etc.—The provisions of this law shall not apply to any debt, execution or deed of trust held by the State against any railroad company because of any loan made by the State to any company under the provisions of the Act to provide for the investment of the special school fund, or any other law which authorizes the loan of money to railroad companies, nor shall any creditor of any railroad company be allowed to make the State a party to any suit brought for the enforcement of any debt, mortgage or deed of trust or lien on any railroad, or permitted to require the State to foreclose any lien which it may have had upon any road, but the lien of the State and its right to enforce the same shall continue as if this law had never been passed, and as if no sale had been made under the provisions of the same. [P. D. 4917.]

Art. 6430. [6620-1-2] Reducing wages.—All persons in the employment of such railway company shall receive thirty full days notice from said company immediately prior to the day upon which a reduction is to take effect before their wages shall be reduced. In all cases of reduction the employe shall be entitled to receive from such company wages at his contract price for the full term of thirty days after such notice is given. Said notice may be given by posting written or printed handbills, specifying the parties whose wages are to be reduced and the amount of such reduction, in at least three conspicuous places in or about each shop, section house, station, depot, train or other place where said employes are at work; provided, such employe shall, within fifteen days from the date of such notice, inform such railway company, by posting like notices as given by such railway company, whether or not he will accept such reduction; and, if no such information is given such company by such employe, then such employe shall forfeit his right to such notice and such reduction shall take effect from the date of such notice, instead of at the expiration of thirty days. Any railway company violating or evading any provision of this article shall pay to each employe affected thereby one month's extra wages. [Acts 1887, p. 20; G. L. Vol. 9, p. 818.]

Art. 6431. [6623] [4547] Discharged employe.—When a railroad company shall discharge an employe, or when the time of service of such employe shall expire, or when a railroad company shall be due and owing an employe, such railroad company, upon discharge, or upon the termination of the term of such service, or upon maturity of said indebtedness, shall, within fifteen days after the demand therefor upon the nearest station agent of said railroad company, pay to such employe the full amount due and owing him. If said railroad company fails or refuses to pay such employe, then it shall be liable to pay to such employe twenty per cent on the amount due him, as damages, in addition to the amount so due, in no case the damages to be less than five nor more than one hundred dollars. [Acts 1887, p. 72; G. L. Vol. 9, p. 870.]

CHAPTER TEN.

LIABILITY FOR INJURIES TO EMPLOYEES.

| | | | |
|---------------------------------------|---------|---|---------|
| | Article | | Article |
| Injury to fellow servant..... | 6432 | Liabile for injury or death of em- | |
| Who are vice-principals..... | 6433 | ploye | 6439 |
| "Fellow-servants"..... | 6434 | Contributory negligence | 6440 |
| Contract limiting liability void..... | 6435 | Assumed risk | 6441 |
| Contributory negligence | 6436 | Contract changing liability void..... | 6442 |
| Assumed risk | 6437 | Articles of this chapter construed..... | 6443 |
| Double header trains..... | 6438 | | |

Art. 6432. [6640] **Injury to fellow servant.**—Every person, receiver, or corporation operating a railroad or street railway, the line of which shall be situated in whole or in part in this State, shall be liable for all damages sustained by any servant or employe thereof while engaged in the work of operating the cars, locomotives or trains of such person, receiver, or corporation, by reason of the negligence of any other servant or employe of such person, receiver or corporation, and the fact that such servants or employes were fellow-servants with each other shall not impair or destroy such liability. [Acts 1st C. S. 1897, p. 14; G. L., Vol. 10, p. 1454.]

Art. 6433. [6641] **Who are vice-principals.**—All persons engaged in the service of any person, receiver, or corporation controlling or operating a railroad or street railway, the line of which shall be situated in whole or in part in this State, who are intrusted by such person, receiver, or corporation with the authority of superintendence, control or command of the other servants or employes of such person, receiver, or corporation, with the authority to direct any other employe in the performance of any duty of such employe, are vice-principals of such person, receiver, or corporation, and are not fellow-servants with their co-employes. [Id.]

Art. 6434. [6642] **"Fellow-servants".**—All persons who are engaged in the common service of such person, receiver, or corporation controlling or operating a railroad or street railway, and who while so employed are in the same grade of employment and are doing the same character of work or service, and are working together at the same time and place, and at the same piece of work and to a common purpose, are fellow-servants with each other. Employes who do not come within the provisions of this article shall not be considered fellow-servants. [Id.]

Art. 6435. [6643] **Contract limiting liability void.**—No contract made between the employer and employe based upon the contingency of death or injury of the employe and limiting the liability of the employer under the preceding articles of this chapter, or fixing damages to be recovered, shall be valid or binding. [Id.]

Art. 6436. [6644] **Contributory negligence.**—Nothing in the preceding articles of this chapter shall be held to impair or diminish the defense of contributory negligence when the injury of the servant or employe is caused proximately by his own

contributory negligence, except as otherwise provided in this chapter.

Art. 6437. [6645] Assumed risk.—The plea of assumed risk shall not be available as a bar to recovery of damages in any suit brought in any court of this State against any corporation, receiver or other person, operating any railroad, interurban railway or street railway in this State for the recovery of damages for the death or personal injury of any employe or servant caused by the wrong or negligence of such person, corporation or receiver; it being contemplated that while the employe does assume the ordinary risk incident to his employment he does not assume the risk resulting from any negligence on the part of his employer, though known to him.

Where, however, in any such suit, it is alleged and proven that such deceased or injured employe was chargeable with negligence in continuing in the service of any such corporation, receiver or person above named in view of the risk, dangers and hazards of which he knew or must necessarily have known, in the ordinary performance of his duties, such fact shall not operate to defeat recovery, but the same shall be treated and considered as constituting contributory negligence, and if proximately causing or contributing to cause the death or injury in question, it shall have the effect of diminishing the amount of damages recoverable by such employe, or his heirs or representatives in case of the employe's death, only in proportion to the amount of negligence so attributable to such employe. [Acts 1905, p. 386; Acts 1921, p. 195.]

Art. 6438. [6647] Double header trains.—Employes of railway companies employed by said companies in the operation of trains within this State, propelled by two or more engines, shall not be held to assume the risk, if any there be, incident to their employment; provided, they be injured while engaged in the operation of such trains and that such injury was occasioned by reason of the operation of two or more engines on such train instead of one. [Acts 1900, S. S. p. 15.]

Art. 6439. [6648] Liable for injury or death of employe.—Every corporation, receiver, or other person, operating any railroad in this State, shall be liable in damages to any person suffering injury while he is employed by such carrier operating such railroad, or in case of death of such employe, to his or her personal representative for the benefit of the surviving widow and children, or husband and children, and mother and father of the deceased, and, if none, then of the next kin dependent upon such employe for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employes of such carrier; or by reason of any defect or insufficiency due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves, or other equipment. The amount recovered shall not be liable for debts of deceased and shall be divided among the persons entitled to the benefit of the action or such of them as shall be alive, in

such shares as the jury, or court trying the case without a jury, shall deem proper. In case of the death of such employe, the action may be brought without administration by all the parties entitled thereto, or by any one or more of them, for the benefit of all, and, if all parties be not before the court, the action may proceed for the benefit of such of said parties as are before the court. [Acts 1st C. S. 1909, p. 279.]

Art. 6440. [6649] **Contributory negligence.**—In all actions brought against any such common carrier or railroad under or by virtue of any provision of the foregoing article and the three succeeding articles to recover damages for personal injuries to an employe, or where such injuries have resulted in his death, the fact that the employe may have been guilty of contributory negligence shall not bar a recovery, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employe; provided, that no such employe who may be injured or killed shall be held to have been guilty of contributory negligence in any case where the violations by such common carrier of any statute enacted for the safety of employes contributed to the injury or death of such employe. [Id.]

Art. 6441. [6650] **Assumed risk.** In any action brought against any common carrier under or by virtue of any provision of the two preceding articles to recover damages for injuries to or the death of any of its employes, such employe shall not be held to have assumed the risks of his employment in any case where the violation by such common carrier of any statute enacted for the safety of employes contributed to the injury or death of such employe. [Id.]

Art. 6442. [6651] **Contract changing liability void.**—Any contract, rule, regulation or device whatsoever, the purpose or intent of which shall be to enable any common carrier to exempt itself from any liability created by the three preceding articles shall to that extent be void; provided, that, in any action brought against any such common carrier by virtue of said articles, such common carrier may set off therein any sum it has contributed or paid to any insurance, relief benefit or indemnity that may have been paid to the injured employe, or the person entitled thereto, on account of the injury or death for which said action was brought. [Id.]

Art. 6443. [6652] **Articles of this chapter construed.**—Nothing in the provisions of the four preceding articles shall be held to limit the duty or liability of common carriers, or to impair the rights of employes, under other articles of these Statutes, but, in case of conflict, these articles shall prevail; and nothing in said articles shall affect the right of action under any law of this State. [Id.]

CHAPTER ELEVEN.

RAILROAD COMMISSION OF TEXAS.

| | Article | | Article |
|--|---------|--|---------|
| Terms defined..... | 6444 | To deliver loaded cars..... | 6484 |
| Powers and authority..... | 6445 | Proof necessary..... | 6485 |
| Power to enforce rules, etc..... | 6446 | Not to affect demurrage regula- | |
| The Commission..... | 6447 | tions..... | 6486 |
| Duties..... | 6448 | Duty to furnish cars..... | 6487 |
| Notice..... | 6449 | Commission to require mortgage..... | 6488 |
| Rules for hearings, etc..... | 6450 | Penalty..... | 6489 |
| May administer oaths, etc..... | 6451 | Facilities, interchange cars, etc..... | 6490 |
| Rates conclusive..... | 6452 | To interchange cars at junction | |
| Appeal..... | 6453 | points..... | 6491 |
| Burden of proof..... | 6454 | Commission to make rules..... | 6492 |
| Schedule of rates..... | 6455 | Liable for damages, when..... | 6493 |
| Schedule to be printed and posted..... | 6456 | Not to furnish cars, when..... | 6494 |
| May abolish or alter regulations..... | 6457 | Other penalty..... | 6495 |
| Emergency freight rates..... | 6458 | "Shipper"..... | 6496 |
| Temporary tariffs..... | 6459 | "Reasonable time"..... | 6497 |
| Complainants..... | 6460 | Suitable depots..... | 6498 |
| Procedure..... | 6461 | Union depots..... | 6499 |
| Complaints, how framed..... | 6462 | Penalty for failure..... | 6500 |
| Testimony taken..... | 6463 | Right to lease another road..... | 6501 |
| May inspect books, etc..... | 6464 | Railroad crossings..... | 6502 |
| Penalty..... | 6465 | Double-header trains..... | 6503 |
| Shall ascertain cost of railway, | | Use regulated by Commission..... | 6504 |
| etc..... | 6466 | Penalty..... | 6505 |
| Blanks for information..... | 6467 | Maintenance; powers of Commis- | |
| Refusal to answer..... | 6468 | sion..... | 6506 |
| Annual reports..... | 6469 | Penalty for failure to comply..... | 6507 |
| Through freights..... | 6470 | Improvement bonds..... | 6508 |
| Witnesses..... | 6471 | Sidings, etc..... | 6509 |
| Depositions..... | 6472 | To enforce compliance..... | 6510 |
| Extortion..... | 6473 | Switch connections..... | 6511 |
| "Unjust discrimination"..... | 6474 | Application..... | 6512 |
| Damages; penalty..... | 6475 | To fix rates, prevent discrimina- | |
| Penalty not otherwise provided..... | 6476 | tion, etc..... | 6513 |
| Suits for penalty..... | 6477 | To regulate private sidetracks, etc..... | 6514 |
| Evidence..... | 6478 | No discrimination..... | 6515 |
| Definitions..... | 6479 | Failure to comply..... | 6516 |
| Law cumulative..... | 6480 | Action for damages..... | 6517 |
| Railroad to furnish cars..... | 6481 | Re-arrangement..... | 6518 |
| Penalty..... | 6482 | Suits for penalties..... | 6519 |
| Deposit..... | 6483 | | |

Art. 6444. **Terms defined.**—The term "Commission" as used in this title means the Railroad Commission of Texas, and the term "Commissioners" means the members of the Railroad Commission of Texas.

Art. 6445. **Power and authority.**—Power and authority are hereby conferred upon the Railroad Commission of Texas over all railroads, and suburban, belt and terminal railroads, and over all public wharves, docks, piers, elevators, warehouses, sheds, tracks and other property used in connection therewith in this State, and over all persons, associations and corporations, private or municipal, owning or operating such railroad, wharf, dock, pier, elevator, warehouse, shed, track or other property to fix, and it is hereby made the duty of the said Commission to adopt all necessary rates, charges and regulations, to govern and regulate such railroads, persons, associations and corporations, and to correct abuses and prevent unjust discrimination in the rates, charges and tolls of such railroads, persons, associations and corporations, and to fix division of rates, charges and regulations between railroads and other utilities and common carriers where a division is proper and correct, and to prevent any and all other abuses in the conduct of their business and to do and perform such other duties and details in connection therewith as may be

provided by law. [Acts 1891, p. 55; Acts 1911, p. 157; G. L. Vol. 10, p. 57.]

Art. 6446. Power to enforce rules, etc.—The Railroad Commission of Texas is hereby vested with full power and authority to do and perform each act and duty authorized, directed or imposed upon it by the provisions of this title, and all railroads, persons, corporations, and associations subject to the control of the Commission shall be subject to the penalties prescribed by law for failure to comply with the rules, orders, directions or requirements of said Commission as severally provided in this title. [Id.]

Art. 6447. [6653] [4561] The Commission.—

Election.—The Railroad Commission of Texas shall be composed of three members, one of whom shall be elected biennially at each general election for a term of six years.

Qualifications.—The members shall be resident citizens of this State, and qualified voters under the Constitution and laws, and not less than twenty-five years of age. No member shall be directly or indirectly interested in any railroad, or in any stock, bond, mortgage, security or earnings of any railroad, and should a member voluntarily become so interested his office shall become vacant; or should he become so interested otherwise than voluntarily, he shall within a reasonable time divest himself of such interest; failing to do this, his office shall become vacant.

Shall hold no other office, etc.—No railroad commissioner shall hold any other office of any character, while such commissioner, nor engage in any occupation or business inconsistent with his duties as such commissioner.

Oath, etc.—Before entering upon the duties of his office, each commissioner shall take and subscribe to the official oath and shall in addition thereto, swear that he is not directly or indirectly interested in any railroad, nor in the bonds, stock, mortgages, securities, contracts or earnings of any railroad, and that he will to the best of his ability faithfully and justly execute and enforce the provisions of this title, and all laws of this State concerning railroads, which oath shall be filed with the Secretary of State.

Organization.—The commissioners shall elect one of their number chairman. They may make all rules necessary for their government and proceedings. They may appoint a secretary at a salary not exceeding \$2,000.00 per annum, and not more than two clerks at salaries not exceeding \$1,500.00 per annum each, and such other experts as may be necessary. They shall be known collectively as the "Railroad Commission of Texas," and shall have a seal, a star of five points with the words "Railroad Commission of Texas" engraved thereon. They shall be furnished with an office at the Capitol, and with necessary furniture, stationery, supplies and all necessary expenses, to be paid for on the order of the Governor.

Secretary's duties.—The secretary shall keep full and correct minutes of all the transactions and proceedings of the Commis-

sion, and perform such duties as the Commission may require of him.

Expenses.—The Commissioners and their employes shall receive from the State their actual necessary traveling expenses while traveling on the business of the Commission, which shall include the cost only of transportation while traveling on business for the Commission, upon an itemized statement thereof, sworn to by the party who incurred the expense, and approved by the Commission.

Sessions.—The Commission may hold its sessions at any place in this State when deemed necessary. [Acts 1891, p. 55; G. L., Vol. 10, p. 57.]

Art. 6448. [6654] [4562] Duties.—The Commission shall:

1. Adopt all necessary rates, charges and regulations, to govern and regulate freight and passenger traffic, to correct abuses and prevent unjust discrimination and extortion in rates of freight and passenger traffic on the different railroads in this State.

2. Fairly and justly classify and subdivide all freight and property of whatsoever character that may be transported over the railroads of this State into such general and special classes or subdivisions as may be found necessary and expedient.

3. Fix to each class or subdivision of freight a reasonable rate for each railroad subject to this title for the transportation of each of said classes and subdivisions. Such classifications shall apply to and be the same for all railroads subject to the provisions of this chapter. It may fix different rates for different railroads and for different lines under the same management, or for different parts of the same lines if found necessary to do justice, and may make rates for express companies different from the rates fixed by railroads.

4. Fix and establish for all or any connecting lines of railroads of this State reasonable joint rates of freight charges for the various classes of freight and cars that may pass over two or more such lines of such railroads.

5. When two or more connecting railroads shall fail to agree upon a fair and just division of the charges arising from the transportation of freights, passengers or cars over their lines, fix the pro rata part of the charges to be received by each connecting line.

6. From time to time, alter, change, amend or abolish any classification or rate established by it when deemed necessary. Such amended, altered or new classification or rates shall be put into effect in the same manner as the originals.

7. Adopt and enforce such rules, regulations and modes of procedure as it may deem proper to hear and determine complaints against the classifications or the rates, the rules, regulations and the determinations of the Commission.

8. Make reasonable and just rates of charges for each railroad subject hereto for the use or transportation of loaded or

empty cars on its road and may establish for each railroad or for all railroads alike, reasonable rates for the storing and handling of freight and for the use of cars not unloaded after forty-eight hours' notice to the consignee, not to include Sundays and legal holidays.

9. Make and establish reasonable rates for the transportation of passengers over each railroad subject hereto, which rates shall not exceed the rates fixed by law. The Commission shall have power to prescribe reasonable rates, tolls or charges for all other services performed by any railroad subject hereto.

10. Require each railway subject to this title to provide and maintain adequate, comfortable and clean depots and depot buildings at its several stations for the accommodation of passengers; and to keep them well-lighted and warmed for the comfort and accommodation of the traveling public; and keep and maintain adequate and suitable freight depots and buildings for the receiving, handling, storing and delivering of all freight handled by such roads and such railway, and to obey the requirements of the Commission in respect thereto.

11. See that all laws of this State concerning railroads are enforced and that violations thereof are promptly prosecuted and penalties due the State therefor are recovered and collected; and report all such violations with the facts in its possession to the Attorney General or other officer charged with the enforcement of the law. It shall investigate all complaints against all railroad companies. Suits between the State and a railroad shall have precedence in the courts. [Id.]

Art. 6449. [6655] [4563] **Notice.**—Before any rates shall be established, the Commission shall give each railroad company to be affected thereby ten days' notice of the time and place when and where the rates shall be fixed; and said railroad company shall be entitled to be heard at such time and place; and it shall have process to enforce the attendance of its witnesses, which shall be served as in civil cases.

Art. 6450. [6655] [4563] **Rules for hearing, etc.**—The Commission may adopt rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings of railroad companies and other parties before it, in the establishment of rates, orders, charges, and other acts required of it under this law; and no person shall be denied admission at such investigation.

Art. 6451. **May administer oaths, etc.**—Each Commissioner, for the purposes mentioned in this chapter, shall have power to administer oaths, certify to all official acts, and to compel the attendance of witnesses, and the production of papers, waybills, books, accounts, documents and testimony, and to punish for contempt as fully as is provided by law for the district court.

Art. 6452. [6656] [4564] **Rates conclusive.**—In all actions between private parties and railway companies brought under this law, the rates, charges, orders, rules, regulations and

classifications prescribed by the Commission before the institution of such action shall be held conclusive, and deemed and accepted to be reasonable, fair, and just, and in such respects shall not be controverted therein until finally found otherwise in a direct action brought for the purpose in the manner prescribed by the two succeeding articles. [Id.]

Art. 6453. [6657] **Appeal.**—If any railroad company or other party at interest be dissatisfied with the decision of any rate, classification, rule, charge, order, act or regulation adopted by the Commission, such dissatisfied company or party may file a petition setting forth the particular cause or causes of objection to such decision, act, rate, rule, charge, classification, or order, or to either or all of them, in a court of competent jurisdiction in Travis County, Texas, against said Commission as defendant. Said action shall have precedence over all other causes on the docket of a different nature, and shall be tried and determined as other civil causes in said court. Either party to said action may appeal to the Appellate Court having jurisdiction of said cause; and said appeal shall be at once returnable to said Appellate Court at either of its terms; and said action so appealed shall have precedence in said appellate Court of all causes of a different character therein pending; provided, that, if the court be in session at the time such right of action accrues, the suit may be filed during such term and stand ready for trial after ten days' notice. Provided further that no preliminary injunction shall be issued without notice to the opposite party and that no temporary restraining order shall be granted without notice to the opposite party unless it shall clearly appear from specific facts shown by affidavit or by the verified petition that immediate and irreparable injury, loss, or damage will result to the applicant before notice can be served and a hearing had thereon. Every such temporary restraining order shall be enforced with the date and hour of issuance, shall be forthwith filed in the clerk's office and entered of record, shall define the injury and state why it is irreparably and why the order was granted without notice, and shall by its terms expire within such time after entry, not to exceed ten days, as the court or judge may fix, unless within the time so fixed the order is extended for a like period for good cause shown, and the reasons for such extension shall be entered of record. In case a temporary restraining order shall be granted without notice in the contingency specified, the matter of the issuance of a preliminary injunction shall be set down for a hearing at the earliest possible time and shall take precedence of all matters except older matters of the same character; and when the same comes up for hearing the party obtaining the temporary restraining order shall proceed with the application for a preliminary injunction, and if he does not do so the court shall dissolve the temporary restraining order. Upon two day's notice to the party obtaining such temporary restraining order the opposite party may appear and move the dissolution or modification of the order,

and in that event the court or judge shall proceed to hear and determine the motion as expeditiously as the ends of justice may require. [Acts 1925, p. 668.]

Art. 6454. [6658] [4566] **Burden of proof.**—The burden of proof shall rest upon the plaintiff to show the rates, regulations, orders, classifications, acts or charges complained of are unreasonable and unjust to it or them. [Id.]

Art. 6455. [6659] [4567] **Schedule of rates.**—The Commission shall, when the classifications and schedule of rates herein provided are prepared and adopted, furnish each railroad affected thereby which is subject to the provisions of this title with a complete schedule in suitable form, showing the classification of freight made by it and the rates fixed to be charged by such road for the transportation of each class of freight, and shall cause a certified copy of such classification and schedule of rates to be delivered to each of said railroads at its principal office in Texas, or to any agent of said company in this State; which schedule, rules, and regulations shall take effect at the date fixed by the Commission, not less than twenty days after the date of service. [Id.]

Art. 6456. [6659] [4567] **Schedule to be printed and posted.**—Each of said railroad companies shall cause said schedule to be printed in type of a size not less than pica, and shall have the same posted up in a conspicuous place at each of its depots, so as to be inspected by the public. [Id.]

Art. 6457. [6659] [4567] **May abolish or alter regulations.**—The Commission may at any time abolish, alter, or in any manner amend any such regulations; and in that event certified copies of the schedules, rules or regulations, showing the changes therein, shall be delivered to each road affected as herein specified. In all cases where the rates shall not have been fixed by the Commission, no changes shall be made, except after ten days' notice to and with the consent of the Commission. [Id.]

Art. 6458. [6660-1-2] **Emergency freight rates.**—The Commission may prevent interstate rate wars and injury to the business or interests of the people or railroads of the State, or in case of any other emergency, to be judged of by the Commission, it shall temporarily alter, amend or suspend any existing freight rates, tariffs, schedules, orders and circulars on any railroad or part of railroad in this State, and fix freight rates where none exist. Said rates so made, shall take effect at such time and remain in force for such length of time as the Commission may prescribe. [Acts 1899, p. 311; Acts 1897, p. 51; G. L. Vol. 10, p. 1105.]

Art. 6459. [6663] **Temporary tariffs.**—The Commission shall have power to make temporary freight and passenger tariffs, to take effect at such times as said Commission shall fix whenever an emergency arises, the sufficiency of which shall be judged of by said Commission. In order that justice may be done or injury prevented any person, place or locality,

said Commission shall have the power at once to suspend temporarily any existing freight or passenger tariffs, rules and regulations for temporary use, to have immediate effect where none exists. [Acts 1907, p. 220.]

Art. 6460. [6664] [4568] **Complainants.**—Any person, firm, corporation, or association, body politic, or municipal organization, complaining of anything done or omitted to be done by any railroad subject hereto, in violation of any law of this State, or any provision of this title, for which penalty is provided, may apply to the Commission under such rules as the Commission may prescribe. [Acts 1891, p. 55; G. L. Vol. 10, p. 57.]

Art. 6461. [6664] [4568] **Procedure.**—If there shall appear to the Commission any reasonable grounds for investigating such complaint; (1) it shall give at least five days' notice to such railroad of such charge and complaint, and call upon such road to answer the same at a time and place to be specified by the Commission. (2) It shall investigate and determine such complaint under such rules and modes of procedure as it may adopt. (3) If the Commission finds that there has been a violation, it shall determine if the same was wilful. (4) If it finds that such violation was not wilful, it may call upon said road to satisfy the damage done to the complainant thereby, stating the amount of such damage, and to pay the cost of such investigation; and if the said railroad shall do so within the time specified by the Commission there shall be no prosecution by the State. (5) If said railroad shall not pay said damage and cost within the time specified by said Commission or if the Commission finds such violation was wilful, it shall institute proceedings to recover the penalty for such violation and the cost of the investigation. [Id.]

Art. 6462. [6664] [4568] **Complaints, how framed.**—All such complaints shall be made in the name of the State of Texas upon the relation of such complainant. All evidence taken before said Commission in the investigation of any such complaint, when reduced to writing and signed and sworn to by the witnesses, may be used by either party, the State, complainant, or by the railroad company, in any proceeding against such railroad involving the same subject matter. [Id.]

Art. 6463. [6664] [4568] **Testimony taken.**—The Commissioners may require the testimony taken before them to be reduced to writing when they deem necessary, or when requested to do so by either party to such proceedings; and a certified copy, under the hand and seal of said Commission, shall be admissible in evidence upon the trial of any cause or proceeding growing out of the same transaction against such railroad, involving the same subject matter and between the same parties. No provisions of this and the three preceding articles shall abridge nor affect the rights of any person to sue for any pen-

alty that may be due him under the provisions of this title, or any other law of the State. [Id.]

Art. 6464. [6665] [4569] **May inspect books, etc.**—The Commissioners or either of them, or such persons as they may authorize in writing under the hand and seal of the Commission, shall have the right at any time to inspect the books and papers of any railroad company and to examine under oath any officer, agent or employe of such railroad in relation to the business and affairs of the same. [Id.]

Art. 6465. [6665] [4569] **Penalty.**—If any railroad shall refuse to permit such examination of its books and papers, such railroad company shall, for each offense, pay to the State of Texas not less than one hundred and twenty-five nor more than five hundred dollars for each day it shall so fail or refuse. [Id.]

Art. 6466. [6666] [4570] **Shall ascertain cost of railway, etc.** The Commission shall ascertain as nearly as practicable:

1. The amount of money expended in construction and equipment per mile of every railway in Texas;

2. The amount of money expended to procure the right of way, and the amount of money it would require to reconstruct the roadbed, track, depots, and equipment, and to replace all the physical properties belonging to the railroad.

3. The outstanding bonds, debentures and indebtedness, and the amount respectively thereof; when issued, and the rate of interest; when due, for what purpose issued, how used, to whom issued, to whom sold, and the price in cash, property or labor, if any, received therefor.

4. Disposition of the proceeds, by whom the indebtedness is held, and the amount purporting to be due thereon.

5. The floating indebtedness of the company, to whom due and his address, and the credits due on it.

6. The property on hand belonging to the railroad company.

7. The judicial or other sales of said road, its property or franchises, and the amounts purporting to have been paid and in what manner paid therefor.

8. The amounts paid for salaries to the officers of the railroad and the wages paid its employes.

For the purposes in this article named, the Commission may employ sworn experts to inspect and assist them when needed, and from time to time, as the information required by this article is obtained, it shall communicate the same to the Attorney General by report, and file a duplicate thereof with the Comptroller for public use. Said information shall be printed from time to time in the annual report of the Commission. [Id.]

Art. 6467. [6667] [4571] **Blanks for information.**—The Commission shall as often as necessary furnish each railroad company suitable blanks with questions formed so as to elicit all information concerning such railroads. Any railroad company receiving such blanks shall cause them to be properly filled

out so as to answer fully and correctly each question therein propounded, and if they are unable to answer any question therein propounded, they shall give satisfactory reason for their failure; and the answers duly sworn to by the proper officer of the company, shall be returned to the Commission within thirty days from the receipt thereof. [Id.]

Art. 6468. [6667] [4571] **Refusal to answer.**—If any officer or employe of a railroad shall fail or refuse to fill out and return any blanks as above required, or fail or refuse to answer any questions therein propounded, or shall give a false answer to any such questions where the fact inquired of is within his knowledge, or shall evade the answer to any such questions, a penalty of five hundred dollars shall be recovered from the company by the State when it appears that such persons acted in obedience to its direction, permission or request in his failure, evasion or refusal. Said Commission shall have the power to prescribe a system of book-keeping to be observed by each railroad subject hereto, under the penalties prescribed in this article. [Id.]

Art. 6469. [6667] [4571] **Annual reports.**—The Commission shall make and submit to the Governor annual reports containing a full and complete account of the transactions of their office, together with the information gathered by such Commission as herein required, and such other facts, suggestions and recommendations as it may deem necessary, which report shall be published as the reports of heads of departments.

Art. 6470. [6667] [4571] **Through freights.**—The Commission shall investigate all through freight rates on railroads in Texas; and when same are, in the opinion of the Commission, excessive or levied or laid in violation of the interstate commerce law, or the rules and regulations of the Interstate Commerce Commission, the officials of the railroads shall be notified of the facts and requested to reduce them or make the proper corrections, as the case may be. When the rates are not changed and the proper corrections are not made according to the request of the Commission, it shall notify the Interstate Commerce Commission and apply to it for relief. [Id.]

Art. 6471. [6668] [4572] **Witnesses.**—In any examination or investigation provided in this chapter, the Commission is authorized and empowered to compel the attendance of witnesses, and may issue subpoenas for witnesses by such rules as they may prescribe, and such process shall be served by the officer to whom it may be directed. Each witness who shall appear before the Commission by order of the Commission, at a place outside the county of his residence, shall receive for his attendance one dollar per day and three cents per mile traveled by the nearest practical route, in going to and returning from the place of meeting of the Commission, which shall be paid by the Comptroller upon the presentation of proper vouchers, sworn to by the witness, and approved by the Commission.

No witness shall be entitled to fees or mileage who is directly or indirectly interested in a railroad, or who is in anywise interested in any stock, bond, mortgage, security or earnings of such road, or was an officer, agent or employe of such road when summoned at the instance of such railroad. No witness furnished with free transportation shall receive pay for the distance he may travel on such free transportation. The Commission may issue an attachment as in civil cases, for a witness who fails or refuses to obey a subpoena, and compel him to attend before the Commission and give his testimony upon such matter as shall be lawfully required by them. If a witness, after being duly summoned, shall fail or refuse to attend or to answer any question propounded to him, and which he would be required to answer if in court, the Commission may fine and imprison such witness for contempt, in the same manner that a judge of the district court might do under similar circumstances. The claim that any such testimony might tend to criminate the person giving it shall not excuse a witness from testifying, but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding. [Id.]

Art. 6472. [6668] **Depositions.**—The Commission may in its discretion issue proper process and take written or oral depositions instead of compelling personal attendance of witnesses. The fees of an officer executing any process issued under the provisions of this title shall be such as the Commission may allow, not to exceed fees as prescribed by law for similar services. [Id.]

Art. 6473. [6669] [4573] **Extortion.**—If any railroad company, subject to the provisions of this title, or its agent or officer, shall charge, collect, demand, or receive a greater rate, charge or compensation than that fixed and established by the Commission for the transportation of freight, passengers or cars, or for the use of any car on the line of its railroad, or any line operated by it, or for receiving, forwarding, handling or storing any such freight or cars, or for any other service performed or to be performed by it, such railroad company and its agent and officer shall be deemed guilty of extortion, and shall forfeit and pay to the State of Texas a sum not less than one hundred nor more than five thousand dollars. [Id.]

Art. 6474. [6670] [4574] **“Unjust discrimination”.**—Unjust discrimination is hereby prohibited and the following acts or either of them shall constitute unjust discrimination.

1. If any railroad subject hereto, directly or indirectly, or by any special rate, rebate, drawback or other device, shall charge, demand, collect or receive from any person, firm or corporation a greater or less compensation for any service rendered or to be rendered by it than it charges, demands, collects or receives from any other person, firm or corporation for doing a like and contemporaneous service, or shall give any undue or unreasonable preference or advantage to any particular per-

son, firm or corporation, or locality, or to subject any particular description of traffic to any undue or unreasonable prejudice, delay or disadvantage in any respect whatsoever.

2. If any railroad company shall fail or refuse, under regulations prescribed by the Commission, to receive and transport without delay or discrimination the passengers, tonnage and cars, loaded or empty, of any connecting line of railroad, and every railroad which shall, under such regulations as the Commission may prescribe, fail or refuse to transport and deliver without delay or discrimination any passengers, tonnage or cars, loaded or empty, destined to any point on or over the line of any connecting line of railroad; provided perishable freights of all kinds and live stock shall have precedence of shipment.

3. If any railroad company shall charge or receive any greater compensation in the aggregate for the transportation of like kind of property or passengers for the shorter line than for a longer distance over the same line; provided, that upon application to the Commission any railroad may in special cases, to prevent manifest injury, be authorized by the Commission to charge less for longer than for shorter distances for transporting persons and property, and the Commission shall, from time to time, prescribe the extent to which such designated railroad may be relieved from the operation of this provision. No injustice shall be imposed upon any citizen at intermediate points. Nothing herein shall be so construed as to prevent the commission from making what are known as "group rates" on any line or lines of railroad in this State.

4. Penalty.—Any railroad company guilty of unjust discrimination as hereinbefore defined shall for each offense pay to the State of Texas a penalty of not less than five hundred dollars nor more than five thousand dollars.

5. Exceptions.—Nothing herein shall prevent the carriage, storage or handling of freight free or at reduced rates, or to prevent railroads from giving free transportation or reduced transportation under such circumstances and to such persons as the law of this State may permit or allow. [Id.]

Art. 6475. [6671] [4575] **Damages; penalty.**—If any railroad subject to this title shall do, cause or permit to be done any matter act or thing prohibited or declared to be unlawful, or shall omit to do any act, matter or thing herein required to be done by it, such railroad shall be liable to the person or persons, firm or corporation injured thereby for the damages sustained in consequence of such violation; and in case said railroad company shall be guilty of extortion or discrimination as by this chapter defined, then in addition to such damages such railroad shall pay to the person, firm or corporation injured thereby a penalty of not less than one hundred and twenty-five nor more than five hundred dollars. Such road may plead and prove as a defense to the action for said penalty that such overcharge was unintentionally and innocently made through a mistake of fact. A recovery as herein provided shall

in no manner affect a recovery by the State of a penalty provided for such violations. [Id.]

Art. 6476. [6672] [4576] Penalty not otherwise provided.—If any railway company doing business in this State shall violate any provision of this title, or shall do any act herein prohibited, or shall fail or refuse to perform any duty enjoined upon it for which a penalty has not been provided by law or shall fail, neglect or refuse to obey any lawful requirement, order, judgment or decree made by the Commission, for every such act of violation it shall pay to the State of Texas a penalty of not more than five thousand dollars. [Id; Acts 1901, p. 265.]

Art. 6477. [6673] [4577] Suits for penalty.—All of the penalties herein provided, except as provided in Article 6475, recoverable by the State shall be recovered and suits thereon shall be brought by the Attorney General or under his direction in the name of the State of Texas, in Travis County, or in any county into or through which such railroad may run; and the attorney bringing such suit shall receive a fee to be paid by the State of fifty dollars for each penalty recovered and collected by him, and ten per cent of the amount collected. In all suits arising under this chapter, the rules of evidence shall be the same as in ordinary civil actions, except as otherwise herein provided. All fines and penalties recovered by the State under this chapter shall be paid into the State Treasury; provided suits brought under Title 66 for recovery of penalties, may be brought in any county:

1. Where an act violative of any provision thereof is committed.

2. Where such company or receiver has an agent or representative.

3. Where the principal office of such company is situated, or such receiver or receivers, or either, reside. One-half of all moneys collected under the provisions of said title, less the commission and expenses allowed by law, shall be paid into the State Treasury; the remainder thereof shall be paid into the treasury of the county where such suit or suits may be maintained and constitute a part of the jury fund of such county. [Acts 1891, p. 55. G. L. Vol. 10, p. 57.]

Art. 6478. [6674] [4578] Evidence.—Upon application of any person, the Commission shall furnish certified copies of any classification, rates, rules, regulations, or orders; and such certified copies, or printed copies published by authority of the Commission shall be admissible in evidence in any suit and sufficient to establish the fact that any charge, rate, rule, order, or classification therein contained and which may be an issue in the trial, is the official act of the Commission. A substantial compliance with the requirements of this chapter shall be sufficient to give effect to all the classifications, rates, charges, rules, regulations, requirements and orders made and established by the Commission, and none of them shall be declared

inoperative for any omission of a technical matter in the performance of such act. [Id.]

Art. 6479. [6676] **Definitions.**—The terms, “road,” “railroad,” “railroad companies,” and “railroad corporations,” as used herein, shall be taken to mean and embrace all corporations, companies, individuals and associations of individuals, their lessees or receivers, appointed by any court whatsoever, that may now or hereafter own, operate, manage or control any railroad, or part of a railroad, in this State, and all such corporations, companies and associations of individuals, their lessees or receivers, as shall do the business of common carriers on any railroad in this State.

1. The provisions of this chapter shall be construed to apply to and affect only the transportation of passengers, freight and cars between points within this State; and this chapter shall not apply to street railways nor suburban or belt lines of railways in or near cities and towns, but shall apply to the transportation of passengers and freight by electric or gasoline motor cars over steam railroads subject to this Act.

2. It shall be the duty of the commissioners to see that, upon every railroad and branch of same carrying passengers for hire in this State, shall be run at least one train a day, Sundays excepted, upon which passengers shall be hauled, and the commission shall have no power to relax this provision, and shall further regulate passenger train service by requiring all passenger trains carrying passengers for hire to stop for a time sufficient to receive and let off passengers at such stations as may be designated by the commissioners; provided, that four trains each way, carrying passengers for hire, if so many are run daily, Sundays excepted, be required to stop as aforesaid at all county seat stations; and if such railroad or branch of same shall operate a gasoline or electric motor car over its line carrying passengers for hire in this State, such motor car shall be deemed a train within the meaning of this article and shall be subject to and included within the requirement that at least one train be run every day, Sundays excepted, and the requirement made by the commission as to stopping for a time sufficient to receive and let off passengers at designated stations. [Acts 1925, p. 365.]

Art. 6480. [6677] [4581] **Law cumulative.**—Any provision of this title which may be inconsistent or in conflict with Title 66 shall be void and inoperative, but to that extent only. The provisions of any foregoing article of this title shall not have the effect to release or waive any right of action by the State, or any person, for any right, penalty or forfeiture which may have arisen or may hereafter arise under any law of this State; and all penalties accruing under this title shall be cumulative of each other, and a suit for or recovery of one shall not be a bar to the recovery of any other penalty. [Acts 1891, p. 55; G. L. Vol. 10, p. 57.]

Art. 6481. [6678-79] **Railroad to furnish cars.**—When any person, firm or corporation, desiring to ship any freight of

any kind shall make written application to any superintendent, agent, or other person in charge of transportation, to any railway company, receiver or trustee operating a line of railway at the point the cars are desired upon which to ship any freight, it shall be the duty of such railroad company, receiver, trustee, or other person in charge thereof, to supply the number of cars so required, at the point indicated in the application, within a reasonable time thereafter, not to exceed six days from the receipt of such application, and shall supply such cars to the persons so applying therefor, in the order in which such applications are made, without giving preference to any person. If the application be for twelve cars or less, the same shall be furnished in three days; and provided further, that, if the application be for fifty cars or more, the railway company may have ten full days in which to supply the cars. Said application for cars shall state the number of cars desired, the place at which they are desired, and the time they are desired. The place designated shall be at some station or switch on the railroad. [Acts 1887, p. 133; Acts 1899, p.67; Acts 1st C. S. 1913, p. 23.]

Art. 6482. [6680] [4499] **Penalty.**—A railway company failing to furnish cars applied for under the provisions of this chapter shall forfeit to the party or parties so applying for them the sum of twenty-five dollars per day for each car failed to be furnished, and all actual damages that such applicant may sustain. [Id.]

Art. 6483. [6681] [4500] **Deposit.**—Such applicant shall deposit with such agent, superintendent or other person one-fourth of the amount of freight charges for the use of such cars, and shall load said cars within forty-eight hours after they have been duly delivered; and upon failure to do so, he shall forfeit and pay to the company the sum of twenty-five dollars for each car not used. Where applications are made on several days, all of which are filed upon the same day, the applicant shall have forty-eight hours to load the car or cars furnished on the first application, and the next forty-eight hours to load the car or cars furnished on the next application, and so on; Sundays shall not be included in computing the time. The penalty prescribed shall not accrue to any car or lot of cars applied for any one day, until the period within which they may be loaded has expired. If the said applicant shall not use such cars so ordered by him, and shall notify said company or its agent, he shall forfeit and pay to the said railroad company, in addition to the penalty herein prescribed, the actual damages that such company may sustain by the failure to use said cars. [Id.]

Art. 6484. [6682] [4501] **To deliver loaded cars.**—When cars have been supplied and loaded, the railway company shall deliver them to the consignee within a reasonable time; and the consignee shall unload the same within forty-eight hours after delivery and notice, Sundays excepted, or forfeit and pay to the company the sum of twenty-five dollars per day for each car not

so unloaded. [Acts 1887, p. 133; Acts 1st C. S. 1913, p. 23; G. L. Vol. 9, p. 931.]

Art. 6485. [6683] [4502] **Proof necessary.**—Parties bringing suit against a railroad company under the provisions of this law shall show that such cars if furnished, would have been loaded within the time specified by this law. The provisions of this law shall not apply in cases of strikes or public calamity. [Id.]

Art. 6486. **Not to affect demurrage regulations.**—The provisions of this law shall not forfeit or annul the demurrage regulations provided by the Commission, and all penalties accruing to the carrier hereunder shall be cumulative of and additional to all demurrage charges prescribed by said Commission. [Acts 1st C. S. 1913, p. 24.]

Art. 6487. [6684] **Duty to furnish cars.**—Each railroad company incorporated under the laws of this State and doing business in this State, under the limitations and regulations prescribed by the Commission, shall equip and provide sufficient motive power and rolling stock to handle all passenger and freight traffic expeditiously and without delay. [Acts 1907, p. 297.]

Art. 6488. [6685] **Commission to require mortgage.**—The Commission shall require each railroad corporation chartered under the laws of this State, holding itself out as a common carrier, to provide and equip itself with sufficient motive power and rolling stock, or other equipment necessary, to handle all passenger and freight traffic, expeditiously and without delay, and it is vested with full power to require of such common carriers the purchase of such rolling stock and motive power as will properly equip such common carrier, and facilitate the movement of all traffic, passenger and freight, and that will supply transportation accommodations which it offers to perform as an inducement to the public to travel or ship via the lines of such railroad company, or common carrier. The Commission is authorized and empowered to approve liens or mortgages that may be given by such railroad companies and common carriers to secure the purchase or lease price of any equipment or motive power which may be deemed by the Commission necessary for the proper discharge of its duty as a common carrier. If in the judgment of the Commission any railroad company in this State which now has an excessive issue of bonds and stocks outstanding, has not sufficient passenger and freight equipment and motive power to handle the passenger and freight business of such common carrier and railroad company, the Commission after not less than five days' notice and hearing shall issue an order requiring the purchase of such rolling stock as in the judgment and discretion of the Commission may be deemed necessary for the prompt, expeditious and comfortable transportation of freight and passengers over the line of such railroad company and common carrier; and in such case, the Commission

is authorized to approve contracts or liens for the purpose of securing the purchase or lease price of such rolling stock, motive power and equipment. [Id.]

Art. 6489. [6686] **Penalty.**—Any railroad company or common carrier failing to comply with any provision of the two preceding articles, or to obey the orders of the Railroad Commission, made in pursuance of any provision thereof, shall be deemed guilty of an abuse of their rights and privileges, and, shall be subject to a penalty of one hundred dollars payable to the State of Texas. Each day that such railroad company or common carrier neglects, fails or refuses to comply with such orders shall constitute a separate offense. [Id.]

Art. 6490. [6687] **Facilities, interchange cars, etc.**—Every railroad company operating a line of railroad within this State shall provide sufficient tracks, switches, sidings, yards, depots, motive power, cars and all other needful facilities and appliances, for receiving and delivering freight, to enable it with reasonable dispatch to perform all of its duties as to all traffic which with ordinary foresight and diligence could be anticipated, as a common carrier; and furnish all necessary and suitable cars and vehicles of transportation for all freight offered or tendered to it for shipment within a reasonable time after demand therefor made by a shipper; and supply within a reasonable time, at its station or stations, spurs, sidings, switches, or other places, at which it receives freight for transportation, and from which such shipper gives notice to such railway company that he desires to ship such freight at the time designated by the shipper, where it is within reasonable time, sufficient suitable cars within which to load the same; and as to all services to be performed within the limits of the State, as to such freight and cars shall transport same within a reasonable time to destination, when destined to a point upon the line of such railway receiving such freight, and, if destined to a point beyond the line of such railroad, then transport and deliver within a reasonable time such freight in such loaded car or cars to the connecting carrier forming any part of the route over which such shipment is made, for the purpose of transportation by such connecting carrier on to the destination of such freight, or for delivery by it to the connecting line or lines forming any part of the route over which same is to be transported to its ultimate destination; and each connecting line of railroad engaged in such transportation, as to all such service to be performed, as to all such freight and cars in which the same is carried within this State, shall receive and transport within a reasonable time such loaded car or cars tendered to it, if in suitable condition for movement, and deliver the same at destination thereof, if destined to a point upon its line of railroad, and, if destined to a point beyond its line of railroad, then to its connecting carrier forming any part of the route over which such car or cars are to be transported, subject to the same duties and obligations as if such freight had originated upon such line of railroad.

Where such freight forms less than a carload, or where it may be necessary to unload the same because of any accident or injury thereto, or to the car in which the same is being transported, or where such freight is unloaded at the request of the shipper en route, or where by reason of any accident or unavoidable cause, or in order to comply with any law or regulation provided by law, such freight is unloaded, or it is reasonably necessary to do so, or where it is for any other reason necessary to unload such freight in order to forward, or before it can be forwarded, in any such cases, where suitable cars may be supplied, and when the freight is carried wholly within this State, the Commission shall make all needful rules and regulations for unloading cars at junction points, or otherwise forwarding cars, furnishing cars for forwarding or reloading and the exchange of cars and forwarding of such freight in the same or other cars. Whenever by reason of any accidental or unavoidable cause which cannot be provided against by the use of reasonable foresight or diligence, such railroad company fails to so furnish cars and shall use reasonable diligence to do so promptly after the happening of such accidental or unavoidable cause, it shall not, on account of such failure, be liable to the penalties of attorney's fees or as otherwise herein prescribed. But nothing in this article shall in anyway affect the right or remedy of any shipper or other person as same may exist at common law or under any statute to recover on account of the failure, delay, or refusal to furnish cars for transportation of any freight, or other failure to perform any other legal duty, nor to in any wise exempt any such railroad company from any provision of the statutes of this State, or other duties imposed by law. [Acts 1907, p. 343.]

Art. 6491. [6688] To interchange cars at junction points.
—To facilitate the movement, preservation and exchange of freight, every railroad company in this State, whose line of railroad connects with the line of any other railroad company in this State, shall exchange at such connecting or junction points, the loaded and empty cars used in or for transportation of freight carried upon such lines of railroad forming any part of the route over which said freight is carried or to be carried; and a railroad company forming any part of the through or joint route over which any freight is carried or to be carried, or having or participating in the joint rates on which such freight is carried or to be carried, on demand of any such connecting line delivering to it any such loaded car or cars of freight at junction points within this State shall furnish to such delivery line within a reasonable time after such loaded cars are so received, at such junction point in this State, as many cars suitable for the carriage or transportation of similar freight as may be so delivered to it loaded, by such connecting line; and upon the demand of the owner thereof, or the railroad company entitled thereto, or to the use thereof, every such railroad company so receiving the cars of another shall return the same at

the place where they were received, or at such place as may be by said railroads agreed upon, within a reasonable time after demand thereof; and as to cars exchanged in transporting freight wholly within this State within the time and according to the rules and regulations prescribed by the Commission. [Id.]

Art. 6492. [6689] **Commission to make rules.**—As to all freight carried wholly within this State and the cars used therefor, the Commission shall make and establish all needful rules and regulations, general and special, which may be different according to the circumstances and conditions to different railroads and localities and for different kinds and classes of freight and cars, providing for the time, place and manner of demanding cars for or giving notice of shipment of such freight and the time, place, manner and order in which the same shall be furnished to shippers for the purpose of shipping freight between points in this State; and prescribe rules and regulations for the furnishing, exchanging and interchanging of cars, loaded and empty, by railroad companies as between each other; the time, place, terms and conditions upon which such cars shall be furnished and such interchange shall be made, and in the absence of an agreement of such railroad companies, the reasonable compensation to be paid by each railroad company for the use, loss, injury or destruction of the cars of another railroad company in the transportation of such freight; the time within which, and the manner by which railroad companies shall give notice or make demand upon each other for cars to be furnished by one railroad company in exchange for loaded cars, or to have its cars returned, the reasonable free time to be allowed the shippers for the loading of such car or cars without incurring liability for demurrage; the free time which shall be allowed to the shipper or consignee in which to unload such freight without incurring any liability for demurrage; a schedule of reasonable demurrage charges, reciprocal or otherwise, for the use of cars, irrespective of damages or penalties herein provided, which may be different for different railroads and different traffic and localities, to be paid by shippers for the detention or use of cars either in loading or unloading, or by the railroads for failing in a reasonable time to furnish cars, or to make delivery of loaded cars, subject to the penalties and damages herein provided, and the rules and regulations with respect thereto. Said Commission, whenever it may deem same necessary in order to secure the prompt transportation of freight and preservation of the property, shall be authorized to prescribe the minimum speed at which freight shall be moved when being transported between points within this State, including the time for transfer and delivery as between connecting railroads. Every such railway company shall conform to each rule, regulation and order of the Commission made in accordance with the two preceding and three succeeding articles; and failure to observe the rules and regulations of the Commission, or to comply with the

provisions of this law, as to freight carried wholly within this State, shall be deemed an abuse subject to correction by the Commission, and shall subject such railroad company to the penalties hereinafter provided. [Id.]

Art. 6493. [6690] **Liable for damages, when.**—Every railroad company which shall fail to furnish cars as provided herein for the shipment of freight within a reasonable time, or in case of the shipment of freight between points within this State, within the time prescribed by the Commission, or shall fail to receive and forward any loaded car or cars or to exchange cars as provided herein, shall be liable to the shipper or other person injured or damaged thereby for all such injury or damages as may result to such shipper, and all special damages of which such railroad company had notice at the time of the shipment, or which shall occur after written notice thereof, and shall be liable in addition thereto for an amount equal to a reasonable attorney's fee in case suit is brought for the recovery of such damage. If any railroad company in this State shall fail or refuse to furnish within a reasonable time after demand therefor, any car or cars for the shipment of live stock, green fruit, vegetables or other perishable freight, such railroad company shall be liable to the shipper for the damage caused thereby, and a reasonable attorney's fee in case of suit to recover the same. Any railroad company which shall fail to furnish or exchange cars as required by the provisions of this law, or by the rules and regulations of the Commission as provided for herein, shall be liable to the railroad company injured thereby for all such damages as may result to it, and in addition thereto an amount equal to a reasonable attorney's fee in case suit is brought for the recovery of any damage. Every railroad company using cars of another railroad company, or which have been delivered to it by such railroad company, shall be liable to pay to the party entitled thereto the value of the reasonable use and hire thereof, and for injury or damage thereto, or destruction thereof, while in its possession or under its control, for the amount of such injury; and, in case of cars in the shipment of freight between points wholly within this State, the amount for the use or hire thereof may be prescribed by the Commission, unless the owners of such cars and such railroad companies agree upon such compensation. Where any such railroad company, or owner of any such car or cars, shall be dissatisfied with the amount fixed by the Commission for such use, hire, loss or destruction, or damage to such car, or where the railroad company liable therefor shall fail to pay for the same, the Commission or person entitled thereto, or which is liable for the use, hire, loss, injury or destruction of such cars, shall be entitled to establish the reasonable value thereof by suit. [Id.]

Art. 6494. [6690] **Not to furnish cars, when.**—No railroad company shall be compelled to furnish its own cars to any other railroad company which is involved, except upon reasonable se-

curity furnished to it to protect it from loss of or damages to or destruction of such cars and compensation for the use thereof, and in no event shall any railroad company be required to furnish any cars to any connecting line, except to exchange for other cars reasonably suitable for the transportation of freight. [Id.]

Art. 6495. [6691] **Other penalty.**—A railroad company which shall willfully, by its gross negligence, or by the gross negligence of its agents having charge and management of the matter of furnishing cars, fail or refuse to furnish or exchange cars as herein provided for, or to transport or deliver the same within the time prescribed by the Commission, as to freight carried between points wholly within this State, or if not so prescribed, then within a reasonable time, shall in addition to the other liabilities herein provided for, forfeit to the State of Texas, for each of such violations, not less than one nor more than one hundred dollars for each offense; and each day of such failure or neglect as to each car which it, by such willful or gross negligence, shall fail or refuse to furnish or exchange shall be a separate offense. [Id.]

Art. 6496. **“Shipper”.**—By the term “shipper” as herein used, is meant any person, firm or corporation tendering freight for shipment, and any consignor or consignee of any bill of lading, or other person, firm or corporation having the right of consignor or consignee. [Id.]

Art. 6497. [6692] **“Reasonable time.”**—It shall be deemed prima facie a reasonable time within which to order cars that any shipper shall give written notice thereof to the station agent at the place of shipment, or in his absence, to the nearest station agent of the railroad company to which such application is made, three days before such shipment of five cars or less, and five days for less than ten or more than five cars, and eight days for ten cars or more. The railroad companies shall furnish their station agents with printed blanks upon which shippers may make application for their cars. Nothing in this and the five preceding articles shall be construed to exempt any railroad company from the obligation to furnish cars for shipment without such written notice, but it shall only be subject to the penalties of this law for failure to furnish cars to shippers where notice thereof shall be given in writing, or in case of shipment of freight wholly between points in this State, then in accordance with the rules and regulations of the Commission. [Id.]

Art. 6498. [6693] **Suitable depots.**—Each railroad company in this State shall provide and maintain adequate, comfortable and clean depots and depot buildings at their several stations for the accommodation of passengers, and keep said depot buildings well lighted and warmed for the comfort and accommodation of the traveling public. They shall keep and maintain separate apartments in such depot buildings for the use of white passengers, and keep and maintain adequate and suitable freight

depots and buildings for receiving, handling, storing and delivering of all freight handled by such roads, and the Commission shall require railroad companies to comply fully with the provisions of this law under such regulations as said Commission may deem reasonable. [Acts 1909, 2nd C. S., p. 401.]

Art. 6499. [6695] **Union depots.**—Where two or more railroad companies reach the same city or town in this State, if the Commission shall deem it practicable for such railroad companies to use a joint or union passenger depot or to join in the construction and use of a passenger depot, then it shall give notice to such railroad companies and after investigation and public hearing, may require the construction and maintenance of such union passenger depot by such railroad companies, if it appears to the Commission that the construction and maintenance of such union passenger depot are just and reasonable to the railroad companies involved, and demanded by the public interest. The Commission may specify the requirements of such union depot as to kind and character and may apportion the cost of construction and maintaining the same to each railroad company where the companies cannot agree. [Acts 2nd C. S. 1909, p. 399.]

Art. 6500. [6696] **Penalty for failure.**—Failure upon the part of any railroad company to observe and obey the orders of the Railroad Commission, issued in compliance with the two preceding articles shall subject such railroad company to the fines and penalties prescribed by law for failure to obey the lawful requirements, order, judgments and decrees made by the Commission. [Id.]

Art. 6501. [6697 to 6700] **Right to lease another road.**—A railroad whose total mileage in this State does not exceed thirty miles in length, which connects at or near the State line with any other railroad, may be leased by the company owning such other railroad, subject to the following provisions:

1. Such lease shall be made on such terms and for such time, not exceeding ten years, as may be approved by the Commission. At any time before or after its expiration the lease may be renewed or another executed subject to the provisions and limitations of this title.

2. During the term of such lease the lessor company shall remain subject to the jurisdiction of the Commission, and shall be liable for any and all things occurring on or in connection with such road. The lease shall not operate to exempt or release either the lessor or lessee company from any liability that would otherwise exist against it.

3. The lessee company shall be exempted from the laws of this State requiring general offices to be maintained and general officers to reside in this State, except as required by provisions of the Constitution of this State and by the orders of the Commission.

4. In a suit against the lessor company the officers and

agents of the lessee company shall be the officers and agents of the lessor company for the purpose of serving process.

The provisions of this article shall not apply to any railroad whose total mileage in this State may exceed thirty miles in length, although the part of its line connecting at or near the State line does not exceed thirty miles in length. [Acts 1899, p. 73.]

Art. 6502. [6701 to 6705] **Railroad crossings.**—Any company, corporation or receiver or person operating any railroad in this State shall forfeit and pay to the State of Texas a penal sum of five hundred dollars per week for each week of refusal or neglect to comply with any order made by the Commission in pursuance of the following provisions of this article:

1. When necessary for the track of one railroad company to cross the track of another, the Commission shall ascertain and define by its decree the mode of such crossings which will occasion the least probable injury upon the rights of the company owning the road to be crossed; and, if the Commission decides that it is reasonably practicable to avoid a grade crossing, said Commission shall by its order prevent the same.

2. Where the tracks of two or more railways cross each other at a common grade in this State, such railroad companies shall protect such crossing by interlocking or other safety devices and regulations to be designated by the Commission, to prevent trains colliding at such crossings.

3. When a railway company seeks to cross, at grades with its track or tracks, the track or tracks of another railroad, the one seeking to cross at grade shall be compelled to interlock, or protect such crossings by safety devices to be designated by the Commission, and to pay all cost of appliances together with the expense of putting them in. This law shall not apply to crossings of side tracks.

4. When interlocking or other safety devices are constructed and maintained in good order to the satisfaction of the Commission, the engines and trains of such railroads may pass over such crossings without stopping. [Acts 1901, p. 255.]

Art. 6503. [6706] **Double-header trains.**—Where an unreasonable degree of hazards results to its employes, it is hereby declared to be an abuse of its franchise and privileges for any railroad company, or receiver, operating a line of railroad in this State to run or operate more than one working locomotive at the same time in propelling or moving any one train of cars, except in moving trains up steep grades, or where a locomotive propelling the train becomes temporarily disabled after leaving the terminal; the Railroad Commission shall investigate such abuses and see that the same are corrected, regulated or prohibited as hereinafter provided. [Acts S. S. 1900, p. 15.]

Art. 6504. [6707] **Use regulated by Commission.**—Should the Commission decide to regulate or forbid the practice of using more than one working locomotive at the same time in

the operation of any train on any railroad, or part of railroad, within this State, then it shall make and record an order fully setting forth its decision and clearly designating the railroad, or part of railroad, on which such practice is forbidden or regulated and how regulated. Notice of such order shall be served upon said railroad affected by it. Said notice shall contain in full a copy of said order, and shall be directed to the sheriff or any constable of the county where the general offices of such railroad are located; and a copy of the same shall be delivered by the officer executing the same to any general officer of said railroad in this State residing in said county. Said officer executing said writ shall make his return on the original, and deliver the same with his return forthwith to the Commission. [Id.]

Art. 6505. [6708] **Penalty.** — Any railroad corporation which shall at any time after ten days after service of such notice violate the order of the Commission, shall be liable to the State for a penalty of not less than five hundred nor more than five thousand dollars for each offense. [Id.]

Art. 6506. **Maintenance; powers of Commission.**—The Commission shall see that each railroad corporation owning or operating a line of railroad in this State shall maintain its roadbed and track in such condition as to enable it to perform all of its duties as a common carrier with reasonable safety to persons and property carried by it and its employes and with reasonable dispatch. The Commission is vested with full power to require any railroad company to purchase or secure for installation in its roadbed or track all ties, rails, ballast and other material and equipment as may, in the judgment of the Commission, be necessary for the proper maintenance of the whole or any designated portion of such track and roadbed so as to put the same in safe condition and enable such railroad to adequately perform its duties to the public and to transport freight and passengers with safety and dispatch. [Acts 1915, p. 201.]

Art. 6507. **Penalty for failure to comply.**—When the Commission has made such order as authorized by the preceding article, each railroad company subject thereto shall promptly comply with the terms thereof, and for failure or refusal to do so, such company or its receiver shall become liable to the State of Texas, for a penalty of not less than five hundred nor more than five thousand dollars for each offense. In addition to such penalties, any court of competent jurisdiction upon application of the Attorney General shall issue writs of mandamus and mandatory injunctions and other proper writs to compel the compliance with such orders. [Id.]

Art. 6508. **Improvement bonds.**—When the Commission shall make an order as authorized by the provisions hereof for the improvement of any line of railway, it may in its discretion at the same time make an order permitting said railroad corporation to issue bonds sufficient to raise the money necessary to

make such improvements; and authorize such railroad corporation to secure the same by proper mortgage upon its property, and designate such bonds and mortgages as "Improvement Bonds and Mortgages"; provided, the entire amount of bonds of said railroad company shall not exceed the assets of the said company. The Commission shall also see that the funds arising from the sale of such bonds are applied to the making of the improvements ordered by it to be made, and shall regulate the same in the proper manner and any sale of such "Improvement Bonds and Mortgages" at less than par value thereof, must in order to be valid, be approved by the Commission. [Id.]

Art. 6509. [6715] **Sidings, etc.**—All railroads in Texas shall build sidings and spur tracks sufficient to handle the business tendered such railroads, when so ordered by the Commission. [Acts 1903, p. 93.]

Art. 6510. [6716] **To enforce compliance.**—Power is conferred on the Railroad Commission to require compliance by railroad companies with the provisions of the preceding article, under such regulations as said Commission may deem reasonable; and all railroad companies shall be subject to the penalties prescribed by law for failure to comply with the requirements of the Commission as provided herein. [Id.]

Art. 6511. **Switch connections.**—Any railroad company or receiver upon application of a shipper tendering traffic for transportation sufficient to justify it, shall construct, maintain and operate upon reasonable terms, a switch connection with any private sidetrack or spur track constructed by such shipper, to connect with its railroad where such connection is reasonably practicable and can be put in with safety and will furnish sufficient business to justify the construction and maintenance of the same; and shall furnish cars for the movement of such traffic to the best of its ability and without discrimination in favor of or against such shipper. [Acts 1915, p. 66.]

Art. 6512. **Application.**—If any railroad company or its receiver shall fail to install and operate any such switch connection, on application therefor by any shipper, such shipper may make application to the Commission, and it shall enter such orders as may be necessary governing the construction, maintenance and operation of said switch connection, if reasonably practicable and safe and will furnish sufficient business to justify the construction and maintenance of the same. [Id.]

Art. 6513. **To fix rates, prevent discrimination, etc.**—The Commission shall fix just and reasonable rates to be charged by railroad companies or their receivers for traffic moved and handled over private sidetracks or spur tracks extending to private industries, and it shall adopt such rates, rules, and regulations as will prevent any discrimination in the operation of such tracks or the handling of such traffic. Whenever any railway company or receiver thereof shall operate any private

sidetrack or spur track without charge, the Commission shall have authority to compel the operation without charge of any private sidetrack or spurtrack similarly situated. [Id.]

Art. 6514. To regulate private sidetracks, etc.—The Commission shall prescribe reasonable rates, rules and regulations for the operation of all private sidetracks or spur tracks constructed either by the railroad companies themselves or by individuals or corporate interests, or jointly by such railroads and individuals or corporations, when such private sidetracks or spur tracks are operated by railroad companies or the receivers thereof; and shall have power and authority to order and compel the operation of said private sidetracks or spur tracks whenever the railway company or receiver thereof is operating other private side tracks or spur tracks similarly situated, to prevent discrimination therein. [Id.]

Art. 6515. No discrimination.—Whenever any railroad company shall construct or maintain or contribute to the construction or maintenance of any private sidetrack or spur track to any private industry, the Commission shall order such railway company or receiver to construct or maintain or contribute to the construction or maintenance of a sidetrack or spur track to any private industry similarly situated on the same terms and conditions. [Id.]

Art. 6516. Failure to comply.—Should any railroad company or receiver thereof fail to obey the orders of the Commission issued in compliance with the five preceding articles, such failure shall subject such railroad company to a penalty of not less than five hundred nor more than five thousand dollars for each offense. [Id.]

Art. 6517. Action for damages.—Any person injured by a violation of the terms of the six preceding articles shall have the right to bring suit for his actual damages and for the enforcement of his rights thereunder. [Id.]

Art. 6518. Re-arrangement.—The Commission shall investigate proposed or existing arrangement of railroad tracks, switches and depot buildings at railroad stations to determine whether or not proposed or existing arrangements of such tracks, switches and depot buildings are or may be dangerous to the public and to determine whether or not the public interest demands a re-arrangement or relocation of such tracks, switches and depot buildings to be made, and to determine whether or not such re-arrangement or relocation can be made upon terms and conditions reasonable and just to the person, firm, corporation or receiver owning or operating such tracks, switches and depot buildings, and the Commission may if the question can, under the facts, be resolved affirmatively, thereupon give notice to such persons, firm, corporation or receiver, and after public hearing and investigation, may require the person, firm, corporation or receiver, owning or operating such tracks, switches and depot buildings at such points to arrange,

or re-arrange, or re-locate the same in accordance with the specifications made by the Commission. No such arrangement, re-arrangement, or relocation, shall be authorized or required within the limits of any incorporated city or town without the express consent of the governing body of such city or town. [Acts 4th C. S. 1918, p. 196.]

Art. 6519. Suits for penalties.—All penalties and forfeitures provided for by this chapter for a violation of any provision hereof by railway companies recoverable by and payable to the State or any municipal subdivision thereof shall be determined by a direct suit in a proper court instituted by or under the direction of the Attorney General in Travis County or in any county into or through which the line of the offending railway company may run. The attorney bringing such suit shall receive a fee of fifty dollars for each penalty recovered and collected by him, and ten per cent of the amount collected to be paid by the State; and the fees so allowed shall be over and above the fees allowed such attorney under the provisions of law. In all suits arising under this chapter, the rules of evidence shall be the same as in ordinary civil actions, except as otherwise herein provided. All fines and penalties recovered by the State under this chapter shall be paid into the State Treasury.

CHAPTER TWELVE.

ISSUANCE OF STOCKS AND BONDS.

| Article | Article | | |
|--------------------------------------|---------|--------------------------------------|------|
| Regulating stocks, bonds, etc..... | 6520 | Registering bonds | 6528 |
| Incumbrance above value of road..... | 6521 | Forfeiture of charter | 6529 |
| To ascertain values, etc..... | 6522 | Certificates, bonds, etc., void..... | 6530 |
| Effect of sale of road..... | 6523 | False statement | 6531 |
| Purchasers may issue bonds, etc..... | 6524 | State not liable | 6532 |
| Authority to issue bonds..... | 6525 | Construction of branch lines..... | 6533 |
| Authority to issue bonds..... | 6525 | May issue for double tracks..... | 6534 |
| Certificates of stock..... | 6526 | | |
| Prerequisites | 6527 | | |

Art. 6520. [6717] Regulating stocks, bonds, etc.—Among other things, the power and authority of issuing or executing bonds, or other evidences of debt, and all kinds of stocks and shares thereof, and the executions of liens and mortgages by railroad corporations in this State are special privileges and franchises, the right of supervision, regulation, restriction and control of which has always been, is now, and shall continue to be vested in the State government, to be exercised according to the provisions of this and other laws. [Acts 1893, p. 56; G. L. Vol. 10, p. 486.]

Art. 6521. [6718] Incumbrance above value of road.—No bonds or other indebtedness shall be increased or issued or executed by any authority whatsoever, and secured by any lien or mortgage on any railroad or part of railroad, or the franchises or property appurtenant or belonging thereto, over the reasonable value of said railroad property; provided, that in case of emergency, on conclusive proof shown by the company to the Commission that public interests or the preservation of the property demand it, the Commission may permit said bonds,

together with the stock in the aggregate, to be executed to an amount not more than fifty per cent over the value of said property. [Id.]

Art. 6522. [6719] **To ascertain values, etc.**—The Commission shall ascertain, and in writing report to the Secretary of State, the value of each railroad in this State, including all its franchises, appurtenances and property. After it shall have prepared said report the Commission shall give the company interested ten days notice in writing by registered letter to the president, treasurer or receiver of said railroad, to the effect that said report is ready to be made, and that if it has any objections thereto it must file them in writing within forty days after said service, or the same will be so deposited with the Secretary of State as correct. If the company files with said Commission any objections to said report, the Commission shall duly investigate and pass on same, and if it concludes that its report of value is too low or too high, then it shall make the necessary correction before filing it. If no objections are filed within the time permitted, or being filed and on examination found without merit, the Commission shall forthwith file its said report in the office of the Secretary of State, where it shall remain as a public record, as a limitation for the issuance of indebtedness under the limitations prescribed in this title. To promote public interests and protect private rights, the Commission, after due notice under the rule herein prescribed, may correct its report of the value of any railroad at any time it may deem proper. [Id.]

Art. 6523. [6720] **Effect of sale of road.**—Every judicial or other sale of any railroad in this State which shall have the effect to discharge the property so sold from liability in the hands of purchasers for claims for damages, unsecured debts, or junior mortgages against such railroad company so sold, shall have the effect to annul and cancel all claims of every stockholder therein to any share in the stock of such railroad; and it shall not be lawful for said purchasers, or for any railroad company to operate said railroad, to issue any stock in lieu of the old stock or to allow any compensation therefor in any manner whatever, nor shall all or any part of the debt to satisfy which such sale is made be continued or held as a claim or lien on said property. [Id.]

Art. 6524. [6721] **Purchasers may issue bonds, etc.**—The purchaser of said property who procures it clear of incumbrance, or any company organized by his consent to operate said railroad under and in pursuance of the laws of this State, may issue stock and bonds in the proportion that he may deem advisable, subject to the rules and limitations prescribed by law. [Id.]

Art. 6525. [6722] **Authority to issue bonds.**—Should any company or corporation authorized to construct, own or operate a railroad in this State desire to issue bonds or other indebtedness, to be secured by lien or other mortgage on its franchises

and property in advance of the completion of the said railroad, it shall make application to and first procure the consent of the Commission thereto. In said application, it shall exhibit to the Commission its contract with the construction company, if it have any, the profile of its completed road or part of road, the evidence of its right of way, depot grounds, terminal facilities, the extent and value of work done or in the process of completion, the amount of property received, the amount of stock subscribed and the amount paid in, and all other necessary facts showing the value of the franchise and property proposed as security for said contemplated debts. If, on investigation, the Commission is satisfied that the company is acting in good faith, and that its contract with the construction company is reasonable and fair to the public, then it shall authorize the execution of said indebtedness and a lien to the extent necessary for the demands of the work, at no time to be fifty per cent over the value of the whole property and franchises. In executing said bonds, the company shall comply with Article 6526, and have them registered as required in Article 6527. [Id.]

Art. 6526. [6723] Certificates of stock.—Each railroad company now existing, or which shall hereafter be organized, or which shall be re-organized under the laws of this State, or which shall increase its stock under the laws of this State, shall issue certificates to the subscribers to its said stock under the following regulations: A majority of the board of directors shall meet in person in this State, at the principal office of such company, and shall cause to be made a list of the subscribers to such stock, showing the number of shares subscribed by each, the amount of stock represented by each share and the amount actually paid, labor done or property received on each share of stock, and shall cause to be affixed to each name on said list a number, beginning with number one, or the next highest number of any certificate previously issued. The president of the board, or presiding officer of the meeting at which the issuing of such certificates of stock is authorized, shall make a certificate signed by him in person to said statement to the effect that the same is correct, and that the amount of money paid, labor done and property received as stated is correct. Such statement shall thereupon be entered at large upon the minutes, and, after having the seal of the company affixed thereto, shall be attested by the secretary of the company, and deposited with the Commission, and by it filed and preserved in its office. The secretary of the company shall then be authorized to make out and deliver to each stockholder in said list a certificate corresponding with said statement in number, name, number of shares, amount of stock represented by each share, and the amount of money or its equivalent paid upon each share; which certificate shall be signed by the president of the said railroad company, attested by the secretary, with the seal of said company affixed. No railroad company shall increase its stock

unless all existing shares of stock shall have been paid in full, or all unpaid shares of such stock have been sold out as forfeited under the law. When the certificates to be issued are for increase of stock, the statement herein required to be made by the board of directors shall state that all existing shares of stock have been paid in full, or that all shares not paid in full have been sold out or forfeited under the law. In no event shall the stock exceed the value of the railway property, and the correct aggregate amount of stock so issued by each railway company shall be certified to and registered in the office of the Secretary of State by or at the instance of the Commission. [Id.]

Art. 6527. [6724] **Prerequisites.**—When any railroad company in this State desires to make, issue, and sell any bonds, or evidences of debt, which are to become a lien on its property, it shall comply with the laws of this State regulating the same, and in addition thereto shall have said bonds prepared, signed by the president of the company, and attested by the secretary, with the seal of the company attached thereto. Each bond shall be numbered, beginning with number one, or the next highest number of any preceding bond issued by it, and continue consecutively until all are numbered. The bonds shall be dated, made payable at a time not exceeding thirty years from date and shall bear interest not exceeding six per cent per annum. Said bonds, when thus prepared, shall be presented to the Commission, with a written statement, signed and sworn to by the president of said company, showing the amount of the stock of said company and the amount of outstanding bonds, if any, of said company. If said bonds are such as are permitted under this law, and the Commission shall be so satisfied, it shall approve said bonds, and shall issue to the Secretary of State a direction to register said bonds, specifying the numbers, dates, and amounts thereof. Said Commission shall keep in its office a correct record of the bonds so approved by it, giving the name of the company, the numbers, dates of execution and maturity of the bonds, the amount and rate of interest of each, and the date of approval. This provision shall not apply to receiver's certificates where the amount does not exceed one hundred thousand dollars. [Id.]

Art. 6528. [6725] **Registering bonds.**—When such bonds shall be presented to the Secretary of State with said direction to register, he shall register said bonds by entering a description thereof in a book to be kept for that purpose, which shall show the date, number, amount, when due, the rate of interest on each bond, and also the date when the same is registered. The Secretary of State shall indorse on each bond, under the seal of his office and his official signature, together with the date thereof, as follows: "This bond is registered under the direction of the Railroad Commission of Texas." No bond or other evidence of debt, hereafter issued by or under the author-

ity of any person, firm, corporation, court, or railroad company, whereby a lien is created on its franchise or property situated in this State, shall be valid or have any force until the same has been registered as required herein. [Id.]

Art. 6529. [6726] **Forfeiture of charter.**—If any railroad company owning or operating a railroad in this State shall issue or consent or cause to be issued any bonds or other evidences of debt to be or become a lien on its railroad property so owned or operated, or shall issue any stock not in accordance with the provisions of this chapter, such action shall work a forfeiture of its charter. [Id.]

Art. 6530. [6727] **Certificates, bonds, etc., void.**—Every certificate of stock in any railroad company, and every bond and other evidence of debt operating as a lien upon the property of such railroad company, which shall be made, issued or sold without first complying with the provisions of this chapter shall be void. [Id.]

Art. 6531. [6728] **False statement.**—Each railroad director, president, secretary or other official, who shall knowingly make any false statement upon which to secure the registration of any bond or other evidence of debt as aforesaid, or who shall by false statement knowingly made procure of the Commission direction to the Secretary of State to register the same, and which shall be by the Secretary of State registered, or shall with the knowledge of such fraud negotiate, or cause to be negotiated, any such bond or other security issued in violation of this chapter, shall be liable to any creditor of such company for the full amount of damages sustained by such wrongful conduct. [Id.]

Art. 6532. [6729] **State not liable.**—Nothing in this law, and no act done or performed under or in connection with it shall be construed to make the State of Texas liable to pay or guarantee, in any manner whatsoever, any obligation, debt or claim executed or assumed under or by virtue of its provisions. [Id.]

Art. 6533. [6730] **Construction of branch lines.**—Any corporation incorporated for the purpose of constructing, owning, maintaining and operating a railroad under the laws of this State, which has outstanding stocks and also outstanding bonds secured by a mortgage lien upon its property, or by any other character of lien, may amend its charter in the manner provided in this title, and in accordance with the Constitution and laws of this State, and may provide by such amendment for the making of any extension or extensions, or branch line or lines that it may desire to construct, and may issue stocks and bonds, or bonds, in an amount equal to the reasonable value of such extension or extensions, or such branch line or lines, and such terminal properties as it may acquire, the same to be issued in accordance with the provisions of this chapter. The Commission is hereby empowered to authorize the execution and issuance of such stocks and bonds, or bonds, and in determining the right to

issue such stock and bonds, said Commission shall not consider the amount of outstanding stock or indebtedness, or bonds previously issued and secured by a lien upon the property of such corporation theretofore constructed; provided, that any existing mortgages or liens upon the property of such corporation constructed or owned prior to the time of making such amendment of its charter and to the construction of such extension or extensions, or branch line or lines, or to the acquiring of such terminal properties, shall not attach to or become a lien upon the extension or extensions, branch line or lines, or terminal properties constructed or acquired under such amended charter. This article shall not be so construed as to in any wise repeal or impair any other provision of this chapter or of the existing laws of this State except in so far as the same may be changed by the provisions of this article. [Acts 1901, p. 257.]

Art. 6534. [6732] May issue for double tracks.—Any railroad company chartered under the laws of this State, whenever the Commission shall find it advisable to authorize it to do so, may construct, own and operate an additional line of road upon its right of way, together with all necessary sidings, switches and turnouts, and may issue stock and bonds, or bonds, in an amount equal to the reasonable cost of such improvements, the same to be issued in accordance with the provisions of this chapter; and the Commission may authorize the execution and issuance of such stock and bonds, or bonds. In determining the right to issue such stock and bonds, or bonds, the Commission shall not consider the amount of outstanding stock, indebtedness or bonds previously issued and secured by lien upon the property of such corporation theretofore constructed. [Acts 1903, p. 131.]

CHAPTER THIRTEEN.

MISCELLANEOUS RAILROADS.

| Article | Article | | |
|-----------------------------------|---------|-----------------------------------|------|
| Eminent domain | 6535 | Merger | 6543 |
| Right of way | 6536 | Street railway fares | 6544 |
| Streams, streets, etc. | 6537 | Street and suburban railways..... | 6545 |
| Electric railway tracks, etc..... | 6538 | Freight interurbans | 6546 |
| Proceedings to condemn | 6539 | Plants and buildings | 6547 |
| "Interurban railway company"..... | 6540 | Gitney lines | 6548 |
| To sell light and power | 6541 | Terminal railways | 6549 |
| Provisions cumulative | 6542 | Road to mines, etc..... | 6550 |

Art. 6535. [6733] Eminent domain. — All corporations chartered for the purpose of constructing, acquiring, maintaining and operating lines of electric railway between any cities and towns in this State for the transportation of freight or passengers, or both, shall have the right of eminent domain with all the rights and powers as fully as are conferred by law upon steam railroad corporations, and shall have the right and power to enter upon, condemn and appropriate the lands, rights of way, easements and property of any person or corporation whomsoever for the purpose of acquiring rights of way upon which to construct and operate their lines of railways and sites for depots and power plants. [Acts 1907, p. 23.]

Art. 6536. [6734] Right of way.—Such corporation shall have the right and power to lay out rights of way for their railways not to exceed two hundred feet in width, and to construct their railways and appurtenances thereon, and for the purpose of cuttings and embankments to take as much more land as may be necessary for the proper construction and security of their said railways, and to cut down any standing trees or remove any other structure that may be in danger of falling upon or obstructing such railway, compensation being made therefor in accordance with law. Such corporation may have such examination and survey of their proposed railways made as may be necessary to the selection of the most advantageous route, and for such purposes may enter upon the lands or waters of any person or corporation subject to responsibility for all damages that may be occasioned thereby. [Id.]

Art. 6537. [6735] Streams, streets, etc.—They may construct their railways along, across and over any stream of water, water course, bay, navigable water, arm of the sea, street, highway, steam railway, plank road, turnpike or canal which the route of such railway shall touch, and erect and operate bridges, trams, trestles, or causeways over, along or across any such stream, water course, navigable water, bay, arm of the sea, street, highway, plank road, turnpike, or canal. Such bridge or other structure shall be so erected as to not unnecessarily or unreasonably prevent the navigation of such stream, water course, bay, arm of the sea or navigable water and nothing herein shall authorize the construction of any such railway upon or across any street, alley, square or property of any incorporated city or town without the assent of said corporation of said city or town, and before constructing an electric railway along and upon highways, plank roads, turnpikes or canals, such interurban electric railway company shall first obtain the consent of the lawful authorities having the jurisdiction of the same. [Id.]

Art. 6538. [6737] Rights over other electric railway tracks, etc.—The right of condemnation herein given to interurban electric railway companies shall include the power and authority to condemn for their use and benefit, easements and rights of way to operate interurban cars along and upon the track or tracks of any electric street railway company owning, controlling or operating such track or tracks upon any public street or alley in any town or city of this State for the purpose herein-after mentioned, subject to the consent, authority and control of the governing body of such town or city. [Id.]

Art. 6539. [6738] Proceedings to condemn.—Any interurban electric railway company, seeking to avail itself of the benefits of this chapter shall have the right to condemn an easement along and upon the track or tracks of any electric street railway company for the purpose only of securing an entrance into and an outlet from a town or city upon a route to be designated

by the governing body of the city or town. In any proceeding to condemn an easement or right of way for the purposes above mentioned, the court, or the jury trying the case shall define and fix the terms and conditions upon which such easement or right of way shall be used. The court rendering such judgment shall be authorized upon a subsequent application or applications by either of the parties to the original proceedings, or any one claiming through or under them, to review and reform the terms and conditions of such grant and the provisions of such judgment, and the hearing upon such application shall be in the nature of a retrial of said cause with respect to the terms and conditions upon which said easement shall be used; but the court shall not have power upon any such rehearing to declare such easement forfeited or to impair the exercise thereof, and no application for a rehearing shall be made until two years after the final judgment on the last preceding application. [Id.]

Art. 6540. [6739] **“Interurban railway company.”**—An interurban electric railway company, within the meaning of this chapter, is a corporation chartered under the laws of this State for the purpose of conducting and operating an electric railway between two cities or between two incorporated towns or between one city and one incorporated town in this State; and the rights secured under this chapter by any interurban company shall be inoperative and void if the road to be constructed under the charter of said company is not fully constructed from a city or incorporated town to some other city or incorporated town within twelve months from the date of the final judgment awarding to said company said easements and right of way. Any interurban company availing itself of the privileges conferred in this chapter is hereby prohibited from receiving for transportation at any point on that portion of the track or tracks so condemned, without the consent of the company over whose track or tracks the easement is condemned, any freight or passengers destined to a point or points between the termini of the track or tracks so condemned; and a wilful violation by the company of the provisions of this article shall operate to forfeit such easements or rights of way. [Id.]

Art. 6541. [6740] **To sell light and power.**—Interurban electric railway companies shall also have the right to produce, supply and sell electric light and power to the public and to municipalities. [Id.]

Art. 6542. [6741] **Provisions cumulative.**—No provision in this chapter shall be construed to have the effect to confer the power of eminent domain, or any power herein conferred, except that conferred in the preceding article, upon any interurban railroad or interurban railroad company, or upon any person, firm, association, or corporation or to add to the powers already possessed by any such railroad or railroad company, person, firm, association or corporation so as to enable or authorize it to condemn any land or ground occupied by any por-

tion of its line or track, already constructed March 5, 1907, or to condemn any land or ground for the purpose of changing the location of any track or line already constructed at said date. Nothing in this article shall be construed to take from any interurban railroad company, person, firm, association or corporation, any power of eminent domain already possessed by it. [Id.]

Art. 6543. **Merger.**—Any corporation organized under the laws of this State authorized to construct, acquire and operate electric or other interurban lines of railway in this State, commonly known as interurban railways, may acquire, lease or purchase the physical properties, rights and franchise of any other railway corporation having and possessing like power, or may lease or purchase physical properties, rights and franchises of any suburban or street railway corporation, the lines of whose railway are to be operated in connection with the lines of the interurban railway, and may sell or dispose of the physical properties, rights and franchise by such corporation or person owning the same, to such corporation, acquiring, leasing or purchasing same hereunder. Such acquisition or purchase may be made upon such terms as may be agreed upon by the respective boards of directors and authorized or approved by a majority of the stockholders of such corporations, respectively. Corporations owning and operating said street car railways before making sale of its properties hereunder, shall obtain the consent of the governing body of the city where such street car line may be located; and, in cities and towns operating under any charter which provides for the right of qualified voters to vote on the granting or amending of franchise to street railways or interurban railways, this right shall still exist. Any corporation authorized to construct, acquire and operate electric or other interurban lines of railway in this State, commonly known as interurban railways, shall also have the power to make and enter into trackage or lease contract with any corporation owning and operating street railways, so as to procure continuous passage into or through such city or town; provided, the governing body of the city or town shall consent thereto; in such case, the owner of such street railways is also authorized to enter into such trackage or lease contract. No corporation named in this article shall ever be permitted to acquire, own, control or operate any parallel or competing interurban line. No such corporation shall be permitted to purchase, lease, acquire, own or control, directly or indirectly, the shares or certificates of stock or bonds, franchise or other rights or the physical properties or any part thereof, of any other corporation, if the same will violate any provision of the law commonly known as the anti-trust law. [Acts 1st C. S. 1915, p. 31.]

Art. 6544. [6742-45] **Street railway fares.**—All persons or corporations owning or operating street railways in or upon the public streets of any town or city of not less than forty thousand inhabitants are required:

1. To carry children of the age of twelve years or less for one-half the fare regularly collected for the transportation of adults. This law shall not apply to street cars carrying children or students to and from schools, colleges or other institutions of learning situated at a distance of one mile or more beyond the limits of the incorporated city or town from which said cars run.

2. To sell or provide for the sale of tickets in lots of twenty, each good for one trip over the line or lines owned or operated by such person or corporation, for one-half of the regular fare collected for the transportation of adults, to students not more than seventeen years of age in actual attendance upon any academic, public or private school of grades not higher than the grades of the public high schools situated within or adjacent to the town or city in which such railway is located. Such tickets are required to be sold only upon the presentation by the student desiring to purchase them of the written certificate of the principal of the school which he attends showing that he is not more than seventeen years old, is in regular attendance upon such school and is within the grades herein provided. Such tickets are not required to be sold to such students and shall not be used except during the months when such school is in actual session and such students shall be transported at half fare only when they present such tickets.

3. To transport free of charge children of the age of five years or less when attended by a passenger of above said age.

4. To accord to all passengers referred to in this article the same rights as to the use of transfers issued by their own or other lines as are or may be accorded to passengers paying full fare. [Acts 1903, p. 132.]

Art. 6545. **Street and suburban railways.**—All street and suburban railways engaged in the transportation of freight within and near cities and towns, shall be subject to the control of the Railroad Commission. No street railway company shall be exempt from payment of assessments that may be legally levied or charged against it for street improvements. Any corporation heretofore or hereafter organized under the general laws of this State, and which owns or operates with electric power any street or suburban railway or belt line of railways within and near cities and towns for the transportation of freight and passengers within Texas shall be authorized to supply and sell electric light and power to the public or municipalities, and to acquire or otherwise provide the necessary appliances therefore, and may, by proceeding in the manner provided by law, amend its articles of incorporation so as to expressly include such authority. When the Railroad Commission shall decide that any corporation created under chapter one of this title for the purpose of operating a local suburban railway not exceeding ten miles from the corporate limits of any city or town in addition to such mileage as it may have within

the same, is not for any reason subject to the control of said Commission in reference to the issuance of stocks and bonds or either under the provisions of Chapter 50, Acts 1893, after such decision of the Commission, said corporation shall have the right to issue its stocks and bonds or either and also to increase its stocks and bonds or either without the control of the Commission and without complying with the Act aforesaid in reference thereto, and when so issued said stocks and bonds shall in all respects be valid and binding. [Acts 1897, p. 189; Acts 1903, pp. 29, 62; G. L. Vol. 10, p. 1243.]

Art. 6546. Freight interurbans.—All electric, gas or gasoline, denatured alcohol or naphtha interurban or motor railways incorporated as such, which shall engage in transporting freight, shall be subject to the control of the Railroad Commission. No such corporation shall ever be exempt from the payment of assessments that may be legally levied or assessed against it for street improvements. Such interurban railways shall have the same right of eminent domain as are now given by law to steam railroads, and may exercise such right for the purpose of acquiring right of way upon which to construct their railway lines, and sites for depots and power plants, and shall have the same rights, powers and privileges as are now granted by law to interurban electric railway companies. Any such interurban company shall have the right and authority to acquire, hold and operate other public utilities in and adjacent to the cities or towns within or through which said company operates. No property upon which is located a cemetery shall ever be condemned by any such interurban railway, unless it shall affirmatively be shown, and so found by the court trying such condemnation suit, that it is necessary to take such property, and no other route is possible or practicable. [Id. Acts 1903, p. 204; Acts 1897, p. 188; Acts 1909, 2nd C. S., p. 396; G. L., Vol. 10, p. 1242; Acts 1917, p. 390.]

Art. 6547. Plants and buildings.—Any corporation heretofore organized under any law of this State, and which now or may hereafter operate a line of electric, gas or gasoline, denatured alcohol, or naphtha motor railway, within and between any cities or towns in Texas, is authorized to own and operate union depots and office buildings, and to acquire, hold and operate electric light and power plants in and adjacent to cities or towns within or through which said company operates. Such existing corporation, or one heretofore organized under subdivision 68 of Article 1302 may, by proceeding in the manner provided by law, amend its charter so as to expressly include any or all powers herein authorized. [Id.]

Art. 6548. Jitney lines.—Any corporation operating a street or suburban railway or interurban railway, and carrying passengers for hire, is hereby authorized to maintain and operate motor trucks or jitney lines in connection with their said business for the purpose of carrying passengers for hire on the public

roads, streets, squares, alleys and highways within the corporate limits of any incorporated city or town under such regulations as may be prescribed by any such city or town, and on the public roads and highways within five miles of the corporate limits of any such incorporated city or town, under such regulations as the commissioners court of such county may prescribe. [Acts 2nd C. S. 1923, p. 97.]

Art. 6549. Terminal railways.—Terminal railways shall have all the rights and powers conferred by law upon railroads by Chapters 6 and 7 of this title, and when such railway is adjacent to any inland navigable stream or water body, it shall have the right and power to construct, erect, operate and maintain all necessary and convenient facilities to accommodate and expeditiously handle the exchange of freight and passenger traffic with all steamship and other vessels and water craft using such waterways; and shall have the right to issue bonds in excess of its authorized capital stock under the direction of the Railroad Commission of Texas, in accordance with the stock and bond law regulating the issuance of stocks and bonds by railroads. Said commission shall fix the values of the property, rights and franchises of such railway company; and its stocks and bonds shall not exceed the amount authorized by said Commission in which jurisdiction over the issuance of the bonds herein authorized is hereby vested. No such terminal company shall have the right to charge any railroad company, steamship, vessel or water craft for terminal facilities a greater amount than may be from time to time designated and established by said Commission, which shall have authority to establish and prescribe such rates and rules for the operation of all such terminal companies as will prevent discrimination by them against any common carrier with respect to either charge or service. The provisions of Articles 6452, 6453 and 6454, shall apply to any and all orders, rulings, judgments and decrees of said Commission made, entered or held under the provisions of this law in respect to such terminal railway companies. [Acts 1897, p. 188; G. L. Vol. 10, p. 1242; Acts 1905, p. 211; Acts 1907, p. 300; Acts 1917, p. 134.]

Art. 6550. Road to mines, etc.—Corporations created to build, maintain and operate a line of railroads to mines, gins, quarries, manufacturing plants, and mills, shall have the right to condemn land necessary for the right of way for such road from and between such mines, gin, quarry, manufacturing plant or mill and the nearest line of railroad, provided, that no such corporation shall have said right of eminent domain until it shall declare itself a public highway and common carrier, thus placing said road under the control of the Railroad Commission. [Acts 1897, p. 192; G. L. Vol. 10, p. 1246.]

CHAPTER FOURTEEN.

UNION DEPOT CORPORATIONS.

| | | | |
|--------------------|---------|----------------------------|---------|
| | Article | | Article |
| Union depots | 6551 | Interest in railways | 6553 |
| Finances | 6552 | Condemnation | 6554 |

Art. 6551. [1243-4] **Union depots.**—Corporations formed for the purpose of acquiring, owning, maintaining and operating union passenger depots in any city or town in which any two or more railroad companies own or operate a railroad, shall have power and authority to acquire, own or lease, maintain and operate railroad tracks in any city or town for the purpose of enabling railroad companies to run their trains to and from the union depot; such tracks not to extend to a greater distance than three miles from such union depot. Such corporations may also add additional stories to their depot buildings and rent the same for offices or other purposes; and may also provide on their property buildings for express purposes, and rent the same to express companies. The Railroad Commission of Texas shall have the same supervision and control over said railroads and tariff rates and depots that it has over any other lines of railroad and depot buildings in Texas. [Acts 1895, p. 187; Acts 1897, p. 42; G. L. Vol. 10, pp. 917, 1096.]

Art. 6552. [1245] **Finances.**—The provisions of Chapter 12 of this title shall govern and control the issuance of stock and bonds of such corporations as far as the same are applicable. [Id.]

Art. 6553. [1246] **Interest in railways.**—Railway companies existing under the laws of Texas, whether under general or special law, and railway companies incorporated under any general or special law of the United States, are authorized and empowered to subscribe to the stock, and purchase and own stock and bonds of any depot company formed under the authority of this law. [Id.]

Art. 6554. [1247-8] **Condemnation.**—Corporations created for the purposes contemplated herein may secure by condemnation such land or real estate as may be necessary for the business and purposes of such corporation, including all lands necessary for depot buildings, passenger sheds, yards or tracks requisite to the convenient use of the depot. Such corporations, by such condemnation, may acquire the fee simple title. After the award by the commissioners, and pending further litigation, the corporation may enter upon and take possession of the land sought to be condemned, by complying with the terms and conditions of any general laws of this State authorizing any corporation having the right to condemn to so enter upon and take possession of such land or real estate. [Acts 1899, p. 49.]

CHAPTER FIFTEEN.

VIADUCTS.

| | | | |
|-----------------------------|---------|-----------------------|---------|
| | Article | | Article |
| Certain cities may contract | 6555 | Condemnation | 6558 |
| May close streets | 6556 | May enforce contracts | 6559 |
| May issue bonds | 6557 | | |

Art. 6555. Certain cities may contract.—All cities acting under special charters granted by the legislature are hereby granted all necessary rights and powers to carry out and comply with existing contracts or to hereafter make contracts with railway companies owning or operating tracks in such cities, to erect and complete by such railway companies, all necessary viaducts, the construction and completion of which shall be at the expense of such railway companies, according to plans and specifications agreed upon between such companies and such cities. [Acts 1911, p. 235.]

Art. 6556. May close streets.—All such cities are hereby given authority to abolish and close such portions of any highway, street or alley crossed by railroad tracks, as such cities have or may agree to close and abolish, in consideration of procuring the erection and completion of any viaduct by any railway company or companies. [Id.]

Art. 6557. May issue bonds.—Such cities are hereby given full power and authority to issue improvement bonds to be designated "viaduct bonds" to an amount not exceeding ten thousand dollars for the purpose of raising sufficient funds to pay for the right of way for a viaduct, over such property or may not be owned by such cities or by any of the railway companies affected, and to pay such damages, if any, which may be sustained by abutting property owners. The question of issuance of said bonds shall be submitted to a vote of the property tax paying voters, and shall be carried by a majority vote of said voters, such election being called as is provided for on other questions in the charters of cities desiring an election on said bonds. In addition, such cities are hereby given authority to give railroad companies the use of any portion of its streets, highways and alleys as may be necessary for a right of way for viaducts. [Id.]

Art. 6558. Condemnation.—All such cities are hereby given the right of eminent domain and the power and authority to condemn all land necessary for right of way purposes for viaducts and approaches to same forming a necessary part of such viaduct. [Id.]

Art. 6559. May enforce contracts.—All such cities are hereby given the right and power to compel the construction and completion of such viaducts as railway companies have by contract agreed with any such city to construct and complete or which any railway company or companies may hereafter agree to construct and complete, by mandamus proceedings in the district court of the county where such viaduct or viaducts are to be completed or through any other lawful means. [Id.]

TITLE 113.

RANGERS—STATE.

| | Article | | Article |
|----------------------------|---------|--------------------------------|---------|
| Organization | 6560 | Equipment | 6567 |
| Companies | 6561 | Arms and equipment | 6568 |
| Compensation | 6562 | Subsistence and quarters | 6569 |
| Quartermaster | 6563 | Powers of peace officers | 6570 |
| Governor in command | 6564 | Arrests | 6571 |
| Term of service | 6565 | Regulations | 6572 |
| Purchase of supplies | 6566 | Qualifications of members..... | 6573 |

Art. 6560. [6754] Organization.—The ranger force authorized to be organized by the Governor is for the purpose of protecting the frontier against marauding or thieving parties, and for the suppression of lawlessness and crime throughout the State, and to aid in the enforcement of the laws of the State. [Acts 1901, p. 41; Acts 1919, p. 263.]

Art. 6561. [6755] Companies.—The Ranger force shall consist of not to exceed one headquarters company and four companies of mounted men, except in cases of emergency, when the Governor shall have authority to increase the force to meet extraordinary conditions.

The headquarters company shall consist of one captain, who shall be designated the senior captain of the force, one sergeant, and not to exceed four privates.

Each separate mounted company shall consist of not to exceed one captain, one sergeant and fifteen privates. The captains and the quartermaster shall be appointed by the Governor and shall be removed at his pleasure; unless so removed by the Governor they shall serve for two years and until their successors are appointed and qualified.

The enlisted men and non-commissioned officers of each company shall be appointed by the Governor, acting by and through the Adjutant General, who shall pass upon the qualifications of such men, and so far as practicable shall make such appointment upon the recommendation of the captain, under whom such men are to serve. The enlisted men and non-commissioned officers shall serve for two years, unless sooner removed by the Governor or the Adjutant General for cause. [Id.]

Art. 6562. [6756] Compensation.—The pay of officers and men shall be: Captains \$150.00 each per month; sergeants \$100.00 each per month; and privates \$90.00 each per month, except as herein otherwise provided. The payment shall be made monthly at such times and in such manner as the Adjutant General may prescribe. The officers and enlisted men on the ranger force shall receive in addition to their regular salary an increase of five per cent after the first two years of continuous service and five per cent for each additional year not to exceed in all twenty per cent of their salary as above provided. For the violation or breach of such rules and regulations for the governing of the ranger force as may be prescribed by the Adjutant General and approved by the Governor, officers and en-

listed men shall forfeit their right to participate in the increase or longevity pay, or any portion thereof provided for herein. [Acts 1901, p. 41; Acts 1917, 1st C. S. p. 57; Acts 1919, p. 263.]

Art. 6563. [6757] Quartermaster.—The Governor shall appoint a quartermaster for the ranger force who shall discharge the duties of a quartermaster, commissary and paymaster, and shall have the rank and pay of a captain. [Id.]

Art. 6564. [6758] Governor in command.—This force shall always be under the command of the Governor; to be operated under his direction in such manner, in such detachments, and in such localities as the Governor may direct, acting by and through the Adjutant General. [Id.]

Art. 6565. [6759] Term of service.—The Governor is authorized to keep this force, or so much thereof as he may deem necessary in the field as long as in his judgment there may be necessity for such a force; and men who may be enlisted in such service shall do so for such term not to exceed two years subject to disbandment in whole or in part at any time and reassemblage or reorganization of the whole force, or such portion thereof as may be deemed necessary by order of the Governor. [Id.]

Art. 6566. [6760] Purchase of supplies.—The quartermaster, when directed by the Adjutant General shall purchase all supplies for the ranger force, and shall make a certificate on the voucher of the party or parties from whom the supplies are purchased to the fact that the account is correct and just, and the articles purchased were at the lowest market prices. [Id.]

Art. 6567. [6761] Equipment.—Each officer, non-commissioned officer and private of said force shall furnish himself with a suitable horse, horse equipment, clothing, etc. If his horse is killed in action it shall be paid for by the State at a fair market value at the time when killed. [Id.]

Art. 6568. [6762] Arms and equipment.—The State shall furnish each member of said force with one improved carbine and pistol at cost, the price of which shall be deducted from the first money due such officer or man, and shall furnish said force with rations of subsistence, camp equipage and ammunition for the officers and men, and also forage for horses. [Id.]

Art. 6569. [6763] Subsistence and quarters.—In addition to the pay allowed to each officer and man of this force, they shall be allowed not to exceed \$30.00 per month for subsistence when at their station, and when on duty outside of his district each member of said force shall be allowed his actual necessary expenses for subsistence and quarters, to be paid on a sworn account showing the actual amount expended, not to exceed \$3.00 per day. In addition thereto, each member shall be allowed his actual railroad expenses when traveling under orders. When any company of said force furnishes motor

transportation without expense to the State, they shall be allowed \$50.00 per month per company for repairs and upkeep for said motor vehicle. [Id.]

Art. 6570. [6764] Powers of peace officers.—The officers, non-commissioned officers and privates of this force shall be clothed with all the powers of peace officers, and shall aid the regular civil authorities in the execution of the laws. They shall have authority to make arrests, and to execute process in criminal cases, and in such cases shall be governed by the laws regulating and defining the powers and duties of sheriffs when in discharge of similar duties; except that they shall have the power and shall be authorized to make arrests and to execute all process in criminal cases in any county in the State. They shall, before entering on the discharge of these duties, take an oath that each of them will faithfully perform his duties in accordance with law. To arrest and bring to justice men who have banded together to prevent the execution of the laws or to commit robbery or other felonies, the officers, non-commissioned officers and privates of said force may accept the services of such citizens as shall volunteer to aid them; but while so engaged such citizens shall not receive pay from the State for such services. [Id.]

Art. 6571. [6765] Arrests.—When said force, or any member or members thereof, shall arrest any person charged with a criminal offense, they shall forthwith convey said person to the county where he or they so stand charged, and shall deliver him or them to the proper officer, taking his receipt therefor. All necessary expenses thus incurred shall be paid by the State. [Id.]

Art. 6572. [6766] Regulations.—The Governor and Adjutant General shall cause to be made such regulations for the government and control of the organization herein provided for, for the enlistment and employment of non-commissioned officers and privates as they may deem necessary, so that the force so provided for shall be as effective as possible. When any complaint is made to the Adjutant General charging any ranger with misconduct or violation of the law, the Adjutant General will have the right to institute proceedings before any magistrate in the county where the offense is alleged to have been committed. Upon application of the Adjutant General said magistrate shall issue process for witnesses to appear and testify under oath, which testimony shall be reduced to writing by a stenographer and transmitted by the court to the Adjutant General, who shall take such action as the facts warrant. The cost of such proceedings including fee of \$3.00 of the magistrate and fifteen cents for each one hundred words of testimony so taken and transcribed shall be paid by the Comptroller upon approval by the Adjutant General out of funds appropriated for enforcement of law. Any citizen who knows of any such misconduct or violation of the law on the part of any

member of the ranger force shall at once notify the Adjutant General in writing of misconduct, and the Adjutant General shall at once conduct such examination and take such action thereon as the facts make necessary and without delay submit all of such evidence and his actions thereon to the Governor for his approval or disapproval. [Id.]

Art. 6573. **Qualifications of members.**—No person shall be appointed to the ranger force who is not a citizen of the United States and of Texas, and preference shall always be given to discharged soldiers holding certificates of honorable discharge from the United States Army. All officers and men selected shall be sober men of good moral character and sound judgment, shall furnish satisfactory evidence thereof, and shall conform to such qualifications as the Governor shall prescribe for appointment. All applications for appointment to the ranger force shall be made to the Governor, who shall pass upon the qualifications of each applicant. [Acts 1919, p. 263.]

TITLE 114.

RECORDS.

I. RECORDS.

| | Article | | Article |
|---------------------------------|---------|--|---------|
| Old records transcribed | 6574 | Records of new county transcribed..... | 6578 |
| Correctness certified to | 6575 | Pay for making transcript..... | 6579 |
| Records of county surveyor..... | 6576 | Translation | 6580 |
| Original books preserved..... | 6577 | Effect of such translations..... | 6581 |

Art. 6574. [6767-8] [4585] [4281] **Old records transcribed.**
 —When any of the records or indexes of a county become defaced, worn or in a condition endangering their preservation in a safe and legible form, the commissioners court of such county shall procure necessary, well bound books and require the officer having the custody thereof, to transcribe such records into such new books so as to perfectly conform to the original record as indexed. The designation of such new records, whether by letter or number, shall not be changed from the original. Such transcribed records shall be carefully compared with the originals by the officer who transcribes them, assisted by a sworn deputy. [Acts 1876, p. 84; G. L. Vol. 8, p. 920.]

Art. 6575. [6769] [4587] [4283] **Correctness certified to.**
 —When such records have been correctly transcribed, the officer with his deputies who transcribed and verified them, shall officially certify at the conclusion of the record to the correctness of the same with the impress of the seal of said court affixed on the same page, stating the number of pages contained in the book from one to the highest number. [Id.]

Art. 6576. [6771] [4589] [4285] **Records of county surveyor.**—Where the records of the county surveyor's office have been so transcribed, the surveyor shall certify the correctness of such transcribed records and make affidavit thereto before the county clerk of his county who shall impress thereon the seal of the county court. [Id.]

Art. 6577. [6770] [4588] [4284] **Original books preserved.**
 —The original books transcribed according to the provisions of this title shall be carefully kept and preserved by such clerk, as other archives of his office. [Id.]

Art. 6578. [6772-3-4] **Records of new county transcribed.**
 —The commissioners court of a county which has been created, either in whole or in part from the territory of another county or counties, or to which may have been added since its creation, the territory of another county or counties, shall require the county clerk to transcribe from the record of said other county or counties in substantial well bound record books to be furnished him by the commissioners court, each deed, mortgage, conveyance, incumbrance and muniment of title affecting or in anywise relating to all lands and real property embraced in the territory so acquired from such other county or counties, which deeds, mortgages, conveyances, incumbrances and muniments

of title appear of record in the county or counties from which said territory may have been taken. When the territory acquired was from more than one county, then the clerk shall use a separate book for each county, and such records shall be indexed and arranged as is provided by law. Said records shall be legibly transcribed, and when so transcribed shall be carefully compared with the original record by the said clerk or his deputies who transcribed them. When said record or records have been correctly transcribed, the county clerk and his deputies who transcribed and verified them, shall certify the correctness of such records under their official oath of office at the conclusion thereof with the impress of the seal of said court affixed on the same page. [Acts 1879, p. 105; G. L. Vol. 8, p. 1405.]

Art. 6579. [6775] [4593] Pay for making transcript.—The county clerk or person making such transcript shall receive not exceeding fifteen cents per hundred words for transcribing, comparing and verifying said records, the amount to be fixed by the commissioners court in the order directing the transcribing of such records; said compensation to be paid out of the county treasury upon warrant issued under the order of the commissioners court of the newly created county. [Acts 1917, p. 88.]

Art. 6580. [6776] [4593] Translation.—Any commissioners court may require the county clerk of its county to have translated into English all or any part of the archives and records of their offices which are in Spanish and which relate to titles to land, and copy said translations in a well bound book or books, but they shall not contract to pay more than fifteen cents per hundred words for both the translation and recording. [Acts 1893, p. 168; G. L. Vol. 10, p. 598.]

Art. 6581. [6777] [4593] Effect of such translations.—When such Spanish archives and records are translated and recorded, said records in English shall have the same force and effect as if the archives and instruments were originally made and recorded in the English language, and certified copies may be used as evidence and otherwise, for like purposes and with like effect as the originals are and certified copies of records of the originals can now be used; and said record books hereinbefore provided for shall be permanent archives and records of the county clerk's office of the counties when so translated and recorded. [Id.]

2. LOST RECORDS, ETC.

| | | | |
|--|---------|---------------------------------------|---------|
| | Article | | Article |
| Lost records supplied by proof..... | 6582 | Effect of judgment | 6588 |
| Proceedings to establish lost records..... | 6583 | Certified copies may be recorded..... | 6587 |
| Judgment | 6584 | Originals recorded again..... | 6588 |
| Proceedings in the county court..... | 6585 | Force of substituted judgment..... | 6589 |
| | | Copies of records | 6590 |

Art. 6582. [6778] [4594] [4286] Lost records supplied by proof.—All deeds, bonds, bills of sale, mortgages, deeds of trust, powers of attorney and conveyances which are required or permitted by law to be acknowledged or recorded, and which have

been so acknowledged or recorded, which have been lost or destroyed, and all judgments of courts of record in this State, where the record of the court containing such judgment has been lost, destroyed or carried away, may be supplied by parol proof of the contents thereof; which proof shall be taken in the manner hereinafter provided. [Acts 1876, p. 45; G. L. Vol. 8, p. 881.]

Art. 6583. [6779] [4595] [4287] **Proceedings to establish lost records.**—Any person having any interest in any such deed, instrument in writing, or any judgment, or order or decree in the district court, the record or entry of which has been lost, destroyed, or carried away, may, in addition to any mode provided by law for establishing the existence and contents of such record, file with the district clerk of the county where such loss or destruction took place, his written application setting forth the facts entitling him to the relief sought; whereupon such clerk shall issue a citation to the grantor in such deed, or to the party or parties interested in such instrument, or to the party or parties who were or may be interested adversely to the applicant at the time of the rendition of any such judgment, or the heirs and legal representatives of such parties to appear at a term of the district court to be designated in said citation, and contest the right of the applicant to have such deed, writing, or judgment substituted and recorded. Service shall be as provided for process in other cases. [Id.]

Art. 6584. [6780] [4596] [4288] **Judgment.**—On hearing said application, if the court shall be satisfied from the evidence of the previous existence of such deed, instrument, order or decree, and of the loss, destruction or carrying away of the same, as alleged by the applicant, and the contents thereof, an order shall be entered on the minutes of the district court to that effect, which order shall contain a description of the lost deed, instrument in writing, judgment or record, and the contents thereof, and a certified copy of such order may be recorded in the records of the proper county. [Id.]

Art. 6585. [6781] [4597] [4289] **Proceedings in the county court.**—Whenever any judgment, order or decree duly entered in the county court of any county has been or may be lost, destroyed or carried away, any person interested therein may file his written application with the clerk of the county court to which the original record belonged, setting forth the facts entitling him to the relief sought, when the same proceedings shall be had and the court shall enter a like judgment as provided in the two preceding articles. [Id.]

Art. 6586. [6782] [4598] [4290] **Effect of judgment.**—Whenever such judgment, order or decree rendered in the district or county court shall be duly entered, it shall stand in the place of and have the same force and effect as the original of said lost deed, instrument in writing, judgment or record; and

when duly recorded may be used as evidence in any court of this State with like effect as the original thereof. [Id.]

Art. 6587. [6783] [4599] [4291] **Certified copies may be recorded.**—All certified copies from the records of such county, where the records have been lost, destroyed or carried away, and all certified copies from the records of the county or counties from which said county was created, may be recorded in such county; provided, the loss of the original shall first be established. [Acts 1876, p. 45; G. L. Vol. 8, p. 881.]

Art. 6588. [6784] [4600] [4292] **Originals recorded again.**—When any original paper mentioned in the first article of this subdivision may have been saved or preserved from loss, the record of said originals having been lost, destroyed or carried away, the same may be recorded again, and this last registration shall have force and effect from the filing for original registration; provided, said originals are recorded within four years next after such loss, destruction or removal of the records. [Id.; Acts 1879, p. 35; G. L. Vol. 8, p. 1335.]

Art. 6589. [6785] [4601] [4293] **Force of substituted judgment.**—Judgments, orders and decrees, when substituted as hereinbefore provided, shall carry all the rights thereunder in every respect as the originals, especially preserving the liens from the date of the originals, and giving the parties the right to issue executions under the substituted judgments as under the originals. [Id.]

Art. 6590. **Copies of records.**—All transcribed records and all translations of Spanish archives, and all judgments supplying lost records or other instruments in writing, and all re-recorded deeds or other instruments in writing required by law to be recorded, when made and recorded in accordance with the provisions of this title and certified copies of such instruments shall have the same force and effect as the original record thereof.

TITLE 115.

REGISTRATION.

| Chapter | Page | Chapter | Page |
|---------|--|---------|---|
| 1 | Recorders and Their Duties.....1881 | 4 | Separate Property of Married Women.....1894 |
| 2 | Acknowledgment and Proof for Record.....1883 | 5 | General Provisions.....1895 |
| 3 | Effect of recording.....1888 | | |

CHAPTER ONE.

RECORDERS AND THEIR DUTIES.

| | Article | | Article |
|--|---------|---------------------------------------|---------|
| Recorders | 6591 | Alphabetical indexes | 6597 |
| Seal | 6592 | What they shall contain..... | 6598 |
| Record books | 6593 | Index of other records..... | 6599 |
| Memorandum and receipt | 6594 | Shall give attested copies, when..... | 6600 |
| Shall record without delay..... | 6595 | Mortgages etc. | 6601 |
| Considered recorded when deposited | 6596 | | |

Art. 6591. [6786] [4602] [4294] **Recorders.** — County clerks shall be the recorders for their respective counties; they shall provide and keep in their offices well bound books in which they shall record all instruments of writing authorized or required to be recorded in the county clerk's office in the manner hereinafter provided. [Acts 1846, p. 236; P. D. 5001; G. L. Vol. 2, p. 1542.]

Art. 6592. [6787] [4603] [4295] **Seal.**—The seal of the county court shall be the seal of the recorder, and shall be used to authenticate all his official acts. [Id.]

Art. 6593. [6788] [4604] [4296] **Record books.** — Each county clerk shall provide suitable books for his office, and keep regular and faithful accounts of the expenses thereof. Such accounts shall be audited by the commissioners court and paid out of the county treasury. [Id.]

Art. 6594. [6789] [4605] [4297] **Memorandum and receipt.** —When any instrument of writing authorized by law to be recorded shall be deposited in the county clerk's office for record, if the same is acknowledged or proved in the manner prescribed by law for record, the clerk shall enter in a book to be provided for that purpose, in alphabetical order, the names of the parties and date and nature thereof, and the time of delivery for record; and shall give to the person depositing the same, if required, a receipt specifying the particulars thereof. [Id.]

Art. 6595. [6790] [4606] [4298] **Shall record without delay.**—Each recorder shall, without delay, record every instrument of writing authorized to be recorded by him, which is deposited with him for record, with the acknowledgments, proofs, affidavits and certificates thereto attached, in the order deposited for record by entering them word for word and letter for letter, and noting at the foot of the record the hour and the day of the month and year when the instrument so recorded was deposited in his office for record. [Id.]

Art. 6596. [6791] [4607] [4299] **Considered recorded**

when deposited.—Every such instrument shall be considered as recorded from the time it was deposited for record; and the clerk shall certify under his hand and seal of office to every such instrument of writing so recorded, the hour, day, month and year when he recorded it, and the book and page or pages in which it is recorded; and when recorded deliver the same to the party entitled thereto. [Id.]

Art. 6597. [6792] [4608] [4300] **Alphabetical indexes.**—Each county clerk shall keep in alphabetical order a well bound index to all books of records wherein deeds, powers of attorney, mortgages or other instruments of writing concerning lands and tenements are recorded, distinguishing the books and pages in which every such deed or writing is recorded. [Id.]

Art. 6598. [6793] [4609] [4301] **What they shall contain.**—It shall be a cross-index and shall contain the names of the several grantors and grantees in alphabetical order; and, in case a deed is made by a sheriff, the name of the sheriff and defendant in execution; and, if by executors, administrators or guardians, their names and the names of their testators, intestates or wards; and, if by attorney, the name of such attorney and his constituents; and, if by a commissioner or trustee, the name of such commissioner or trustee and the person whose estate is conveyed. [Id.]

Art. 6599. [6794] [4610] [4302] **Index of other records.**—Each shall, in like manner, make and keep in his office a full and perfect alphabetical index to all books of record in his office, wherein all instruments of writing relating to goods and chattels, or movable property of any description, marriage contracts, and all other instruments of writing authorized or required to be recorded in his office are recorded; and in a like index of all the books of record wherein official bonds are recorded, the names of the officers appointed, and of the obligors in any bond recorded, and a reference to the book and page where the same are recorded. [Id.]

Art. 6600. [6795] [4611] [4303] **Shall give attested copies.**—The county clerk shall give attested copies whenever demanded of all papers recorded in his office; and he shall receive for all such copies, such fees as may be provided by law. [Acts 1836, p. 155; P. D. 4979; G. L. Vol. 1, p. 1215.]

Art. 6601. [6796] [4612] [4303] **Mortgages, etc.**—All deeds of trust, mortgages or judgments which are required to be recorded in order to create a judgment lien, or other instruments of writing intended to create a lien, shall be recorded in a book or books separate from those in which deeds or other conveyances are recorded.

CHAPTER TWO.

ACKNOWLEDGMENTS AND PROOF FOR RECORD.

| | Article | Article | |
|---------------------------------------|---------|---------------------------------------|------|
| Before whom acknowledgments made..... | 6602 | Handwriting may be proved, when..... | 6612 |
| Acknowledgment, how made..... | 6603 | Evidence must prove what..... | 6613 |
| Party must be known or proven..... | 6604 | When grantor made his mark..... | 6614 |
| Acknowledgment of married woman..... | 6605 | Proofs how made and certified..... | 6615 |
| Certificate of officer..... | 6606 | Officers authority..... | 6616 |
| Form of certificate..... | 6607 | Subpoena to witness..... | 6617 |
| Form by a married woman..... | 6608 | May compel attendance of witness..... | 6618 |
| Proof by witness..... | 6609 | Record of acknowledgment..... | 6619 |
| Witness must be personally known..... | 6610 | Contents of statement..... | 6620 |
| Form of certificate..... | 6611 | Shall further recite..... | 6621 |
| | | The book a public record..... | 6622 |
| | | Action for damages..... | 6623 |

Art. 6602. [6797-8-9] [4613-14-15] [4305-6-7] **Before whom acknowledgments made.**—The acknowledgment or proof of an instrument of writing for record may be made, within this State before:

1. A clerk of the district court.
2. A judge or clerk of the county court.
3. A notary public.

Without the State, but within the United States or their territories before:

1. A clerk of some court of record having a seal.
2. A commissioner of deeds duly appointed under the laws of the State.
3. A notary public.

Without the United States before:

1. A minister, commissioner or charge d'affaires of the United States, resident and accredited in the country where the proof or acknowledgment is made.
2. A consul-general, consul, vice-consul, commercial agent, vice-commercial agent, deputy consul or consular agent of the United States, resident in the country where proof or acknowledgment is made.
3. A notary public. [Acts 1871, p. 77; P. D. 7418; G. L. Vol. 6, p. 979.]

Art. 6603. [6800] [4616] [4308] **Acknowledgment, how made.**—The acknowledgment of an instrument of writing for the purpose of being recorded shall be by the grantor or person who executed the same appearing before some officer authorized to take such acknowledgment, and stating that he had executed the same for the consideration and purposes therein stated; and the officer taking such acknowledgment shall make a certificate thereof, sign and seal the same with his seal of office. [Acts 1846, p. 236; P. D. 5007; G. L. Vol. 2, p. 1542.]

Art. 6604. [6801] [4617] [4309] **Party must be known or proven.**—No acknowledgment of any instrument of writing shall be taken unless the officer taking it knows or has satisfactory evidence on the oath or affirmation of a credible witness, which shall be noted in his certificate, that the person making such acknowledgment is the individual who executed and is described in the instrument. [Id.]

Art. 6605. [6802] [4618] [4310] **Acknowledgment of married woman.**—No acknowledgment of a married woman to any conveyance or other instrument purporting to be executed by her shall be taken, unless she has had the same shown to her, and then and there fully explained by the officer taking the acknowledgment on an examination privily and apart from her husband; nor shall he certify to the same, unless she thereupon acknowledges to such officer that the same is her act and deed, that she has willingly signed the same, and that she wishes not to retract it. [Acts 1846, p. 156; P. D. 1003; G. L. Vol. 2, p. 1462.]

Art. 6606. [6803] [4619] [4311] **Certificate of officer.**—An officer taking the acknowledgment of a deed, or other instrument of writing, must place thereon his official certificate, signed by him and given under his seal of office, substantially in form as hereinafter prescribed.

Art. 6607. [6804] [4620] [4312] **Form of certificate.**—The form of an ordinary certificate of acknowledgment must be substantially as follows:

“The State of _____,

“County of _____.

“Before me _____ (here insert the name and character of the officer) on this day personally appeared _____, known to me (or proved to me on the oath of _____) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal) “Given under my hand and seal of office this _____ day of _____, A. D., _____.”

Art. 6608. [6805] [4621] [4313] **Form by a married woman.**—The certificate of acknowledgment of a married woman must be substantially in the following form:

“The State of _____,

“County of _____.

“Before me, _____ (here insert the name and character of officer) on this day personally appeared _____, wife of _____, known to me (or proved to me on the oath of _____) to be the person whose name is subscribed to the foregoing instrument, and having been examined by me privily and apart from her husband, and having the same fully explained to her, she, the said _____, acknowledged such instrument to be her act and deed, and declared that she had willingly signed the same for the purposes and consideration therein expressed, and that she did not wish to retract it.

(Seal) “Given under my hand and seal of office this _____ day of _____, A. D., _____.”

Art. 6609. [6806] [4622] [4314] **Proof by witness.**—The proof of any instrument of writing for the purpose of being recorded shall be by one or more of the subscribing witnesses personally appearing before some officer authorized to take such proof, and stating on oath that he or they saw the grantor or

person who executed such instrument of writing subscribe the same or that the grantor or person who executed such instrument of writing acknowledged in his or their presence that he had executed the same for the purposes and consideration therein stated; and that he or they had signed the same as witnesses at the request of the grantor or person who executed such instrument; and the officer taking such proof shall make a certificate thereof, sign and seal the same with his official seal. [Acts 1846, p. 236; P. D. 5008; G. L. Vol. 2, p. 1542.]

Art. 6610. [6807] [4623] [4315] Witness must be personally known.—The proof by a subscribing witness must be by some one personally known to the officer taking the proof to be the person whose name is subscribed to the instrument as a witness, or must be proved to be such by the oath of a credible witness, which fact shall be noted in the certificate. [Id.]

Art. 6611. [6808] [4624] [4316] Form of certificate.—The certificate of the officer, where the execution of the instrument is proved by a witness, must be substantially in the following form:

“The State of.....,

“County of.....

“Before me,..... (here insert the name and character of the officer), on this day personally appeared....., known to me (or proved to me on the oath of.....), to be the person whose name is subscribed as a witness to the foregoing instrument of writing, and after being duly sworn by me stated on oath that he saw....., the grantor or person who executed the foregoing instrument, subscribe the same (or that the grantor or person who executed such instrument of writing acknowledged in his presence that he had executed the same for the purposes and consideration therein expressed), and that he had signed the same as a witness at the request of the grantor (or person who executed the same.)

(Seal) “Given under my hand and seal of office this..... day of....., A. D.,.....”

Art. 6612. [6809] [4625] [4317] Handwriting may be proved, when.—The execution of an instrument may be established for record by proof of the handwriting of the grantor and of at least one of the subscribing witnesses in the following cases:

1. When the grantor and all the subscribing witnesses are dead.
2. When the grantor and all the subscribing witnesses are non-residents of this State.
3. When the place of their residence is unknown to the party desiring the proof, and cannot be ascertained.
4. When the subscribing witnesses have been convicted of felony, or have become of unsound mind, or have otherwise become incompetent to testify.
5. When all the subscribing witnesses to an instrument are

dead or are non-residents of this State, or when their residence is unknown, or when they are incompetent to testify, and the grantor in such instrument refuses to acknowledge the execution of the same for record.

Art. 6613. [6810] [4626] [4218] **Evidence must prove what.**—The evidence taken under the preceding article must satisfactorily prove to the officer the following facts:

1. The existence of one or more of the conditions mentioned therein; and,

2. That the witness testifying knew the person whose name purports to be subscribed to the instrument as a party, and is well acquainted with his signature, and that it is genuine; and,

3. That the witness testifying personally knew the person who subscribed the instrument as a witness, and is well acquainted with his signature, and that it is genuine; and,

4. The place of residence of the witness testifying.

Art. 6614. [6811] [4319] [4319] **When grantor made his mark.**—When the grantor or person who executed the instrument signed the same by making his mark, and when also any one or more of the conditions mentioned in Article 6612 exists, the execution of any such instrument may be established by proof of the handwriting of two subscribing witnesses and of the place of residence of such witnesses testifying. [Acts 1863, p. 26; G. L. Vol. 5, p. 614; P. D. 5009.]

Art. 6615. [6812] [4628] [4320] **Proofs how made and certified.**—The proof mentioned in the three preceding articles must be made by the deposition or affidavit of two or more disinterested persons in writing; and the officer taking such proof shall make a certificate thereof, and sign and seal the same with his official seal; which proofs and certificates shall be attached to such instrument. [Id.]

Art. 6616. [6813] [4629] [4321] **Officers authority.**—Officers authorized to take the proof of instruments of writing under the provisions of this chapter are also authorized in such proceedings:

1. To administer oaths or affirmations.

2. To employ and swear interpreters.

3. To issue subpoenas.

4. To punish for contempt as hereinafter provided.

Art. 6617. [6814] [4630] [4322] **Subpoena to witness.**—Upon the sworn application of any person interested in the proof of any instrument required or permitted by law to be recorded, stating that any witness to the instrument refuses to appear and testify touching the execution thereof, and that such instrument cannot be proved without his evidence, any officer authorized to take the proof of said instrument shall issue a subpoena requiring such witness to appear and testify before such officer touching the execution of such instrument. [Acts 1860, p. 75; P. D. 5020; G. L. Vol. 4, p. 1437.]

Art. 6618. [6815] [4631] [4323] **May compel attendance**

of witness.—When a witness shall fail to obey a subpoena, said officer shall have the same power to enforce his attendance and to compel his answers as a judge of the district court has to compel the attendance and answers of witnesses; but no attachment shall issue unless the same compensation is made or tendered to each witness as is allowed to witnesses in other cases; and no witness shall be required to go beyond the limits of the county of his residence, unless he shall, for the time being, be found in the county where the execution of such instrument is sought to be proved for registration.

Art. 6619. [6816] [4632] [4324] **Record of acknowledgment.**—All officers authorized or permitted by law to take the acknowledgment or proof of any deed, bond, mortgage, bill of sale or any other written instrument required or permitted by law to be placed on record shall procure a well bound book, in which they shall enter and record a short statement of each acknowledgment or proof taken by them, which statement shall be by them signed officially. [Acts 1874, p. 155; P. D. 7418b; G. L. Vol. 8, p. 157.]

Art. 6620. [6817] [4633] [4325] **Contents of statement.**—Such statement shall recite the true date on which such acknowledgment or proof was taken, the name of the grantor and grantee of such instrument, its date, if proved by a subscribing witness, the name of the witness, the known or alleged residence of the witness and whether personally known or unknown to the officer; if personally unknown, this fact shall be stated, and by whom such person was introduced to such officer, if by any one, and the known or alleged residence of such person. [Id.]

Art. 6621. [6818] [4634] [4326] **Shall further recite.**—Such statement shall also recite, if the instrument is acknowledged by the grantor, his then place of residence, if known to the officer; if unknown, his alleged residence, and whether such grantor is personally known to the officer; if personally unknown, by whom such grantor was introduced, if by any one, and his place of residence. If land is conveyed or charged by the instrument, the name of the original grantee shall be mentioned, and the county where the same is situated. [Id.]

Art. 6622. [6819] [4635] [4327] **The book a public record.**—The book herein required to be procured and kept, and the statements herein required to be recorded in the same shall be an original public record, and shall be delivered to his successor, and the same shall be open to the inspection and examination of any citizen at all reasonable times. [Id.]

Art. 6623. [6820] [4636] [4328] **Action for damages.**—Any person injured by the failure, refusal or neglect of any officer whose duty it is to comply with any provision of this chapter shall have a right of action against such officer so failing, refusing or neglecting, before any court of competent jurisdiction, for the recovery of all damages resulting from such neglect, failure or refusal. [Id.]

CHAPTER THREE.

EFFECT OF RECORDING.

| Article | Article |
|-----------------------------------|---|
| Patents and grants | Transfers of judgment..... |
| 6624 | 6636 |
| Copies of archives | Judgment in justice courts..... |
| 6625 | 6637 |
| What may be recorded..... | Partition to be recorded..... |
| 6626 | 6638 |
| When sales, etc., to be void..... | Decree may be abbreviated..... |
| 6627 | 6639 |
| Located lands have priority..... | Suit for land; notice to be filed..... |
| 6628 | 6640 |
| English language used | Record of, how made..... |
| 6629 | 6641 |
| Deeds, etc., recorded..... | Transfers without notice, valid..... |
| 6630 | 6642 |
| Deeds, etc., valid against subse- | Effect of notice |
| quent creditors..... | 6643 |
| 6631 | In lieu of lis pendens..... |
| Marriage contract | 6643a |
| 6632 | Federal Lien Record..... |
| Recorder shall record, etc..... | 6644 |
| 6633 | Titles to chattels, where recorded..... |
| Copies from land office..... | 6645 |
| 6634 | Record of a grant, etc..... |
| Judgments recorded | 6646 |
| 6635 | |

Art. 6624. [6821] [4637] [4329] Patents and grants.—Letters patent from the State of Texas, or any grant from the government, executed and authenticated pursuant to existing law, may be recorded, without further acknowledgment or proof.

Art. 6625. [6822] [4638] [4330] Copies of archives.—Copies of all deeds, transfers, or any other written evidence of title to land, which have been filed in the general land office, in accordance with law, or copies where the originals remain in the public archives, and were executed in conformity with the laws existing at their dates, duly certified by the officers having lawful custody thereof, shall be admitted to record in the county where such land lies. [Acts 1839, p. 52; G. L. Vol. 2, p. 52.]

Art. 6626. [6823] [4639] [4331] What may be recorded.—The following instruments of writing, which shall have been acknowledged or proved according to law, are authorized to be recorded, viz, all deeds, mortgages, conveyances, deeds of trust, bonds for title, covenants, defeasances or other instruments of writing concerning any lands or tenements, or goods and chattels, or movable property of any description. [Acts 1846, p. 236; P. D. 5004; G. L. Vol. 2, p. 1542.]

Art. 6627. [6824] [4640] [4332] When sales, etc., to be void unless registered.—All bargains, sales and other conveyances whatever, of any land, tenements and hereditaments, whether they may be made for passing any estate of freehold of inheritance or for a term of years; and deeds of settlement upon marriage, whether land, money or other personal thing; and all deeds of trust and mortgages shall be void as to all creditors and subsequent purchasers for a valuable consideration without notice, unless they shall be acknowledged or proved and filed with the clerk, to be recorded as required by law; but the same as between the parties and their heirs, and as to all subsequent purchasers, with notice thereof or without valuable consideration, shall be valid and binding. [Acts 1840, p. 154; P. D. 4988; G. L. Vol. 2, p. 328.]

Art. 6628. [6825] [2322] [2265] Located lands have priority.—Titles to land which may have been deposited in the general land office subsequently to the time when the land em-

braced by such titles had been located or surveyed, by virtue of valid land warrants or certificates, shall not be received as evidence of superior title to the land against any such location or survey, unless such elder title had been duly recorded in the office of the county clerk where the land may have been situated prior to the location and survey, or unless the party having such location or survey made had actual notice of the existence of such elder title before he made such location or survey. [Acts 1866, p. 32; P. D. 5825; G. L. Vol. 5, p. 950.]

Art. 6629. [6826] English language used.—No deed, conveyance or other instrument, whether relating to real or personal property, if in any other than the English language, shall be admitted to record; provided, that all such instruments executed prior to the twenty-second day of August, 1897, may be filed and recorded if accompanied by a correct translation thereof, the accuracy of which is sworn to before some officer authorized to administer oaths. Such translations shall be recorded with the original, and if correct shall operate as constructive notice from and after the date of its filing, if the original be authenticated in the manner required by law. [Acts 1897, p. 11; G. L. Vol. 10, p. 1065.]

Art. 6630. [6827] [4641] [4333] Deeds, etc., recorded.—All deeds, conveyances, deeds of trust, or other written contracts relating to real estate, which are authorized to be recorded, shall be recorded in the county where such real estate, or a part thereof, is situated; provided, that all such instruments, when relating to real estate situated in an unorganized county, shall be recorded in the county to which such unorganized county is attached for judicial purposes, in a well bound book, or books, to be kept for that purpose, separately from the records of the county to which it is attached and from other unorganized counties; and the clerk or other officer having the custody of such books, when such unorganized county shall be organized, or has been detached therefrom and attached to another county for judicial purposes, shall deliver such book or books, without charge, to the proper officer of such newly organized county, or of the county to which it is attached for judicial purposes when demanded by him; and, where such records have been heretofore kept in separate books, they shall also be delivered in like manner as above, and in each case the same shall become archives of the county to which it is so delivered. Where such records have not heretofore been kept separately, upon the organization or attachment of such unorganized county to another organized county, a certified transcript from the records of such instruments so recorded shall be obtained by such new clerk or officer; and when so made the same shall in like manner become archives of such newly organized county, or county to which such unorganized county may be attached, as the case may be. [Acts 1887, p. 94; G. L. Vol. 9, p. 892.]

Art. 6631. [6828] [4642] [4334] Deed, etc., valid against

subsequent creditors.—Every conveyance, covenant, agreement, deed, deed of trust or mortgage or certified copies of any such original conveyance, covenant, agreement, deed, deed of trust or mortgage copied from the deed or mortgage records of any county in the State where the same has been regularly recorded, although the land may not have been situated in the county where such instrument was recorded, and which shall have been acknowledged, proved or certified according to law, may be recorded in the county where the land lies; and when delivered to the clerk of the proper court to be recorded shall take effect and be valid as to all subsequent purchasers for a valuable consideration without notice, and as to all creditors from the time when such instrument shall have been so acknowledged, proved or certified and delivered to such clerk to be recorded, and from that time only. All certified copies filed and recorded under the provisions of this article shall take effect and be in force from the time such certified copy was filed for record. Nothing herein shall be construed to validate an invalid instrument. [Acts 1895, p. 157; P. D. 4994; G. L. Vol. 10, p. 887.]

Art. 6632. [6829] [4643] [4335] Marriage contract.—No covenant or agreement made in consideration of marriage shall be valid against a purchaser for a valuable consideration, or any creditor not having notice thereof, unless such covenant or agreement shall be duly acknowledged or proved and recorded in manner and form as provided by law for deeds and other conveyances. [Acts 1887, p. 94; P. D. 4987; G. L. Vol. 9, p. 892.]

Art. 6633. [6830] [4644] [4336] Recorder shall record, etc.—Each county clerk shall record in books to be provided for that purpose all marriage contracts and powers of attorney, and all official bonds required to be recorded in his office, and all other instruments of writing authorized or required to be recorded in his office, which shall be proved and acknowledged according to law and delivered to him for record. [Acts 1846, p. 236; P. D. 5005; G. L. Vol. 2, p. 1542.]

Art. 6634. [6831] [4645] [4337] Copies from land office.—County clerks shall record all copies of titles recorded in the general land office presented for record; provided, such copies are attested with the seal of the general land office. [Id.]

Art. 6635. [6832] [4646] [4338] Judgments recorded.—County clerks shall record all judgments and abstracts of judgments rendered by any court of this State presented to him for record when attested under the hand and seal of the clerk of the court where such judgment was obtained. [Id.]

Art. 6636. [6833] [4647] Transfers of judgment.—The sale of a judgment, or any part thereof, of any court of record, or the sale of any cause of action, or interest therein, after suit has been filed thereon, shall be evidenced by a written transfer; which, when acknowledged in the manner and form required by law for the acknowledgment of deeds, may be filed with the papers of such suit, and when thus filed the clerk shall make a

minute of said transfer on the margin of the minute book of the court where such judgment of said court is recorded; or if judgment be not rendered when transfer is filed, the clerk shall make a minute of such transfer on the court trial docket where the suit is entered, giving briefly the substance thereof; for which service he shall be entitled to a fee of twenty-five cents, to be paid by the party applying therefor; and this article shall apply to any and all judgments, suits, claims and causes of action, whether assignable in law and equity or not. When said transfer is duly acknowledged, filed and noted as aforesaid, the same shall be full notice and valid and binding upon all persons subsequently dealing with reference to said cause of action or judgment, whether they have actual knowledge of such transfer or not. [Acts 1889, p. 103; G. L. Vol. 9, p. 1131.]

Art. 6637. [6834] [4648] Judgment in justice courts.—Whenever land is sold under execution or order of sale issuing out of a justice court, upon the application of any party interested in said land, it shall be the duty of the justice of the peace having the custody of the execution and judgment upon which said execution issued to make from said records a complete transcript of said judgment and the execution issued thereon and levied on land, together with the levy and return of the officer executing the same thereon indorsed, and to certify to the correctness thereof officially; then said transcript shall be admitted to record in the county where the land is situated in the same manner in which deeds are recorded and with like effect; said transcript or certified copy thereof, under the hand and seal of the county clerk of the county where said transcript has been recorded, shall be admitted in evidence in like manner and with like effect that the original judgment and execution with indorsements thereon would have if offered. [Acts 1889, p. 133; G. L. Vol. 9, p. 1161.]

Art. 6638. [6835] [4649] Partition to be recorded.—Every partition of land made under an order or decree of a court, and every judgment or decree by which the title to land is recovered shall be duly recorded in the office of the county clerk in which such land may lie; and until so recorded, such partition, judgment or decree shall not be received in evidence in support of any right claimed by virtue thereof. [Acts 1860, p. 75; P. D. 5023; G. L. Vol. 4, p. 1437.]

Art. 6639. [6836] [4650] [4340] Decree may be abbreviated.—It shall not be necessary to record the proceedings or the decree rendered in such cases in full; but a brief statement by the clerk of the court in which the same is made, under his hand and seal, setting forth the case in which the partition or decree was made, and the date thereof, and the names of the parties in the suit for partition, and the particular land or lot lying in the county in which the record is made and the name of the party to whom the same is decreed, shall be a sufficient record of such partition, judgment or decree. [Id.]

Art. 6640. [6837] Suit for land; notice to be filed.—During the pendency of any suit or action, involving the title to real estate, or seeking to establish any interest or right therein, or to enforce any lien, charge or encumbrance against the same, any party seeking affirmative relief therein, may file a notice of the pendency of such suit with the county clerk of each county where such real estate, or any part thereof, is situated. Such notice shall be signed by the party filing the same, his agent or attorney, setting forth the number and style of the cause, the court in which pending, the names of the party thereto, the kind of suit and description of the land affected. [Acts 1905, p. 316.]

Art. 6641. [6838] Record of, how made.—The county clerk shall record such notice in a well-bound book, to be styled, "Lis Pendens Record," and at the same time index the same, both direct and reverse, under the names of each and all parties to the suit. For which the clerk shall be allowed a fee of fifteen cents per hundred words recorded, not to be less than fifty cents. [Id.]

Art. 6642. [6839] Transfers without notice, valid.—The pendency of such suit or action shall not prevent effective transfers or encumbrances of such real estate to a third party for a valuable consideration and without other notice, actual or constructive, by a party to the suit as against a subsequent decree for the adverse party unless such notice shall have been properly filed under the name of the party attempting to transfer or encumber in the county or counties in which said land is situated. [Id.]

Art. 6643. [6840] Effect of notice.—Such notice of pendency shall not be deemed constructive notice, but merely a memorandum that shall refer all intending purchasers and encumbrances to an examination of the court records and pleadings to determine whether there is in fact a lis pendens concerning the real estate in question, and it shall be effective for such purpose from the time of its filing. [Id.]

Art. 6643a. In lieu of lis pendens.—In any suit or action of which a notice of pendency thereof has been filed, and in which it shall appear to the court, upon motion made by any party to the suit or other person having an interest in the property affected by the action or in the result of such suit or action, that adequate relief can be secured to the party plaintiff or defendant seeking such affirmative relief therein, by the deposit of money, or in the discretion of the court, by the giving of an undertaking, the court may, at any stage of the proceeding, upon notice to all of the parties to the suit or action to be affected thereby, direct, by order made either in term time or in vacation, that the notice of the pendency thereof be cancelled upon the payment into court of the amount of the judgment sought to be recovered in such action, and such sum in addition thereto as the court may deem sufficient to cover interest likely to accrue during the pendency of the action, and costs.

In lieu thereof, the court may, in its discretion, order that an undertaking be given in a sum double the amount of the judgments sought to be recovered, with two sufficient sureties to be approved by the court, conditioned that the party or person applying therefor will pay the judgment or judgments sought to be enforced against said property, with interest and costs, in the event that a final judgment shall be entered in favor of the party to such suit filing such notice to the effect that such real estate was, at the time of the filing of such notice of pendency of action, legally and equitably therewith charged. A copy of such undertaking with notice of the filing of same shall be served upon the attorney for the party filing such notice of pendency of suit not less than two days prior to the submission of the same to the court for its approval. Upon the approval of such undertaking by the court, the court may direct that the notice of pendency of action or suit be cancelled of record in the manner above provided. [Acts 1925, p. 353.]

Art. 6644. Federal Lien Record.—The county clerk of each county is authorized to, and shall either file, or file and record, as is or may be provided by the laws of the United States, every notice, abstract or statement of any lien or claim, or release or discharge thereof, in favor of the United States or of any department or bureau thereof, when any such notice, abstract or statement prepared in conformity to the laws of the United States, is presented to him for filing or filing and recording. The county clerk shall number such notices, abstracts or statements, in the order in which they are filed, and if they are required to be recorded, he shall record them in a well bound book to be styled, "Federal Lien Record," and in either case he shall index them alphabetically under the names of the persons named therein or affected thereby, such index to be kept in a well bound book styled, "Index to Federal Liens," and for the performance of these services he shall not charge a fee, but shall be compensated by the county, as provided for in Article 3931. His failure to file, record or index properly any such notice, abstract or statement as herein required, or to be compensated therefor, shall not affect the validity or legality of any such lien or claim, or release or discharge thereof. [Acts 1923, p. 18.]

Art. 6645. [6841] [4651] [4341] Titles to chattels, where recorded.—Every deed, mortgage, or other writing, respecting the title of personal property hereafter executed, which by law ought to be recorded, shall be recorded in the clerk's office of the county court of that county in which the property shall remain; and if afterwards the person claiming title under such deed, mortgage, or other writing, shall permit any other person in whose possession such property may be to remove with the same, or any party thereof, out of the county in which the same shall be recorded, and shall not, within four months after such removal, cause the same to be recorded in the county to which such property shall be removed, such deed, mortgage, or other writing for so long as it shall not be recorded in such last men-

tioned county, and for so much of the property aforesaid as shall have been removed, shall be void as to all creditors and purchasers thereof for valuable consideration without notice. [Acts 1897, p. 209; Acts 1840, p. 156; P. D. 4993; G. L. Vol. 10, p. 1263; G. L. Vol. 2, p. 330.]

Art. 6646. [6842] [4652] [4342] **Record of a grant, etc.**—The record of any grant, deed or instrument of writing authorized or required to be recorded, which shall have been duly proven or acknowledged for record and duly recorded in the proper county, shall be taken and held as notice to all persons of the existence of such grant, deed or instrument.

CHAPTER FOUR.

SEPARATE PROPERTY OF MARRIED WOMEN.

| | | | |
|-------------------------------------|---------|--------------------------------|---------|
| | Article | | Article |
| Property of married women..... | 6647 | Where registration made..... | 6650 |
| May present and prove schedule..... | 6648 | Subsequent creditors, etc..... | 6651 |
| Acquisition after marriage..... | 6649 | | |

Art. 6647. [6844] [4654] [4344] **Property of married women.**—All property, real and personal, which may be owned or claimed at the time of marriage by any woman, or which she may acquire after marriage by gift, devise or descent, shall be registered as herein directed. [Acts 1846, p. 153; P. D. 4995; G. L. Vol. 2, p. 1459.]

Art. 6648. [6845] [4655] **May present and prove schedule.**—A married woman may prepare a schedule of all the real and personal property which she owned at the time of her marriage, and make her statement under oath before an officer authorized to take acknowledgments that the property described in the schedule is her separate property; and upon such statement being made, such officer shall annex a certificate of the fact under his hand and seal of office; which certificate shall be sufficient evidence for the recorder of any county to record the same. [Id.]

Art. 6649. [6846] [4656] [4346] **Acquisition after marriage.**—A married woman upon coming into possession of any property, real or personal, to which she had claim at the time of her marriage, or which she may afterward acquire by gift, devise or descent, may have a schedule of the same recorded in the same manner as prescribed in the foregoing article. [Id.]

Art. 6650. [6847] [4657] **Where registration made.**—The registration of the wife's separate property herein provided for, if real estate, shall be made in the county or counties in which the same, or a part thereof, is situated; if personal property, in the county or counties where the same remains; and in case such personal property be removed out of the county, the registration must also be made in the county in which the property is removed within four months after such removal. [Id.]

Art. 6651. [6848] [4659] [4349] **Subsequent creditors, etc.**—The registration of a schedule of a wife's separate property, made in accordance with the provisions of this chapter, shall be

conclusive as against all subsequent creditors of and purchasers from her husband. [Id.]

CHAPTER FIVE.

GENERAL PROVISIONS.

| | | | |
|---|--------------|---|--------------|
| Penalty for failing to record..... | Article 6652 | Effect of judgment | Article 6657 |
| Conveyances governed by existing laws | 6653 | Land in Archer County..... | 6658 |
| Old conveyances | 6654 | Record of certain titles confirmed..... | 6659 |
| May correct imperfect certificate..... | 6655 | Shall be evidence, when | 6660 |
| Judgment of proof of instrument..... | 6656 | Old registration operative | 6661 |
| | | Attachments recorded | 6662 |

Art. 6652. [6849] [4660] [4350] **Penalty for failing to record.**—If any county clerk to whom any instrument of writing authorized to be recorded by him, and proved or acknowledged according to law, has been delivered for record, shall neglect or refuse to make an entry thereof, or give receipt therefor, as required by law, or shall neglect or refuse to record such instrument of writing within a reasonable time after receiving the same, or shall record any instrument of writing affecting the same property, or any part thereof, before another first deposited in his office and entitled to be recorded, or shall record any such instrument incorrectly, or shall neglect or refuse to provide and keep in his office such indexes as required by law, he shall forfeit and pay a sum not exceeding five hundred dollars, to be recovered on motion in the district court, one-half to the use of the county, and the other half to the use of the person who shall sue for the same, such clerk having three days' notice of such motion, and shall also be liable to the party for all damages he may have sustained thereby, to be recovered by suit on his official bond against such clerk and his sureties. [Acts 1846, p. 236; G. L. Vol. 2, p. 1542.]

Art. 6653. [6850] [4661] [4351] **Conveyances governed by then existing law.**—The legality of the execution, acknowledgment, proof, form or record of any conveyance or other instrument heretofore made, executed, acknowledged, proved or recorded, shall not be affected by anything contained in this title, but shall depend for its validity and legality upon the laws in force when the act was performed.

Art. 6654. [6851] [4664] [4352] **Prior records; evidence.**—All conveyances of real property heretofore made and acknowledged or proved, according to the laws in force at the time of such making and acknowledgment or proof, shall have the same force as evidence, and may be recorded in the same manner and with the like effect as conveyances executed and acknowledged in pursuance of this title.

Art. 6655. [6852] [4663] [4353] **May correct imperfect certificate.**—When the acknowledgment or proof of the execution of any instrument in writing may be properly made, but defectively certified, any party interested may have an action in the district court to obtain a judgment correcting the certificate.

Art. 6656. [6853] [4664] [4354] **Judgment of proof of instrument.**—Any person interested under any instrument in writing entitled to be proved for record may institute an action in the district court against the proper parties to obtain a judgment proving such instrument.

Art. 6657. [6854] [4665] [4355] **Effect of judgment.**—A certified copy of the judgment in a proceeding instituted under either of the two preceding articles, showing the proof of the instrument, and attached thereto, shall entitle such instrument to record with like effect as if acknowledged.

Art. 6658. [3702] **Land in Archer County.**—Certified copies of deeds, mortgages, trust deeds, and all other instruments in any manner affecting titles to lands in Archer County which were recorded in Jack County from August 10, 1866 to August 10, 1870, made under the hand and seal of the County Clerk of Shackelford County, shall be admitted in evidence in all suits where secondary evidence is admissible. [Acts 1897, p. 143.]

Art. 6659. [6855] [4666] [4356] **Record of certain titles confirmed.**—Any grant, deed, or other instrument of writing, for the conveyance of real estate or personal property, or both, or for the settlement thereof in marriage, or separate property, or conveyance of the same in mortgage, or trust to uses, or on conditions, as well as any and every other deed or instrument required or permitted by law to be registered, and which shall have been prior to the ninth day of February, 1860, registered or recorded, shall be held to have been lawfully registered, with the full effect and consequences of existing laws; provided, the same shall have been acknowledged by the grantor or grantors before any chief justice, or associate justice, or clerk of the county court, or notary public in any county within the late Republic or the now State of Texas, or judge of the department of Brazos, or any primary judge, or judge of the first instance in 1835 or 1836, or proven before any such officer by one or more of the subscribing witnesses thereto, and certified by such officer, whether such acknowledgment or proof shall have been made before any such officer of the county where such instrument should have been recorded or not. [Acts 1860, p. 75; G. L. Vol. 4, p. 1437; P. D. 5021.]

Art. 6660. [6856] [4667] [4357] **Shall be evidence, when.**—All such instruments which shall have been acknowledged or proven before any officer named in the preceding article, and which shall have been afterward recorded in the proper county, or certified copies thereof, shall be evidence in the courts, as full and sufficient as if such acknowledgment had been taken or proof made in accordance with existing laws; but this article and the article preceding shall not be construed so as to affect or bind, in any manner, any person or party with constructive notice of the existence of any deed or other instru-

ment, except after the ninth day of February, 1860, and in the future. [Id.]

Art. 6661. [6857] [4668] [4358] **Old registration operative.**—Where an instrument in writing has been duly registered in the proper county, and any property conveyed or incumbered by such instrument shall fall within another county subsequently created, the prior registration shall not be deemed to be thereby invalidated or in any manner affected, but shall still continue to be equivalent to an actual notice of its contents to all persons whomsoever; and it shall be the duty of the county court of the new county (and at the expense thereof) to cause a transcript of the record of all such instruments to be made and duly certified and deposited in the recorder's office of said new county, for public inspection, and indexes of the same to be made. [Id.]

Art. 6662. [6858] [4669] **Attachments recorded.**—Whenever an attachment is levied upon real estate, the officer levying the writ shall immediately file with the county clerk of the county or counties in which the real estate so levied upon is situated, a copy of the writ, together with a copy of so much of his return as relates to the land in said county. Said clerk shall enter in a book, to be kept for that purpose, the names of the plaintiffs and defendants in attachment, the amount of the debt and the return of the officer in full. Should the writ of attachment be quashed or otherwise vacated, the court in which the attachment suit is pending shall cause a certified copy of said order to be sent to the county clerk of the county or counties in which the real estate levied upon is situated. The clerk shall, upon the receipt of the same, enter in the book aforesaid the names of the plaintiffs and defendants and record the order of the court in full. If the real estate levied upon is situated in any county other than the one in which the suit is pending, then, in case of failure to make the record aforesaid, the attachment lien shall not be valid against subsequent purchasers for value and without notice and subsequent lienholders in good faith. Each county clerk shall keep a well bound book for the record of the matters aforesaid, and shall keep a direct and reverse index thereto in which shall be entered the names of all the plaintiffs and defendants in the various attachments recorded by him; and the order of the court aforesaid shall be indexed in the same manner. [Acts 1889, p. 80, G. L. Vol. 9, p. 1108.]

TITLE 116.

ROADS, BRIDGES AND FERRIES.

| Chapter | Page | Chapter | Page |
|--|------|-----------------------------|------|
| 1 State Highways..... | 1898 | 3 Maintenance of Roads..... | 1924 |
| 2 Establishment of County Roads | 1919 | 4 Special Road Tax..... | 1945 |
| | | 5 Bridges and Ferries..... | 1947 |

CHAPTER ONE.

STATE HIGHWAYS.

1. STATE HIGHWAY DEPARTMENT.

| | Article | | Article |
|----------------------------------|---------|---------------------------|---------|
| Department | 6663 | Engineer | 6669 |
| Commission | 6664 | State road map | 6670 |
| Organization | 6665 | Laboratories | 6671 |
| Rules | 6666 | Federal aid | 6672 |
| To aid road officials | 6667 | Control of highways | 6673 |
| Qualifications of engineers..... | 6668 | Operating expenses | 6674 |

Art. 6663. Department.—The administrative control of the State Highway Department, hereinafter called the Department, shall be vested in the State Highway Commission, hereinafter called the Commission, and the State Highway Engineer. Said Department shall have its office at Austin where all its records shall be kept. [Acts 1917, p. 416.]

Art. 6664. Commission.—The Commission shall consist of three citizens of the State. With the advice and consent of the Senate, the Governor shall biennially appoint one member to serve for a term of six years, the classification to continue as constituted by law. The Governor shall designate one such member as chairman. Each member shall execute a bond payable to the State in the sum of five thousand dollars, to be approved by the Governor, and conditioned upon the faithful performance of his duties. The premium on such bonds shall be paid out of the State Highway Fund. [Id.; Acts 1923, p. 325.]

Art. 6665. Organization.—The Commission shall hold regular meetings once each month. They shall attend the same and such special or called meetings as they may provide by rule or the chairman may call. They shall formulate plans and policies for the location, construction and maintenance of a comprehensive system of State highways and public roads. They shall biennially submit a report of their work to the Governor and the legislature, with their recommendations and those of the State Highway Engineer. A quarterly statement containing an itemized list of all moneys received and from what source and of all money paid out and for what purpose shall be prepared and filed in the records of the Department and a copy sent to the Governor. These records shall be open to public inspection. [Id.]

Art. 6666. Rules.—The Commission shall establish and make public proclamation of all rules and regulations for the conduct of the work of the Department as may be deemed necessary, not inconsistent with the provisions of law. They shall

maintain a record of all proceedings and official orders and keep on file copies of all road plans, specifications and estimates prepared by the Department or under its direction. [Acts 1917, p. 416.]

Art. 6667. To aid road officials.—The Department shall collect information and compile statistics relative to the mileage, character and condition of the public roads in the different counties, and the cost of construction of the different classes of roads in the various counties. It shall investigate and determine the methods of road construction best adapted to the different sections of the State, and shall establish standards for the construction and maintenance of highways, bridges and ferries, giving due regard to all natural conditions and to the character and adaptability of road building material in the different counties. The Department may, at all reasonable times, be consulted by county and city officials for any information or assistance it can render with reference to the highways within such counties or cities, and it shall supply such information when called for by city or county officials; and it may in turn call upon all such officials for any information necessary for the performance of its duties hereunder. Upon request of the commissioners court of any county, the Department shall consider and advise concerning general plans and specifications for all road construction to be undertaken from the proceeds of the sale of bonds or other legal obligations issued by a county, or by any subdivision or defined district of a county; and such information and advice shall be so obtained before any of the proceeds from such bond issues are expended by or under the direction of the commissioners court. [Id.]

Art. 6668. Qualifications of engineers.—The Department shall adopt such rules as are found necessary to determine the fitness of engineers making application for highway construction work. Upon the formal application of any county or organized road district thereof, or of any municipality, the Commission may recommend for appointment a competent civil engineer, and graduate of some first class school of civil engineering, skilled in the knowledge of highway construction and maintenance. [Id.]

Art. 6669. Engineer.—The Commission shall elect a State Highway Engineer who shall be a competent civil engineer and graduate of some first class school of civil engineering, experienced and skilled in highway construction and maintenance, who shall hold his position until removed by the Commission. He shall first execute a bond payable to the State in such sum as the Commission may deem necessary, to be approved by the Commission, and conditioned upon the faithful performance of his duties. He shall act with the Commission in an advisory capacity, without vote, and shall quarterly, annually and biennially submit to it detailed reports of the progress of public road construction and statement of expenditures. He shall

be allowed all actual traveling and other expenses therefor, under the direction of the Department, while absent from Austin in the performance of duty under the direction of the Commission. [Id.]

Art. 6670. State road map.—The Highway Engineer shall cause to be made and kept in form convenient for examination in the office of the Department, a complete road map of the State as represented in the road construction of the various counties, and such map shall be regularly revised as construction proceeds in the different counties. He shall also prepare, under the direction and with the approval of the Commission, a comprehensive plan providing a system of State highways. [Id.]

Art. 6671. Laboratories.—The laboratories maintained at the Agricultural and Mechanical College of Texas and at the University of Texas shall be at the disposal and direction of the Highway Engineer for the purpose of testing and analyzing road and bridge material, and those in charge of said laboratories shall co-operate with and assist said Engineer to that end. [Id.]

Art. 6672. Federal aid.—Any funds for public road construction in this State appropriated by the Federal Government shall be expended by and under the supervision of the Department only upon a part of the system of State Highways. [Id.]

Art. 6673. Control of highways.—The Commission is authorized to take over and maintain the various State Highways in Texas, and the counties through which said highways pass shall be free from any cost, expense or supervision of such highways. The Commission shall use the automobile registration fees in the State Highway Fund for the maintenance of such highways, and shall divert the same to no other use unless the Commission shall be without sufficient funds from other sources to meet Federal aid to roads in Texas, and in such case the Commission is authorized by resolution to transfer a sufficient amount from such fund to match said Federal aid. [Acts 1923, p. 161; Acts 2nd C. S. 1923, p. 71.]

Art. 6674. Operating expenses.—The legislature shall make appropriations for the maintenance and running expenses of the Department, fix the compensation of the Highway Engineer and all other employes of the Department, and determine the number of such employes; and shall fix the compensation of the members of the Commission at not exceeding twenty-five hundred dollars per annum. The Board of Control shall make contracts for equipment and supplies (including seals and number plates) required by law in the administration of the registration of licensed vehicles, and in the operation of said Department. All money herein authorized to be appropriated for the operation of the Department and the purchase of equipment shall be paid from the State Highway Fund, and the remainder of said fund shall be expended by the Commission for

the furtherance of public road construction and the establishment of a system of State highways as herein provided. [Acts 1921, p. 102; Acts 1923, p. 325.]

2. REGULATION OF VEHICLES.

| | Article | | Article |
|--------------------------------|---------|-------------------------------|---------|
| Registration | 6675 | Replacement license | 6689 |
| Vehicles exempt | 6676 | License receipt | 6690 |
| Registration dates | 6677 | Apportionment of funds | 6691 |
| Fees: passenger vehicles | 6678 | Duty of tax collector | 6692 |
| Fees: trucks | 6679 | Registration supplies | 6693 |
| Fees: trailers | 6680 | State Highway Fund | 6694 |
| Fees: tractors | 6681 | Misrepresenting weight | 6695 |
| Basis of power fees | 6682 | Unsafe vehicle | 6696 |
| Basis of weight fees | 6683 | Delinquent registration | 6697 |
| Disputed classifications | 6684 | Municipal regulation | 6698 |
| Transfer fees | 6685 | County traffic officers | 6699 |
| Dealer's license | 6686 | Salaries of deputies | 6699a |
| Chauffeur's license | 6687 | Disposition of fines | 6700 |
| Number plates and seals | 6688 | Width of wheels | 6701 |

Art. 6675. Registration.—Every owner of a motor vehicle, tractor, trailer, semi-trailer, or motorcycle used on the public highways of this State, and each chauffeur, shall annually file in the office of the county tax collector of the county in which he resides or in which the vehicle to be registered is being operated, an application for the registration of each such vehicle owned or controlled by him, or for a chauffeur's license. The county tax collector shall not issue a license to any person until such application has been filled out in full and signed by the applicant, and until the requisite fee for the number of unexpired quarters for the calendar year is paid. [Acts 1917, p. 423; Acts 4th C. S. 1918, p. 158; Acts 1919, p. 174; Acts 1921, p. 253; Acts 1st C. S. 1921, p. 166; Acts 1923, p. 155.]

Art. 6676. Vehicles exempt.—Road rollers and other road building equipment owned and operated by municipalities, counties or subdivisions of counties; street sprinklers, fire engines or apparatus, patrol wagons, ambulances owned by municipalities or counties; and motor vehicles owned and operated under the direction of and exclusively in the official service of the United States Government, State of Texas, or any county or city thereof, shall not be required to pay the fees herein required for motor vehicles, but application shall be made for and a registration number and distinguishing seal secured for such motor vehicles. [Acts 1917, p. 423.]

Art. 6677. Registration dates.—The registration for all vehicles and chauffeurs hereunder shall begin with the first day of January and end with the 31st day of December of each year. All applications for such registration filed during the first quarter ending March 31st shall be accompanied by the annual fee; all applications except for chauffeur's license, filed during each succeeding quarter shall be accompanied by three-fourths, one-half and one-fourth, respectively, of the annual fee. [Acts 4th C. S. 1918, p. 160.]

Art. 6678. Fees: passenger vehicles.—The annual registration fee of a motorcycle shall be five dollars. The annual fee for registration of a passenger motor vehicle shall be based upon

the weight of the vehicle and upon the N. A. C. C. horsepower rating, as follows:

| Weight of vehicle in pounds. | Fee per 100 lbs. or fraction thereof. | Fee per horsepower. |
|------------------------------|---------------------------------------|---------------------|
| Class 1 1000-2000 | \$.40 | \$.17½ |
| Class 2 2001-3500 | .50 | .17½ |
| Class 3 3501-4500 | .60 | .17½ |
| Class 4 4501 and up | .75 | .17½ |

The minimum fee, based on horsepower, shall be four dollars for a full year. [Id.]

Art. 6679. Fees: trucks.—For each motor vehicle designed or used for the transportation of property, the annual license fee shall be based upon the gross weight of the vehicle including the body, plus its net carrying capacity, the tire equipment and the N. A. C. C. horsepower rating as follows:

| Gross weight in lbs. | Fee per 100 lbs. or fraction thereof of the carrying capacity, plus the weight of the vehicle: | | Fee per horsepower. |
|-----------------------------|--|--------------------------------------|---------------------|
| | If equipped with pneumatic tires. | If equipped with solid rubber tires. | |
| Class 1 1000-6000 | \$.30 | \$.40 | \$.17½ |
| Class 2 6001-8000 | .40 | .50 | .17½ |
| Class 3 8001-10,000 | .50 | .60 | .17½ |
| Class 4 10,001-12,000 | .60 | .80 | .17½ |
| Class 5 12,001-14,000 | .80 | 1.00 | .17½ |
| Class 6 14,001-16,000 | 1.20 | 1.50 | .17½ |
| Class 7 16,001-22,000 | 1.60 | 2.00 | .17½ |
| Class 8 22,001 and up | 4.00 | 5.00 | .17½ |

[Id.]

Art. 6680. Fees: trailers.—For each trailer or semi-trailer, drawn or designed to be drawn by a commercial motor vehicle, or tractor, the annual license fee shall be based upon the tire equipment and gross weight of vehicle and capacity of load, as follows:

| Gross weight in lbs. | Fees per 100 lbs. or fraction thereof: | | |
|-----------------------------|--|--------------------------------------|-------------------------------|
| | If equipped with pneumatic tires. | If equipped with solid rubber tires. | If equipped with steel tires. |
| Class 1 1000-6000 | \$.30 | \$.40 | \$ 1.00 |
| Class 2 6001-8000 | .40 | .50 | 1.25 |
| Class 3 8001-10,000 | .50 | .60 | 1.50 |
| Class 4 10,001-12,000 | .60 | .80 | 2.00 |
| Class 5 12,001-14,000 | .80 | 1.00 | 2.50 |
| Class 6 14,001-16,000 | 1.20 | 1.50 | 3.00 |
| Class 7 16,001-20,000 | 1.60 | 2.00 | 4.00 |
| Class 8 20,001 and up | 4.00 | 5.00 | 6.00 |

[Id.]

Art. 6681. Fees: tractors.—The word “tractor” as used in this title shall mean any self-propelled vehicle designed or used as a traveling power plant or for drawing other vehicles, but having no provision for carrying loads on its own structure.

For each tractor used upon the highways of this State the annual license fee shall be based upon the weight of the tractor as follows:

| | | |
|--------------------|-------|-----------------|
| 1,000- 4,000 lbs. | ..... | \$ .25 per cwt. |
| 4,001- 6,000 lbs. | ..... | .50 per cwt. |
| 6,001- 8,000 lbs. | ..... | .60 per cwt. |
| 8,001-10,000 lbs. | ..... | .75 per cwt. |
| 10,001-16,000 lbs. | ..... | 1.00 per cwt. |
| 16,001-20,000 lbs. | ..... | 2.00 per cwt. |

[Id.]

Art. 6682. Basis of power fees.—For all purposes of this law, the horsepower of any motor vehicle, except electric or steam driven vehicles, shall be determined by the formula commonly known as the National Automobile Chamber of Commerce Formula, being as follows: Square the diameter of the bore of the cylinder in inches, multiply by the number of cylinders, and divide by two and one-half. The horsepower of any steam driven vehicle shall be computed by the system of horsepower rating adopted by the United States Government. For vehicles propelled by electricity the rating shall be the normal horsepower designated by the manufacturer of the electric motor or motors used therein. [Id.]

Art. 6683. Basis of weight fees.—In the computation of the fees for all passenger motor vehicles and tractors the actual weight shall be the weight of the vehicles in pounds, fully provisioned and equipped for use on the highways. For commercial motor vehicles, trailers and semi-trailers, the gross weight shall be determined by adding the actual weight of vehicles, including body, to the carrying capacity of the vehicle. The Department shall compile and furnish to the tax collectors a schedule of weights of the various makes and models of motor vehicles, trailers and semi-trailers, to be ascertained from the actual weighing of the vehicles fully provisioned with water, oil and fuel and equipped with the manufacturer's standard equipment, or from certified statements of the manufacturers of the various vehicles or vehicle bodies. No applicant shall be permitted to register any such vehicle upon a declared weight less than that shown for the vehicle to be registered in said schedule. [Id.]

Art. 6684. Disputed classifications.—The Department shall have authority in disputed cases to determine the classification in which any vehicle belongs and the amount of fee which shall be paid therefor. [Id.]

Art. 6685. Transfer fees.—When any person, other than a dealer, sells a vehicle subject to registration hereunder, he shall indorse upon his certificate of registration a written transfer of the same. The purchaser of such motor vehicle shall pay to the county tax collector of the county of his residence a transfer fee of one dollar, with his full name and address, and he

shall then be regarded as the owner thereof and amenable to the provisions of this law. [Acts 1917, p. 423.]

Art. 6686. Dealer's license.—Any manufacturer of, or dealer in motor vehicles in this State may, in lieu of registering each machine he may wish to show or demonstrate on the public highways, apply for registration and secure a general distinguishing number which may be attached to any motor vehicle or motorcycle he sends temporarily upon the road. The annual fee for such dealer's registration of a general distinguishing number shall be fifteen dollars, and additional numbers desired by any dealer, not exceeding five, will be assigned and registered for a fee of five dollars each. All the other provisions of this law shall apply in case of dealer's registration. [Id.]

Art. 6687. Chauffeur's license.—A "chauffeur" is one whose business or occupation is operating a motor vehicle for compensation, wages or hire. Each chauffeur shall pay an annual fee of three dollars for the whole or part of any year he is so engaged. The Department shall prescribe the form of application for chauffeur's license, and shall require the same to be sworn to by the applicant, indorsed and vouched for by two reputable citizens of the place where the applicant lives or resides when making application, setting forth that they have known or been acquainted with the applicant for a period of not less than sixty days prior thereto, and that he is trustworthy, sober and competent to operate motor vehicles upon the highways of this State. No license shall be issued to an applicant unless he is over eighteen years old. He shall be issued a certificate and a metal badge with a distinguishing number, free of charge. Said badge shall at all times be prominently displayed on his clothing while engaged as a chauffeur, and shall be valid only during the term of his license. [Acts 1917, p. 475.]

Art. 6688. Number plates and seals.—A license number plate or pair of license number plates, in the discretion of the Commission, such plates to be designated as State license numbers, bearing the license number assigned therefor, shall be issued for every motor vehicle being registered for any year a re-numbering is ordered by the Commission, or being registered for the first time in Texas subsequent to the last year a re-numbering is so ordered. If one such plate is issued, it shall be securely attached to the rear of the motor vehicle for which it is issued, and if two are issued, the extra plate shall be securely attached to the front of such vehicle, and shall remain attached thereto during the existence of such vehicle or until such time as the Commission shall order a re-numbering of all motor vehicles in the State.

A numbered registration seal shall be issued for every motor vehicle registered in Texas for each year subsequent to the last year a re-numbering is so ordered. Such seal shall be attached to the front of the motor vehicle for which issued, to evidence payment of the license fee thereon for the year for which said

seal is issued. In any year a re-numbering is so ordered, no such seal shall be issued, and the new number plate shall be prima facie evidence that the license fee due on said vehicle has been paid for that year. Said seals shall be of distinctly different colors each year. If the Commission deem it advisable, they may use a plate or pair of plates annually in lieu of said seals. The Department shall prescribe the form, size and color of all plates and seals. [Id.; Acts 1st C. S. 1921, p. 146.]

Art. 6689. Replacement license.—If a license number plate, seal or chauffeur's badge is lost or destroyed, the owner of a registered vehicle, or a chauffeur, may obtain from the Department through the county tax collector a replacement number plate, seal or badge by filing with said collector an affidavit showing the fact, and by paying one dollar for each replacement number, seal or badge. [Acts 1917, p. 475.]

Art. 6690. License receipt.—Upon filing an application for license the applicant shall pay said collector the amount of the license fee required by law, and said collector shall issue a receipt therefor showing the name of the holder, the make of his car, the model and the number of the engine of same, or the number of the chauffeur's badge and his name. Such receipt shall be a protection to the holder against prosecution under any provision of the Highway Law regulating the registration of motor vehicles until the receipt by him of the number plates and seals, or badge and certificate. Such receipts shall be issued in triplicate, one to be delivered to the licensee, one forwarded to the Department by the collector, and one retained by him. Said receipts shall be numbered consecutively for each county. [Acts 4th C. S. 1918, p. 161.]

Art. 6691. Apportionment of funds.—On Monday of each week each county tax collector shall deposit in the county depository of his county to the credit of the road and bridge fund of that county an amount equal to seventeen and one-half cents per horsepower of every vehicle registered in such county, such amount to be deducted from the gross registration fees collected during the preceding week, and transmit the balance of such fees to the Department. Each county may use the tax so apportioned to it on any county roads that it may deem necessary or expedient. [Id.; Acts 1923, p. 156.]

Art. 6692. Duty of tax collector.—Said tax collector shall forward to the Department the copies of receipts issued to applicants for license, together with the State's part of the remittances therefor. He shall keep a record of all transfers and report same weekly to the Department. Tax collectors in counties having five thousand or more motor vehicles shall receive for such services a two per cent commission on all amounts so collected; and collectors in counties having less than five thousand motor vehicles shall receive a four per cent commission on all money so collected. Such compensation shall be used exclusively to pay salaries of deputies or other employes

appointed in accordance with law, and any fees so collected remaining after paying such salaries shall be accounted for as fees of office as provided by law. [Acts 4th C. S. 1918, p. 161; Acts 2nd C. S. 1923, p. 81.]

Art. 6693. Registration supplies.—Upon receipt of such receipts and remittances, the Department shall assign registration numbers to the persons whose names appear thereon, and shall at once forward, charges prepaid, to the collector the required number plates, seals or badges and certificates corresponding thereto, which shall be delivered by the collector, without expense to him or to the county, to those entitled thereto upon application therefor by the owners. The Secretary of the Department shall on or before January first of each year forward to each county tax collector, carrying charges prepaid, registration blanks and receipts, and a number of seals corresponding to the number of motor vehicle and motorcycle registrations in their respective counties for the previous year, which shall be delivered by said collector to the registrants upon the payment of the license fee for the ensuing year. The number of seals so sent out shall be charged to the respective collectors in a book kept for that purpose by the Department, and upon receipt of notification by the said collector, together with the remittance therefor, he shall be credited with the seals so distributed. [Acts 4th C. S. 1918, p. 161.]

Art. 6694. State Highway Fund.—All funds coming into the hands of the Commission derived from the registration fees or other sources provided for in this subdivision, as collected, shall be deposited with the State Treasurer to the credit of a special fund designated as "The State Highway Fund," and shall be paid only on warrants issued by the Comptroller upon vouchers drawn by the chairman of the Commission and approved by one other member thereof, such vouchers to be accompanied by itemized sworn statements of the expenditures. [Acts 1917, p. 424.]

Art. 6695. Misrepresenting weight.—If any person shall operate, or permit to be operated, any motor vehicle licensed under this law of a greater weight than stated in his declaration or application, he shall be liable to pay the tax collector of any county through or into which he shall operate, or cause to be operated, such vehicle, the full license fee provided for the class to which such motor vehicle properly belongs. [Acts 1923, p. 156.]

Art. 6696. Unsafe vehicle.—If the Department shall determine at any time that a motor vehicle is unsafe or improperly equipped, or otherwise unfit to be operated upon the public highways, it may refuse to register such vehicle, and may for a like reason revoke any registration already issued. [Acts 1917, p. 475.]

Art. 6697. Delinquent registration.—The registration fee required to be paid upon a motor vehicle shall become delin-

quent when the owner of any such vehicle operates or permits the same to be operated upon the public highways without first having applied for registration and paid the registration fee therefor. In addition to all other penalties, if at the expiration of thirty days after any registration fee becomes delinquent such fee has not been paid and registration applied for, a penalty of twenty-five per cent of the fee shall be added thereto, and both shall be a lien upon such vehicle. The Department shall collect said fee and penalty by foreclosure upon and by sale of such vehicle in the manner provided by law for the sale of personal property by the county tax collector for collection of taxes due on personal property. [Id.]

Art. 6698. **Municipal regulation.**—The certificate of registration and numbering for purposes of identification, and the fees herein provided for shall be in lieu of all other similar registrations heretofore required by any county, municipality or other political subdivision of this State, and no such registration fees or other like burdens shall be required of any owner of any motor vehicle or motorcycle by any county, municipality or other sub-division of the State. This provision shall not affect the right of incorporated cities and towns to license and regulate the use of motor vehicles for hire in such corporation. Nothing herein shall in anywise authorize or empower any county or incorporated city or town in this State to levy and collect any occupation tax or license fees on motorcycles, motor vehicles or motor trucks. [Id.]

Art. 6699. **County traffic officers.**—The commissioners' court of each county, acting in conjunction with the sheriff, may employ not more than two regular deputies, nor more than two additional deputies for special emergency to aid said regular deputies, to be known as county traffic officers to enforce the highway laws of this State regulating the use of the public highways by motor vehicles. Said deputies shall be, whenever practicable, motorcycle riders, and shall be assigned to work under the direction of the sheriff. They shall give bond and take the oath of office as other deputies. They may be dismissed from service on request of the sheriff whenever approved by the commissioners court, or by said court on its own initiative, whenever their services are no longer needed or have not been satisfactory. The commissioners court shall fix their compensation prior to their selection, and may provide at the expense of the county, necessary equipment for said officers. The pay of said deputies shall not be included in the settlements of the sheriff in accounting for the fees of office. For the purposes of this law, the commissioners courts of counties whose funds from the motor registration fees provided herein amount to thirty thousand dollars or over, may use not exceeding five per cent of said funds; and not to exceed seven and one-half per cent of such funds in counties receiving a lesser amount from such registration. Said deputies shall at all times co-operate with the

police department of each city or town within the county, in the enforcement of said traffic laws therein and in all other parts of the county. [Acts 1919, p. 228.]

Art. 6699a. **Salaries of deputies.**—Deputies shall be paid a salary out of the general county fund not to exceed one hundred and fifty (\$150) dollars per month, the salary to be fixed by the commissioners' court, and in addition thereto the commissioners' court is hereby authorized to provide at the expense of the county such necessary uniforms, caps and badges, such badges to be not less than two inches by three inches in dimensions, and other necessary equipment, to include a motorcycle and its maintenance, as is necessary for them to discharge their duties. The salaries paid to said deputies acting as such highway officer shall be paid direct to said deputies by the commissioners' court, and such salaries shall be independent of any salary or fee paid to the sheriff and all of his deputies not so acting as highway officers, and the sheriff shall not be required to account for the salaries provided for herein as fees of office or as salary to the sheriff or his other deputies. Such deputies as are provided for herein shall be appointed by the commissioners' court and be deputized by either the sheriff or any constable of the county in which they are appointed, and no other officers shall make arrests in this State for violation of laws relating to highways now in effect in this State. Such deputies as provided for herein shall at all times when in the performance of their duties wear a full uniform with a cap and badge, the badge to be displayed on the outside of the uniform in a conspicuous place. Such officers shall remain in and upon the highway, and at all times patrol the same while in the performance of their duties, only leaving the highway to pursue any offender whom such officers were unable to apprehend upon the highway itself. No arrest by any such officer shall be binding or valid upon the person apprehended if the officer making such arrest was in hiding or if he set a trap to apprehend persons traveling upon the highway. No fees or charges whatever shall be made for the service of such officers provided for herein, nor shall any fee for the arrests made by such officers be charged and taxed as costs or paid to such officers in any case in which such officers shall make an arrest. Such officers shall perform all their duties and make arrests for violation of any law of this State appertaining to the control and regulation of vehicles operating in and upon any highway, street, or alley of this State. The district engineer in whose district the county in which such officers operate shall advise with such officers as to the enforcement of the various State laws pertaining to control and regulation of traffic upon the highways, and in case such officers shall not perform their duties in enforcing such laws, the district engineer may complain to the commissioners' court, and upon the filing of such complaint in writing duly signed by the district engineer, the commissioners' court shall summons before them for a hearing the officer or officers so complained of, and if such hearing develops that such officer or officers

are not performing their duties as required of them, then such officer or officers shall immediately be discharged from all of their duties and powers as herein provided for, and other officers shall forthwith be appointed. Should any portion or section of this article be held invalid or unconstitutional, such holding shall not affect the validity or constitutionality of any other portion of this article, and all other portions not held invalid or unconstitutional shall remain in full force and effect. [Acts 1925, p. 202.]

Art. 6700. Disposition of fines.—Fines collected for violations of any highway law as set forth in Chapter 1 of Title 13 of the Penal Code, shall be used by the municipality or the counties in which the same are assessed and to which the same are payable, in the construction and maintenance of roads, bridges and culverts therein, and for the enforcement of the traffic laws regulating the use of the public highways by motor vehicles and motorcycles, and to help defray the expense of county traffic officers. [Acts 1917, p. 484; Acts 1919, pp. 228, 310.]

Art. 6701. Width of wheels.—No person, firm, association or corporation shall sell or offer for sale in this State any wagon or other road vehicle with an intended carrying capacity of more than two thousand pounds and not exceeding four thousand five hundred pounds which shall have a rim or tire on the wheels of same less than three inches in width; or any such wagon or other road vehicle with an intended carrying capacity of more than four thousand five hundred pounds which shall have a rim or tire on the wheels of same less than four inches in width. This article shall apply to all persons, firms, associations or corporations engaged in the sale of road vehicles, either at wholesale or retail, but shall not apply to individuals selling or offering for sale road vehicles purchased for their individual use. Any firm, association or corporation violating the terms of this article shall be subject to a penalty of not less than one hundred nor more than one thousand dollars for each offense, to be collected for the benefit of the county in which such violation may occur. [Acts 1917, p. 139; Acts 1919, p. 284; Acts 3rd C. S. 1920, p. 61.]

[Additional legislation, Acts 1925, pp. 135-145.]

SECTION 1. Wherever used in this Act the following terms shall have the meaning ascribed to each as follows:

(a) "Motor Vehicle" shall include all vehicles propelled otherwise than by muscular power, except motorcycles and vehicles that run exclusively upon tracks or rails.

(b) "Tractor" shall include any motor vehicle used as a traveling power plant or for drawing other vehicles, but having no provisions for carrying loads independently, other than the operator of such tractor.

(c) "Trailer" shall include any vehicle without motive power constructed for carrying passengers or property wholly on its

own structure and for being drawn by a self-propelled vehicle, except those running exclusively on tracks or rails.

(d) "Semi-trailer" shall include a vehicle designed and constructed for use in conjunction with a self-propelled vehicle so that some of the weight of its load rests upon and is carried by the towing vehicle, but not including those running exclusively upon tracks or rails.

(e) "Motorcycle" shall include any motor vehicle constructed to travel on not more than three wheels in contact with the ground or public highway, but not those that run exclusively on rails or tracks.

(f) "Bicycle" shall include any vehicle propelled by human power while the person or persons furnishing the power ride such vehicle, except those running exclusively upon tracks or rails.

(g) "Public Highway" shall include any road, street, way, thoroughfare or bridge in this State not privately owned or controlled, for the use of vehicles, over which the State has legislative jurisdiction under its police power.

(h) "Night-time" shall mean the time between one-half hour after sunset and one-half hour before sunrise.

(i) "Person" shall include, wherever applicable, a person, firm, partnership, corporation, association or other concern by whatever name known or howsoever organized or created.

(j) "Headlighting Device" or "Device," when used in the provisions relative to lights on motor vehicles, tractors, or motorcycles, shall include the integral and complete headlamp or a device intended to modify in any manner the beam of the ordinary type of headlighting equipment.

(k) "Ordinary Type of Headlighting Equipment" shall mean a headlamp composed of a lamp housing, plain parabolic reflector, plain glass front or bare reflector, and a clear-glass incandescent lamp or bulb.

(l) "Lens" shall include any headlight lens, cover-glass or front-glass other than a plain glass front.

(m) "Reflector" shall include any reflector other than a plain parabolic reflector.

(n) "Headlight Control Device" shall have the same meaning as that assigned to "Headlighting Device" and "Device."

(o) "Spotlight" shall mean any light or lamp, the direction of the beam from which is controllable from the front seat of a motor vehicle or from the seat or side-car of a motorcycle.

SEC. 2. It shall be unlawful for any person to operate any motor vehicle, motorcycle, tractor, trailer, semi-trailer or bicycle upon any public highway in this State during the night-time if such motor vehicle, motorcycle, tractor, trailer, semi-trailer or bicycle be not equipped with lights complying with the following requirements applicable to any such vehicle.

(a) Every motor vehicle and tractor shall, during the night-time, have two lighted headlamps of approximately equal

candle-power attached to the front end thereof, one of said headlamps shall be located to the right of the car axis and the other to the left of said axis. Every motorcycle shall, during the night-time, have one lighted headlamp attached to the front thereof. Each of said headlights of motor vehicles, tractors, and motorcycles shall be visible from the front of the vehicle.

(b) Every motor vehicle, motorcycle, tractor, trailer, or semi-trailer shall, during the night-time, have attached one lighted lamp displaying a red or yellow light visible from the rear of such vehicle; provided, that when more than one of such vehicles are operated while fastened together, one behind the other, only the last of such vehicles toward the rear shall be required to carry such a tail light. Such rear tail light on all such vehicles mentioned in this subdivision shall be so arranged and constructed as to illuminate during the night-time the number plate showing the registration number of the vehicle so that the number plate shall be visible from the rear of such vehicle. Where the construction or use of a motor truck makes it necessary to separate the tail light and the number plate for the purpose of protecting either or both, it shall not be necessary for the tail light to be so placed as to illuminate the number plate.

(c) Every bicycle shall, during the night-time, have attached to it in front a lighted lamp which shall be visible from the front of such bicycle, or a reflex mirror, and attached to it in the rear a reflex mirror or a lighted lamp exhibiting a red or yellow light which shall be visible from the rear of such bicycle.

SEC. 3. No headlight shall be used upon any motor vehicle, tractor or motorcycle operated upon the public highways of this State unless such headlight is equipped with a lens, reflector or headlight control device which has been approved by the State Highway Commission in accordance with the provision of this Act, and which is adjusted as prescribed in the certificate of approval issued by the State Highway Commission to the manufacturer of such lens, reflector or headlight control device or his agent within this State.

SEC. 4. The University of Texas is hereby designated as the official testing agency for the State of Texas, said tests to be carried on under the supervision of the Experiment Station of said institution. In the event that said institution is unable to carry on the tests herein prescribed, the State Highway Commission shall have the authority to designate a new testing agency. Said testing agency, in either case, shall carry on the tests in laboratories equipped to carry on photometric tests according to the best practice, recognized as such by the National

Bureau of Standards and other states requiring tests similar to those required herein.

SEC. 5. Any person, firm or corporation may submit to the State Highway Commission a lens, reflector or headlight control device intended to make a headlight comply with the provisions of this Act, and make application that the same be tested as to conformity with the requirements of this Act. Upon such application being made, the State Highway Commission shall, upon notice to the applicant, submit such lens, reflector or headlight control device to the testing agency as herein designated with the request that such device be tested as to conformity with the requirements of this Act. Each such applicant shall, upon the filing of his application, pay to the State Highway Commission a fee of fifty dollars. All such fees shall be paid by the State Highway Commission into the State Treasury, and they shall be deposited in a fund to be known as the Highway Light Test Fund, and the State Treasurer shall keep such fund separate. The moneys in such fund, or so much of them as may be necessary, shall be used to meet the expense of the tests as herein provided, and for such use they are hereby appropriated, and the balance thereof, if any, shall be paid into the State Highway Fund. Moneys in the Highway Light Test Fund shall be spent under the direction of the State Highway Commission, and may be spent only to defray the expenses of testing by the testing agency herein provided for.

SEC. 6. The testing agency shall conduct an exact scientific test of every device submitted to it as herein provided, and shall report thereon to the State Highway Commission its findings and instructions as to the candlepower lamp or bulb and any particular adjustment to be used with such device.

The sample submitted to the testing agency shall be representative of the device as manufactured and as marketed. They shall be accompanied by printed instructions for their use as issued by the manufacturer of the device. The samples submitted shall include as much of the accessory equipment peculiar to the device (except batteries) as is necessary to operate the device in its normal manner.

In the case of devices to be used in connection with standard parabolic reflectors, the reflectors used in making the laboratory tests shall be of standard high grade manufacture of 1.25 inch focal length, with clean and highly polished surfaces and as nearly truly paraboloidal in form as possible, and as approved for this purpose by the National Bureau of Standards.

The incandescent lamps used in connection with the laboratory tests shall be of standard manufacture and as approved for this purpose by the National Bureau of Standards. In case of devices involving the use of special incandescent lamps, such lamps, together with any necessary accessories, shall be submitted.

Each device submitted must bear a distinctive designation prominently and permanently indicating the name and type of

the device. Special incandescent lamps submitted in connection with devices shall bear the manufacturer's normal clear-bulb rating.

The testing agency shall adjust the device in accordance with the printed instructions issued by the manufacturer, which instructions must be adequate for practical purposes. An exact description of the adjustments made for test shall be given in the report.

SEC. 7. The following designations of the focal adjustments of the incandescent lamp in the parabolic reflector are hereby adopted:

Principal Focus. The beam, with bare reflector, or plain front glass, is nearly parallel and of the smallest possible diameter.

Rear Focus. The beam, with bare reflector or plain front glass, diverges as much as possible without having a dark center.

Front Focus. The beam, with bare reflector or plain front glass, converges and crosses near the lamp, and then diverges as much as possible without having a dark center.

Special Focus. A special focal adjustment shall be allowed only when it can be clearly defined and described.

SEC. 8. (a) The testing agency shall make the following photometric tests:

Tests of devices used in pairs. A pair of testing reflectors, mounted similarly to the headlamps on a motor vehicle, shall be set up in a dark room at a distance of not less than sixty feet nor more than one hundred feet from a vertical white screen. If a testing distance of one hundred feet is taken, the reflectors shall be set twenty-eight inches apart from center to center, and if a shorter testing distance is taken, the distance between reflectors shall be proportionately reduced. The axis of the lamps shall be parallel and horizontal, or tilted in a vertical plane in accordance with manufacturer's adjustment. The intensity of the combined light shall then be measured with each pair of samples in turn, with the reflectors fitted with a pair of incandescent lamps of the gas-filled type, six to eight volts, 21 spherical candlepower rating. The lamps shall be such as will give their rated candlepower when operated at their rated efficiency. They shall be operated at their rated candlepower.

Measurements shall be made at the following points at the surface of the screen:

A. In the median vertical plane parallel to the lamp axis, on a level with the lamps.

B. In the median plane one degree of arc below the level of the lamps.

C. In the median plane one degree of arc above the level of the lamps.

D. Four degrees of arc to the left of the median plane and one degree of arc above the level of the lamps.

PL and PR. One and one-half degree of arc below the level of the lamps and three degrees of arc to the left and to the right, respectively, of the median plane.

QL and QR. Three degrees of arc below the level of the lamps and six degrees of arc to the left and to the right, respectively, of the median plane.

(b) All pairs of samples tested under the conditions prescribed above shall conform to the following specifications for observed apparent candlepower:

Point A. Not less than 1,800 candlepower nor more than 6,000 candlepower.

Point B. Not less than 7,200 candlepower, and there shall not be less than 7,200 candlepower at any point on the horizontal line through B, one degree to the left and to the right of B.

Point C. Not over 2,400 candlepower, and not less than 800 candlepower.

Point D. Not over 800 candlepower.

Points PL and PR. At each of these points and at every point on the line between them, not less than 5,000 candlepower.

Points QL and QR. At each of these points and at every point on the line between them, but less than 2,000 candlepower.

SEC. 9. Test of devices used singly. Where a device is to be used singly, only one reflector shall be used, and the specifications for the observed candlepower for the test stations in 8 (a) shall be as follows:

Point A. Not less than 1,800 candlepower.

Point B. Not less than 3,600 candlepower, and there shall not be less than 3,600 candlepower at any point on the horizontal line through B, one degree to the left and to the right of B.

Point C. Not more than 2,400 candlepower.

Point D. Not more than 800 candlepower.

Points PL and PR. At each of these points and at every point on the line between them, not less than 2,500 candlepower.

Points QL and QR. At each of these points and at every point on the line between them, not less than 1,000 candlepower.

SEC. 10. The testing agency shall recommend to the State Highway Commission that any device submitted be not given a certificate of approval, even though it passes the photometric tests herein prescribed, if such device has one of the following defects:

Unnecessary loss of light due to absorption or diffusion.

Abnormal or unduly complicated adjustment.

Unstable or bad mechanical construction.

Unduly bright or dark areas or excessive contrast in the illuminated field.

Irregular or badly defined cut-off line.

SEC. 11. In the case that the design or construction of any device is changed in any way which alters the characteristics by which it is ordinarily identified, a new name or type designation must be given, and the device may then be submitted for approval on the same basis as a new device.

Any alteration in the design of any approved device which does not affect its distinctive appearance, but which is made for the purpose of improving its performance or to correct for alterations made in the standard of construction of incandescent

lamps or reflectors, may be allowed under the original approval of such device, provided that due notice of such alteration is given to the State Highway Commission and verification tests made to the satisfaction of the commission that the device as altered complies with the specifications herein given.

SEC. 12. As a safeguard against deviations in the design and construction of an approved device from that on which approval was originally based, the State Highway Commission shall have the right to submit from time to time samples of the approved devices to the testing agency for a verification of their performance or to require the submission at suitable intervals of certified copies of reports of such verification tests, satisfactory to the testing agency, made by a person or an organization fulfilling the requirements of a testing authority. In case copies of verification tests are not submitted as required, or in case the verification test shows failure of any device to conform to the specification herein prescribed, the State Highway Commission may suspend or withdraw approval of such device.

SEC. 13. Whenever the State Highway Commission shall receive from the testing agency a report that a particular device has been tested and found to comply with the provisions of this Act, together with instructions as to the candlepower lamp or bulb and any particular adjustments to be used in connection with such device, the commission shall issue to the applicant a certificate of approval, together with a copy of the instructions of the testing agency relative to the use of such device. The State Highway Commission may refuse approval to any device which in its opinion will be, in actual use, unsafe or impractical due to any one or more of the defects detailed in Section 10 of this Act, but upon any such refusal must furnish the applicant a detailed statement setting forth the reason for such refusal.

Upon receipt of said certificate of approval, the applicant may stamp on or attach to, or cause to be stamped on or attached to, all devices identical in design and construction with the device for which the certificate of approval was issued, the following words: "Approved by the Texas State Highway Commission." Should any person stamp upon or attach to or cause to be stamped upon or attached to any such device or equipment the words: "Approved by the Texas State Highway Commission," or any words meaning that such device has been approved by the Texas State Highway Commission when such device or equipment has not been approved by the State Highway Commission, or should any person knowingly sell or offer for sale in this State any device or equipment so marked which has not been approved by the State Highway Commission, such person shall be guilty of a misdemeanor and upon conviction be confined to the county jail for not less than one year, and not more than two years, or by a fine of not less than \$100.00 and not more than \$1,000.00, or by both such fine and imprisonment; or should any corporation cause or knowingly permit such offense to be committed, the offending corporation shall forfeit to the State of Texas as a penalty the sum of one thousand dollars,

and the Attorney General shall sue or cause such corporation to be sued in the district court of Travis County for such penalty.

SEC. 14. Each and every county commissioners' court in this State shall, under the technical supervision of the State Highway Commission, establish and maintain county test stations in the various counties for the purpose of testing and adjusting the headlights on motor vehicles and motorcycles. Said county test stations shall test and adjust the headlights of motor vehicles and motorcycles for proper tilt, proper focal adjustment, and general efficient operation. Proper tilt, proper focal adjustment, and general efficient operation shall mean the tilt, focal adjustment, and proper mechanical condition as prescribed for the various devices by the State Highway Commission upon the recommendation of the testing agency heretofore referred to. The establishment of county test stations shall mean the designation of any place which shall comply with the requirements for a test station as determined by the State Highway Commission. The number and location of county test stations shall be determined by the county commissioners' court in accordance with the number and geographical distribution of motor vehicles and motorcycles in the county.

SEC. 15. The county commissioners' court shall require the county test stations to charge a fee of twenty-five cents for the test and adjustment of headlights of each motor vehicle and motorcycle. Said court shall require the issuance by the county test stations of a certificate of test and adjustment which shall show the make of the motor vehicle or motorcycle, the registration number, the date of the adjustment, and the official designation of the station making the test. Said certificate shall bear the signature of the person in charge of the test station, and shall be kept by the owner of the motor vehicle or motorcycle for which the certificate was issued until replaced by the certificate for the next year, or by a certificate issued at a later date in the same year. These certificates shall be issued to the county commissioners' court upon requisition to the State Highway Commission, and the county commissioners' court shall issue them to the various test stations. A duplicate of each certificate issued by each county test station shall be forwarded at the end of each month to the county commissioners' court together with as much of the total fee charged for such test as the court may require. The portion of the total fee, if any, to be allowed the county test station for making the test and adjustment for such motor vehicle and motorcycle shall be determined by the county commissioners' court before the designation of any county test station under this Act, but may be changed at any future time as necessity may require.

SEC. 16. Before any county tax collector shall issue a certificate of registration to the owner of a motor vehicle or motorcycle as now provided by law, he shall require the presentation of a certificate showing that the headlights of such motor vehicle or motorcycle have been tested and adjusted at some one

of the county test stations referred to, and that said test and adjustment have been made within the thirty-day period preceding the date of application for registration.

SEC. 17. The expense of the administration of this Act in the various counties shall be paid out of the fees received from the county test stations. At the end of each year any moneys so received and not expended as herein provided shall be paid into the road and bridge fund of the county.

SEC. 18. Upon designation of a county test station, the county commissioners' courts shall appoint the party or one of the parties making the request for designation, or some person satisfactory to both the court and the party or parties requesting the designation, as the official representative of the county. This representative shall sign each certificate issued by the county test station, and he shall be responsible to the county commissioners' court for the proper conducting of the county test station. If the county commissioners' court finds that the business of any county test station is being badly or poorly conducted, it shall be the duty of the court to revoke the designation of said test station. Before the final designation of a county test station by the county commissioners' court, said court shall require of the person who is to be the official representative, as above provided for, such bond and in such amount as the court may deem necessary for the proper safeguard of the funds to be handled.

SEC. 19. County test stations shall re-test and re-adjust the headlights of any motor vehicle without charge upon the presentation by the owner of said motor vehicle or motorcycle of a certificate of test adjustment issued for the current year. No such re-test and re-adjustment shall be made during the period from December 1 of any year to February 1 of the following year, unless so ordered by an officer who has arrested a person for a violation of the provisions of this Act, and who is acting under the provisions of Section 25 hereof.

SEC. 20. The State Highway Commission shall have published and sent to each county commissioners' court in this State a sufficient number of lists of devices approved for use, as hereinbefore provided. These lists shall be distributed by the county commissioners' court to the various county test stations and to individuals upon request. This list of approved devices shall show the required tilt of the headlamp, the candlepower limit of the lamp or bulb to be used with the device, and any other special adjustment required by the State Highway Commission in order to make the device, whole headlamp or portion thereof, comply with the requirements of this Act.

SEC. 21. It shall be unlawful for any person or persons, firm, corporation or association to sell or offer for sale any lens, reflector, or headlight control device which has not been approved by the State Highway Commission as herein provided.

SEC. 22. It shall be unlawful for any operator of a motor vehicle or motorcycle to use a spotlight when a motor vehicle or motorcycle, approaching from the front, is in sight. Upon sight

of a motor vehicle or motorcycle approaching from the front, it shall be the duty of the operator of a motor vehicle or motorcycle upon which a spotlight is being used to immediately extinguish said spotlight, and it shall not be turned on until the approaching motor vehicle or motorcycle has passed. In case the headlights of a motor vehicle or headlight of a motorcycle should fail to function, and the operator of said motor vehicle or motorcycle is without sufficient driving light, the use of a spotlight shall be permissible at all times, but when so used the beam from said spotlight shall be so directed that it strikes the road not more than fifty feet ahead of the motor vehicle or motorcycle upon which it is being used. The provisions of this section prohibiting the use of spotlights under certain conditions shall not apply to police or fire department vehicles.

SEC. 23. Any motor vehicle, tractor, or motorcycle equipped with acetylene headlamps shall be deemed to have complied with the provisions of this Act, concerning headlights, anything to the contrary notwithstanding, if such vehicle has two acetylene headlamps attached to the front portion thereof, of approximately equal candlepower, which shall be lighted during the time specified in Section 2 of this Act, and are fitted with plain glass fronts, bright six-inch spherical mirrors, and standard acetylene five-eighths foot burners.

SEC. 24. Upon the day this Act becomes effective the State Highway Commission may begin to receive applications for the approval of lenses, reflectors or headlight control devices as herein provided, and the commission shall immediately begin submitting the various devices to the testing agency as provided in this Act. Action shall be taken on all applications as soon as the report of the testing agency is received.

No person shall be arrested and prosecuted under this Act until after September 1, 1925, by which time the State Highway Commission shall have distributed, as provided in Section 20, copies of its list of devices which have been approved for use. This list of approved devices may be supplemented from time to time as applications are received and approved by the State Highway Commission.

SEC. 25. Each headlamp of motor vehicles, tractors or motorcycles, including the lens, reflector, or headlight control device used in connection therewith, shall be kept in adjustment according to the certificates of approval of said lens, reflector or headlight control device issued by the State Highway Commission. Any person operating a motor vehicle, or motorcycle which is equipped with a lens, reflector or headlight control device which is approved for use by the State Highway Commission, and who shall be arrested upon a charge that such headlamps or headlamp is equipped with a lamp or bulb not approved for use with such lens, reflector or headlight control device by the State Highway Commission, or that such headlamps or headlamp is not focused or adjusted as directed by the State Highway Commission in its certificate of approval of the lens, reflector or headlight control device, used therewith, shall

be immediately released from custody by the officer making the arrest, and said person shall have seventy-two hours in which to have his headlamps or headlamp tested and adjusted or re-tested and re-adjusted by some one of the county test stations and for this purpose the officer making the arrest shall issue to the person arrested a permit to have the lights of said automobile or motorcycle re-tested and re-adjusted at any one of the county test stations without charge to the party arrested. The officer making the arrest shall instruct the person so arrested to appear before the justice of the peace or other authority designated by the officer within the seventy-two hour period immediately following the arrest, and, if said person presents to the justice of the peace or other authority designated by the officer making the arrest, a certificate of test and adjustment or re-test and re-adjustment issued by a county test station within the seventy-two hour period immediately following his arrest, the charge shall be dropped and the person arrested released.

SEC. 26. If any section, provision or part of this Act should be held invalid for any reason, it is the legislative intent that the remainder of the Act shall remain in full force and effect.

SEC. 27. If any person violates any provision of this Act, except any provision setting forth a specific penalty, he shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than five dollars nor more than twenty-five dollars for the first offense, and not less than twenty-five nor more than two hundred dollars for the second or any subsequent offense after the first.

SEC. 28. All laws and parts of laws in conflict herewith are hereby repealed.

CHAPTER TWO.

ESTABLISHMENT OF COUNTY ROADS.

| | Article | | Article |
|------------------------------------|---------|---------------------------|---------|
| "Public roads" | 6702 | Damages to land | 6710 |
| Commissioners courts: powers | 6703 | Neighborhood roads | 6711 |
| Classes of roads | 6704 | Gates | 6712 |
| Petition | 6705 | Road supervisors | 6713 |
| Preliminary survey | 6706 | Reports | 6714 |
| Notice of appointment | 6707 | Across public lands | 6715 |
| Oath of jury | 6708 | Damage to roads | 6716 |
| Notice to owner | 6709 | | |

Art. 6702. [6859] [4670] "Public roads."—All public roads and highways not discontinued that have heretofore been laid out and established agreeably to law are hereby declared to be public roads. [Acts 1876, p. 64; G. L., Vol. 8, p. 905.]

Art. 6703. [6860-1-2-76-6902] Commissioners courts: powers.—The commissioners court shall order the laying out and opening of public roads when necessary, and discontinue or alter any road whenever it shall be deemed expedient. No public roads shall be altered or changed except to shorten the distance from end to end, unless the court upon a full investigation of the proposed change finds that the public interest will be better served by making the change; and said change shall be by unanimous consent of all the commissioners elected. No part

of a public road shall be discontinued until a new road is first built connecting the parts not discontinued; and no entire first or second class road shall be discontinued except upon vacation or non-use for a period of three years. Said court shall assume and have control of the streets and alleys in all cities and incorporated towns in Texas which have no defacto municipal government in the active discharge of their official duties. [Acts 1st C. S. 1884, p. 24; G. L., Vol. 9, p. 556; Acts 1885, p. 25; G. L., Vol. 9, p. 645; Acts 1889, p. 21; G. L., Vol. 9, p. 1049.]

Art. 6704. [6871-2-3-4] **Classes of roads.**—The commissioners courts shall classify all public roads in their counties as follows:

1. First class roads shall be clear of all obstructions, and not less than forty feet nor more than sixty feet wide; all stumps over six inches in diameter shall be cut down to six inches of the the surface and rounded off, and all stumps six inches in diameter and under cut smooth with the ground, and all causeways made at least sixteen feet wide. No first or second class road shall be reduced to a lower class.

2. Second class roads shall conform to the requirements of first class roads except that they shall be not less than thirty feet wide.

3. Third class roads shall be not less than twenty feet wide and the causeways not less than twelve feet wide; otherwise they shall conform to the requirements of first-class roads. [Acts 1st C. S. 1884, p. 20; G. L., Vol. 9, p. 553.]

Art. 6705. [6875-6-85] **Petition.**—The commissioners court shall in no instance grant an order on an application for any new road, or to discontinue an original one, or to alter or change the course of a public road, unless the applicants have given at least twenty days notice by written advertisement of their intended application, posted up at the court house door of the county and at two other public places in the vicinity of the route of such road. All such applications shall be by petition to the commissioners court, signed by at least eight freeholders in the precinct in which such road is desired to be made or discontinued, specifying in such petition the beginning and termination of such road, provided an application to alter or change a road need not be signed by more than one freeholder of the precinct. [Id.]

Art. 6706. [6877-9] **Preliminary survey.**—All roads ordered to be made shall be laid out by a jury of freeholders in the county, to be appointed by the commissioners court. Said jury shall consist of five persons, a majority of whom may proceed, with or without the county surveyor, as ordered by the commissioners court, to lay out, survey and describe such road to the greatest advantage to the public, and so that the same can be traced with certainty. They shall make written report of their proceedings to the next term of said court, and the field

notes of such survey or description of the road shall be included therein, and, if adopted, shall be recorded in the minutes of said court. [Id.]

Art. 6707. [6886-7-8] **Notice of appointment.**—When juries of view are appointed, the clerk of the court shall make out and deliver to the sheriff duplicate copies of the order appointing them within ten days after such appointment was made, indorsing on such copies the date of such order. The sheriff shall serve the same upon each juror in person, or by leaving one of said copies at his usual place of abode. The sheriff shall make such service within twenty days after he receives said copies, and shall make his return to the clerk on the duplicate copies, stating the date and manner of service, or the cause of his failure to make the same. Any juror of view, summoned as such, who fails or refuses to perform the service required of him by law as such juror, shall forfeit and pay for every such failure the sum of ten dollars, to be recovered by judgment on motion of the district or county attorney, in the name of the county. [Id.]

Art. 6708. [6878] [4689] **Oath of jury.**—Said jurors shall first take the following oath: “I, _____, do solemnly swear that I will lay out the road now directed to be laid out by the order to us directed from the commissioners court, according to law, without favor or affection, malice or hatred, to the best of my skill and knowledge. So help me God.” [Id.]

Art. 6709. [6880] [4691] **Notice to owner.**—Said jury shall issue a written notice of the time when they will proceed to lay out such road, or when they will assess the damages incidental to the opening of the same. Such notice shall be served upon each land owner, his agent or attorney, through whose land said road may run, at least five days before the day named therein. If such owner is a non-resident of the county the notice may be given by publication in a newspaper published in the county, once a week for four consecutive weeks, and the road may be established after four weeks publication, the cost of publishing to be paid as directed by the judgment of the court. [Id.]

Art. 6710. [6881-2-3-4] **Damages to land.**—Any such owner may, at the time stated in such notice, or previously thereto, but not in any event thereafter, present to the jury a written statement of the damages claimed by him, incidental to the opening of such road, and thereupon the jury shall proceed to assess the damages, returning their assessment and the claimant's statement with their report. If the commissioners court approves the report and orders such road to be opened, they shall consider the assessment and damages by the jury and the claimant's statement thereof, and allow to such owner just damages and adequate compensation for the land taken.

When same are paid or secured by special deposit with the county treasurer to the credit of such owner and after notice of such payment or deposit to the owner, and if no objection is made to the jury's report, said court may proceed to have such road opened, if deemed of sufficient importance. Said owner may appeal from such assessment as in cases of appeal from judgment of justice courts, but such appeal shall not prevent the road from being opened, but shall be only to fix the amount of damages. [Id.]

Art. 6711. [6889-6900] Neighborhood roads.—Any lines between different persons or owners of lands, any section line, or any direct line through an inclosure containing twelve hundred and eighty acres of land or more may be declared public highways upon the following conditions:

1. Ten freeholders, or one or more persons living within an inclosure, who desire a nearer, better or more practicable road to their church, county seat, mill, timber or water, may make sworn application to the commissioners court for an order establishing such road, designating the lines sought to be opened and the names and residences of the persons or owners to be affected by such proposed road, and stating the facts which show a necessity for such road.

2. Upon the filing of such application the clerk shall issue a notice reciting the substance thereof directed to the sheriff or any constable of the county, commanding him to summon such land owners, naming them, to appear at the next regular term of the commissioners court and show cause why said lines should not be declared public highways. Said notice shall be served in the manner and for the length of time provided for the service of citations in civil actions in justice courts, and shall be returned in like manner as such citation.

3. At a regular term of the court, after due service of such notice, if the commissioners court deems said road of sufficient public importance, it may issue an order declaring the lines designated in the application to be public highways, and direct the same to be opened by the owners thereof and left open for a space of fifteen feet on each side of said line, but the marked trees and other objects used to designate said lines, and the corners of surveys, shall not be removed or defaced. Notice of such order shall be immediately served upon such owners, and return made thereon, as before provided.

4. The damages to such land owners shall be assessed by a jury of freeholders, as for other public roads, and all costs attending the proceedings in opening neighborhood roads, if the application is granted shall be paid by the county.

5. The commissioners court shall not be required to keep any such road worked by the road hands as in the case of other public roads. [Id.]

Art. 6712. [6899] [4710] Gates.—The owners of land

across which a third class or neighborhood road may be run, when the right of way therefor has been acquired without cost to the county, may erect gates across said road when necessary, said gates to be not less than ten feet wide and free of obstructions at the top. [Acts 1st C. S. 1884, p. 23; G. L., Vol. 9, p. 555.]

Art. 6713. [6901] [4712] **Road supervisors.**—Except when road commissioners are employed, the county commissioners shall be supervisors of public roads in their respective counties, and each commissioner shall supervise the public roads within his commissioners precinct once each month. He shall also make a sworn report to each regular term of the commissioners court held in his county during the year, showing:

1. The condition of all roads and parts of roads in his precinct.
2. The condition of all culverts and bridges.
3. The amount of money remaining in the hands of overseers subject to be expended upon the roads within his precinct.
4. The number of mile posts and finger boards defaced and torn down.
5. What, if any, new roads of any kind should be opened in his precinct, and what, if any, bridges, culverts, or other improvements are necessary to place the roads in his precinct in good condition and the probable cost of such improvements; also the name of every overseer who has failed to work on the road, or in any way neglected to perform his duty.

Said report shall be spread upon the minutes of the court, to be considered in improving public roads and determining the amount of taxes levied therefor. [Id.; Acts 1913, p. 255.]

Art. 6714. [6903] [4714] **Reports.**—Said supervisor's report shall be submitted together with all contracts made by said court since its last report for any work on any road, to the grand jury, at the first term of the district court thereafter. [Id.]

Art. 6715. [6904] [4715] **Across public lands.**—No public road shall be opened across lands owned and used or for actual use by the State, educational, eleemosynary, or other public State institutions for public purposes and not subject to sale under the general laws of the State, without the consent of the trustees of said institution and the approval of the Governor. The roads heretofore opened across such lands may be closed by the authorities in charge of any such lands whenever they deem it necessary to protect the interests of the State, upon repayment to the county where the land is situated with eight per cent interest, the amount actually paid out by said county for the condemnation of said lands as shown by the records of the commissioners court.

Art. 6716. **Damage to roads.**—The county commissioner of any precinct, or county road superintendent of any county, or road supervisor, whose road is affected, may forbid the use of

highways or parts thereof when from wet weather or recent construction or repairs they cannot be safely used without probable serious damages to same, or when the bridge or culverts on same are unsafe, under the following rules:

1. Such officer shall post notices on such highways, stating the maximum load permitted and the time such use is prohibited, and same shall be posted upon the highway in such places as will enable the drivers to make detours to avoid the restricted highways or portions thereof.

2. If the owner or operator of any such vehicle feels himself aggrieved by such action, he may complain in writing to the county judge of such county, setting forth the nature of his grievance. When such complaint is filed, the judge shall set the same down for a day certain not more than three days later, and shall give written notice to such official of the day and purpose of such hearing. The judge shall hear testimony offered by the parties thereto, and upon conclusion thereof, shall render judgment sustaining, revoking or modifying such order or notice, and such judgment shall be final as to the issues raised.

3. The owners, operators, drivers or movers of any vehicle, object or contrivance over a public highway or bridge shall be jointly and severally responsible for all damages which said highway or bridge may sustain as the result of negligent driving, operating or moving of such vehicle, or as a result of operating same at a time forbidden by said road officials. The amount of such damages may be recovered in any action at law by the county judge for the use of the county, and such recovery shall go to the benefit of the damaged road. The county attorney shall represent the county in such suit. [Acts 1st C. S. 1921, p. 133; Acts 1923, p. 160.]

CHAPTER THREE.

MAINTENANCE OF ROADS.

1. OVERSEERS AND HANDS.

| Article | | Article | |
|---------|-----------------------------------|---------|-------------------------------------|
| 6717 | Road precincts | 6727 | Bridges |
| 6718 | Road force | 6728 | Road material |
| 6719 | Appointment of overseer | 6729 | Condemnation of road material |
| 6720 | Term of service | 6730 | Drains |
| 6721 | Persons exempt from serving | 6731 | Wagons and scrapers |
| 6722 | List of overseers | 6732 | Mail posts and signs |
| 6723 | Road duty | 6733 | Expenditures |
| 6724 | Call for hands | 6734 | Report to commissioners court |
| 6725 | Summons | 6735 | Pay of overseers |
| 6726 | Complaints against hands | 6736 | Road and bridge funds |

Art. 6717. [6905] [4716] **Road precincts.**—The commissioners courts of the several counties shall lay off their respective counties into convenient road precincts and shall number each precinct; and in the order establishing the same shall specify as definitely as practicable the boundaries thereof. [Acts 1876, p. 63; G. L. Vol. 8, p. 899.]

Art. 6718. [6906-7] **Road force.**—At the first regular term of said court in each year, or, if not done then, at any subsequent regular or called term, said court shall appoint an overseer for each road precinct, and designate all the hands liable to work on public roads and apportion them to the several overseers. Hands shall as nearly as practicable be apportioned to work on the road precincts nearest to their place of abode. The supervisor of public roads shall at any time apportion any hands in his precinct who from any cause may not have been apportioned as otherwise provided in this subdivision. [Acts 1st C. S. 1884, p. 24; G. L. Vol. 9, p. 556.]

Art. 6719. [6909-10-11-17] **Appointment of overseer.**—All orders appointing overseers shall embrace the designation of hands liable to work under such overseer, as far as known, and shall specify the boundaries of such overseer's road precinct as laid off by the court. The clerk of said court shall make out duplicate copies of all orders appointing overseers, inserting thereon the duties required of overseers in regard to their non-acceptance of such appointment, and deliver the same to the sheriff of the county within ten days after any such order is made, indorsing on such copies the date of the orders of appointment. The sheriff shall, within twenty days after receipt of such copies, deliver to or leave at the usual place of abode of such overseer, one of such copies, and return duplicate of such copy to the clerk of the county court, indorsing thereon the date and manner of service, or the cause of his failure to serve the same. [Id.]

Art. 6720. [6908-12] **Term of service.**—The term of service of a road overseer shall be from the time of the service of the order of appointment until the first regular term of the commissioners court in the succeeding year, and during such time he shall be exempt from jury service. If any road overseer dies, removes or is unable to act, the county judge, immediately upon information of the fact, shall appoint an overseer to fill such vacancy, and notify him of his appointment. [Id.]

Art. 6721. [6913-14-15-16] **Persons exempt from serving.**—No person shall be compelled to serve as an overseer who is lawfully exempt from road duty, nor shall any one be compelled to serve as overseer more than one year in every three successive years. Such person shall notify the clerk of his non-acceptance within ten days after notice of his appointment, and the clerk shall forthwith report the same to the county judge, who shall immediately appoint another overseer for said road precinct. If such exempt person fails to so notify the clerk, it shall be considered an acceptance of the appointment, and he shall not be permitted thereafter to plead his exemption from road duty as a defense against any neglect or failure to perform any of the duties of such overseer. [Id.]

Art. 6722. [6918] [4729] **List of overseers.**—Each county clerk shall post up in the court house on the first day of each term of the district court held in his county, a list of the names and road precincts of all overseers in the county. [Id.]

Art. 6723. [6919-26] **Road duty.**—All male persons between the ages of twenty-one and forty-five years shall be liable to work on, repair and clean out the public roads under the provisions of this title, subject to the following conditions:

1. Ministers in the active discharge of their duties, invalids, members of volunteer fire companies in the active discharge of their duties, and persons who have not been residing in the county in which they are summoned to work for fifteen days immediately preceding such summons, shall be exempt.

2. Any person so liable who has been summoned to do such duty may furnish an able bodied substitute to work in his place. The overseer shall not accept such substitute if he is incapable of performing a reasonable amount of work.

3. Any person so liable, by paying to his road overseer before the day appointed to work, one dollar for each day he is summoned to work, shall be exempt for each day paid for.

4. Each person summoned to work on a road shall take with him an axe, hoe, pick, spade or such tool as the overseer directs, or if he has no such tool then such other suitable tool as he may have.

5. Each road hand shall perform his duties as such in accordance with the directions of his overseer. No person shall be compelled to do such work more than five days of eight hours efficient service each in each year. [Acts 1876, p. 63; G. L. Vol. 8, p. 899; Acts 1883, p. 22; G. L. Vol. 9, p. 329; Acts 1895, p. 160; G. L. Vol. 10, p. 890.]

Art. 6724. [6927-8-9] **Call for hands.**—Each overseer shall cause the roads through his precinct to be worked twice in each year; and he may call out all or some of the hands at any time he deems it necessary, or when ordered by the commissioners court or other competent authority. If any hand has not ben apportioned by the commissioners court, the overseer nearest such person's residence shall summon such hand. [Acts 1876, p. 66; G. L. Vol. 8, p. 902; Acts 1889, p. 21; G. L. Vol. 9, p. 1049.]

Art. 6725. [6930-31-32] **Summons.**—Each overseer shall give three days previous notice, by summons in person or in writing, to each person within his road precinct liable to road duty, of the time and place such person is required to appear to work on the road, and the number of days such person shall be required to work. A written summons may be served by leaving the same at the usual place of abode of the person summoned, with some person residing at such place who is not less than ten years of age, or by posting it on the door of such abode. The overseer may appoint some one to summon the

hands and such person shall be exempt from road duty as many days as he was actually so engaged. [Acts 1889, p. 21.]

Art 6726. [6933-45] **Complaints against hands.**—Within ten days after he has had his road worked, the overseer shall file with the county attorney or the justice of the peace a sworn complaint against each person so summoned who has failed to work and who is not entitled to exemption from road duty. Overseers shall dismiss from the road any hand who fails to do efficient work, or who hinders other hands from doing their work properly, or dismiss any hand who may be intoxicated, or who shall refuse to obey any reasonable order of the overseers; and the overseer shall also file complaints against such hands. [Id. Acts 1st C. S. 1884, p. 24; G. L. Vol. 9, p. 556.]

Art. 6727. [7013] [4791] **Bridges.**—Overseers of roads shall cause bridges to be erected across all such water courses and other places as may appear to them to be necessary and expedient; and should there be a water course or other place that requires a bridge, dividing any two road precincts, the overseer of each of such precincts, together with their hands, shall meet at the same time and place to construct such bridge, and the overseer chosen by a majority of the hands present shall superintend the building of such bridge until finished. [Acts 1876, p. 67; G. L. Vol. 8, p. 903.]

Art. 6728. [6934] [4744] **Road material.**—If an overseer deems it expedient to make causeways and build bridges, or to gravel any public road, the timber, gravel, earth, stone or other necessary material most convenient therefor may be used. In such case the owner of such material shall be paid out of the county treasury a fair compensation for the same, to be determined by the commissioners court upon the application of such owner. [Acts 1876, p. 66; G. L. Vol. 8, p. 902; Acts 1897, p. 84; G. L. Vol. 10, p. 1138.]

Art. 6729. **Condemnation of road material.**—The commissioners court may use either timber, earth, stone, gravel, or other necessary material most convenient therefor to build, repair, or maintain any public road or any part of any public road in the county without regard to the location or extent thereof or the funds from which such repair or maintenance is paid. In such case the owner of any such material shall be paid a fair and just compensation therefor as may be agreed upon by the owner or his agent and the commissioners court. Should the owner and the commissioners court fail to agree upon the compensation to be paid for the material required, then the county, upon the order of said court, shall proceed to condemn the same. If such material is needed for the general system of county highways, then payment shall be made from the road and bridge fund of the county, or from the proceeds of any county issue of bonds. If such material is to be used for the benefit of any defined district or political subdivision

of the county, then the cost of such material shall be paid from funds of such defined district or subdivision arising through sale of bonds or the collection of special taxes. The commissioners appointed to condemn the property shall receive two dollars for each day that they may be necessarily engaged in the performance of their duties, to be paid out of the same fund from which payment is made for materials on the order of the commissioners court. Compensation awarded by said commissioners for material shall be paid to the owner or deposited with the county treasurer to the credit of such owner, and when so paid or deposited the county shall have the right to enter upon and use said material. If the owner or the county is not satisfied with the compensation awarded, he or said county may appeal therefrom as in condemnation cases; provided, the commissioners appointed to condemn such road material shall, after due hearing, fix a fair and reasonable value for such material; and if it has a market value, then such market value shall be determined and the market value fixed thereon as compensation to the owners, or if the material has no market value, then its value shall be fixed at such sum as the evidence shows the material to be reasonably worth for the purpose for which it was used. The value may be fixed either as a whole or in quantities, by the yard for earth, for sand, or broken stone, or by the perch for stone, and per tree, or per post, or per foot where trees are suitable for lumber or for timbers in such quantities as may be needed upon estimates secured by the commissioners court. [Acts 1901, p. 277; Acts 3rd C. S. 1920, p. 44; Acts 2nd C. S. 1923, p. 46.]

Art. 6730. [6935] [4745] Drains.—The earth necessary to construct a causeway shall be taken from both sides, so as to make a drain on each side thereof. Whenever it is necessary to drain the water from any public road, the overseer shall cut a ditch for that purpose, having due regard for the natural water flow, and with as little injury as possible to the adjacent land owners. In such cases the commissioners court shall cause the damages to such premises to be assessed and paid out of the general revenues of the county, and in case of disagreement the same may be settled by suit as in other cases. [Id.]

Art. 6731. [6936] [4746] Wagons and scrapers.—When it may be necessary to use a wagon for any purpose in working a road, or a plow or a scraper, the overseer may exchange the labor of any hand for the use of wagons, plows or scrapers, and the necessary teams to operate the same, at reasonable rates, to be employed as aforesaid. [Acts 1876, p. 67; G. L. Vol. 8, p. 903.]

Art. 6732. [6937-40] Mile posts and signs.—Each overseer shall measure such parts of such roads in his precinct as are in continuation, and set up posts of stone or good lasting timber

at the end of each mile leading from the courthouse or some other noted place, and mark on said posts in legible and enduring figures the distance in miles to said courthouse or other noted place. He shall place conspicuously and permanently at the intersection of all first and second class public roads in his precincts, index or sign boards, with directions plainly marked thereon, stating the most noted place to which each of said roads leads. The commissioners court may enter into contracts with persons, firms or corporations to mark or designate road intersections as herein provided for, by the use of advertising schemes and devices, and the correct marking of road intersections by such devices shall be deemed a compliance with this law, provided such sign boards are properly maintained. When a mile post or index board is removed or defaced by any means whatever, the overseer shall cause the same to be replaced immediately by another marked as the original one. The overseer may exchange the labor of any hand for the marking of index boards or mile posts. [Id. Acts 2nd C. S. 1919, p. 57; Acts 1923, p. 59.]

Art. 6733. [6941] [4751] Expenditures.—Each overseer shall impartially apply all money coming into his hands as such to the improvement of roads, by repairing or building bridges, hiring hands or teams to work on the road, or in such other manner as he may deem best. He shall pay to the commissioners court any such funds remaining in his hands, when he makes his report thereto. [Act 1876, p. 68.]

Art. 6734. [6942] [4752] Report to commissioners court.—Each overseer shall make written sworn report to the commissioners court at the first regular term thereof in each year, giving the number of hands and their names in his precinct liable to work on the roads; the number of days he has caused his road to be worked; the condition of such road; the amount of funds received by him for his road, from whom received, and for what purpose, and to whom and for what purpose said funds have been paid out, and the amount of such funds in his hands. [Id.]

Art. 6735. [6943] [4753] Pay of overseers.—Overseers shall retain out of money that may come into their hands as such ten per cent thereof as compensation for their services.

Art. 6736. [6944] [4754] Road and bridge funds.—All moneys appropriated by law, or by order of the commissioners court, for working public roads or building bridges, shall be expended under the order of the commissioners court, except when otherwise herein provided, and said court shall from time to time make the necessary orders for utilizing such money and for utilizing convict labor for such purposes. [Const., Art. 16, Sec. 24.]

2. ROAD COMMISSIONERS.

| | | | |
|-------------------------|---------|-------------------------------|---------|
| | Article | | Article |
| Employment | 6737 | Expenditure of road fund..... | 6740 |
| Powers and duties | 6738 | Powers of court | 6741 |
| Expenditures | 6739 | Donations | 6742 |

Art. 6737. [6946] [4756] Employment.—Each commissioner court may employ not exceeding four road commissioners, who shall be resident citizens of the district for which they are employed, and when more than one is employed, the district that each road commissioner is to control shall be defined and fixed by the court. Such road commissioners shall receive such compensation as may be agreed upon by the court, not to exceed two dollars per day for the time actually engaged. Each road commissioner shall first execute a bond, payable to the county judge of the county and his successors in office, in the sum of one thousand dollars, with one or more good and sufficient sureties, to be approved by the county judge, and conditioned for the faithful performance of his duties. [Acts 1889, p. 134; G. L. Vol. 9, p. 1162.]

Art. 6738. [6947] [4757] Powers and duties.—A road commissioner shall have control over all overseers, hands, tools, machinery and teams to be used upon the roads in his district; and may require overseers to order out hands in any number he may designate for the purpose of opening, working or repairing roads or building or repairing bridges or culverts in his district. He shall see that all roads and bridges in his district are kept in good repair, and he shall, under the direction and control of the commissioners court, inaugurate a system of grading and draining public roads in his district, and see that such system is carried out by the overseers and hands under his control, and shall obey all orders of the commissioners court; and he shall be responsible for the safe-keeping and liable for the loss or destruction of all machinery, tools or teams placed under his control, unless such loss is without his fault, and when he shall be discharged he shall deliver them to the person designated by the court. [Id.]

Art. 6739. [6948] [4758] Expenditures.—He shall expend such money as may be placed in his hands by the commissioners court under its direction in the most economical and advantageous manner on the public roads, bridges and culverts of his district; and all his acts shall be subject to the control, supervision, orders and approval of the commissioners court. He shall work the convicts and such other labor as may be furnished him by the commissioners court. When he has funds in his hands to expend for labor on the roads, and when it shall be necessary for any overseer in his district to work more than five days during any one year upon the public roads, he may employ such overseer to continue his duties as such for such length of time as may be necessary, and pay him for such services not more than one dollar and fifty cents per day for

the time actually employed after the five days; provided, that the hands shall not be required to work when there shall be on hand, after building and repairing bridges, a sufficient road fund to provide for the necessary work on the roads. Said road commissioner shall report to the commissioners court at each regular term under oath showing an itemized account of all money he has received to be expended on roads and bridges and what disposition he has made of the money, and showing the condition of all roads, bridges and culverts in his district, and such other facts as the court may desire information upon, and shall make such other reports and at such time as the court may desire. [Id.]

Art. 6740. [6949] [4759] **Expenditure of road fund.**—The commissioners court shall see that the road and bridge fund of their county is judiciously and equitably expended on the roads and bridges of their county, and, as nearly as the condition and necessity of the roads will permit, it shall be expended in each county commissioners precinct in proportion to the amount collected in such precinct. Money used in building permanent roads shall first be used only on first or second-class roads, and on those which shall have the right of way furnished free of cost to make as straight a road as is practicable and having the greatest bonus offered by the citizens of money, labor or other property. [Id.]

Art. 6741. [6950] [4760] **Powers of court.**—The commissioners court may make and enforce all reasonable and necessary rules and orders for the working and repairing of public roads, and to utilize the labor to be used and money expended thereon, not in conflict with the laws of this State. Said court may purchase or hire all necessary road machinery, tools or teams, and hire such labor as may be needed in addition to the labor required of citizens to build or repair the roads. [Id.]

Art. 6742. [6951] [4761] **Donations.**—Commissioners court or road commissioners may accept donations of money, lands, labor of men, teams or tools, or any other kind of property or material to aid in building roads in their counties, and may authorize any person to make a drain along any public road for the purpose of draining his land, and require the person draining his land to do such work under the direction of the road commissioner. [Id.]

3. ROAD SUPERINTENDENTS.

| | Article | | Article |
|----------------------------|---------|---------------------------------|---------|
| Appointment | 6743 | Contracts for road work..... | 6753 |
| Oath and bond | 6744 | Donations | 6754 |
| Salary | 6745 | Overseers | 6755 |
| Powers | 6746 | Road duty: exemptions | 6756 |
| Duties | 6747 | Injuring property | 6757 |
| Road districts | 6748 | Delinquent poll tax payers..... | 6758 |
| Road hands | 6749 | Definitions | 6759 |
| Accounts and reports | 6750 | Law cumulative | 6760 |
| Powers of court | 6751 | Counties exempt | 6761 |
| Extra road force | 6752 | | |

Art. 6743. [6953-4-6] **Appointment.**—The commissioners

court of any county subject to this law may appoint a competent person as road superintendent for such county, or one such superintendent in each commissioners precinct, as it shall determine by an order made at a regular term thereof. Such order shall be entered on the minutes of such court, and shall not be void for want of form, but a substantial compliance with the provisions of this subdivision shall be sufficient. Every road superintendent shall be a qualified voter in the county or precinct for which he is appointed, and shall hold his office for two years or until removed by the commissioners court for good cause. No county shall be under the operation of this law whose commissioners court does not appoint a road superintendent or superintendents. [Acts 1891, p. 149; G. L., Vol. 10, p. 151.]

Art. 6744. [6955] [4765] **Oath and bond.**—Each road superintendent shall within twenty days after his appointment take and subscribe the oath required by the Constitution, and give bond payable to and to be approved by the county judge in such sum as the commissioners court may fix, conditioned that he will faithfully perform all the duties required of him by law or the commissioners court, and that he will pay out and disburse the funds subject to his control as the law provides or said court may direct. [Id.]

Art. 6745. [6957] [4767] **Salary.**—Each road superintendent shall receive such salary as the commissioners court may fix, to be paid on the order of said court at stated intervals. In counties of less than fifteen thousand inhabitants the county superintendent's salary shall never exceed one thousand dollars per annum, and in counties of more than fifteen thousand inhabitants it shall not exceed twelve hundred dollars per annum. The salary of precinct superintendents in counties of less than fifteen thousand inhabitants shall not exceed three hundred dollars per annum, and in counties of over fifteen thousand inhabitants it shall never exceed four hundred dollars per annum. Said court may suspend the salary of any superintendent whose continued services are not needed. [Id.]

Art. 6746. [6958] [4768] **Powers.**—Subject to the orders of said court, each superintendent shall have general supervision over all public roads of his county or precinct, and shall superintend the laying out of new roads, the making, changing, working and repairing of roads, and the building of bridges except where otherwise contracted, and over all county convicts worked on such roads, but this shall not prevent the commissioners court from employing a person to watch and manage such convicts and direct the work to be done by them. Said road superintendent shall take charge of and be responsible for the safe-keeping of all tools, machinery, implements and teams placed under his control by the commissioners court and execute his receipt therefor, which shall be filed with the county clerk. He shall be liable for the loss, injury or destruction of

any such tools, teams, implements or machinery unless such loss occurred without his fault, and for the wrongful or improper expenditure of any road funds coming into his hands. On leaving office, he shall deliver all such money and property to such person as the commissioners court may direct. [Id.]

Art. 6747. [6959] [4769] **Duties.**—Each superintendent shall see that all roads and bridges in his county or precinct are kept in good repair, and he shall, under the direction of the commissioners court, inaugurate and carry out a system of working, grading and draining the public roads in his county or precinct. He shall act as supervisor of the roads in his county or precinct, and perform all the duties of supervisor devolving on the county commissioners in counties not adopting this law, and he shall do and perform such other service as said court may require. [Id.]

Art. 6748. [6960] [4770] **Road districts.**—When said court so directs, each superintendent shall divide his county or precinct into road districts of convenient size, to be approved by said court, and define the boundaries thereof and designate the same by number. Such boundaries shall be recorded in the road minutes of the commissioners court. He shall ascertain the names of all persons subject to road duty in each district and keep a record thereof and report the same to the commissioners court. [Id.]

Art. 6749. [6961] [4771] **Road hands.**—Each superintendent shall call out all persons liable to work on the public roads at any time and in such numbers as he deems necessary, under the provisions of subdivision 1 of this chapter. No person shall be compelled to work outside of his road district. He may contract with any such person to discharge his road duty by the use of a double team, but he shall not allow more than two dollars a day for any team, nor more than three dollars for any hand and double team. [Id.]

Art. 6750. [6962-71] **Accounts and reports.**—Each superintendent shall make a sworn report to said court at each regular term thereof showing an itemized account of all money belonging to the road fund he has received, from whom received, and what disposition he has made of the same, the condition of all roads and bridges in the county or precinct, and such other matters as the court may desire information upon, and shall make such other reports at such times as such court may require. Within ten days after collection of any money on account of the road or bridge fund he shall pay the same over to the county treasurer, taking his receipt therefor, and shall keep an accurate account thereof. [Id.]

Art. 6751. [6963] [4773] **Powers of court.**—The commissioners court of any such county is authorized to purchase or hire all necessary road machinery, tools, implements, teams and labor required to grade, drain, or repair the roads of such

county, and said court is authorized and empowered to make all reasonable and necessary rules, orders and regulations not in conflict with law for laying out, working and otherwise improving the public roads, and to utilize the labor and money expended thereon, and to enforce the same. [Id.]

Art. 6752. [6964-5] **Extra road force.**—Each road superintendent shall employ a sufficient force to enable him to do the necessary work in his county or precinct, as the case may be, having due regard for the condition of the county road and bridge fund and the quality and durability of the work to be done, and shall buy or hire such tools, teams, implements and machinery as the commissioners court may direct, and he shall work such roads in such manner as the commissioners court may direct, and such work shall at all times be subject to the general supervision of the commissioners court. He shall make the best contract possible for such labor or machinery, and in payment therefor he shall issue to the person entitled thereto his certificate showing the amount due, the purpose for which it was given, and upon approval by the commissioners court, a warrant shall issue therefor to the holder thereof on the county treasurer, to be paid by him out of the proper fund as other warrants. All such certificates shall be dated, numbered and signed by the road superintendent, and he and his sureties on his official bond shall be liable for all loss or damages caused by the wrongful issue of any such certificate or any extravagance in the amount thereof. [Id.]

Art. 6753. [6966] [4776] **Contracts for road work.**—The commissioners court may, when deemed best, construct, grade, gravel or otherwise improve any road or bridge by contract, and advertise for bids, and may reject any bid. The contract shall be awarded to the lowest responsible bidder, who shall enter into bond with good and sufficient sureties payable to and to be approved by the county judge, in such sum as said court may determine, conditioned for the faithful compliance with such contract. At the time of making such contract said court shall direct the county treasurer to pass the amount of money stipulated in such contract to a particular fund and to keep a separate account thereof, and the same shall be used for no other purpose and can only be paid out on the order of said court. [Id.]

Art. 6754. [6968] [4778] **Donations.**—The commissioners court may accept donations of money, land, teams, tools, or labor, or any other kind of property or material to aid in building or keeping up roads in the county, and said court or any road superintendent, with the concurrence of the commissioners, may authorize any person to make a drain along any public road, the same to be done under the direction of the road superintendent or such other person as said court may direct. [Id.]

Art. 6755. [6969] [4779] **Overseers.**—The commissioners court may retain the system of working hands under road over-

seers as provided by general laws, and place such overseers under control of a superintendent, under such lawful regulations as said court may prescribe, or may work with the overseers without any superintendent, as may be deemed best. [Id.]

Art. 6756. [6970] [4780] **Road duty: exemptions.**—The commissioners court of any county in which a special tax for the maintenance of the public roads is levied and collected, as provided in Section 9 of Article 8 of the Constitution, shall not be compelled to require persons subject to road duty to work on the roads, but in such counties the roads shall be worked wholly by taxation, or by taxation in connection with road service, as such court may deem best. [Id.]

Art. 6757. [6972] [4782] **Injuring property.**—Any person who shall knowingly or wilfully destroy, injure or misplace any bridge, culvert, drain, sewer, ditch, signboard or mile post or anything of like character, placed upon any road for the benefit of the same, shall be liable to the county and any person injured for all damages caused thereby. [Id.]

Art. 6758. [6973] [4783] **Delinquent poll tax payers.**—The superintendent shall obtain from the tax collector as soon after the first day of January of each year as practicable and before the first day of May thereafter, a full list of the delinquent poll tax payers of such county for the previous year, and those appearing on said list who are such delinquent poll tax payers shall be subject to road duty for three days during such year in addition to the five days required by law. All the provisions of law governing persons liable to road duty shall apply to persons subject to such duty hereunder. Any such person summoned to road work may satisfy such summons and be relieved from such duty by paying to the road superintendent three dollars, one-third of which shall go to the free school fund, and the balance to the road and bridge fund. [Id.]

Art. 6759. [6974] [4784] **Definitions.**—As used in this subdivision, “road” includes roadbed, ditches, drains, bridges, culverts, and every part of such road, and “work” and “working” includes the opening and laying out of new roads, widening, constructing, draining, repairing, and everything else that may be done in and about any road. [Id.]

Art. 6760. [6975] [4785] **Law cumulative.**—This law shall be cumulative of all other general laws on the subject of roads and bridges not in conflict herewith, and where not otherwise provided herein such general laws shall apply; but in case of conflict with other general laws the provisions of this chapter shall govern. [Id.]

Art. 6761. [6976] **Counties exempt.**—The counties of Angelina, Aransas, Blanco, Bowie, Calhoun, Camp, Cass, Cherokee, Comal, Dallas, Delta, DeWitt, Fayette, Franklin, Galveston, Gillespie, Grayson, Gregg, Harris, Harrison, Henderson, Hill, Hopkins, Houston, Jack, Jackson, Jasper, Lamar, Lavaca, Limestone, McLennan, Milam, Montgomery, Morris, Nacog-

doches, Newton, Panola, Parker, Rains, Red River, Refugio, Sabine, San Augustine, Shelby, Smith, Tarrant, Titus, Travis, Trinity, Tyler, Upshur, Van Zandt, Victoria, Washington, and Wood are exempted from the provisions of this subdivision; provided that the commissioners court of Dallas and Collin counties may accept and adopt the provisions of this law in lieu of the special acts for Dallas, Collin, Grayson and other counties, if in their judgment, its provisions are better suited to Dallas and Collin counties than the said special laws. [Acts 1911, p. 234.]

4. OPTIONAL ROAD LAW.

| | Article | | Article |
|--------------------------------|---------|---------------------------------|---------|
| Ex-officio commissioners | 6762 | Road hands | 6767 |
| Powers | 6763 | Road duty; exemptions | 6768 |
| County convicts | 6764 | Law cumulative | 6769 |
| Overseers | 6765 | Certain counties excepted | 6770 |
| To direct work | 6766 | | |

Art. 6762. [6977] Ex-officio commissioners.—In all counties of this State, as shown by the preceding Federal census to contain as many as forty thousand inhabitants, the members of the commissioners court shall be ex-officio road commissioners of their respective precincts; and under the direction of the commissioners court shall have charge of the teams, tools and machinery belonging to the county and placed in their hands by said court. They shall superintend the laying out of new roads, the making or changing of roads and the building of bridges under rules adopted by said court. Each commissioner shall first execute a bond of one thousand dollars payable to and to be approved by the county judge for the use and benefit of the road and bridge fund, conditioned that he will perform all the duties required of him by law, or by the commissioners court, and that he will account for all money or other property belonging to the county that may come into his possession. [Acts 1901, p. 277.]

Art. 6763. [6978] Powers.—The commissioners court shall adopt such system for working, laying out, draining and repairing the public roads as they deem best, and from time to time, said court may change their plan or system of working. Said court may purchase such teams, tools and machinery as may be necessary for the working of public roads; and construct, grade, or otherwise improve any road or bridge by contract in the manner provided in the preceding subdivision of this chapter. Said court may employ any hands and teams on the public roads under such regulations and for such prices as they may deem best. [Id.]

Art. 6764. [6979] County convicts.—The commissioners court may provide the necessary houses, prisons, clothing, bedding, food, medicine, medical attention and superintendents and guards for the safe and humane keeping of county convicts. Said court may provide such reasonable regulations and punishment as may be necessary to require such convicts to perform good work, and may provide a reward not to exceed ten

dollars, to be paid out of the road and bridge fund, for the recapture and delivery of any escaped convict to be paid to any person other than the guard or person in charge of such convict at the time of his escape. [Id.]

Art. 6765. [6980] Overseers.—Each commissioner shall have control of all road overseers in his precinct, and shall deliver to each of them such teams, tools and machinery necessary in working the roads therein as have been supplied to him by the commissioners court, taking a receipt therefor, specifying each item and giving its value, which receipt shall be a full answer for the liability of the road commissioner, and shall fix the liability of the road overseer. The commissioner or overseer who shall have been intrusted with any teams, tools or machinery belonging to the county, shall be liable for all damages that may occur to the same while in his possession caused by his negligence or want of due care of same. When the overseer has finished work on his road, he shall return to said road commissioner all teams, tools and machinery received from him and take up the receipt given therefor. [Id.]

Art. 6766. [6981] To direct work.—Each county commissioner, when acting as road commissioner, shall inform himself of the condition of the public roads in his precinct, and shall determine what character of work shall be done on said roads, and shall direct the manner of grading, draining or otherwise improving the same, which directions shall be followed and obeyed by all road overseers of his precinct. [Id.]

Art. 6767. [6982] Road hands.—The road commissioner may require each road overseer in his precinct to call out the hands in such numbers as may be sufficient to perform the work. All road hands in a particular road precinct shall as far as practicable be worked a uniform time. Each road overseer shall have full control of all road hands in his precinct. The overseer may, when he deems it expedient or when directed to do so by the road commissioner, and at the time of notifying any hand to work upon the road, also summon such hand as may be the owner of a team suitable for road work, to bring such team with him to be used in working upon the public roads during such time as the hand may be notified to work upon the public roads. Any hand for so doing shall be credited with and allowed two and one-half days upon his time for which he is liable for road duty for each day he may work in connection with and while furnishing such team, and one and one-half days for his team without such hand. [Id.]

Art. 6768. [6983] Road duty: exemptions.—A person liable for road duty who shall, on or before the first day of February of any year, pay the county treasurer the sum of three dollars, shall be exempt from road duty for such year beginning on the first day of February. The county treasurer shall receive and receipt for all money so paid him and place the same to the credit of the road and bridge fund, and he shall keep a separate account for each precinct from which it was received.

The county treasurer shall, on the third day of February, or as soon thereafter as practicable, furnish to each road commissioner a list of all persons in their respective precincts that have paid said sums. [Id.]

Art. 6769. [6988] Law cumulative.—The provisions of this subdivision shall be cumulative of all general laws on the subject of roads, when not in conflict therewith, but in case of such conflict this law shall control. This law shall not be in operation in any county unless the commissioners court thereof in their judgment may deem it advisable, and then only by an order of said court when all the members are present, made at some regular term thereof, accepting the provisions hereof. Such order shall be entered on the minutes of said court, and shall not be void for want of form, but a substantial compliance of the provisions hereof shall be sufficient. [Id.]

Art. 6770. [6989] Certain counties excepted.—The provisions of this subdivision shall not apply to the counties of Fannin, Lamar, Grayson, Collin, Hunt, Dallas, and Bell. [Id.]

5. DRAINAGE.

| | | | |
|-----------------------------|--------------|----------------------------------|--------------|
| Powers | Article 6771 | Claims | Article 6781 |
| Culverts | 6772 | Appeals | 6782 |
| Petition | 6773 | Trial on appeal | 6783 |
| Notice of hearing | 6774 | Appropriation construction | 6784 |
| Hearing | 6775 | Special overseer | 6785 |
| Survey | 6776 | List of assessments | 6786 |
| Survey: report | 6777 | Assessments: collection | 6787 |
| Jury of view | 6778 | Compensation | 6788 |
| Oath of viewers | 6779 | Private ditch | 6789 |
| Notice of assessments | 6780 | | |

Art. 6771. [6990] Powers.—For the purpose of this subdivision, all public roads and highways that have been or may be laid out and established agreeably to law, and all roads and highways that have been opened to and used by the public for a period of ten years prior to March 25, 1897, and which have not been discontinued or closed to the use of the public agreeably to law, are hereby declared to be public roads.

The commissioners court at any regular session thereof may cause to be constructed and maintained, as hereinafter provided, ditches, drains and water courses, hereinafter called ditches, on and within the exterior lines of all public roads situated within the county sufficient in capacity to carry off and into the natural waterways of the county, all surface water reasonably adjacent and liable to collect in said ditch from natural causes, or by means of the construction of private lateral ditches as hereinafter provided for, and shall also have power to construct, in connection with such ditch any side, lateral, spur or branch ditch or watercourse necessary to the accomplishment of the purposes of this law. No ditch shall be constructed along any public road unless at the same time an outlet is constructed to a natural waterway, sufficient in capacity to carry off all water that may collect therein. [Acts 1897, p. 66; G. L. Vol. 10, p. 1120.]

Art. 6772. [6991] Culverts.—No road overseer, or any

court, shall, on petition or otherwise, have the power to change the natural course of any branch, creek or stream, but such volume of water shall always enter and cross said road at its natural crossing; and overseers shall always, in draining their roads, provide a culvert sufficiently broad and tall to permit said stream to flow at high tide, from its intersection with said road, across its natural outflow at the opposite natural channel. [Id.]

Art. 6773. [6992] Petition.—A petition shall first be filed with the county clerk, signed by at least one hundred tax payers and voters of said county, setting forth the necessity and availability for such drainage system, and the number of miles of public roads within such county, as accurately as the same may be known, and as near as practicable the width and depth required for the ditches to be constructed along the first class roads of the county. Said petition shall also separately state the name and location of each natural waterway of such county crossed by each of the first class public roads of said county, and the distance of said natural waterways one from the other along said road. Said petition shall also state the names and residences, if known, of the owners of the lands adjacent to each of said first class public roads, and within one mile thereof, and, if unknown, shall so state. [Id.]

Art. 6774. [6993] Notice of hearing.—Upon the filing of said petition, the clerk shall issue five notices in writing, containing a brief statement of the contents of said petition, commanding all persons interested to appear at the next regular term of the commissioners court and contest the same. One of said notices shall be posted at the courthouse door of such county, and one each at four other public places in such county, no two of which shall be in the same town or city, for twenty days prior to the first day of the next regular term of the commissioners court after the issuance thereof. Said notices shall be posted by the sheriff of the county, who shall make due returns to the clerk of said court of such notices, on or before the said first day of the term; and for such services the sheriff shall receive three dollars, and the clerk one dollar and fifty cents. [Id.]

Art. 6775. [6994-7000] Hearing.—At the time specified, said court shall hear and determine the petition in connection with all protests, remonstrances or objections thereto; and, if they find that the adoption of the drainage system provided for herein is necessary, advisable or for the public benefit, or for the best interest of the county, the court shall so order, and the order shall be entered at length upon the minutes of the court and become a part of the record thereof, and the same shall recite the time, character and manner of service of notice. If it appears therefrom that notice has been given as provided for herein, the said order shall be final. If said court refuses to adopt said drainage system, no other application therefor shall be heard for one year thereafter. [Id.]

Art. 6776. [6995] **Survey.**—At the same or any succeeding term of said court after the entry of such order, said court shall employ a competent surveyor, who shall be an engineer, to run a line of levels along the public roads of the county, and to measure the same from the beginning to the terminus of said road, and to measure the distance of each waterway crossed by said roads from the beginning point. Said survey and the drainage system shall be first applied to the first class roads of such county, and thereafter to roads of the second and third class. Nothing herein shall be construed to prohibit said court from constructing one or more ditches at the same time, as the financial condition of the county will permit. [Id.]

Art. 6777. [6996] **Survey: report.**—The surveyor shall, as soon as practicable after his employment, proceed to make such survey and system of levels, and shall cause stakes or monuments to be placed along said line at intervals of one hundred feet, with such intermediate stakes as may be necessary, numbered progressively, and shall establish permanent bench marks along said lines at intervals of one mile or less, as may be necessary, and shall establish by stake or monument of a different character and appearance from all other stakes or monuments, the highest point upon said road between each of the natural waterways crossed by the road; and said surveyor shall also measure and establish by suitable marks, the frontage of each tract of land abutting on said road; and if there be a natural waterway adjacent to the line of said road and ditch and the same is necessary to be utilized as an outlet for the water at any point on said ditch, the surveyor shall measure the distance to same, and run the line of levels thereto, at the nearest practicable point on said road and ditch. He shall prepare a map showing the location of said ditch or ditches, together with the position of stakes or monuments with numbers corresponding with those on the ground, and the position of bench marks, with their elevations referred to an assumed or previously determined datum. Said map shall also show the lines and boundaries of adjacent land, and the courses and distances of any adjacent watercourse, together with a profile of the line of the ditch which shall show the assumed datum and the grade line of the bottom of the same, and the elevation of each stake, monument, or other important feature along the line, such as top of banks, and bottom of all ditches or watercourses, and surface of water, top of rail and bottom of tie, foot of embankment, and bottom of borrow pits of all railroads. Said map, or the explanation accompanying same, shall in tabular form give the depth of cut, width at bottom and width at top, at the source, outlet, and at each one hundred feet stake or monument to said ditch; and shall show the total number of cubic yards of earth to be excavated and removed from said ditch between each natural waterway into which the water is to be conveyed, and an estimate of the cost of each portion of the said ditch or ditches lying between natural

waterways crossed by said road, together with an estimate of total cost of the whole work. He shall also prepare detailed specifications for the execution of such project. Whenever in his opinion it may be advantageous to run said ditch underground through drainage tiles, he shall so state in said report, map and specifications, together with the statement of the locality of said underground ditch, and length thereof, and the dimensions or character of tiling or other material required therefor. As soon as completed, he shall file said survey, report, map, explanation and estimate with the county clerk. [Id.]

Art. 6778. [6997] **Jury of view.**—At any regular or called session of the commissioners court after the filing of said report, map, explanation, specifications and estimate, the court shall appoint a jury of five freeholders of the county who shall meet at a time and place to be specified by the said court in the order appointing them. The county clerk shall thereupon issue to said viewers a certified copy of the petition and order of the court, together with the original report, map, explanation, specifications and estimate of the surveyor; and, if said jury of viewers shall fail or refuse from any cause to perform the duties required under such appointment, or if their report, from any cause, should not be adopted, the court may at any succeeding term appoint another jury of viewers, whose appointment and duties shall be the same as required in the first instance. Said jury shall proceed at the time and place so specified, after giving notice to each abutting land owner, and owner of land within one mile of said ditch, as hereinafter provided, and after viewing the line of the proposed ditch and after hearing all protests, claims and remonstrances offered, they shall take the several partial estimates, and the surveyor's estimate of the total cost of the work as a basis, and shall have lines run parallel to the lines of said ditch at a distance of one mile on either side thereof, and shall set apart and apportion to each parcel of land abutting on said road and ditch, or within said parallel lines, and to each person, firm or corporation owning the same, its proportionate share of the one-half of the total cost of said ditch, taking into consideration the relative amount of benefit derived by said land from the construction thereof. They shall assess the amount of damages or compensation due to each land owner through whose land any spur, branch or lateral ditch, is or may be constructed under the order of appointment. Before such ditch is opened said sum shall be paid on the order of the commissioners court out of the county treasury from the fund set aside for the construction of said ditch. Said jury shall make a sworn report to the commissioners court as soon as practicable after their meeting, signed by at least three of said jury, and shall return with their report an accurate and full description of each tract of land assessed by them, with the number of acres and the name of the owners

thereof, and the amount assessed against each tract and the owner thereof. The jury shall also return with their report the map, profile, explanation and estimates of the surveyor, together with a copy of the specifications; and the same shall be filed with the clerk, and shall become a public record and be preserved as such. The court shall act upon said report at the next regular or called term, and approve or reject the same; provided, that the court may appoint separate juries of view for each road and ditch to be constructed, if deemed desirable or advantageous to the public. [Id.]

Art. 6779. [6998] **Oath of viewers.**—Said jury shall first take the following oath: “I do solemnly swear that I am not directly interested in the construction of the proposed ditch, either as the owner or otherwise, of adjacent land lying within one mile thereof, and that I am not of kin to any person who is so interested. I further swear that I have no bias or prejudice toward any person directly interested in said ditch, and that I will assess the amount of expense due on and by all adjacent lands lying within one mile of said ditch, according to law, without fear, favor, hatred or hope of reward, to the best of my knowledge and ability. So help me God.” [Id.]

Art. 6780. [6999] **Notice of assessments.**—The said jury shall issue a written notice to the land owner of each abutting tract along said ditch, and to each land owner, any part of whose land lies within one mile of the line of said ditch, or to his agent or attorney, of the time and place when they will assess the one-half of the expense incidental to the construction of the ditch or ditches specified in the order of appointment; which notice shall be served at least five days before the day named therein, by any person competent to testify; and a duplicate of said notice, together with the returns of said service, shall be returned and filed with the report of the jury of viewers. If such owner is a non-resident of the county, and has no resident, agent or attorney therein, the notice shall be given by publication in a newspaper published in the county, as notices are required to be given to non-resident defendants in actions in the district courts; and said notices shall be complete after four weeks publication thereof prior to the date named for the meeting of the jury of view, and at any time thereafter the jury of viewers may proceed to assess the proportionate part of such expense against said non-resident land owner, and the land owned by him subject thereto. The cost of such publication shall be paid by the county, on an order of the commissioners court. [Id.]

Art. 6781. [7001] **Claims.**—Any person whose land may be affected by such ditch may appear before said viewers and freely express his opinion on all matters pertaining to the assessment of expense against him. The owner of any such lands may at the time stated in such notice, or previously thereto, present to the jury a written statement of any objections to, or

dissatisfaction therewith, and any claim for damages which he may have sustained by reason of making said ditch or drain; and a failure to so make such objection or claim for damages or compensation shall be deemed a waiver of all claim or right thereto. All such claims or objections shall be returned to the commissioners court in connection with the report of the viewers. Any adjacent land owner may appear before and be heard by the commissioners court on his protest or remonstrance or claim against the action of said jury. [Id.]

Art. 6782. [7002] Appeals.—Any person, firm or corporation, aggrieved by any such assessments, may appeal from the final order of the commissioners court approving the report of said jury to any proper court within the county by giving notice of appeal in open court and having the same entered as a part of the judgment of the court, and by filing within ten days thereafter, a transcript of the proceeding had in the commissioners court, with the justice or clerk of the court to which appeal is taken, together with an appeal bond, with at least two good sureties, to be approved by such clerk or justice, in double the amount of the probable costs to accrue, conditioned that the appellant will prosecute his appeal to effect, and pay all costs that may be adjudged against him in said court. Appeals from an assessment of expense shall be heard upon this issue: whether the assessments made against the appellant for the construction of such ditch are in proportion to the benefits to be derived therefrom. Appeals from an assessment of compensation shall be heard upon this issue: whether the assessment of compensation made by the jury is adequate to the injury occasioned and to the value of the land. [Id.]

Art. 6783. [7003] Trial on appeal.—In the trial of all such appealed cases the burden of proof shall rest upon the appellant; and the court or jury trying the cause shall state the correct amount of expense chargeable to appellant, or the correct amount of compensation due to appellant as found by them, and the same shall be entered as the judgment of the court thereon, and from such judgment no further appeal shall be allowed to either party. If the verdict of the jury shall find the appellant chargeable with a less amount of expense, or that the appellant is entitled to a greater amount of compensation as damages, than was found by the jury of viewers, the costs shall be adjudged against the county; otherwise the same shall be adjudged against the appellant. Within five days after the entry of such judgment, the clerk or justice shall issue and return to the commissioners court a certified copy of such judgment, to be filed with the papers pertaining to such ditch, and the same shall be entered by the commissioners court as the judgment of said court, and thereafter the appellant shall be held for, or claim, the amount specified in said judgment. [Id.]

Art. 6784. [7004] Appropriation: construction.—The commissioners court of such county may, at the next term thereof, after the filing of the report of the jury of viewers and the en-

try of the order approving the same, if the report be approved, make an order setting aside such portion of the road and bridge fund, and such portion of the special road and bridge fund as may be necessary for the construction of the ditch described in the report of the jury of viewers, and shall also enter an order to the overseers of the road adjoining said ditch or to the supervisors of the road, or to the road commissioner, commanding him to construct such ditch in accordance with the specifications of the surveyor, which shall be turned over to him for his information, and that the earth taken therefrom shall be used in making a raised road adjoining said ditch. The court shall further order that all the road hands apportioned to said road, and that any teams, tools or materials, belonging to the county, and necessary to the execution of such work, be apportioned to said overseer, supervisor or commissioner, for the completion thereof; and shall authorize such overseer, supervisor or commissioner to employ such additional labor and teams, and to purchase tools and implements as may be necessary, to be paid for out of the road and bridge fund set aside therefor, on the order of the commissioners court, and said order shall also show the amount of compensation to be allowed to said overseer, supervisor, or road commissioner for his services. [Id.]

Art. 6785. [7005] **Special overseer.**—The commissioners court may employ some suitable and competent person, other than the overseer, road commissioner or supervisor, if to the best interest of the county, and such person shall have the same powers, duties and responsibilities as provided for overseers, road commissioners, and supervisors in the preceding article, and the court shall enter an order showing the amount of compensation to be paid him for his services. [Id.]

Art. 6786. [7006] **List of assessments.**—At the same or at any succeeding term after the entry of such order for the construction of the ditches and roadway, the commissioners court shall make and enter upon the minutes of the court a list showing the names of the owners, amounts due, the tract of land, original grantees, number of acres covered by each assessment of expense, as made and reported by the jury of viewers and approved by the court; and the county clerk shall issue a certificate against each person on said list showing the amount of each assessment and for what ditch or road the same was issued, and the tract of land on which said amount was assessed. Such certificate shall be signed by the county judge in open court, and attested under the hand and seal of the county clerk, which fact shall be noted upon the minutes of said court. [Id.]

Art. 6787. [7007-8-9] **Assessments: collection.**—All assessments, sums, and charges by said viewers, or order of court, assessed against any land and the owner thereof, shall be a lien thereon, unless prohibited by the Constitution of this State. The county judge shall deliver the certificate to the county

treasurer, taking his receipt therefor, which shall be filed with the papers and archives concerning such ditch; and the county treasurer shall collect the sums due on such certificates, and deposit the amount so collected to the credit of the road and bridge fund. If any person against whom any such certificate may be issued fails or refuses to pay the same to the county treasurer on demand therefor, such treasurer shall turn same over to the county attorney, who shall at once file suit thereon, and have the lien on said land foreclosed, or for a personal judgment as may be lawful. [Id.]

Art. 6788. [7010] **Compensation.**—The jury of viewers shall each receive three dollars per day for their services for each day so actually engaged; and said surveyor shall receive such sum as the commissioners court may allow. [Id.]

Art. 6789. [7011] **Private ditch.**—Any owner of lands or tracts of land abutting on said road or ditch, or the owner of any tract of land lying wholly or partially within one mile of such road or ditch, may construct at his own cost lateral drainage ditches and connect the same with such main ditch or ditches as shall be constructed under the provisions of this subdivision. [Id.]

CHAPTER FOUR.

SPECIAL ROAD TAX.

| | | | |
|----------------------------|---------|--------------------------|---------|
| | Article | | Article |
| Election | 6790 | Result of election | 6792 |
| Election, conduct of | 6791 | No bonds to issue..... | 6793 |

Art. 6790. [7042] **Election.**—The commissioners court shall order an election upon presentation to it at any regular session of a petition signed by two hundred qualified voters and property tax payers of the county, or a petition of fifty persons so qualified in any political subdivision or defined district of the county, requesting said court to order an election to determine whether said court shall levy upon the property within said territory a road tax not to exceed fifteen cents on the one hundred dollars worth of property, under the provisions of the amendment of 1889 to the Constitution of the State of Texas, adopted in 1890. Said court may act on such petition without notice, and may make an order for such election, fixing the amount to be levied, not to exceed fifteen cents on the one hundred dollars, the election to take place at any time thereafter, not less than twenty nor more than ninety days from the date of making the order therefor. Upon a petition signed by a majority of the qualified tax paying voters of any portion of any county or of any political subdivision of any county, to said court requesting that such portion of said county or political subdivision shall be created as a defined district, the said court shall declare such territory a defined district and spread the order for same upon the minutes of said court; provided the petition aforesaid shall define by metes and bounds the territory desired to be so incorporated in such defined district. [Acts 1891, p. 51; G. L., Vol. 10, p. 53; Acts 1913, p. 30.]

Art. 6791. [7043-4] **Election, conduct of.**—No formal notice need be given of such election, but the county judge shall issue his election proclamation; and the fact that such election is to be held shall be published in the newspapers of the county or political subdivision or defined district as fully as practicable. Tickets for the election shall be printed by the county and sent to each voting precinct by the county judge before the election opens, and as long before such time as practicable. The tickets printed and to be voted shall have written or printed on them the words: "For the Tax" and "Against the Tax," and those who favor the tax shall vote the ticket "For the Tax," and those who oppose the tax shall vote the ticket "Against the Tax." The expenses of the election shall be paid for by the county. An election ordered within ninety days of a general election shall be held on the day of the general election, and as elections on other questions are held, but otherwise the commissioners court shall order a special election which shall be conducted as other elections. The officers to conduct the same shall be appointed as in other cases. Only qualified voters who pay a property tax in the county or political subdivision or defined district shall be permitted to vote at such election.

Art. 6792. [7045] **Result of election.**—If at any such election a majority of the qualified voters voting thereat shall vote for such tax, it shall not be necessary to make further proclamation of that fact than to count the votes, as in other cases, and officially announce the result, and the commissioners court shall thereby be authorized and required to levy a road tax in the same manner that other taxes are levied in the amount specified in said order for such election, never to exceed fifteen cents on the one hundred dollars worth of property. Such levy shall be made at the same time other county taxes are levied, if such election is held in time therefor, but otherwise it may be made at any time before the rolls are made out. If at the election, the proposition for said tax shall carry, no petition for its repeal shall be granted in less than two years. But if it fail to carry, another petition may be granted in one year, but not sooner; and the order granting the second or any subsequent petition may fix a greater or less rate of levy, not to exceed fifteen cents on the one hundred dollars worth of property, and if no greater rate is levied for any one year the commissioners court may lower the rate for the next year without a petition therefor. An election to repeal the levy may be ordered and held as in other cases, but there must be satisfactory proof presented to said commissioners court that there is great dissatisfaction with such tax and that it is probable that a majority of the citizens of the county or political subdivision or defined district who are authorized to vote for said tax would vote for the repeal of the law, and unless such proof be made the petition to repeal shall be denied. [Id.]

Art. 6793. [7046] **No bonds to issue.**—No bonds shall ever be issued under the provisions of this chapter. [Id.]

CHAPTER FIVE.

BRIDGES AND FERRIES.

I. BRIDGES.

| | | | |
|----------------------------------|-----------------|----------------------------------|-----------------|
| Commissioners court: powers..... | Article 6794 | Boundary bridge | Article 6796 |
| Toll bridges | 6795 | Tolls assessed to pay bonds..... | 6797 |

Art. 6794. [7014] [4792] Commissioners court: powers.—The commissioners court shall have full power and authority to cause all necessary bridges to be built and kept in repair in their respective counties, and to make necessary appropriations of money of the counties therefor. [Acts 1876, p. 51; G. L. Vol. 8, p. 888.]

Art. 6795. [7015-16] Toll bridges.—When it is inexpedient for the road force to build bridges over large creeks or water courses, the commissioners court may contract with a proper person to build a toll bridge, for which the court shall lay the toll to be levied on all persons, cattle, horses, vehicles, etc., passing over the same, to be granted to the contractor for such a number of years as said court may think proper, not to exceed ten years; and the builder and his successors shall keep the bridge in constant repair during the term of the contract, and in default thereof shall forfeit all right and claim to the toll of such bridges. Before granting a license to any person to build a toll bridge, the commissioners court shall take bond in the sum of one thousand dollars, with good and sufficient sureties, conditioned that the contractor shall build and keep in constant repair the bridges so contemplated for the term of years agreed upon. If any person shall sustain damages in consequence of the owner or keeper of any toll bridge not having complied with the conditions of his bond, the person so damaged may bring an action of debt against the owner or keeper of such toll bridge on his or their bond, in the county in which such license was granted, and recover judgment for the damages so sustained. [Acts 1836, p. 162; G. L. Vol. 1, p. 1222.]

Art. 6796. [7017] [4795] Boundary bridge.—Whenever any stream constitutes either in whole or in part the boundary line between two or more counties, or when two or more counties are jointly interested in the construction of a bridge, whether over a stream or elsewhere, it shall be lawful for the counties so divided or interested to jointly erect bridges over such stream or over any other stream, upon such equitable terms as the commissioners court of each county interested may agree upon. [Acts 1871, p. 42; G. L. Vol. 7, p. 44; P. D. 5883; Acts 1923, p. 273.]

Art. 6797. [7018] [4796] Tolls assessed to pay bonds.—Whenever any county bonds are issued to build bridges, the commissioners court may assess and collect tolls on said bridges sufficient to pay the interest on bonds so issued; and, if thought proper, sufficient to pay the interest and create a sinking fund with which to pay the principal at maturity, all of which shall

be done under such rules as said court may prescribe. [Acts 1871, p. 42; P. D. 5884; G. L. Vol. 7, p. 44.]

2. FERRIES.

| | Article | | Article |
|--------------------------|---------|------------------------------|---------|
| Right to maintain | 6798 | Delays | 6806 |
| License | 6799 | Refusal to operate | 6807 |
| Bond | 6800 | Recovery from sureties..... | 6808 |
| Rates of ferriage | 6801 | Temporary license | 6809 |
| Swimming cattle | 6802 | County boundary stream | 6810 |
| To post rates | 6803 | State boundary stream | 6811 |
| Excessive rates | 6804 | Unlicensed ferry | 6812 |
| Duties of ferryman | 6805 | | |

Art. 6798. [7021] [4797] Right to maintain.—Every person owning the land fronting upon any water course, navigable stream, lake or bay, shall be entitled to the privilege of keeping a public ferry over or across the same. If he owns the lands on both sides or banks he shall be entitled to the sole and exclusive right of ferriage at such place; if he owns the lands on one side only, he shall have the privilege of a public ferry from his own shore, with the privilege of landing his boat and passengers on the opposite shore, with the consent of the owner of the land on said shore. If such consent cannot be obtained, he may apply to the commissioners court for the establishment of a public road from said opposite shore; and said court shall act on such applications as in other cases. Acts 1850, p. 67; G. L. Vol. 3, p. 505; P. D. 3841.]

Art. 6799. [7022-24-29-39] License.—No person shall keep any such ferry for hire without first procuring a license from the commissioners court of the county in which such ferry is situated. If the applicant for such license shows that he is the lawful owner of such land as the ferry is sought to be established on, and satisfies the court that the public convenience will be promoted thereby, such court shall grant such license for one year from the date thereof, when the applicant makes bond and produces his receipt from the county treasurer for the payment of the annual license tax, which said court is authorized to assess and collect from each such ferryman, not to exceed one hundred dollars per annum. Such license shall be renewed annually. [Id.]

Art. 6800. [7028-37] Bond.—The owner of each ferry shall annually enter into bond payable to and to be approved by the county judge, in such sum as the commissioners court shall direct, not less than one thousand dollars, conditioned that such owner will at all times keep good and sufficient boats for the use of such ferry, and will also keep the banks on each side of the ferry in good repair and so graded and leveled that the rise shall not exceed one foot in every seven feet from the water's edge to the top of the bank, and that said ferry shall be well attended at all times, and that he will comply with the laws relating to or governing ferries. Any person injured by breach of such bond may sue thereon in his own name. Such bond may be sued on until the whole penalty is recovered. [Acts 1850, p. 67; G. L. Vol. 3, p. 506; P. D. 3846, 3847.]

Art. 6801. [7025-6-30] **Rates of ferriage.**—When a commissioners court shall establish a ferry, they shall state in their record the rate of toll or ferriage which may be demanded for ferrying such property as is usually transported by ferries; and may, at their first term in each year, and shall at any other term, upon the petition of twenty respectable citizens of the county, revise, and, if deemed expedient, change the rates of toll or ferriage at all ferries in their county. The county clerk shall record all rates of ferriage and changes therein and deliver copies thereof, under his hand and official seal, to the owners of ferries affected. No change of rate shall take effect until the expiration of thirty days from the day on which said change may be made. [Acts 1854, p. 5, G. L. Vol. 3, p. 1449.]

Art. 6802. [7041] [4817] **Swimming cattle.**—The commissioners court shall not authorize a charge of more than one cent per head on cattle or horses swimming rivers at licensed ferries, including the use of pens and boats necessary for the control of such stock. [Acts 1862, p. 31; G. L. Vol. 5, p. 475.]

Art. 6803. [7031] [4807] **To post rates.**—Every owner of a ferry license shall keep a list of the rates of toll or ferriage established for his ferry posted up at either the ferry or ferry house, for the inspection of all persons. If any such owner shall fail or neglect to do so, he shall forfeit and pay the sum of four dollars for every such neglect, which may be recovered before any justice of the peace of the county on the complaint of any person, one-half of said amount to go to the county and the other half to the prosecutor. Every week that he shall so fail or neglect shall be deemed a separate offense for which he shall be liable as aforesaid. [Id.]

Art. 6804. [7034] [4810] **Excessive rates.**—If any licensed ferryman shall charge and receive from any person a higher rate of toll or ferriage than has been established for his ferry by the commissioners court, he shall forfeit and pay to such person five dollars for every such offense, to be recovered by action before any justice of the peace of the county in which the ferry is established, with costs of suit. [Id.]

Art. 6805. [7033] [4809] **Duties of ferryman.**—Every licensed ferryman shall at all times keep good and sufficient boats for the use of such ferry, and shall keep the banks on each side of the ferry in good repair, and so graded and leveled that the rise shall not exceed one foot in every seven feet from the water's edge to the top of the bank; and shall give ready and due attendance on all passengers, horses, wagons, and other property. [Id.]

Art. 6806. [7032] [4808] **Delays.**—If any person licensed to keep a ferry shall, on being tendered his lawful fees, refuse or neglect without a reasonable cause, to cross any person or property usually transported by such ferry, he shall, for every delay of thirty minutes, forfeit and pay to the person injured the sum of two dollars, to be recovered by action before any

justice of the peace of the county in which the ferry is situated, with costs of suit. [Id.]

Art. 6807. [7027] [4803] **Refusal to operate.**—Where any owner of a ferry shall refuse to keep up the same at the rates allowed by the commissioners court, said court may issue a license to any one who will do so. In such case the party receiving such license shall be bound to take the ferry boat in use at said ferry, if desired by the owner, at such valuation as two respectable citizens of the vicinity, one to be chosen by each party, shall place upon it. [Id.]

Art. 6808. [7036] [4812] **Recovery from sureties.**—In all cases where a recovery shall be had against the ferryman for violation of this law, if after judgment, execution shall be returned that no estate of such ferryman can be found whereon to levy and make the money demanded in such execution, the justice to whom such execution is so returned shall cite the sureties of such ferryman to appear and show cause why judgment should not be rendered against them for the amount of the execution that is not satisfied, and unless such cause is shown, judgment shall be entered and execution issue therefor. [Id.]

Art. 6809. [7038] [4814] **Temporary license.**—One wishing to establish a public ferry between the regular terms of the commissioners court may obtain a temporary license for such ferry from the county judge, which shall authorize him to keep such ferry until the next regular term of the commissioners court for the county, and to charge and receive for such time such rates of toll or ferriage as are charged at other ferries on the same water course, stream, lake or bay. [Id.]

Art. 6810. [7040] [4816] **County boundary stream.**—If the banks of any water course, navigable stream, lake or bay lie in different counties, the application for a license to operate a ferry between such banks shall be made to the commissioners court of the county wherein the applicant resides or has his ferry house, and upon the granting of such license by the said court, the person so licensed shall have the right to own and operate a ferry upon the same terms and conditions and with the same rights and privileges as are provided by this subdivision for the owners or keepers of ferries operated exclusively in one county, and no county tax shall be assessed and collected upon a ferry by any other commissioners court than the one granting the license therefor. [Id.]

Art. 6811. [7023] [4799] **State boundary stream.**—When a water course, navigable stream, lake or bay forms a part of the boundary line of this State, if any tax or charge shall be assessed or collected by any such adjoining State for the privilege of a ferry landing on the shore or bank of such State from this State, then the same tax or charge may be assessed and collected by the commissioners court for the like privilege of landing on the bank or shore of this State. [Id.]

Art. 6812. [7035] [4811] **Unlicensed ferry.**—If any person shall keep any ferry over any water course, navigable stream, lake or bay, for which he shall charge any person any money or other valuable thing, without complying with the provisions of this subdivision in relation to paying the tax, obtaining license and entering into bond, he shall forfeit and pay to every other person having a licensed ferry on the same water course, stream, lake or bay in the same county five dollars for every person so ferried, and the same sum for every wagon or other article so transported which may be subject to a separate charge, to be sued for and recovered before any justice of the peace of the county, with costs of suit; and shall forfeit and pay a like sum in like manner to the county, which may be sued for and recovered in like manner by the county treasurer. [Id.]

TITLE 117.

SALARIES.

| | Article | | Article |
|----------------------------------|---------|---------------------------------|---------|
| Enumeration | 6813 | Salaries of employes | 6822 |
| Bureau of Labor Statistics | 6814 | Traveling expenses | 6823 |
| Eleemosynary institutions | 6815 | Change in salary | 6824 |
| Perquisites | 6816 | Salary of women | 6825 |
| Lieutenant Governor | 6817 | How paid | 6826 |
| Legislators | 6818 | Evidence of qualification | 6827 |
| Courts | 6819 | Unauthorized officers | 6828 |
| Judicial district expenses | 6820 | Other salaries | 6829 |
| Special judges | 6821 | | |

Art. 6813. Enumeration.—The following named officers, deputies, clerks and assistants in the employ of the State Government shall receive for their services the annual salaries set opposite their respective names:

| | |
|---|--------|
| Adjutant General | \$3600 |
| Assistant Adjutant General | 2000 |
| Quartermaster | 2000 |
| Assistant Quartermaster General | 2000 |
| Agriculture—Commissioner of | 3600 |
| Chief Clerk Department of Agriculture | 2000 |
| Plant Pathologist Department of Agriculture | 2100 |
| Nursery Inspector Department of Agriculture | 2000 |
| Attorney General | 2000 |
| Banking Commissioner | 6000 |
| Deputy Banking Commissioner | 5000 |
| Comptroller | 2500 |
| Control—Each Member of Board of | 5000 |
| Governor | 4000 |
| Health Officer—State | 4500 |
| Assistant State Health Officer | 2400 |
| Chemist in Health Department | 2100 |
| Industrial Accident Board—Chairman | 4500 |
| Other Members of Industrial Accident Board | 4000 |
| Insurance—Commissioner of | 4000 |
| Each Other Member of State Insurance Commission | 3600 |
| Land Commissioner | 2500 |
| Librarian—State | 2000 |
| Live Stock Sanitary Commission—Chairman of | 2500 |
| Other Members of Live Stock Sanitary Commission | 1250 |
| Markets and Warehouses—Commissioner of | 3600 |
| Chief Clerk Markets and Warehouse Department | 2000 |
| Mining Inspector—State | 2000 |
| Pardons—Each member of Board of | 3000 |
| Prosecuting Attorney—State | 3600 |
| Assistant State Prosecuting Attorney | 3000 |
| Public Instruction—State Superintendent of | 4000 |
| Railroad Commission—Each Member of | 4000 |
| Reclamation Engineer—State | 3600 |
| State—Secretary of | 2000 |
| Tax Commissioner—State | 2500 |

| | |
|---|------|
| Treasurer—State | 2500 |
| Vital Statistics—Registrar of | 2400 |
| Deputy Registrar of Vital Statistics | 1500 |
| Water Engineers—Each member of Board of | 3600 |
| Game Commissioner—Acts 1925, p. 401 | 3600 |

Art. 6814. [5243] Bureau of Labor Statistics.—The Commissioner of Labor Statistics shall receive a salary of \$3,000.00 per annum; and he shall be allowed a secretary at a salary of \$1,800.00 per annum; an assistant secretary and stenographer at a salary of \$1,500.00 per annum; a chief deputy at a salary of \$2,000.00 per annum; six deputies at a salary of \$1,800.00 each per annum; a chief of the Woman's Division at a salary of \$2,000.00 per annum; and two women inspectors at a salary of \$1,800.00 each per annum. [Acts 1919, p. 164.]

Art. 6815. Eleemosynary institutions.—The superintendents of the Blind Institute, the Deaf and Dumb Institute, the Epileptic Colony, State Lunatic Asylum, Southwestern Insane Asylum, North Texas Hospital for the Insane, Northwest Texas Insane Asylum, Hospital for Negro Insane, Colony for the Feeble Minded, State Juvenile Training School, State Tuberculosis Sanatorium, and the Head Physician of the State Pasteur Institute shall each receive an annual salary of \$2,500.00; the superintendents of the Confederate Home, the Confederate Woman's Home, Girls Training School, and the State Orphans' Home shall each receive an annual salary of \$2,000.00; the superintendent of the Deaf, Dumb and Blind Institute for Colored Youths shall receive an annual salary of \$1,800.00; and each of said superintendents or physicians shall receive provisions not exceeding in value \$500.00 per year, and fuel, lights, water, laundry and housing for himself and immediate family. The secretary to the Superintendent of the Confederate Home shall receive an annual salary of \$720.00. The store-keepers and accountants of the various eleemosynary institutions shall receive an annual salary to be fixed in the general appropriation bills from year to year, not to exceed \$1,200.00. [Acts 1st C. S. 1917, p. 241; Acts 2nd C. S. 1919, p. 61.]

Art. 6816. Perquisites.—The Governor shall have the use and occupation of the Governor's Mansion, fixtures and furniture. The Attorney General shall receive such fees as may be prescribed by law, not to exceed \$2,000.00 annually. The Commissioner of Insurance shall receive an annual salary of \$500.00 for his services to the State Insurance Commission. Said Commissioner shall receive \$50.00 per annum for services as a member of the State Insurance Commission for services as to workmen's compensation insurance, and each of the other members of said Commission shall receive \$100.00 per annum for such services.

Art. 6817. [7055] Lieutenant Governor.—The Lieutenant Governor shall, while he acts as president of the Senate, receive for his services the same compensation and mileage allow-

ed to members of the Senate, and no more; and when acting as Governor, the same compensation which the Governor would have received had he been employed in the duties of his office, and no more. [Const. Art. 4, Sec. 17; Acts 1907, p. 10.]

Art. 6818. [7056] Legislators.—Members of the Legislature shall receive as compensation for their services and attendance upon any session of the Legislature, five dollars per day for the first sixty days of each session, and after that, the sum of two dollars per day for the remainder of the session. They shall receive as mileage for attendance upon any regular or called session of the Legislature five dollars of every twenty-five miles in going to and returning from Austin, to be computed by the nearest and most direct route of travel by land, regardless of railways or water routes. The Comptroller shall prepare and preserve a table of distances to each county seat, by which such mileage shall be computed and paid, the calculation to be based in each instance upon the distance to the county seat of the county in which such member resides. No member shall be entitled to mileage for any extra session of the Legislature that may be called within one day after the adjournment of any regular or called session. [Const. Art. 3, Sec. 24; Acts 1907, p. 10.]

Art. 6819. Courts.—The Judges of the Supreme Court, Commission of Appeals, and the Court of Criminal Appeals shall each be paid an annual salary of \$6,500.00. The judges of the several Courts of Civil Appeals shall each be paid an annual salary of \$5,000.00. The Judges of the District Courts shall each be paid an annual salary of \$4,000.00. The clerks of the Courts of Civil Appeals shall each receive an annual salary of \$3,000.00, and may employ a deputy at an annual salary of \$1,500.00. Each stenographer to each Court of Civil Appeals shall receive \$1,500.00 per annum. The reporter of the Supreme Court and the reporter and the clerk of the Court of Criminal Appeals shall each receive an annual salary of \$3,000.00.

Art. 6820. Judicial district expenses.—All district judges and district attorneys when engaged in the discharge of their official duties in any county in this State other than the county of their residence, shall be allowed their actual and necessary expenses while actually engaged in the discharge of such duties, not to exceed four dollars per day for hotel bills, and not to exceed four cents a mile when traveling by railroad, and not to exceed twenty cents a mile when traveling by private conveyance, in going to and returning from the place where such duties are discharged, traveling by the nearest practical route. Such officers shall also receive the actual and necessary postage, telegraph and telephone expenses incurred by them in the actual discharge of their duties. Such expenses shall be paid by the State upon the sworn and itemized account of each district judge or attorney entitled thereto, showing such expenses. In districts containing more than one county, such expenses shall never exceed in any one year \$100.00 for each county in the

district; provided that no district judge or attorney shall receive more than \$600.00 in any one year under the provisions of this article. The account for said services shall be recorded in the official minutes of the district court of the county in which such judge or attorney resides, respectively. [Acts 1923, p. 50.]

Art. 6821. [7061-65] **Special judges.**—The salaries of special judges commissioned by the Governor in obedience to Section 11, Article 5, of the Constitution, or elected by the practicing lawyers or agreed upon by the parties as provided by law, shall be determined and paid as follows:

1. Each special judge shall receive the same pay as district judges for every day that he may be occupied in performing the duties of judge, and those commissioned by the Governor shall also receive the same pay as district judges for every day they may be necessarily occupied in going to and returning from the place where they may be required to hold court.

2. The amount of such salary shall be ascertained by dividing the salary allowed a district judge by three hundred and sixty-five, and then multiplying the quotient by the number of days actually served by the special judge.

3. A judge so commissioned shall, in order to obtain his salary, present his sworn account to the Comptroller, showing the number of days necessarily occupied in going to and returning from such place, accompanied by evidence that he was duly commissioned. Such account shall be certified to be correct by the judge of the district, or by the clerk of the court in which the services were performed.

4. A judge so elected or agreed upon shall be paid for his services on presentation to the Comptroller of the certificate of the clerk of the court in which such services were performed, showing the record of such election or appointment and services, and accompanied by the sworn account of such judge showing the number of days actually served by him as such special judge. [Acts 1876, p. 140.]

Art. 6822. **Salaries of employes.**—Any deputy, assistant clerk or any employe authorized by the laws of this State to be appointed by the head of any department of the State Government, shall, when his salary is not fixed or provided for by law, receive such salary as the Legislature shall from time to time appropriate.

Art. 6823. **Traveling expenses.**—The traveling and other necessary expenses incurred by the various officers, assistants, deputies, clerks and other employes in the various departments of the State Government, in the active discharge of their duties shall be such as are specifically fixed and appropriated by the Legislature in the general appropriation bills providing for the expenses of the State Government from year to year. [Acts 1st C. S. 1917, p. 241.]

Art. 6824. [7086] [4853] **Change in salary.**—The salaries of officers shall not be increased nor diminished during the term of office of the officers entitled thereto.

Art. 6825. **Salary of women.**—All women performing public service for this State shall be paid the same compensation for their service as is paid to men performing the same kind, grade and quantity of service, and there shall be no distinction in compensation on account of sex. [Acts 1919, p. 145.]

Art. 6826. [7087] [4854] **How paid.**—Annual salaries provided for in this title shall be paid monthly on warrants drawn by the Comptroller on the Treasurer.

Art. 6827. [7088] [4858] **Evidence of qualification.**—Upon demand of any citizen of this State, the Comptroller, Treasurer, commissioners courts, county treasurers and all other officers of this State or of any municipal division thereof, who are authorized or required by law to audit, pay or order to be paid, claims due from the State, or any county or municipal division thereof, to any person as salary, fees, compensation, perquisites or emoluments for official services rendered by such person as an officer thereof, before auditing, paying or ordering payment of such claim, shall require such claimant to produce the certificate of his election or appointment to such office directed by the laws of this State to be issued to such officer, or if his claim be founded upon the judgment or decree of a court of this State authorized by law to hear and determine the claims of persons to office, then a copy of the record of such judgment or decree certified under the hand and seal of the legal custodian of such record to be a true copy thereof. [Acts 1881, p. 7; G. L. Vol. 9, p. 99.]

Art. 6828. [7089-90] **Unauthorized officers.**—It shall be unlawful for any officer or court of this State, or of any municipal division thereof, to allow, audit, pay or order to be paid, the claim of any person for salary, compensation, fees, perquisites, emoluments or services, as an officer of the State or of any municipal division thereof, except to such person as has been duly elected such officer by the qualified voters of this State, and whose election has been ascertained and certified or declared in the manner required by law, or who has been appointed such officer by the lawful appointing power under the Constitution and laws of this State, or who has been adjudged entitled thereto by a State court of competent jurisdiction, and has qualified as such officer in accordance with law. Any person not so elected, appointed and qualified shall not be entitled to receive pay for services as such officer, or to exercise the powers or jurisdiction of such officer. The official acts of any person claiming a right to exercise such power or jurisdiction contrary to the provisions of this law shall be void. [Id.]

Art. 6829. [7091] **Other salaries.**—The enumeration of various officers and their salaries in this title shall not operate to repeal or affect provisions of law found elsewhere in the statutes, or in any appropriation bill permitting or authorizing the existence, or prescribing the compensation of other officers.

TITLE 118.

SEAWALLS.

| | Article | | Article |
|---|---------|------------------------|---------|
| Commissioners' court may construct levees | 6830 | Result of election | 6835 |
| May use streets and alleys | 6831 | Sinking fund | 6836 |
| Eminent domain | 6832 | Cession of State lands | 6837 |
| Bonds: election | 6833 | Custodians of funds | 6838 |
| Election: Board of Inquiry | 6834 | General laws to govern | 6839 |

Art. 6830. [5585] Commissioners' court may construct levees.—The county commissioners' court of all counties, and the municipal authorities of all cities, bordering on the coast of the Gulf of Mexico, shall have the power and are authorized from time to time to establish, locate, erect, construct, extend, protect, strengthen, maintain, and keep in repair and otherwise improve any sea wall or breakwater, levees, dikes, floodways and drainways, and to improve, maintain and beautify any boulevard erected in connection with such sea wall or breakwater, levees, dikes, floodways and drainways, and to incur indebtedness therefor, the payment of which may be provided for either with or without the issuance of bonds. And said commissioners' courts and municipal authorities shall also have power and are hereby authorized to levy taxes not to exceed in any one year fifty cents on the one hundred dollars of taxable values of said county or city for the payment of said indebtedness, provided that when the taxes are levied as herein provided for, will not pay off said indebtedness within five years, then the payment of said indebtedness shall be provided for by the issuance of bonds as hereinafter provided.

Art. 6831. [5586] May use streets and alleys.—Said county commissioners' court, and municipal authorities, shall have the power to impose such additional uses and burdens upon all streets, alleys, public highways and other public grounds as they may deem necessary for the location, erection, construction and maintenance of seawalls, breakwaters, levees, dikes, floodways and drainways, and to license, regulate or grant such additional uses of said seawalls, breakwaters, levees, dikes, floodways or drainways as will not impair their efficiency.

Art. 6832. [5587] Eminent domain.—Said counties and cities shall have the power to take and appropriate such land and other property as may be deemed necessary for the establishment, location, construction and maintenance of said seawalls, breakwaters, levees, dikes, floodways and drainways, and to define the area of land needed, and to acquire, take, hold and enjoy the same for the purposes aforesaid, and to that end shall have the right to exercise the right of eminent domain and to condemn lands for the uses and purposes aforesaid, in the manner and under the conditions provided by law in case of railroad corporations; provided, nevertheless, that said county commissioners' court, or said municipal authorities, shall be empowered to take the fee simple estate to the land condemned or acquired hereunder, whenever deemed necessary for the purposes of this

Act; and, provided, further, that before exercising the power of eminent domain hereunder said county commissioners' court, or said municipal authorities, shall, by order, ordinance, or resolution duly entered on the minutes of the county commissioners' court, of the city council, define and describe lands needed, and determine whether an easement or fee simple estate in said land shall be taken. [Acts 1925, p. 270.]

Art. 6833. [5588] **Bonds: election.**—Before issuing said bonds the commissioners court or governing body shall prescribe the amount to be issued, the rate of interest thereon, and provide for an election to vote for or against the proposed taxation. [Acts 1881, p. 7; G. L. Vol. 9, p. 99; Acts 1st C. S. 1913, p. 3.]

Art. 6834. [5589] **Election: Board of Inquiry.**—For the purpose of ascertaining whether two-thirds of the tax-payers of said county or city have voted in favor of the proposed taxation, the county judge, the county assessor and the county collector, or three members of their own body selected by the governing body, as the case may be, are hereby constituted and appointed a Board of Inquiry. Whenever an election is ordered hereunder, said Board shall make out from the latest completed assessment rolls of said county, or city, a list of all taxpayers of said county or city, who are qualified voters and taxpayers entitled to vote hereunder; and from the date of the notice of said election until five days before the day thereof, said Board shall sit daily for the purpose of making additions to and corrections of said list. All tax payers who are qualified voters shall, during said period, have the right to apply to said Board and to have their names entered on said list. During the period of five days before said election, said Board shall make out under certificate and file with the county or city clerk as the case may be, a complete alphabetical list of all tax payers who are qualified voters at said election, and shall furnish printed copies of said list to the officers at each poll at said election. Said printed list furnished by said Board, and the returns and poll lists of said election, shall be returned to the county, or city clerk as the case may be. The ballots at said election shall contain the words, in substance, "In favor of the proposed tax," or "Against the proposed tax." Said election may be held on thirty days notice thereof at any time fixed by the commissioners court, or governing body. The proposition to levy a tax hereunder may be renewed until the power to tax hereunder shall have been exhausted. [Acts 1st C. S. 1901, p. 23.]

Art. 6835. [5590] **Result of election.**—The commissioners court or governing body as soon as practicable after said election shall meet and canvass the returns thereof, and with the aid of the returns and lists herein provided for, together with such other evidence as may be required, ascertain and record in its minutes, the total number of taxpayers of said county or city who were qualified voters on the day of said election, the

number of said taxpayers voting in favor of and the number voting against the proposed taxation. If two-thirds of the taxpayers of said county or city, who are qualified voters therein, shall have voted in favor of the proposed tax, the said county or city shall thereupon have power to issue its bonds for the construction and maintenance of seawalls and breakwaters. [Id.]

Art. 6836. [5591] **Sinking fund.**—Whenever bonds are issued under this title, the commissioners court, or governing body, shall annually levy, assess and collect, in the mode prescribed by law for other county or municipal taxes, a tax on the real estate and personal or mixed property in said county or city, sufficient to pay the interest and provide a sinking fund of not less than two per cent of the principal of all of said bonds. All taxes collected by virtue hereof shall be held in trust by said county, or city, as a special and inviolable fund for the payment of interest and principal of said bonds; provided, that any surplus above the amount required to meet the annual interest may be invested for the benefit of the sinking fund in the bonds issued hereunder, or in the bonds of the State of Texas, or of the United States. [Id.]

Art. 6837. [5592] **Cession of State lands.**—The right to the use and control for the purposes prescribed by this title, of so much of the land and sea bottom below high tide as may be deemed necessary by said commissioners court or governing body, is hereby ceded by the State of Texas to counties and cities availing themselves of the provisions herein. [Id.]

Art. 6838. [5593] **Custodians of funds.**—All funds, revenues and moneys derived from the sale of the bonds herein authorized and from the sale or rent of reclaimed or other lands acquired under this title and from additional uses of said works as herein authorized, shall be deposited with the county or city treasurer, as the case may be, and shall be held in trust exclusively for the construction and maintenance of seawalls and breakwaters, including the purchase of the right of way therefor. All moneys derived from the assessment and levy of taxes as aforesaid are declared to be a trust fund for the payment of interest and principal of bonds to be issued under this title. [Id.]

Art. 6839. [5594] **General laws to govern.**—All bonds issued hereunder shall be issued under and subject to the provisions of the laws regulating bonds issued by cities and counties, in so far as said laws do not conflict with the provisions of this title. The provisions of this title shall apply to all cities bordering on the coast of the Gulf of Mexico, whether incorporated by general or special laws. [Id.]

TITLE 119.

SEQUESTRATION.

| | Article | | Article |
|----------------------------------|---------|--|---------|
| When to be issued | 6840 | Defendant may discharge judgment | 6853 |
| Applicant's affidavit | 6841 | When property has been injured | 6854 |
| Petition | 6842 | Execution | 6855 |
| Applicant's bond | 6843 | Plaintiff may replevy | 6856 |
| On claim not due | 6844 | When bond forfeited | 6857 |
| Requisites of writ | 6845 | Defendant need not account for hire, etc. | 6858 |
| Duty of officer | 6846 | Perishable goods | 6859 |
| Compensation of officer | 6847 | Order of sale for | 6860 |
| Officer expending money | 6848 | Return of order | 6861 |
| Defendant may replevy | 6849 | Sale on debt not due | 6862 |
| Bond for personal property | 6850 | Purchaser's bond | 6863 |
| Bond for real estate | 6851 | Return of bond | 6864 |
| Return of bond | 6852 | | |

Art. 6840. [7094] [4864] [4489] When to be issued.—Judges and clerks of the district and county courts, and justices of the peace shall, at the commencement or during the progress of any civil suit, before final judgment, have power to issue writs of sequestration, returnable to their respective courts, in the following cases:

1. When a married woman sues for divorce, and makes oath that she fears her husband will waste her separate property, or their common property, or the fruits or revenues produced by either, or that he will sell or otherwise dispose of the same so as to defraud her of her just rights, or remove the same out of the limits of the county during the pendency of the suit.

2. When a person sues for the title or possession of any personal property of any description, and makes oath that he fears the defendant or person in possession thereof will injure, ill-treat, waste or destroy such property, or remove the same out of the limits of the county during the pendency of the suit.

3. When a person sues for the foreclosure of a mortgage or the enforcement of a lien upon personal property of any description, and makes oath that he fears the defendant or person in possession thereof will injure, ill-treat, waste or destroy, or remove the same out of the county during the pendency of the suit.

4. When any person sues for the title or possession of real property; and makes oath that he fears the defendant or person in possession thereof will make use of his possession to injure such property, or waste or convert to his own use the fruits or revenue produced by the same.

5. When any person sues for the title or possession of any property from which he has been ejected by force or violence, and makes oath of such fact.

6. When any person sues for the foreclosure of a mortgage or the enforcement of a lien on real estate, and makes oath that he fears the defendant or person in possession thereof will make use of such possession to injure such property, or waste or convert to his own use the timber, rents, fruits or revenue thereof.

7. When any person sues to try the title to any real property,

or to remove cloud upon the title to such real property, or to foreclose a lien upon any such real property, or for a partition of real property and makes oath that the defendant or either of them in the event there be more than one defendant, is a non-resident of this State. [Acts 1866, p. 120; Acts 1887, p. 30; G. L. Vol. 5, p. 1038; Vol. 9, p. 828.]

Art. 6841. [7095] [4865] [4490] **Applicant's affidavit.**—No sequestration shall issue in any cause until the party applying therefor shall file an affidavit in writing stating:

1. That he is the owner of the property sued for, or some interest therein, specifying such interest, and is entitled to the possession thereof; or,

2. If the suit be to foreclose a mortgage or enforce a lien upon the property, the fact of the existence of such mortgage or lien, and that the same is just and unsatisfied, and the amount of the same still unsatisfied, and the date when due.

3. The property to be sequestered shall be described with such certainty that it may be identified and distinguished from property of a like kind, giving the value of each article of the property and the county in which the same is situated.

4. It shall set forth one or more of the causes named in the preceding article entitling him to the writ. [Acts 1848, p. 88; G. L. Vol. 3, p. 88.]

Art. 6842. [7096] [4866] [4491] **Petition.**—If the suit be in the district or county court, no writ of sequestration shall issue, unless a petition shall have been first filed therein, as in other suits in said courts. [Acts 1866, p. 120; G. L. Vol. 5, p. 1038.]

Art. 6843. [7097] [4867] [4492] **Applicant's bond.**—No writ of sequestration shall issue until the party applying therefor has filed with the officer authorized to issue such writ a bond payable to the defendant for a sum not less than double the value of the property to be sequestered as stated in his affidavit, with two or more good sureties to be approved by such officer, conditioned for the payment of all damages and costs in such suit in case it shall be decided that such sequestration was wrongfully issued. [Acts 1848, p. 89; G. L. Vol. 3, p. 89.]

Art. 6844. [7098] [4868] [4493] **On claim not due.**—When any person has a mortgage or lien upon personal property of any description, and makes affidavit and gives bond as required by law, the writ of sequestration may issue, although the right of action upon such mortgage or lien has not accrued. The same proceeding shall be had thereon as in other cases of sequestration, except that no final judgment shall be rendered against the defendant until such right shall have accrued. [Id.]

Art. 6845. [7099] [4869] [4494] **Requisites of writ.**—The writ of sequestration shall be directed to the sheriff or any constable of any county wherein the property is alleged to be situated, which allegation may be made either in the original or in a supplemental affidavit. It shall command the sheriff or any constable to take into his possession the property, describing the

same as it is described in the affidavit, if to be found in the county, and keep the same subject to the future order of the judge, court or justice of the peace who issued the writ, unless the same is replevied according to law. [Act Nov. 9, 1866, p. 121; G. L. Vol. 5, p. 1039.]

Art. 6846. [7100] [4870] [4495] **Duty of officer.**—The officer executing a writ of sequestration, while he retains custody of the property sequestered, shall take care of and manage the same in a prudent manner, and if he confides the same to the custody of other persons he shall be responsible for their acts in regard thereto, and shall be responsible to the party injured for any neglect or mismanagement by himself, or by those to whom he has confided the custody or management of the property. [Id.]

Art. 6847. [7101] [4871] [4496] **Compensation of officer.**—The officer retaining custody of property by virtue of a writ of sequestration shall be entitled to receive a just compensation and all reasonable charges therefor, to be determined by the judge or justice from whose court the writ issued, to be taxed in the bill of costs against the party cast in the suit, and collected in the same manner as the other costs in the case. [Id.]

Art. 6848. [7102] [4872] [4497] **Officer expending money.**—If the officer be compelled to expend any sum in the security, management or care of the property, he may retain possession of said property until said money be refunded by the party offering to replevy said property, his agent or attorney. [Id.]

Art. 6849. [7103] [4873] [4498] **Defendant may replevy.**—When property has been sequestered, the defendant shall have the right to retain possession of the same by delivering to the officer executing the writ, his bond payable to the plaintiff, with two or more good and sufficient sureties, to be approved by such officer, in an amount not less than double the value of the property to be replevied. [Act Feb. 8, 1860, p. 70; G. L. Vol. 4, p. 1432.]

Art. 6850. [7104] [4874] [4499] **Bond for personal property.**—If the property to be replevied be personal property, the condition of the bond shall be that the defendant will not remove the same out of the county, or that he will not waste, ill-treat, injure, destroy or sell or dispose of the same, according to the plaintiff's affidavit, and that he will have such property, with the value of the fruits, hire or revenue thereof, forthcoming to abide the decision of the court, or that he will pay the value thereof and of the fruits, hire or revenue of the same in case he shall be condemned so to do. [Id.]

Art. 6851. [7105] [4875] [4500] **Bond for real estate.**—If the property be real estate, the condition of such bond shall be that the defendant will not injure the property, and that he will pay the value of the rents of the same in case he shall be condemned so to do. [Id.]

Art. 6852. [7106] [4876] [4501] **Return of bond.**—The bond provided for in the three preceding articles shall be re-

turned with the writ to the court from whence the writ issued. In case the suit is decided against the defendant, final judgment shall be entered against all the obligors in such bond, jointly and severally, for the value of the property replevied, and the value of the fruits, hire, revenue or rent thereof as the case may be; and the value of the property replevied shall be proven either as of the time of the execution of the replevy bond or as of the time of the trial, as the plaintiff may elect. [Id. Acts 1923, p. 28.]

Art. 6853. [7107] [4877] [4502] Defendant may discharge judgment.—Within ten days after the rendition of the judgment provided for in the preceding article, the defendant may deliver to the sheriff or constable of the court in which such judgment is rendered, the property or any part thereof, which the defendant has bound himself to have forthcoming to abide the decision of the court, and which property has not been injured or damaged since the replevy. Such officer shall receipt the defendant therefor, and shall immediately deliver such property to the plaintiff. Upon filing such receipt with the papers in the cause, the defendant shall be credited by the clerk or justice of the peace upon such judgment with the value of the property so returned.

Art. 6854. [7108] [4878] [4503] When property has been injured.—If the property tendered back by the defendant has been injured or damaged while in his possession under such bond, the sheriff or constable to whom the same is tendered shall not receive the same, unless the defendant at the same time tenders the reasonable amount of such injury or damage, to be judged of by such officer.

Art. 6855. [7109] [4879] [4504] Execution.—If the property be not returned and received, as provided in the two preceding articles, execution shall issue upon said judgment for the amount due thereon, as in other cases.

Art. 6856. [7110] [4880] [4505] Plaintiff may replevy.—When the defendant fails to replevy the property within ten days after the levy of the writ, if such defendant, his agent or attorney is present in the county, or within twenty days if absent from the county at the time of such levy, the officer having the property in possession shall deliver the same to the plaintiff upon his giving bond payable to the defendant in a sum of money not less than double the value of such property, with two or more good and sufficient sureties to be approved by such officer, conditioned for the forthcoming of such property, together with the fruits, hire, revenue and rent of the same, to abide the decision of the court. [Acts 1866, p. 122; G. L. Vol. 5, p. 1040.]

Art. 6857. [7111] [4881] [4506] When bond forfeited.—The bond provided for in the preceding article shall be returned with the writ, and in case the suit is decided against the plaintiff, final judgment shall be entered against all the obligors in such bond, jointly and severally for the value of the property replevied, and for the value of the fruits, hire, revenue or rent

thereof as the case may be; and the value of the property replevied shall be proven either as of the time of the execution of the replevy bond or as of the time of the trial, as the defendant may elect. The same rules which govern the discharge or enforcement of a judgment against the obligors in the defendant's replevy bond shall be applicable to and govern in case of a judgment against the obligors in the plaintiff's replevy bond. [Acts 1923, p. 28.]

Art. 6858. [7112] [4882] [4507] **Defendant need not account for hire, etc.**—In suits for the enforcement of a mortgage or lien upon property, the defendant, should he replevy the property, shall not be required to account for the fruits, hire, revenue or rent of the same, but this exemption shall not apply to the plaintiff in case he shall replevy the property.

Art. 6859. [7113] [4883] [4508] **Perishable goods.**—If after the expiration of ten days from the levy of a writ of sequestration the defendant has failed to replevy the same, if the plaintiff or defendant shall make affidavit in writing that the property levied upon, or any portion thereof, is likely to be wasted or destroyed or greatly depreciated in value by keeping, and if the officer having possession of such property shall certify to the truth of such affidavit, it shall be the duty of the judge or justice of the peace to whose court the writ is returnable, upon the presentation of such affidavit and certificate, either in term time or vacation, to order the sale of said property or so much thereof as is likely to be so wasted, destroyed or depreciated in value by keeping, but either party may replevy the property at any time before such sale. [Id.]

Art. 6860. [7114] [4884] [4509] **Order of sale for.**—The judge or justice granting the order provided for in the preceding article shall issue an order directed to the officer having such property in possession, commanding such officer to sell such property in the same manner as under execution. [Id.]

Art. 6861. [7115] [4885] [4510] **Return of order.**—The officer making such sale shall, within five days thereafter, return the order of sale to the court from whence the same issued, with his proceedings thereon, and shall, at the time of making such return, pay over to the clerk or justice of the peace the proceeds of such sale. [Id.]

Art. 6862. [7116] [4886] [4511] **Sale on debt not due.**—If the suit in which the sequestration issued be for a debt or demand not yet due, and the property sequestered be likely to be wasted, destroyed or greatly depreciated in value by keeping, the judge or justice of the peace shall, under the regulations hereinbefore provided, order the same to be sold, giving credit on such sale until such debt or demand shall become due. [Acts 1848, p. 88; G. L. Vol. 3, p. 88.]

Art. 6863. [7117] [4887] [4512] **Purchaser's bond.**—In the case of a sale as provided for in the preceding article, the purchaser of the property shall execute his bond, with two or more good and sufficient sureties, to be approved by the officer mak-

ing the sale, and payable to such officer, in a sum not less than double the amount of the purchase money, conditioned that such purchaser shall pay such purchase money at the expiration of the time given. [Id.]

Art. 6864. [7118] [4888] [4513] **Return of bond.**—The bond provided for in the preceding article shall be returned by the officer taking the same to the clerk or justice of the peace from whose court the order of sale issued, with such order, and shall be filed among the papers in the cause; and, in case the purchaser does not pay the purchase money at the expiration of the time given, judgment shall be rendered against all the obligors in such bond for the amount of such purchase money, interest thereon and all costs incurred in the enforcement and collection of the same; and execution shall issue thereon in the name of the plaintiff in the suit, as in other cases, and the money when collected shall be paid to the clerk or justice of the peace to abide the final decision of the cause. [Id.]

TITLE 120.

SHERIFFS AND CONSTABLES.

I. SHERIFFS.

| | Article | | Article |
|----------------------------------|---------|----------------------------------|---------|
| Election and term | 6865 | Control of court house | 6872 |
| Oath and bond | 6866 | Shall execute process | 6873 |
| Neglect to qualify | 6867 | Legislative process | 6874 |
| Failure to give new bond | 6868 | Shall indorse all process | 6875 |
| May appoint deputies, etc. | 6869 | May summon posse comitatus | 6876 |
| Responsible for their acts | 6870 | Unfinished business | 6877 |
| May employ guards | 6871 | | |

Art. 6865. [7119] [4890] Election and term.—The qualified voters of each county at each general election shall elect one sheriff for a term of two years. [Const. Art. 5, Sec. 23; Acts 1846, p. 265; P. D. 5108; G. L. Vol. 2, p. 1571.]

Art. 6866. [7121-2] Oath and bond.—Every person elected to the office of sheriff shall, before entering upon the duties of his office, give a bond with two or more good and sufficient sureties, to be approved by the commissioners court of his county, for such sum as may be directed by such court, not less than five thousand nor more than thirty thousand dollars payable to the Governor and his successors in office, conditioned that he will account for and pay over to the persons authorized by law to receive the same, all fines, forfeitures and penalties that he may collect for the use of the State or any county, and that he will well and truly execute and make due return of all process and precepts to him lawfully directed, and pay over all sums of money collected by him by virtue of any such process or precepts, to the persons to whom the same are due, or their lawful attorney, and that he will faithfully perform all such duties as may be required of him by law, and further conditioned that he will pay over to his county all moneys illegally paid to him out of county funds, as voluntary payments or otherwise, and said sheriff shall also take and subscribe the official oath, which shall be indorsed on said bond, together with the certificate of the officer administering the same. When any person elected or appointed sheriff, in accordance with this article, shall have given bond and taken the official oath, he may enter at once upon the discharge of his duties, and his acts shall be as valid in law before receiving his commission as afterward. [Acts 1846, p. 265; G. L. Vol. 2, p. 1571; Acts 1923, p. 23.]

Art. 6867. [7123] [4894] Neglect to qualify.—When any person elected sheriff shall neglect, refuse or fail from any cause whatever to give bond and take the official oath within twenty days after notice of his election, the office shall be deemed vacant. [Acts 1885, p. 89; G. L. Vol. 9, p. 709.]

Art. 6868. [7124] [4895] Failure to give new bond.—Whenever any of the sureties of a sheriff shall die, remove permanently from the State, become insolvent, or be released from liability in accordance with law, or whenever the commissioners court shall deem the sheriff's bond insufficient, said court shall

cite said sheriff to appear at a time to be named in such citation, not less than ten nor more than thirty days after issuing such citation and give a new bond with good and sufficient security; and, if such sheriff shall neglect or refuse to appear and give such bond on or before the designated time he shall cease to exercise the functions of his office, and shall be removed from office by the judge of the district court in the mode prescribed by law for the removal of county officers. [Acts 1836, p. 178; P. D. 5110; G. L. Vol. 1, p. 1239.]

Art. 6869. [7125] [4896] **May appoint deputies, etc.—** Sheriffs shall have the power, by writing, to appoint one or more deputies for their respective counties, to continue in office during the pleasure of the sheriff, who shall have power and authority to perform all the acts and duties of their principals; and every person so appointed shall, before he enters upon the duties of his office, take and subscribe to the official oath, which shall be indorsed on his appointment, together with the certificate of the officer administering the same; and such appointment and oath shall be recorded in the office of the county clerk and deposited in said office. The number of deputies appointed by the sheriff of any one county shall be limited to not exceeding three in the justice precinct in which is located the county site of such county, and one in each justice precinct, and a list of these appointments shall be posted up in a conspicuous place in the clerk's office. An indictment for a felony of any deputy sheriff appointed shall operate a revocation of his appointment as such deputy sheriff. [Acts 1889, p. 23; G. L. Vol. 9, p. 1051.]

Art. 6870. [7126] [4897] **Responsible for their acts.—** Sheriffs shall be responsible for the official acts of their deputies, and they shall have power to require from their deputies bond and security; and they shall have the same remedies against their deputies and sureties as any person can have against a sheriff and his sureties. [Acts 1846, p. 265; P. D. 5113, G. L. Vol. 2, p. 1571.]

Art. 6871. [7127] [4898] **May employ guards.—** Whenever in any county it may become necessary to employ guards for the safe keeping of prisoners and the security of jails, the sheriff may, with the approval of the commissioners court, or in case of emergency, with the approval of the county judge, employ such number of guards as may be necessary; and his account therefor, duly itemized and sworn to, shall be allowed by said court and paid out of the county treasury. [Id.]

Art. 6872. [6393] [3835] **Control of courthouse.—** Sheriffs shall have charge and control of the courthouses of their respective counties, subject to such regulations as the commissioners court may prescribe; and the official bonds shall extend to and include the faithful performance of their duties under this article.

Art. 6873. [7130] [4901] **Shall execute process.—** Each sheriff shall execute all process and precepts directed to him by

legal authority, and make return thereof to the proper court, on or before the day to which the same is returnable; and any sheriff who shall fail so to do, or who shall make a false return on any process or precept shall, for every such offense, be liable to be fined by the court to which such process is returnable, as for a contempt, not exceeding one hundred dollars at the discretion of the court, which fine shall go to the county treasury; and such sheriff shall also be liable to the party injured for all damages he may sustain. [Id. P. D. 5115.]

Art. 6874. [7131] [4902] Legislative process.—Sheriffs are required also to execute all subpoenas and other process issued by the Speaker of the House of Representatives, or the President of the Senate, or chairman of a committee of either house of the Legislature, to them directed, under like pains and penalties as are incurred by failure to execute process issued by a court; and for such services they shall receive the fees prescribed by law for similar services in the courts, to be paid on the certificate of the authority issuing such process. [Acts 1873, p. 19; P. D. 7102a et seq. G. L. Vol. 7, p. 471.]

Art. 6875. [7134] [4905] Shall indorse all process.—Every sheriff, deputy sheriff or constable shall indorse on all process and precepts coming to their hands the day and hour on which they received them, the manner in which they executed them, and state at what time and place the process was served as well as the distance actually traveled in serving such process, and shall sign their returns officially. [Acts 1846, p. 265; P. D. 5121; G. L. Vol. 2, p. 1571; Acts 1903, p. 81.]

Art. 6876. [7135] [4906] May summon posse comitatus.—Whenever a sheriff or any of his deputies shall meet with resistance in the execution of any legal process, they shall call to their aid the power of the county; and any person who shall neglect or refuse to aid and assist any sheriff or deputy in the execution of any legal process when summoned so to do shall be deemed guilty of a contempt of court, and shall be fined not exceeding ten dollars, to be recovered on motion of such sheriff or his deputy and proof of such neglect or refusal before the court from which such process issued, three days' notice of such motion being given to the party accused, and in addition thereto may be punished criminally as prescribed in the Penal Code. [Id. Sec. 10; P. D. 5117.]

Art. 6877. [7136] [4907] Unfinished business.—When any sheriff or any constable shall from any cause vacate his office, all unfinished business whatsoever in his hands shall be transferred to his successor, and be completed by him in the same manner as if commenced by himself. [Acts 1846 p. 265; P. D. 5122; G. L. Vol. 2, p. 1571.]

2. CONSTABLES.

| | Article | | Article |
|-------------------------------|---------|-----------------------------------|---------|
| Election | 6878 | Duties in general | 6885 |
| Appointment of deputies..... | 6879 | May summon posse | 6886 |
| Unorganized counties | 6880 | Failure to execute or return pro- | |
| Bond and oath | 6881 | cess | 6887 |
| De facto constable | 6882 | Failure to pay | 6888 |
| Neglect to qualify | 6883 | Jurisdiction | 6889 |
| Failure to give new bond..... | 6884 | | |

Art. 6878. [7137] [4908] **Election.**—The qualified voters of each justice precinct at each general election shall elect a constable for such precinct for a term of two years. [Acts 1885, p. 17; G. L. Vol. 9, p. 637; Acts 1897, p. 194; G. L. Vol. 10, p. 1248.]

Art. 6879. [7138] **Appointment of deputies.**—When in any such justice precinct there may be a city of eight thousand or more inhabitants, such constable may appoint no more than two deputies who shall qualify as required of deputy sheriffs; and provided, that, when in any such justice precinct there may be a city of forty thousand or more inhabitants, such constable may appoint five deputies and no more, who shall qualify as required of deputies; provided, such constable shall first make written application to the commissioners court of his county, showing the necessity therefor, giving the name of each proposed appointee, for the approval and confirmation of said court. In justice precincts which do not contain a city of eight thousand or more inhabitants, said constable may appoint no more than one deputy who shall qualify in such manner as is required by law. [Id. Acts 1921, p. 131; Acts 1923, p. 348.]

Art. 6880. [7139] [4909] **Unorganized counties.**—The commissioners courts of the several counties to which unorganized counties are attached for judicial purposes shall have power to appoint a constable for each unorganized county attached to said counties for judicial purposes, in accordance with the laws governing such appointments in organized counties. [Acts 1879, p. 89; G. L. Vol. 8, p. 1389.]

Art. 6881. [7141] [4911] **Bond and oath.**—Each person who may be elected to the office of constable shall, before entering upon the duties of the office, give a bond with two or more good and sufficient sureties to be approved by the commissioners court of his county, for such sum as said court may direct, not less than five hundred nor more than fifteen hundred dollars, conditioned for the faithful performance of all the duties required of him by law; and shall also take and subscribe the official oath, which shall be indorsed on said bond, together with the certificate of the officer administering the same. [Acts 1846, p. 261; G. L. Vol. 2, p. 1567.]

Art. 6882. [7142] [4912] **De facto constable.**—Whenever any person is elected or appointed to the office of constable and has given bond and taken said oath, he may enter at once upon the duties of the office, and his acts shall be as valid in law as if he had been duly commissioned.

Art. 6883. [7143] [4913] **Neglect to qualify.**—Whenever any person elected constable shall neglect or refuse to give bond

and take the official oath within twenty days after notice of his election, the office shall be deemed vacant. [Id.]

Art. 6884. [7144] [4914] Failure to give new bond.—Whenever any of the sureties of a constable shall die, remove permanently from the State or become insolvent, or are released from liability in accordance with law, or whenever the commissioners court shall deem the bond of any constable to be insufficient, said court shall cite said constable to appear at a time to be named in such citation, not less than ten nor more than thirty days after issuing such citation, and give a new bond, with good and sufficient security. If such constable shall neglect or refuse to appear and give such bond at the designated time, he shall cease to exercise the functions of his office, and shall be removed from office by the judge of the district court in the mode prescribed by law for the removal of county officers. [Id. Sec. 3; P. D. 982.]

Art. 6885. [7145] [4915] Duties in general.—Each constable shall execute and return according to law all process, warrants and precepts to him directed and delivered by any lawful officer, attend upon all justice courts held in his precinct and perform all such other duties as may be required of him by law. [Id. P. D. 987.]

Art. 6886. [7146] [4916] May summon posse.—When any constable shall meet with resistance in the execution of any lawful process, or in the arrest of offenders, he may call to his aid any citizen of the county who may be convenient; and any person who shall fail or refuse to obey such call may be fined as for a contempt by any justice of the peace, in a sum not exceeding ten dollars, on motion of such constable, three days' notice thereof having been given to the party accused. [Id. P. D. 986.]

Art. 6887. [7147] [4917] Failure to execute or return process.—If any constable shall fail or refuse to execute and return, according to law, any process, warrant, or precept to him lawfully directed and delivered, he shall be fined for a contempt, on motion of the party injured, before the court from which such process, warrant or precept issued, not less than ten nor more than one hundred dollars, with costs; which fine shall be for the benefit of the party injured. Said constable shall have ten days' notice of such motion. [Id. P. D. 990.]

Art. 6888. [7148] [4918] Failure to pay.—If any constable shall receive from any person any bonds, bills, notes or accounts for collection, and shall give his receipt therefor, in his official capacity, and shall fail to pay to such person, on demand, any amount he may have collected on the same, such constable and his sureties shall be responsible on his official bond for all such amounts as he may have collected on such bonds, bills, notes or accounts not paid over. [Id. P. D. 991.]

Art. 6889. [7149] [4919] Jurisdiction.—Every constable may execute any process, civil or criminal, throughout his county and elsewhere, as may be provided for in the Code of Criminal Procedure, or other law. [Id. Sec. 14; P. D. 993.]

TITLE 121.

STOCK LAWS.

| | | | |
|---------|--------------------------------------|---------|--|
| Chapter | Page | Chapter | Page |
| 1 | Marks and brands.....1971 | 6 | Stock running at large.....1990 |
| 2 | Protection of livestock.....1974 | 7 | Protection of stockraisers.....1996 |
| 3 | Slaughter and shipment.....1975 | 8 | Live Stock Sanitary Com- sion .....2007 |
| 4 | Estrays .....1978 | | |
| 5 | Stock law and limited range.....1982 | | |

CHAPTER ONE.

MARKS AND BRANDS.

| | | | |
|---------------------------------|---------|------------------------------------|---------|
| | Article | | Article |
| Owner's mark and brand..... | 6890 | Brands of minors | 6895 |
| County brands | 6891 | When branded | 6896 |
| Owner may use county brand..... | 6892 | Disputes settled | 6897 |
| Stock removed from county..... | 6893 | Marks and brands recorded..... | 6898 |
| To furnish lists | 6894 | Unrecorded brands as evidence..... | 6899 |

Art. 6890. [7151] [4921] **Owner's mark and brand.**—Every person who has cattle, hogs, sheep or goats shall have an ear mark and brand differing from the ear mark and brand of his neighbors, which ear mark and brand shall be recorded by the county clerk of the county where such animals shall be. No person shall use more than one brand, but may record his brand in as many counties as he deems necessary. [Acts 1848, p. 156; P. D. 4655; G. L. Vol. 3, p. 156.]

Art. 6891. [7152] [4922] **County brands.**—Each county shall have a brand for horses and cattle, said brand to be known and designated as the "county brand." The county brand of each county shall be as follows:

| County. | Brand. | County. | Brand. |
|-----------------|--------|---------------------|--------|
| Anderson | A.A. | Brown | B.W. |
| Andrews | A.N. | Burleson | B.U. |
| Angelina | A.L. | Burnet | B.T. |
| Aransas | A.R. | Caldwell | C.A. |
| Archer | A.H. | Calhoun | C.H. |
| Armstrong | A.M. | Callahan | C.L. |
| Atascosa | A.T. | Cameron | C.M. |
| Austin | A.U. | Camp | C.P. |
| Bandera | B.A. | Carson | C.R. |
| Bastrop | B.S. | Cass | C.S. |
| Bailey | B.I. | Castro | C.T. |
| Baylor | B.R. | Chambers | C.B. |
| Bee | B.E. | Cherokee | C.K. |
| Bell | B.L. | Childress | C.D. |
| Bexar | B.X. | Clay | C.Y. |
| Blanco | B.N. | Cochran | C.C. |
| Borden | B.D. | Coleman | C.E. |
| Bosque | B. | Collin | C.I. |
| Bowie | B.O. | Collingsworth | C.W. |
| Brazoria | B.D. | Colorado | C.N. |
| Brazos | B.Z. | Comal | C.O. |
| Briscoe | B.H. | | |

| County. | Brand. | County. | Brand. |
|------------|--------|------------|--------|
| Comanche | C.J. | Hardin | H.D. |
| Concho | C.V. | Harris | H.S. |
| Cooke | C.U. | Harrison | H.X. |
| Coryell | C.X. | Hartley | H.T. |
| Cottle | C.2. | Haskell | H.6. |
| Crockett | C.3. | Hays | H.Y. |
| Crosby | C.4. | Hemphill | H.M. |
| Dallam | D.L. | Henderson | H.E. |
| Dallas | D.A. | Hidalgo | H.G. |
| Dawson | D.N. | Hill | H.L. |
| Deaf Smith | D.S. | Hockley | H.K. |
| Delta | D.T. | Hood | H.O. |
| Denton | D.O. | Hopkins | H.P. |
| DeWitt | D.E. | Howard | H.R. |
| Dickens | D.I. | Houston | H.4. |
| Dimmit | D.M. | Hunt | H.U. |
| Donley | D.N. | Hutchinson | H.H. |
| Duval | D.D. | Jack | J. |
| Eastland | E.A. | Jackson | J.A. |
| Edwards | E.D. | Jasper | J.P. |
| Ellis | E.L. | Jefferson | J.E. |
| El Paso | E.P. | Johnson | J.H. |
| Erath | E.R. | Jones | J.O. |
| Falls | F.A. | Karnes | K. |
| Fannin | F.N. | Kaufman | K.A. |
| Fayette | F.E. | Kendall | K.E. |
| Fisher | F.I. | Kent | K.T. |
| Floyd | F.L. | Kerr | K.R. |
| Fort Bend | F.B. | Kimble | K.I. |
| Franklin | F.K. | King | K.N. |
| Freestone | F.R. | Kinney | K.O. |
| Frio | F.O. | Knox | K.X. |
| Galveston | G.A. | Lamar | L.A. |
| Gaines | G.I. | Lamb | L.M. |
| Garza | G.R. | Lampasas | L.P. |
| Gillespie | G.L. | La Salle | L.S. |
| Goliad | G.D. | Lavaca | L.C. |
| Gonzales | G.O. | Lee | L.E. |
| Gray | G.Y. | Leon | L.4. |
| Grayson | G.N. | Liberty | L.I. |
| Greer | G. | Limestone | L.T. |
| Gregg | G.G. | Lipscomb | L.B. |
| Grimes | G.M. | Live Oak | L.O. |
| Guadalupe | G.E. | Llano | L. |
| Hale | H. | Lubbock | L. K. |
| Hall | H.A. | Lynn | L.N. |
| Hamilton | H.I. | Madison | M.1. |
| Hansford | H.F. | Marion | M.2. |
| Hardeman | H.N. | Martin | M.4. |

| County. | Brand. | County. | Brand. |
|---------------|--------|--------------|--------|
| Mason | M.N. | San Jacinto | S.J. |
| Matagorda | M.R. | San Patricio | S.P. |
| Maverick | M.K. | San Saba | S.S. |
| McCulloch | M.C. | Scurry | S. |
| McLennan | M.L. | Shackelford | S.D. |
| McMullen | M. | Shelby | S.H. |
| Medina | M.A. | Sherman | S.N. |
| Menard | M.D. | Smith | S.T. |
| Milam | M.I. | Somervell | S.O. |
| Mitchell | M.H. | Starr | S.R. |
| Montague | M.E. | Stephens | S.E. |
| Montgomery | M.M. | Stonewall | S.L. |
| Moore | M.O. | Swisher | S.I. |
| Morris | M.S. | Tarrant | T.A. |
| Motley | M.T. | Taylor | T.E. |
| Nacogdoches | N.S. | Terry | T. |
| Navarro | N.A. | Throckmorton | T.H. |
| Newton | N. | Titus | T.I. |
| Nolan | N.O. | Tom Green | T.G. |
| Nueces | N.E. | Travis | T.S. |
| Ochiltree | O.H. | Trinity | T.R. |
| Oldham | O.O. | Tyler | T.L. |
| Orange | O. | Upshur | U.P. |
| Palo Pinto | P.P. | Uvalde | U. |
| Panola | P.A. | Van Zandt | V. |
| Parmer | P.R. | Victoria | V.I. |
| Parker | P.K. | Walker | W.K. |
| Pecos | P. | Waller | W. |
| Polk | P.K. | Washington | W.N. |
| Potter | P.O. | Webb | W.E. |
| Presidio | P.R. | Wharton | W.T. |
| Rains | R. | Wheeler | W.H. |
| Randall | R.A. | Wichita | W.A. |
| Red River | R.R. | Wilbarger | W.R. |
| Refugio | R.E. | Williamson | W.I. |
| Roberts | R.S. | Wilson | W.L. |
| Robertson | R.O. | Wise | W.S. |
| Rockwall | R.L. | Wood | W.O. |
| Runnels | R.N. | Yoakum | Y. |
| Rusk | R.K. | Young | Y.O. |
| Sabine | S.B. | Zapata | X. |
| San Augustine | S.A. | Zavalla | X.X. |

[Acts 1883, p. 76; G. L. Vol. 9, p. 382.]

Art. 6892. [7153] [4923] **Owner may use county brand.**—
The owners of all horses and cattle, in addition to their private brand, may place said county brand upon the neck of all horses and cattle owned by them. [Id.]

Art. 6893. [7154] [4924] **Stock removed from county.**—
Whenever any horses or cattle branded with the county brand

are removed to another county, the owners of such stock may counterbrand with said county brand, and a bar under said county brand shall be used and known as the "County brand," and when so counterbranded the brand of the county in which said stock may be newly located may be placed on said stock. [Id.]

Art. 6894. [7155] [4925] **To furnish lists.**—The Secretary of State shall furnish a printed list of the county brands to the county clerks of this State, who shall securely post the same in their office. [Id.]

Art. 6895. [7156] [4926] **Brands of minors.**—Minors owning cattle or hogs, separate from that of the father or guardian, may have a brand and mark, which shall be recorded. The father or guardian shall be responsible for the proper use of such mark and brand of any such minor. [Acts 1848, p. 156; P. D. 4660; G. L. Vol. 3, p. 156.]

Art. 6896. [7157] [4927] **When branded.**—Cattle shall be marked with the ear mark or branded with the brand of the owner on or before they are twelve months old; hogs, sheep, and goats shall be marked with the ear mark of the owner on or before they are six months old. [Id. P. D. 4656.]

Art. 6897. [7158] [4928] **Disputes settled.**—If any dispute shall arise about any ear mark or brand, it shall be decided by reference to the book of marks and brands kept by the county clerk, and the ear mark and brand of the oldest date shall have the preference. [Id. P. D. 4657.]

Art. 6898. [7159] [4929] **Marks and brands recorded.**—The clerks of the county courts in their respective counties shall keep a well bound book, in which they shall record the marks and brands of each individual who may apply to them for that purpose, noting in every instance the date on which the brand or mark is recorded. [Id. P. D. 4658.]

Art. 6899. [7160] [4930] **Unrecorded brands as evidence.**—No brands, except such as are recorded as provided in this chapter, shall be recognized in law as any evidence of the ownership of the cattle, horses, or mules, upon which the same may be used; provided, that this shall not apply in criminal cases. [Acts 1848, p. 156; P. D. 4659; G. L. Vol. 3, p. 156; Acts 1913, p. 129.]

CHAPTER TWO.

PROTECTION OF LIVE STOCK.

Art. 6900. [7161] [4931] **Glanders.**—If it comes to the knowledge of any county judge, by affidavit of any credible citizen of his county, stating that affiant has reason to believe and does believe that glanders or farcy exists among any horses, mules, jacks or jennets in said county, naming owner or owners of such animal or animals so infected, if known, if unknown, so stating, such county judge, upon the filing of said affidavit, shall immediately appoint three disinterested and intelligent citi-

zens of said county, who shall carefully and minutely examine said animal or animals so reported to be diseased with glanders or farcy; said three citizens, before entering upon the duties required of them by this chapter, shall take an oath that they will discharge their duties as prescribed by this chapter in a fair and impartial manner. [Acts 1st. C. S. 1892, p. 11; G. L. Vol. 10, p. 375.]

Art. 6901. [7162] [4932] Report as to disease.—If, after carefully and minutely examining each animal so reported to be affected with glanders or farcy, said three citizens shall be of the opinion that said animal is diseased with glanders or farcy, they shall condemn the same; and appraise each animal so condemned, at their just and full value at the time of such examination and condemnation, forthwith reporting their action in writing to the county judge, stating the number of animals condemned, the owner of same if known, and if unknown so stating it, with the appraised value of same. If the said citizens have any reasonable doubt as to the diseased animals being affected with glanders or farcy, before condemning as above provided for, they shall require the owner or owners to have said diseased animals separated from contact with all other animals subject to contagion, for a reasonable time. When they are fully satisfied that the disease is glanders or farcy, then they shall proceed to condemn and destroy said animals as provided for in this article. [Id.]

Art. 6902. [7163-4] Condemned animals killed. — The county judge upon the receipt of said report shall issue his order to the sheriff or any constable of his county commanding him to seize said diseased animals and take same to some secluded place and kill them and bury or burn the carcass. After said animals are killed, the owner thereof may present his claim to the commissioners court of the county where the same were killed, for the value, if any, of each animal at the time the same was killed. The amount of such claim, or so much thereof as may be allowed by said court, shall be paid out of the general revenue of the county, as other claims against such county. The sheriff or constable killing, burying or burning said animal or animals shall be paid by the county such sum as the commissioners court thereof may determine the service worth. [Acts 1899, p. 303.]

CHAPTER THREE.

SLAUGHTER AND SHIPMENT.

| | | | |
|-------------------------------|---------|--------------------------|---------|
| | Article | | Article |
| Bill of sale | 6903 | Register of cattle | 6907 |
| Butchers to report | 6904 | Bond of butcher | 6908 |
| Recorded before driving | 6905 | Inspector's record | 6909 |
| Sworn descriptive lists | 6906 | Counties exempt | 6910 |

Art. 6903. [7170-1-2] Bill of sale.—Upon the sale or transfer of any horse, mare, mule, gelding, colt, jack, jennet, cow, calf, ox, or beef steer by any person in this State, the actual delivery of such animals shall be accompanied by a written trans-

fer to the purchaser from the vendor, or party selling, giving the number, marks and brands of each animal sold and delivered. Upon the trial of the right of property in any such animal, the possession of such animal without said written transfer shall be prima facie illegal. Persons may dispose of stock animals of any said kind as they run in the range, by the sale and delivery of the brands and marks; and in every such sale the purchaser, in order to acquire title thereto, shall have his conveyance or bill of sale of such stock, recorded in the county clerk's office, in a book to be kept by him for that purpose; and such sale or transfer shall be noted on the record of original marks and brands in the name of the vendee or purchaser. [Acts 1866, p. 223; G. L. Vol. 5, p. 1141.]

Art. 6904. [7173] [4943] **Butchers to report.**—Each person in this State engaged in the slaughter and sale of animals for market shall make a regular sworn report to each regular meeting of the commissioners court of the county, giving the number, color, age, marks and brands of every animal slaughtered by him since the last term of said court, to be filed with and kept on file by the county clerk. Each said report shall be accompanied by the bill of sale or written conveyance to the butcher for every animal that he has purchased for slaughter. If any of the animals slaughtered have been raised by himself it shall be so stated in the report. Said report so made to said court may in the discretion of said clerk be destroyed after a period of five years. [Acts 1907, p. 239.]

Art. 6905. [7175] [4944] **Recorded before driving.** — Any person who shall purchase animals of any class named in Article 6903, for the purpose of driving to market out of the county where purchased, or out of the State, shall, before moving the animals out of the county where purchased, deposit with the county clerk for record, a bill of sale and correct list of the number, marks, brands and kind of animals, signed and acknowledged by each vendor, which, together with the address of the vendee, shall be recorded in the book kept by the clerk for that purpose, and with his certificate of record under seal shall be returned to the purchaser upon payment of the recording fees. [Acts 1866, p. 223; G. L. Vol. 5, p. 1141.]

Art. 6906. [7176] [4945] **Sworn descriptive lists.**—Persons intending to drive their own stock raised by themselves to market out of the county where raised, or out of the State, shall, before so driving, deposit with the county clerk for record a correct list of such animals, with a particular description of their marks and brands, verified by their own affidavit; which list said clerk shall record and certify and return to the owner. [Id.]

Art. 6907. [7177-8] **Register of cattle.**—The commanders or agents of all vessels and the agents of all railroads on which cattle are exported from the State, and the proprietors or agents of all establishments for the slaughter of cattle within the State,

shall keep a register of all cattle shipped or slaughtered, with the marks, brands and general description of such animals, and the names of the persons shipping or selling the same, the dates of their shipments or purchase, and the county from which they were driven. Such register on the first day of each month shall be deposited with the county clerk of the county where the cattle were shipped or slaughtered. Said clerk shall at once copy the same in a well bound book to be kept for that purpose, and return the original to the party depositing it. [Acts 1850, p. 27; G. L. Vol. 3, p. 809; P. D. 460.]

Art. 6908. [7179] [4948] **Bond of butcher.**—Every person, before he shall set up and carry on the trade or occupation of a butcher or slaughterer of cattle in this State, shall file a bond to be approved by the county judge of the county in which he desires to carry on the business, in a sum not less than two hundred nor more than one thousand dollars, payable to the State of Texas, conditioned that he shall keep a true and faithful record in a book kept for that purpose of all cattle purchased or slaughtered by him, with a description of the animal including marks, brands, age, color, weight, and from whom purchased and the date thereof; that he will have the hide and ear of such animal inspected by the inspector, or some magistrate of the county, within twenty days after it is slaughtered, and that he will not purchase any cattle that has been slaughtered by another unless the hide and ears of such slaughtered animal accompany said animal offered for sale, and that he will not purchase any animal that has been slaughtered by another when the ear marks, or brands on the hide accompanying such animal, when offered for sale, have been changed, mutilated or destroyed. Any butcher or slaughterer of cattle who shall violate any condition of said bond may be sued upon his bond at the instance of the county or district attorney of the county where such bond is given. All sums recovered by suits upon said bonds shall be paid into the county treasury and become a part of the available school fund of such county. [Acts 1893, p. 38; G. L. Vol. 10, p. 468.]

Art. 6909. [7183] [4952] **Inspector's record.**—The inspector or magistrate shall keep a record of the marks, brands, color and general description of such hides, and for whom inspected, with the date of inspection, and return a copy of the same to the county clerk of the county in which it was inspected within thirty days after said inspection. Said inspector or magistrate shall be entitled to receive ten cents for each hide so inspected, to be paid by the party having the hide inspected. [Id.]

Art. 6910. [7184] [4953] **Counties exempt.**—The provisions of the two preceding articles shall not apply to the following counties: Anderson, Angelina, Austin, Bandera, Bastrop, Bell, Bexar, Blanco, Bowie, Brazos, Burleson, Caldwell, Calhoun, Camp, Cass, Chambers, Cherokee, Clay, Collin, Colorado, Comal, Comanche, Dallas, Delta, Denton, DeWitt, Ellis, Falls, Fannin,

Fayette, Franklin, Freestone, Galveston, Gillespie, Goliad, Gonzales, Grayson, Gregg, Grimes, Guadalupe, Hardin, Harris, Harrison, Hays, Henderson, Hill, Hopkins, Houston, Hunt, Jasper, Johnson, Karnes, Kaufman, Kendall, Kerr, Kimball, Lamar, Lavaca, Lee, Leon, Liberty, Limestone, Llano, Madison, Marion, Mason, McLennan, Milam, Montgomery, Morris, Nacogdoches, Navarro, Newton, Palo Pinto, Panola, Polk, Rains, Robertson, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Smith, Sutton, Tarrant, Titus, Travis, Trinity, Tyler, Upshur, Van Zandt, Walker, Waller, Washington, Williamson, Wood. Acts 1917, p. 358.]

CHAPTER FOUR.

ESTRAYS.

| | Article | | Article |
|------------------------------|---------|--------------------------------------|---------|
| Who may take up | 6911 | Returns of sales | 6920 |
| Appraisalment and bond | 6912 | Taker-up liable | 6921 |
| Proof of ownership | 6913 | Taker-up may use | 6922 |
| No pay for takers-up | 6914 | If estray dies | 6923 |
| Commissioner to return | 6915 | Proceeds of sale | 6924 |
| Advertisement | 6916 | If taker-up refuses to deliver | 6925 |
| Property in estrays | 6917 | Owner may reclaim money | 6926 |
| Sale day | 6918 | Notice of estray | 6927 |
| Other estrays | 6919 | | |

Art. 6911. [7185-90] Who may take up.—When any stray horse, mare, gelding, filly, colt, mule, jack, jennet, or work ox shall be found on the land of any citizen or his lessee for one year or more, such citizen or his lessee may forthwith advertise the same, describing the animal's color and specifying the marks and brands, if any, also giving the age and flesh marks of every kind, at three public places in the county in which he resides, one of which notices shall be at the courthouse door, for at least twenty days, and shall also deliver to the county clerk a copy of said notice which shall be by him securely posted up in his office; after the expiration of which time, if no owner apply, the taker-up of said animal or animals shall appear before some justice of the peace in said county and estray the same. No animal so taken up shall be used for any purpose until the party shall have given bond as required by the succeeding article. [Acts 1866, p. 54; G. L. Vol. 5, p. 972.]

Art. 6912. [7186-92-93] Appraisalment and bond.—Any citizen so entitled to estray any animal shall make affidavit before said justice of the peace that the animal which he proposes to estray was taken upon his plantation, or on his lands adjoining the same; that the marks and brands thereof have not been altered or disfigured since the same was taken up; that notice has been given as the law requires, and that no owner has been found; whereupon the said justice shall file said affidavit and shall cause to appear before him, by summons or otherwise, two disinterested householders of his county, who are in no way related to the person estraying, commanding them, after being sworn, to value and appraise the same and certify under oath attested by said justice the valuation, together with a particular description of the animal, including height, marks, brands, color

and age. Said justice shall thereupon require of the taker-up a bond with two or more good and sufficient sureties, in double the value of such animal or animals, payable to the county judge of the county, conditioned that the taker-up shall comply with the provisions of this chapter, which bond, affidavit and appraisal shall be sent by such justice to the county clerk within twenty days thereafter, for which said justice shall receive the same fees that are allowed for similar services by law. Said clerk shall record said papers so sent to him in a separate book to be kept for that purpose, for which he shall be entitled to collect the same fees allowed by law for similar services to be paid in all cases by the taker-up. When two or more animals are taken up at the same time by the same person, they shall be included in the same entry, and said justice and said clerk shall receive no more fees including posting and advertising, than for one such animal. [Id.]

Art. 6913. [7187-8] Proof of ownership. — At any time within twelve months, and before the sale of any estrays, it shall be lawful for the owner of any such stray to prove his property by the affidavit of any respectable witness, which shall specify a particular description of the animal claimed, including the kind, marks, brands, height, color and age of the same. This affidavit shall be delivered to the taker-up and by him filed in the office of the county clerk of such county, and on the delivery of such affidavit and the payment of all costs incurred in posting such stray to the taker-up, such owner shall be entitled to demand and receive the animal. When the respectability of said witness is not known to the officer administering the oath, the party claiming the stray shall produce satisfactory evidence of the respectability of such witness, certified to by a notary public, county clerk or county judge of the county in which such witness resides. [Id. P. D. 6812.]

Art. 6914. [7189] [4958] No pay for taker-up.—If the owner of any animal which has been so duly estrayed, be a resident citizen of the county in which it has been estrayed, and shall have had his mark and brand recorded in said county, and the animal so estrayed shall be in the mark and brand of the owner at the time it was taken up, then and in that case the taker-up shall not be entitled to receive any compensation for expense incurred in estraying said animal. [Id.]

Art. 6915. [7191] [4960] Commissioner to return.—If any estrays of any kind shall be found running at large and not estrayed, and the owner of the same be unknown, any county commissioner shall return the same, with a full description thereof, to the county clerk of his county, who shall advertise the same as specified in this chapter. If such animal shall not be proven away by the owner within the time allowed by law the commissioner returning the same, or his successor in office, shall proceed to sell such animals and report the sale thereof to said county clerk, and after paying the clerk's fee

and retaining twenty per cent of the proceeds of such sale, he shall pay the remaining sum into the county treasury. [Id. P. D. 6813.]

Art. 6916. [7194] [4963] Advertisement.—The county clerk shall cause a statement of the appraisement and a description of the animals so estrayed to be advertised at least three times in some newspaper published in the county where such animal was estrayed, if there be one; and if none, then the clerk shall cause the same to be advertised in the newspaper nearest to the county, and also by posting up notices at three public places in the county, one of which shall be at the courthouse door thereof. The printer of such notice shall furnish the said clerk with a copy of the paper containing said notice. For such publication the printer shall be entitled to receive two dollars from the party estraying the same. Said clerk shall file and preserve said copy in his office. [Id.]

Art. 6917. [7195-6] Property in estrays.—The property of every stray horse, mare, gelding, filly, colt, mule, jack, jennet or work ox taken up as aforesaid and not proven away within twelve months after such appraisement shall be deemed vested in the county wherein such stray or estrays may have been posted, and the taker-up shall immediately thereafter proceed to sell the same for cash to the highest bidder at the courthouse door of the county, after giving notice of the same as required in the case of sheriff's sale. Within ten days after such sale, he shall, after deducting the expenses incurred in estraying said animals, pay into the county treasury seventy-five per cent of the proceeds of the same, and retain the other twenty-five per cent for his own use. Whenever a sale of an estray shall be made according to the provisions of this article, the taker-up shall make a return of such sale, duly sworn to by him, to the county clerk of the county in which the sale was made, who shall file the same in his office. [Id.]

Art. 6918. [7197] [4966] Sale day.—All sales of estrays, horses, mares, fillies, geldings, colts, mules, jacks, jennets, or work oxen shall be made on the first Monday in the month, and between the hours of one and three o'clock p. m. of said day. [Id.]

Art. 6919. [7198-9] Other estrays.—Any citizen taking up any stray hogs, sheep, goats or cattle, other than work oxen, shall proceed in the same manner as is required in the case of horses, etc., except advertising in a newspaper; and any person estraying the same, at the expiration of six months from the day of appraisement, shall proceed to give notice as in the case of sheriff's or constable's sales, and sell such estrays where they were taken up; provided, there be not less than three adult bidders in attendance at said sale, beside the family of the taker-up. No animal enumerated in this article except work oxen, shall be subject to be estrayed, unless the same shall have been known to the taker-up as being an estray for at least four months

previous to the time of estraying the same. [Id. Acts 1899, p. 234.]

Art. 6920. [7200] [4969] **Returns of sales.**—In making the returns of sales under this chapter, when the sale has been made at the residence of the taker-up or other place than at the courthouse door of the county, the taker-up shall, in all cases, give the names of at least three of the bidders who were present at said sale, who were not members of his family. [Acts 1866, p. 54; P. D. 6817; G. L. Vol. 5, p. 972.]

Art. 6921. [7201] [4970] **Taker-up liable.**—If any person estraying an animal enumerated in this chapter shall send or take away the same out of the county in which the same was taken up and estrayed, or sell or otherwise dispose of the same, he and his sureties shall be liable upon their bond in an action for damages in favor of the party injured. [Id. P. D. 6818.]

Art. 6922. [7202] [4971] **Taker-up may use.**—The taker-up of an estray may use the same in moderation, after having executed bond as provided in this chapter, but should he abuse or injure the same, he and his sureties shall be liable upon his bond in damages for such abuse or injury, and may be sued therefor by the owner for his own use, or by the county judge for the use of the county.

Art. 6923. [7203] [4972] **If estray dies.**—Whenever an estray animal shall be found dead, or shall escape, the taker-up shall without delay, make a written sworn report thereof to the county clerk; which report shall be recorded by said clerk in a book to be kept by him for that purpose. Any person who shall make a false report shall be liable on his bond, together with his sureties, for the value of the animal or animals estrayed. [Id. P. D. 6819.]

Art. 6924. [7204] [4973] **Proceeds of sale.**—All moneys arising from the sales of estrays, under the provisions of this chapter, shall be paid to the county treasurer, and shall be by him applied exclusively to the jury fund of the county. [Id. P. D. 6820.]

Art. 6925. [7205] [4974] **If taker-up refuse to deliver.**—If any person having in charge an estray shall refuse to deliver the same to the owner thereof, on his complying with the provisions of this chapter, such owner shall be entitled to action therefor with damages. [Id. P. D. 6821.]

Art. 6926. [7206] [4975] **Owner may reclaim money.** At any time within twelve months after the sale of any estray made under the provisions of this chapter, the owner of such estray may apply to the county treasurer of the county in which such estray has been sold, and upon proof of such ownership shall be entitled to receive from said treasurer the amount deposited on account of such sale, after paying such costs as may be necessary to establish his right thereto. [Id. P. D. 6822.]

Art. 6927. [7207-8] **Notice of estray.**—Whenever any person shall stray any animal on which any county brand may

be found, the county clerk of the county in which said estray may be shall immediately send a notice containing a full description of said animal, together with the marks and brands, to the county clerk of the county to which the county brand may belong; and the county clerk of said county brand shall record said notice in a book kept for that purpose, and post the same on the courthouse door; and shall ascertain from his record of brands to whom said animal may belong, and notify said owner by letter or otherwise. For such services he shall be entitled to a fee of one dollar from said owner; and the county clerk furnishing the notice shall be entitled to a fee of one dollar from said owner. Any county clerk who shall fail to send a notice as required by this article, shall become liable to the original owner of said estray in an amount equal to the value of said estray. [Acts 1883, p. 78; G. L. Vol. 9, p. 384.]

CHAPTER FIVE.

STOCK LAW AND LIMITED RANGE.

1. GENERAL PROVISIONS.

| | | | |
|--------------------|-----------------|-------------------|-----------------|
| General provisions | Article 6928 | Combined election | Article 6929 |
|--------------------|-----------------|-------------------|-----------------|

Art. 6928. **General provisions.**—The following rules shall govern any election held under any provision of this chapter for either of the purposes named in this chapter:

1. If the election be for a subdivision of the county, the county judge, at the time he issues the order for such election, shall appoint proper persons as managers of said election, all of whom shall be freeholders of the county and qualified voters; and such managers may appoint their own clerks.
2. Said election shall be held at the usual voting places in the several election precincts if the election is ordered for the whole county; but if the election is ordered for any particular subdivision, the county judge shall designate the particular places in such subdivision at which the polls shall be opened.
3. Only persons who are freeholders and qualified voters under the Constitution and laws shall vote at said election.
4. On or before the tenth day after any said election, the persons holding such election shall make due returns to the county judge of all votes cast at their respective voting places for and against the proposition or propositions submitted at said election. [Acts 1876, p. 150; G. L. Vol. 8, p. 986; Acts 1919, p. 149.]

Art. 6929. **Combined elections.**—When an election is called for any county or subdivision thereof for the purpose of voting upon the question of the adoption of the stock law or any part thereof, under the provisions of this chapter, if such county or subdivision has not already in operation the stock law or any part thereof under the provisions of this chapter, it shall be lawful to submit at the same time and at the same election

the question of the limited period of free range for hogs, as provided for in this chapter, but said proposition must be submitted and voted upon as a separate proposition, and the votes cast therein, and the returns thereof, and the judge's proclamation thereon, must be separate and distinct from that of the stock law proposition voted on at such election. [Acts 1919, p. 149.]

2. STOCK LAW ELECTIONS.

| | | | |
|-------------------------------------|------|------------------------------------|------|
| To order election | 6930 | Fees and damages | 6939 |
| Territory between subdivisions..... | 6931 | Stock sold | 6940 |
| Requisites of petition | 6932 | Subsequent elections..... | 6941 |
| Election ordered | 6933 | Lawful fence | 6942 |
| Order and notice | 6934 | Stock not to be injured | 6943 |
| Manner of voting..... | 6935 | No election within two years | 6944 |
| Returns of election | 6936 | Proclamation issued | 6945 |
| Proclamation of result | 6937 | Elections validated | 6946 |
| Stock impounded | 6938 | | |

Art. 6930. [7209] [4978] **To order election.**—Upon the written petition of fifty freeholders of any county, or upon the petition of twenty freeholders of any subdivision of a county, the commissioners court of such county shall order an election to be held in said county or subdivision, on some day named in the order, for the purpose of enabling the freeholders of such county or subdivision to determine whether hogs, sheep or goats shall be permitted to run at large in such county or subdivision. [Const. Art. 16, Sec. 23; Acts 1876, p. 150; G. L. Vol. 8, p. 986; Acts 1909, p. 164.]

Art. 6931. [7210-7234] **Territory between subdivisions.**—Whenever there is territory between two subdivisions of a county which have adopted a stock law, or when there is territory adjoining a subdivision which has adopted a stock law, and in such territory there are less than fifty freeholders, an election shall be ordered on a petition of a majority of the freeholders residing in such territory; and the election shall be held as provided by law in other cases relating to the adoption of the stock law. If there be less than twenty freeholders in such intervening or adjoining territory, then on the petition of a majority of the owners of the land to the commissioners court, the said commissioners court shall issue an order extending the stock law to said territory and the same shall be included in the territory of such adjoining subdivision; in cases where there are no freeholders on such intervening or adjoining territory, then on the petition of the owner or owners of the land to the commissioners court, the said court shall issue an order extending the stock law to said territory, and the same shall be included in the territory of such adjoining subdivision; and any person or persons who own lands adjoining any other lands which have been added to territory in which a stock law prevails, shall have the same right, and, on petition of the owner or owners of such lands to the said court, the said court shall issue an order extending the stock law to said territory, and the same shall be included in the territory of such adjoining subdivision. [Acts 1899, p. 80; Acts 1907, p. 150; Acts 1915, p. 206.]

Art. 6932. [7211] [4980] **Requisites of petition.**—Such petition shall set forth clearly the class or classes of animals enumerated in the preceding articles which the petitioners desire shall not run at large in such county or subdivision. If the petition be from the freeholders of a subdivision of any county, such subdivision shall be particularly described and the boundaries thereof designated. [Acts 1876, p. 150; G. L. Vol. 8, p. 986.]

Art. 6933. [7212] [4981] **Election ordered.**—Upon the filing of such petition, the commissioners court, at its next regular term thereafter, shall order an election to be held throughout the county, or the particular subdivision thereof, as the case may be, on a day to be designated in the order, not less than thirty days from the date of such order. [Id.]

Art. 6934. [7213-14] **Order and notice.**—Immediately after the passage of an order for an election by the commissioners court, the county judge shall issue an order for such election and cause public notice thereof to be given for at least thirty days before the day of election, by publication of the order therefor in some newspaper published in the county; but if no newspaper be published in the county, then by posting copies of such order at the courthouse door, and at some public place in each justice's precinct, if the election be ordered for the whole county, or at three public places in the subdivision, if the election be ordered for a subdivision. The order of the county judge shall specify:

1. The petition and the action of the commissioners court.
2. The class of animals it is proposed shall not run at large.
3. The territorial limits to be affected.
4. The day of election.
5. The places at which polls are to be opened. [Id.]

Art. 6935. [7218] [4987] **Manner of voting.**—All votes at any such election shall be by ballot; and voters desiring to prevent the animals designated in the order from running at large shall place upon their ballots the words, "For the stock law," and those in favor of allowing such animals to run at large shall place upon their ballots the words, "Against the stock law."

Art. 6936. [7220] [4989] **Returns of election.**—The returns shall be opened, tabulated and counted by the commissioners court of the county in the same manner as provided for all general elections in this State. [Acts 2nd C. S. 1919, p. 150.]

Art. 6937. [7221] [4990] **Proclamation of result.**—If a majority of the votes cast at such election shall be "For the stock law," the county judge shall immediately issue his proclamation declaring the result; which proclamation shall be posted at the courthouse door, and after the expiration of thirty days from its issuance it shall be unlawful to permit to run at large within the limits designated any animal of the class mentioned in said proclamation. [Acts 1876, p. 150; G. L. Vol. 8, p. 986.]

Art. 6938. [7222-23] **Stock impounded.**—If any stock forbidden to run at large shall enter the inclosed lands, or shall, without being herded, roam about the residence, lots or culti-

vated land of any person, other than the owner of such stock, without his consent, in any county or subdivision in which the provisions of this subdivision have become operative in the manner provided in the preceding articles, the owner, lessee or person in lawful possession of such lands may impound said stock and detain the same until his fees and all damages occasioned by said stock are paid to him. No animals shall be impounded unless they have entered upon the inclosed lands or shall be found roaming about the residence, lots, or cultivated land of another; and whenever any stock is impounded notice thereof shall at once be given to the owner, if known, and such owner shall be entitled to their possession upon payment of fees and damages. [Acts 1887, p. 56; G. L. Vol. 9, p. 854.]

Art. 6939. [7224-5] **Fees and damages.**—Any owner, lessee, or person in lawful possession of inclosed lands shall be entitled to the following fees for impounding stock, to-wit: Ten cents per day per head for hogs, ten cents per day per head for goats, and five cents per day per head for sheep. The damages done by such stock, if any, may be assessed by any three disinterested freeholders of the subdivision in which said stock is taken up, who shall upon the application of the taker-up of the stock be appointed by the justice of the peace of the precinct in which such subdivision is situated. Where said justice shall fail or refuse to make such appointment, or where the stock law has been adopted by an entire county, said freeholders shall be appointed by the county judge of the county. Said freeholders, after being duly sworn to discharge with impartiality the duties devolving upon them by said appointment, shall proceed after hearing the evidence to determine whether or not any trespass prohibited by the provisions of this law has been committed, and to ascertain the damages, if any, occasioned thereby, and the fees due to the taker-up of the stock by reason of said trespass, and shall make an assessment of damages and fees, in writing, and signed by said freeholders, or two of them, and verified by the affidavit of said freeholders, to the effect that said assessment is just and that they have no bias in favor of or prejudice against any party interested therein, and shall file said assessment with said justice, which shall be final; provided, that the owner of the stock, if known, shall have five days' notice of the time and place of the meeting of said freeholders, and if the owner is unknown then a written notice thereof shall be posted in two public places in said subdivision, and one at the door of the courthouse of the county; and provided, further, that nothing in this law shall be construed to deprive the taker-up of the stock to enforce by suit in a court of competent jurisdiction any claim he may have for such fees and damages, and to subject the stock so taken for the payment of the same under the provisions of this law. After the filing of the assessment, as provided for in this article, the constable of the precinct shall sell such stock at public auction for cash, after having given notice of such sale

as in constable's sales of personal property, and apply the proceeds of such sale, after deducting the expenses thereof, to the satisfaction of said fees and damages, and shall pay the balance, if any remains, to the owner of such stock. The justices and constables shall receive for their services the same compensation as is allowed for like services in civil cases. [Acts 1895, p. 84; G. L. Vol. 10, p. 814.]

Art. 6940. [7226] [4995] **Stock sold.**—If no owner can be found of stock so impounded, the taker-up may make affidavit before a justice of the peace of the county, describing the stock impounded by him, and that the owner is unknown to affiant, which affidavit shall be forthwith delivered to the county clerk by such justice, to be kept in his office for inspection. After the filing of such assessment, the constable of the precinct shall sell such stock as in case where the owner is known; and, if anything remains after satisfying the expenses of said sale and the fees and damages due to the taker-up, he shall report the same under oath to the county clerk, and pay the same over to the county treasurer, to be received and disbursed by him, as in case of sales of estrays; or the taker-up may at his option, after the expiration of five days, stray such stock, according to the laws regulating estrays in this State. [Id.]

Art. 6941. [7228] [4997] **Subsequent elections.**—Whenever an election is held under the provisions of this law for any county or subdivision, and the proposition for a stock and fence law, as herein provided, is defeated, no other election for such purpose shall be held within that locality for the space of twelve months thereafter. But the defeat of the proposition for a county shall not prevent another election from being held immediately thereafter for any subdivision of such county; nor shall a defeat of the proposition for any subdivision prevent an election from being held immediately thereafter for the entire county. [Acts 1876, p. 150; G. L. Vol. 8, p. 986.]

Art. 6942. [7227-29-31] **Lawful fence.**—Should any stock not permitted to run at large enter any inclosure of any owner or lessee of land, entitled to the benefit of this law, without his consent, it shall be lawful for the owner or lessee of said inclosure to impound said stock; and it shall be the duty of the owner or lessee of said land to give notice immediately to the owner of said stock of their impounding and detention; and the owner of said stock shall be entitled to the possession of his stock on payment of expenses incurred in impounding and keeping said stock; provided, that in such county or subdivision said owners or lessees shall not be required to fence against the stock not permitted to run at large; and any fence in said county or subdivision which is sufficient to keep out ordinary stock permitted to run at large under this chapter shall be deemed a lawful fence. Three barbed wires with posts not more than thirty feet apart, and one or more stays between them or pickets four feet high and not more than six inches apart, shall constitute a

lawful fence. If boards or rails are used, then three boards to be not less than five inches wide and one thick, or four rails shall constitute a lawful fence; provided, that all fencing built under the provision of this chapter shall be four feet high. Nothing in this subdivision shall prevent the freeholders of any county or subdivision of a county where the stock law prevails from deciding by a majority vote whether or not three barbed wires without a board shall constitute a lawful fence in such county or subdivision thereof; the election for such purpose to be conducted in the same manner and under the same rules as elections provided for in this chapter governing the passage of the stock law. [Id. Acts 1879, p. 66; G. L. Vol. 8, p. 1366; Acts 1901, p. 290.]

Art. 6943. [7230] [4999] **Stock not to be injured.**—If any person whose fence is insufficient under this law shall, with guns, dogs or otherwise, maim, wound or kill any cattle, or any horse, mule, jack or jennet, or procure the same to be done, such person or persons so offending shall give full satisfaction to the party injured for all damages by such person or persons sustained, to be recovered as in other suits for damages; provided, that this article shall not be so construed as to authorize any person in any event to maim, kill or wound any horse, mule, jack, jennet or cattle belonging to another. When a trespass has been committed by any cattle or horses on the cleared or cultivated land of any person who has complied with the provisions of this chapter, in the erection of a lawful fence, such person may complain thereof to the justice of the peace of the precinct in which such trespass shall have been committed; and such justice is hereby authorized and required to cause two disinterested and impartial freeholders to be summoned, who shall on oath view and examine whether such complaint be sufficient or not, and what damages have been sustained by said trespass, and certify the same in writing; and, if it shall so appear that said fence be sufficient, then the owner of such cattle or horses shall make just satisfaction for the trespass to the party injured, to be recovered before any tribunal having proper jurisdiction. In case of a second trespass by the same cattle or horses, the owner or lessee of the premises upon which the trespass is committed may, if he deem it necessary for the protection and preservation of his premises or growing crops thereon, cause said stock to be penned and turned over to the sheriff or constable, and held responsible to the person damaged for all damages caused by said stock and all costs thereof. It shall be lawful for the owner or lessee of such inclosures as are contemplated in this law to charge twenty-five cents per day per head for impounding such stock as referred to in this law. [Id.]

Art. 6944. [7232] **No election within two years.**—After the adoption of the stock law in any county or subdivision, no election under the preceding articles shall be held within the same prescribed limits in less than two years after an election

under this law has been held therein; but at the expiration of that time the commissioners court of each county in the State, whenever petitioned to do so by a majority of the freeholders, who are qualified voters under the constitution and laws of a county which has formerly adopted the stock law, or by a majority of the freeholders who are qualified voters under the constitution and laws of the subdivision of a county which has formerly adopted the stock law, shall order another election to be held by the freeholders who are qualified voters under the constitution and laws of such county, or subdivision, to determine whether hogs, sheep and goats shall be permitted to run at large in said county or subdivision, which election shall be ordered, held, notice thereof given, the votes returned and counted in all respects as provided by this law for a first election. [Acts 1899, p. 81.]

Art. 6945. [7233] **Proclamation issued.**—If, in a county or subdivision which has formerly adopted the stock law, a majority of the legal votes cast at such election shall be “Against the stock law,” the county judge shall immediately issue his proclamation declaring the result; which proclamation shall be posted at the courthouse door, and after the expiration of one hundred and eighty days from its issuance it shall be lawful to permit to run at large, within the limits designated, any animal of the class mentioned in said proclamation; if a majority of the legal votes cast at such election shall be “For the stock law,” he shall so state in his proclamation, and the operation of the law shall be in no way affected by such election. [Id.]

Art. 6946. **Elections validated.**—All elections held in any county in this State for the purpose of determining whether or not hogs, sheep, or goats shall be permitted to run at large in such county or subdivision as provided in this chapter, wherein the petition was filed, orders of the election made by the commissioners court, notice thereof given, such election held and a majority of the freeholders voting at such election, voted in favor of the same, and such election may have been invalidated by the failure of some ministerial officer to perform the duties required of him, the same is hereby in all things validated, and shall be by each court of this State held to be valid elections just the same as if the officers charged with the duty of opening, tabulating and counting the votes, had complied with the law, as provided in this chapter. [Acts 2d C. S. 1919, p. 150.]

3. FREE RANGE ELECTIONS.

| | | | |
|--------------------------|--------------|-----------------------------|--------------|
| Limited free range | Article 6947 | Returns | Article 6951 |
| Order by court | 6948 | Declaration of result | 6952 |
| Order by judge | 6949 | Second election | 6953 |
| Ballots | 6950 | | |

Art. 6947. **Limited free range.**—Upon the written petition of fifty freeholders of any county, or upon the petition of twenty freeholders of any subdivision of any county, which county or subdivision has heretofore adopted, or may hereafter adopt, the

hog law under the provisions of this chapter the commissioners court of such county shall order an election to be held in said county or subdivision on some day named in the order for the purpose of enabling the freeholders of such county or subdivision to determine whether hogs shall have a free range in said county or subdivision from the fifteenth day of November to the fifteenth day of February, of each year. Whenever there is territory between two subdivisions of a county which have adopted the hog law, and in such intervening territory there is less than fifty freeholders, an election shall be ordered on the petition of a majority of the freeholders residing in such intervening territory, and the election shall be held for the purpose named herein. If the petition be from the freeholders of a subdivision of any county, such subdivision shall be particularly described and the boundaries thereof designated in the same manner as when originally established. [Acts 1919, p. 149.]

Art. 6948. **Order by Court.**—Upon the filing of such petition, the commissioners court, at a regular or special meeting thereof, shall order an election to be held throughout the county or the particular subdivision thereof, as the case may be, on a day to be designated in the order, not less than thirty days from the date of such order; which election shall be held and conducted and the returns made in accordance with the laws regulating general elections, in so far as the same are applicable. [Id.]

Art. 6949. **Order by judge.**—Immediately after the passage of an order for an election by the commissioners court, the county judge shall issue an order for such election and cause public notices thereof to be given for at least thirty days before the day of election, by publication of the order therefor in some newspaper published in the county, if there be one; if no newspaper be published in the county then by posting copies of such order at the courthouse door, and at some public place in each justice's precinct, if such election be ordered for the whole county, or at three public places in the subdivision, if the election be ordered for a subdivision. The order of the county judge shall specify:

1. The petition and the action of the commissioners court.
2. The class of animals it is proposed shall have the limited period of free range.
3. The time in which said animals are to have the limited period of free range.
4. The territorial limits to be affected.
5. The day of election.
6. The places at which polls are to be opened. [Id.]

Art. 6950. **Ballots.**—All votes at an election held under the provisions of this Act, shall be by ballot; and voters desiring to permit hogs to have a limited period of free range in hog law counties or districts as designated in the order, shall place upon their ballots the words, "For the limited period of free range for hogs," and those against the limited period of free range

for hogs shall place upon their ballots the words, "Against the limited period of free range for hogs." [Id.]

Art. 6951. **Returns.**—The returns shall be opened, tabulated and counted by the county judge in the presence of the county clerk and at least one justice of the peace of the county, or two respectable freeholders of the county. [Id.]

Art. 6952. **Declaration of result.**—If a majority of the votes cast at such election shall be "For the limited period of free range for hogs," the county judge shall immediately issue his proclamation declaring the result; which proclamation shall be posted at the courthouse door, and after the expiration of ten days from its issuance, it shall be lawful to permit hogs to run at large within the limits designated for the period of time between the fifteenth day of November of each year and the fifteenth day of the following February of each year, both days inclusive. [Id.]

Art. 6953. **Second election.**—Whenever an election is held under the provisions of this law for any county or subdivision, no other election for such purpose shall be held within such county or subdivision for the space of two years, but the defeat of the proposition for a county shall not prevent another election from being held immediately thereafter for any subdivision of such county, nor shall the defeat of the proposition for any subdivision prevent an election from being held immediately thereafter, for the entire county. If, in a county or subdivision which has formerly adopted the limited period of free range for hogs, as provided for under the terms of this law, a majority of the legal votes cast at such election shall be "Against the limited period of free range for hogs," the county judge shall immediately issue his proclamation declaring the result; which proclamation shall be posted at the courthouse door, and after the expiration of ten days from its issuance, it shall be unlawful to permit hogs to run at large within the limits designated; if a majority of the legal votes cast at such election shall be, "For the limited period of free range for hogs," he shall so state in his proclamation, and the operation of the law shall in no way be affected by such election. [Id.]

CHAPTER SIX.

STOCK RUNNING AT LARGE.

| | Article | | Article |
|------------------------------|---------|-------------------------------|---------|
| Petition | 6954 | Election to repeal law | 6963 |
| Exceptions | 6955 | Second election | 6964 |
| Intervening territory | 6956 | Duty of officers | 6965 |
| Requisites of petition | 6957 | May impound | 6966 |
| Order by court | 6958 | Fees for impounding | 6967 |
| Order by judge | 6959 | Sale of impounded stock | 6968 |
| Election | 6960 | Sale if not redeemed | 6969 |
| Effect of election | 6961 | Unknown owners | 6970 |
| Proclamation | 6962 | Lawful fence | 6971 |

Art. 6954. [7235] **Petition.**—Upon the written petition of one hundred freeholders of any of the following counties: Anderson, Atascosa, Austin, Bastrop, Baylor, Bandera, Bee,

Bell, Bexar, Blanco, Borden, Bosque, Brazos, Brewster, Brown, Burnet, Caldwell, Calhoun, Callahan, Cameron, Camp, Cass, Castro, Clay, Cherokee, Childress, Collingsworth, Coleman, Collin, Colorado, Cooke, Comanche, Concho, Crockett, Coryell, Cottle, Crosby, Cochran, Crane, Dallas, Dallam, Dawson, Deaf Smith, Delta, Denton, DeWitt, Dimmit, Donley, Eastland, Ector, Edwards, Ellis, Erath, El Paso, Falls, Fannin, Fayette, Floyd, Foard, Franklin, Fisher, Freestone, Gaines, Gregg, Guadalupe, Garza, Glasscock, Gillespie, Gonzales, Grimes, Grayson, Hale, Hamilton, Hansford, Harrison, Hays, Haskell, Hall, Hardeman, Hartley, Henderson, Hidalgo, Hill, Hood, Hopkins, Howard, Hockley, Hudspeth, Hunt, Jack, Jackson, Jones, Jefferson, Johnson, Kaufman, Kimball, Knox, Kerr, Kendall, Kleberg, Lamar, Lampasas, Lavaca, Lamb, Lee, Limestone, Lynn, Lipscomb, Llano, Lubbock, Madison, Mason, McLennan, Matagorda, McCulloch, Menard, Moore, Martin, Maverick, Medina, Midland, Milam, Mills, Mitchell, Montague, Morris, Navarro, Nacogdoches, Nolan, Nueces, Ochiltree, Palo Pinto, Parker, Pecos, Rains, Randall, Red River, Reeves, Real, Robertson, Rockwell, Rusk, Reynolds, San Patricio, San Saba, Scurry, Sherman, Smith, Somervell, Sterling, Starr, Sutton, Swisher, Tarrant, Tom Green, Taylor, Titus, Travis, Upshur, Victoria, Val Verde, Van Zandt, Washington, Williamson, Wilson, Wise, Ward, Wharton, Wood, Wheeler, Winkler, Wichita, Wilbarger, and Young, or upon the petition of fifty freeholders of any such subdivision of a county as may be described in the petition, and defined by the commissioners' court of any of the above named counties, commissioners' court of said county shall order an election to be held in such county or such subdivision of a county as may be described in the petition and defined by the commissioners' court on the day named in the order for the purpose of enabling the freeholders of such county or such subdivision of a county as may be described in the petition and defined by the commissioners' court to determine whether horses, mules, jacks, jennets and cattle shall be permitted to run at large in such county or such subdivision of a county as may be described in the petition and defined by the commissioners' court; provided that where there is an application for an election to include an entire county there shall not be less than twelve freeholders from each justice precinct of said county as signers to the petition for such election. [Acts 1925, p. 277.]

Art. 6955. Exceptions.—The provisions of the preceding article shall not apply to Wharton County as a whole, but shall apply only to such subdivision thereof as may be designated in the manner herein provided; provided, however, that the provisions of this Act shall not apply to Jefferson County as a whole, but shall apply only to such subdivision thereof as may be designated in the manner herein provided; provided, however, that the provisions of this Act shall not apply to Hudspeth County as a whole, but shall apply only to such subdivisions thereof as may be designated in the manner herein provided. [Id. p. 277.]

Art. 6956. [7237] Intervening territory.—Whenever there is territory between two subdivisions of a county which have

adopted the stock law, and in such intervening territory there are less than fifty freeholders, an election shall be ordered on the petition of a majority of the freeholders residing in such intervening territory; and the election shall be held as provided by law in other cases relating to the adoption of the stock law. [Acts 1899, p. 220.]

Art. 6957. [7238] **Requisites of petition.**—Such petition shall set forth clearly the class or classes of animals enumerated in the first article of this chapter, which the petitioners desire shall not run at large in such county, or subdivision, as the case may be; and, if the petition be from the freeholders of a subdivision of any county, such subdivision shall be particularly described and the boundaries thereof designated. [Id.]

Art. 6958. [7239] **Order of court.**—Upon the filing of such petition, the commissioners court at the next regular term thereafter shall pass an order directing an election to be held throughout the county, or the particular subdivision thereof, as the case may be, on a day to be designated in the order, not less than thirty days from the date of such order; which election shall be held and conducted and the returns thereof made in accordance with the laws regulating general elections, in so far as the same are applicable. [Id.]

Art. 6959. [7240-1] **Order by judge.**—Immediately after the passage of an order for an election by the commissioners court, the county judge shall issue an order for such election and cause public notices thereof to be given for at least thirty days before the day of election, by publication of the order therefor in some newspaper published in the county, if there be one, if no newspaper be published in the county, then by posting copies of such order at the courthouse door and at some public place in each justice's precinct, if the election be ordered for the whole county, or at three public places in the subdivision, if the election be ordered for a subdivision. Said order of the county judge shall specify:

1. The petition and the action of the commissioners court.
2. The class of animals it is proposed shall not run at large.
3. The territorial limits to be affected.
4. The day of election.
5. The places at which polls are to be opened. [Id.]

Art. 6960. [7242 to 7246] **Election.**—The following rules shall govern any election held under any provision of this chapter:

1. If the election be for a subdivision of the county the county judge, at the time he issues the order for such election shall appoint proper persons as managers of said election, all of whom shall be freeholders of the county and qualified voters; and such managers may appoint their own clerks.

2. Said election shall be held at the usual voting places in the several election precincts if the election is ordered for the whole county; but if the election is ordered for any particular

subdivision, the county judge shall designate the particular places in such subdivision at which the polls shall be opened.

3. Only persons who are freeholders and qualified voters under the Constitution and laws shall vote at said election.

4. All votes at any election, in pursuance of this chapter, shall be by ballot, and voters desiring to prevent the animals designated in the order from running at large shall place upon their ballots the words "For the stock law," and those in favor of allowing animals to run at large shall place upon their ballots the words, "Against the stock law."

5. On or before the tenth day after any such election, the persons holding such election shall make due returns to the county judge of all votes cast at their respective voting places for and against said proposition submitted at said election. [Acts 1899, p. 220.]

Art. 6961. [7247] **Effect of election.**—The returns shall be opened tabulated and counted by the county judge in the presence of the county clerk and at least one justice of the peace of the county, or of two respectable freeholders of the county, and an order showing the result shall be duly recorded in the minutes of the commissioners court in the said county. The order showing the result of said election this determined, certified and recorded, shall be held to be prima facie evidence that all the provisions of law have been complied with in presenting the petition, the action of the court thereon ordering the election, the giving of notice and holding said election, and in counting and returning the votes and declaring the result thereof, and, if said election be then declared to be in favor of the stock law, then after thirty days from said date, it shall be prima facie evidence that the proclamation required by law has been made and published as required by law. [Acts 1907, p. 124.]

Art. 6962. [7248] **Proclamation.**—If a majority of the votes cast at such election shall be "For the stock law," the county judge shall immediately issue his proclamation declaring the result, which proclamation shall be posted at the courthouse door, and, after the expiration of thirty days from its issuance, it shall be unlawful to permit to run at large, within the limits designated, any animal of the class mentioned in said proclamation. [Acts 1899, p. 220.]

Art. 6963. [7236] **Election to repeal law.**—Upon the written petition of two hundred freeholders of any of the above named counties, or upon the written petition of fifty freeholders of any subdivision of the above named counties, if the law be in force in that subdivision only, the commissioners court shall be authorized and required to order an election on the date therein named to determine whether or not said law be repealed; provided, such petition be signed by at least twenty-four freeholders from each justice precinct in such county. But if this law becomes operative over any of the above named counties, as prescribed, it can in no case be repealed by any subdivision, ex-

cept by a two-thirds majority of the votes cast by the freeholders of such counties, at an election held in accordance with the provisions of this chapter. [Acts 1909, p. 121.]

Art. 6964. [7255] **Second election.**—Whenever an election is held under the provisions of this chapter for any county or subdivision, and the proposition of a stock law as herein provided is defeated, no other election for such purpose shall be held within that locality for the space of twelve months thereafter; but the defeat of the proposition for a county shall not prevent another election from being held immediately thereafter for any subdivision of such county, nor shall a defeat of the proposition for any subdivision prevent an election from being held immediately thereafter for the entire county. [Acts 1899, p. 220.]

Art. 6965. **Duty of officers.**—It shall be the duty of any sheriff or constable of any county, or subdivision thereof, within this State, where the provisions of this chapter are or may hereafter become operative, to seize any stock which may become known to him to be running at large on any outside premises where the provisions of the stock law are in force, and impound the same in some place provided for that purpose, and immediately notify the owner thereof, if such owner is known to such officer, who may redeem the same on the payment of an impounding fee of one dollar per head, and an additional fee of twenty-five cents per day per head for each day such stock is so kept. [Acts 1915, p. 146.]

Art. 6966. [7249] **May impound.**—If any stock forbidden to run at large shall enter the inclosed lands, or shall, without being herded, roam about the residence, lots or cultivated lands of any person other than the owner of such stock without his consent, in any county or subdivision in which the provisions of this chapter have become operative in the manner provided in this chapter, the owner, lessee, or person in lawful possession of such lands may impound such stock and detain the same until his fees and all damages occasioned by said stock are paid to him; provided that no animals shall be impounded except as provided in the preceding article, unless they have entered upon the inclosed lands or be found roaming about the residence, lots or cultivated land of another, and, whenever any stock is impounded, notice thereof shall be given to the owner, if known, and such owner shall be entitled to their possession upon payment of fees and damages. [Acts 1899, p. 220; Acts 1915, p. 146.]

Art. 6967. [7251] **Fees for impounding.**—Any owner, lessee or person in lawful possession of inclosed lands shall be entitled to the following fees for impounding stock, to-wit: twenty-five cents per day per head for horses and mules, fifteen cents per day per head for cattle, and ten cents per day per head for jacks and jennets. The damages done by such stock, if any, and the fees due to the taker-up of such stock, if any,

may be assessed by any three disinterested freeholders of the subdivision in which said stock is taken up, who shall, upon the application of the taker-up of the stock, be appointed by the justice of the peace of the precinct in which such subdivision is situated. When such justice shall fail or refuse to make appointments, or when the stock law has been adopted by an entire county, said freeholders shall be appointed by the county judge of the county. Said freeholders, after being duly sworn to discharge with impartiality the duties devolving upon them by said appointment, shall proceed after hearing the evidence to determine whether or not any trespass prohibited by the provisions of this chapter has been committed, and to ascertain the damages, if any, occasioned thereby, and the fees due the taker-up of the stock by reason of said trespass, and shall make an assessment of damages and fees in writing and signed by said freeholders, or two of them, and verified by the affidavit of said freeholders to the effect that said assessment is just and that they have no bias in favor of or prejudice against any party interested therein, and shall file said assessment with the justice of the peace, which shall be final; provided, that the owner of the stock, if known, shall have five days notice of the time and place of the meeting of said freeholders, and if the owner is unknown, then a written notice thereof shall be posted in two public places in said subdivision and one at the courthouse door of the county. Nothing in this chapter shall be construed to deprive the taker-up of the stock to enforce, by suit, any claim he may have for such fees and damages, and to subject the stock so taken up for the payment of the same under the provisions of this chapter. [Acts 1899, p. 220, Sec. 16.]

Art. 6968. [7252] Sale of impounded stock.—After the filing of the assessment, as provided for in the preceding article, the constable of the precinct shall sell such stock at public auction for cash, after having given notice of such sale, as in constables' sales of personal property, and apply the proceeds of such sale, after deducting the expenses thereof, to the satisfaction of said fees and damages, and shall pay the balance, if any remains, to the owner of such stock. The justices and constables shall receive for their services the same compensation as is allowed for like service in civil cases. [Acts 1899, p. 220, Sec. 17.]

Art. 6969. Sale if not redeemed.—When any stock shall have been impounded as provided in the third preceding article, and after five days' notice has been given to the owner of such stock, such officer shall sell such stock at public auction for cash, after having given notice of such sale, as in constables' sales of personal property, and apply the proceeds of such sale, after deducting the expenses thereof, to the satisfaction of said fees and damages, and shall pay the balance, if any remains, to the owner of such stock. The justices and constables shall re-

ceive for their services the same compensation as is allowed for like service in civil cases. [Acts 1915, p. 146.]

Art. 6970. [7253] **Unknown owners.**—If no owner can be found of stock so impounded, such officer or other person taking up any such stock shall make affidavit before a justice of the peace of the county, describing the stock impounded by him, and that the owner is unknown to the affiant; which affidavit shall be forthwith delivered to the county clerk by such justice to be kept in his office for inspection. After the filing of such affidavit, the constable of the precinct shall sell such stock as in case when the owner is known; and if anything remains after satisfying the expenses of said sale and the fees and damages due to the taker-up, he shall report the same under oath to the clerk of the county court and pay the same over to the county treasurer to be received by him and placed to the credit of the road and bridge fund of the county. [Acts 1899, p. 220; Acts 1915, p. 146.]

Art. 6971. [7254] **Lawful fence.**—After the adoption of the stock law in any county, or subdivision, any fence within such county or subdivision shall be deemed a lawful fence if it be sufficient to keep out the classes of stock not affected by the provisions of this chapter. [Acts 1899, p. 220, Sec. 19.]

CHAPTER SEVEN.

PROTECTION OF STOCK RAISERS.

| Article | Article | | |
|---------------------------------|---------|-----------------------------------|------|
| Inspector | 6972 | Notify if stolen | 6991 |
| Bond | 6973 | Importer to recover | 6992 |
| Seal of office | 6974 | Hides or animals sold | 6993 |
| Deputies | 6975 | Property delivered to owner | 6994 |
| Definitions | 6976 | Brand recorded once | 6995 |
| Take acknowledgments | 6977 | In county of range | 6996 |
| Inspection and record | 6978 | Only one to be used | 6997 |
| Exemption from inspection | 6979 | Counter-branding | 6998 |
| Shall not certify | 6980 | Authority to gather | 6999 |
| Seizure | 6981 | Inspection personal | 7000 |
| Procedure as to seizure | 6982 | Inspection before export | 7001 |
| Bill of sale taken | 6983 | Seizure of other cattle | 7002 |
| In sale of hides | 6984 | Proceeds into treasury | 7003 |
| Certificate of inspection | 6985 | Change of destination | 7004 |
| Road brand | 6986 | Counties exempt | 7005 |
| Export to Mexico | 6987 | Local option elections | 7006 |
| Herds in transit | 6988 | Result | 7007 |
| Hides from Mexico | 6989 | Fees of inspector | 7008 |
| Animals imported | 6990 | | |

Art. 6972. [7256 to 7259] **Inspector.**—Each organized county, not expressly excepted herein, shall constitute an inspection district for the inspection of hides and animals; and at each general election an officer to be styled, "Inspector of hides and animals" shall be elected by the qualified voters of such county, and in each unorganized county the Governor shall appoint such inspector. The word, "inspector," as used in this title, shall mean the inspector of hides and animals. Such inspectors shall hold their office for the term of two years. Until any vacancy in such office is filled by appointment, the sheriff of the county shall discharge the duties of the office. [Acts

1876, pp. 217-295; Acts 1879, p. 89; G. L. Vol. 8, pp. 1053-1131-1389.]

Art. 6973. [7260] [5006] Bond.—Each person elected to the office of inspector, before entering on the duties of his office, shall enter into a bond, with two or more good and sufficient sureties, to be approved by the commissioners court of the county constituting his district, payable to the county judge, in a sum to be fixed by said court, not less than one thousand nor more than ten thousand dollars, conditioned that he shall well and truly perform the duties of his office. A sheriff acting temporarily as inspector, pending a vacancy in such office, shall not be required to give additional bond, but his official bond as sheriff shall extend to and include the faithful and proper performance of his duties as inspector ad interim. [Acts 1876, p. 295; G. L. Vol 8, p. 1131.]

Art. 6974. [7262] [5008] Seal of office.—Each commissioners court shall furnish to the inspector for such county a seal of office, having upon it the words, "Inspector of hides and animals, _____ county, Texas" (the blank to be filled with the name of the county), and each inspector and his deputy shall certify their official acts with the impress of such seal. The inspector upon retiring from office shall deliver such seal, together with the books, papers and records of his office to his successor. [Id.]

Art. 6975. [7263-4] Deputies.—Every inspector shall have power to appoint in writing and under his seal as many deputies as shall be necessary to perform the duties imposed on them by this chapter. The inspectors shall require bond and security of their deputies for the faithful performance of their duties; and the said deputies shall take and subscribe the official oath. The inspectors shall be responsible to any person injured thereby for the official acts of each of their deputies and they shall have the same remedies against their deputies and their sureties as any person can have against the inspectors and their sureties. [Id.]

Art. 6976. [7265] [5011] Definitions.—As used in this chapter, the words "deputy inspector" shall mean the "deputy inspector of hides and animals," and the words "county," "district," or "inspection district," shall include each organized county in this State not herein excepted, together with any unorganized county that may be attached for judicial purposes to any such county. [Id.]

Art. 6977. [7266] [5012] Take acknowledgments.—Every inspector shall have authority to authenticate bills of sale of animals, and give certificates of acknowledgment of the same under his hand and seal, and shall be allowed to collect fifty cents for every acknowledgment so taken. [Id. p. 302.]

Art. 6978. [7267-8] Inspections and record.—The inspector, in person or by deputy, shall faithfully examine and inspect all hides or animals known or reported to him as sold, or as

leaving or going out of the county for sale or shipment, and all animals driven or sold in his district for slaughter, packeries or butcheries; and shall keep a record, in a well bound book, in which he shall record a correct statement of the number, ages, marks and brands of all animals inspected by him, and the number, mark and brand of all hides inspected by him, and whether the same are dry or green, and the name or names of the vendor and of the purchaser thereof. He shall return a certified copy of all entries made in such record during each month to the county clerk on the last day of each month, which report shall be filed among the records of the county court. [Id.]

Art. 6979. [7629] [5015] **Exemption from inspection.**—The provisions of this chapter shall not be so construed as to include sheep, goats, swine, or hides of either, nor to involve the re-inspection of salted hides in packeries or other slaughter houses taken from animals previously inspected and returned as provided in the preceding articles. [Id.]

Art. 6980. [7270] [5016] **Shall not certify.**—No inspector shall grant any certificate of inspection of any unbranded hides or animals, or of hides or animals upon which the marks and brands cannot be ascertained, and he shall prevent the same from being taken or shipped out of the county unless they are identified by proof or by a duly acknowledged bill of sale signed by the owner of such hides or animals. [Id.]

Art. 6981. [7271-2] **Seizure.**—Every inspector may seize and sequester all unmarked or unbranded calves or yearlings, and all calves or yearlings freshly marked or branded, and on which the fresh marks or brands are unhealed, which are about to be slaughtered, or driven or shipped out of the county, unless such animals are accompanied by the mother thereof, or are identified by the presentation of a bill of sale from the person proven to be the owner thereof, signed by him or his legally authorized agent, and acknowledged before some officer authorized to authenticate instruments for record in this State. Every inspector may seize and sequester all unbranded animals or hides, and animals and hides upon which the mark or brand cannot be ascertained, which are about to be taken or shipped out of the county, or which animals are to be slaughtered, unless such animals or hides are identified as provided in this article. [Id.]

Art. 6982. [7273] [5019] **Procedure as to seizure.**—When an inspector has seized any hides or animals as provided for in the preceding article, he shall report the fact to some judge of the district or county court, or justice of the peace, according as the value of the property seized may come within the jurisdiction of either of said courts; and said judge or justice shall issue or cause to be issued a citation addressed, "To all whom it may concern," setting forth a seizure of said property with a description of the same, commanding them to appear at a day named in said citation to show cause why said property should not be forfeited to the county wherein the same was seized, and

sold for the benefit of said county. Said citation shall be directed to the sheriff or to any constable of said county, who shall cause certified copies of the same to be posted in three public places in said county for a period of ten days before the day mentioned in said citation. Upon the proof of the posting of said citation, said judge or justice issuing said citation shall proceed to condemn the property mentioned in said citation, unless satisfactory proof shall be made of the ownership of said property, or other sufficient cause be shown why the same should not be condemned. In case of condemnation he shall order the same to be sold by the inspector at public auction to the highest bidder. The inspector shall be entitled to retain one-fourth of the net proceeds of such sale, after deducting therefrom all expenses connected therewith, and he shall immediately pay the remaining three-fourths thereof into the county treasury; and all sums so paid in shall be placed to the credit of the general fund of such county. [Id.]

Art. 6983. [7274] [5020] Bill of sale taken.—Each person who shall buy or drive any animal or animals for sale or shipment out of any county, or who shall buy or drive the same for slaughter, shall, at the time of purchasing and before driving the same, procure a written bill of sale from the owner or owners thereof, or from his or their legally authorized agent. Said bill of sale shall be properly signed and acknowledged. Such bill of sale shall distinctly enumerate the number, kind and age of animals sold, together with all marks and brands discernable thereon; and said animals before leaving the county in which they have been gathered shall be inspected by the inspector of such county or his deputy. [Id.]

Art. 6984. [7275] [5021] In sale of hides.—The purchaser of any hides of cattle at the time of purchasing same shall obtain from the owner thereof, or from his legally authorized agent, a written bill of sale duly acknowledged, which shall recite in full the marks and brands of each hide, the weight thereof, and whether the same is dry or green. [Id.]

Art. 6985. [7276-7] Certificate of inspection.—Whenever an inspector shall have inspected any animal or animals, as herein provided, he shall, on the presentation of a written bill of sale or power of attorney from the owner or owners of such animal or animals, or his or their agent duly authorized in writing, duly signed and acknowledged, and on payment to said inspector of his legal fees, deliver to the purchaser of the animals mentioned in such bill of sale or power of attorney, or his agent, a certificate setting forth that he has carefully examined and inspected such animal or animals, and that said purchaser has in all respects complied with the law, which certificate shall not be complete until the same and the bill of sale herein provided for shall be recorded in the office of the county clerk of the county, and be certified to by said clerk under his hand and seal. Such certificate shall be then delivered to the purchaser

and shall protect him from the payment of inspection fees in any other district for the animals therein described, except from the county from which the same may be exported; provided that any person driving cattle in his own mark and brand shall be entitled to the certificate of inspection provided for herein, on payment of fees to the inspector, and on presentation to the inspector of the certificate of the county clerk of the county where such mark and brand is recorded, to the effect that the mark and brand named therein is duly recorded in his office as the mark and brand of the person so driving such cattle. [Id. Sen. Jour. 1895, p. 484.]

Art. 6986. [7278] Road brand.—Any person who shall drive any cattle to market beyond the limits of this State shall, before removing such cattle from the county where same are gathered, place upon each animal so to be driven a large and plain road brand, composed of any device he may choose, which shall be branded on the left side of the back behind the shoulder; and each person using or causing to be used any road brand shall place the same on record as in the case of other brands, in the county from which the animals are to be driven, and before their removal from such county. [Id.]

Art. 6987. [7279] Export to Mexico.—Any person may drive or ship any animals to Mexico from any point on the coast of Texas, or may drive or ship them across the Rio Grande River at any point where a custom house of the United States is located, but not from any other point; and he shall cause all such animals to be inspected by the inspector of the district in which the point of shipment or place at which they are to be driven across said river is situated before shipment from the State or passage across said river of said animals. [Id.]

Art. 6988. [7280-1] Herds in transit.—Whenever a drove of cattle may be passing through any county, the inspector, if called upon to do so by any person, shall stop and inspect said drove without any unnecessary detention of the same; and he shall exercise the same powers and perform the same duties in the inspection of such cattle as are prescribed above. If any cattle be found in said drove not included in the certificate of the inspector of the county in which the drove may have been gathered, the fees of the inspector shall be paid out of the proceeds of the sale of said cattle; but if no cattle shall be found in said drove except those covered by the inspector's certificate, then the inspector's fee shall be paid by the person at whose instance said drove was inspected. [Id.]

Art. 6989. [7282] Hides from Mexico.—The hides of all cattle imported into this State from Mexico shall be inspected by the inspector of any county or district into which the same may be imported. If the importer of said hides fails or refuses to place such hides in a position where the same may be inspected by said inspector, or if said hides are found by said inspector to be folded or booked in such a manner as that the

same may not be inspected without injury to said hides, said inspector shall take possession of such hides and have the same treated in such manner as will enable him to unfold the same without injury thereto. Such inspector shall not be held liable for any damage which may accrue to such hides by reason of the treatment thereof for the purpose of enabling him to inspect the same, and such treatment as may be necessary to enable the inspector to unfold and inspect such hides shall be wholly at the risk of the importer or person in whose possession such hides may be found. In addition to the inspection fees allowed such inspector for the inspection of said hides, there shall be paid by the importer or the person in whose possession said hides may be found after importation, all expenses incurred by said inspector in the treatment of said hides, for the purpose of enabling him to inspect the same as herein provided, such expenses to include drayage and freight charges and all expenses for handling and treatment of said hides. If the importer or the person in whose possession said hides may be found after importation, fails or refuses to pay said expenses for retreatment, or if he fails or refuses to pay the inspection fees as required by law, the inspector may retain possession of said hides and sell a sufficient number thereof, after three days public notice, to the highest and best bidder, to pay said inspection fees and all necessary expenses in connection therewith. [Acts 1876, p. 295; G. L. Vol. 8, p. 1131; Acts 1917, p. 325.]

Art. 6990. [7283] **Animals imported.**—Horses, mules and cattle imported from Mexico into this State shall be inspected in accordance with the provisions of Article 6978, and with like authority to retain and sell as provided in the preceding article for a failure to pay the inspection fees. [Id.]

Art. 6991. [7284-5] **Notify if stolen.**—If an inspector finds among hides or animals imported from Mexico any hides or animals which from the brand or from other evidence, he has reason to believe have been stolen from the lawful owner, he shall separate said hides or animals from others undergoing inspection and take possession of the same and notify any person he believes to be interested therein to come forward and institute suit for the recovery of the same. If no person appears to claim said hides or animals, the inspector shall within twenty-four hours, make oath before the district judge, the county judge, or any justice of the peace of the county, according to the value of the property involved, that he has reason to believe that said hides or animals have been stolen; whereupon said judge or justice shall issue a citation directing the importer or party claiming the same to appear before him at his office within a time specified, not to exceed twenty-four hours, to show cause why said property should not be condemned. [Id.]

Art. 6992. [7286] [5024] **Importer to recover.**—If said importer or claimant makes proof that he is the lawful owner of said hides or animals by showing a bill of sale from the owner

of same, or his legally authorized agent, and by showing complete chain of transfer of title from the original owner of the brand to himself, or his firm, such judge or justice shall direct the same to be delivered to said importer or claimant upon his paying the inspection fees. [Id.]

Art. 6993. [7287-8] [5025] **Hides or animals sold.**—If the importer or claimant of said hides or animals fail to establish his claim as the lawful owner of the same, or to any number of hides or animals so seized, the district judge, county judge or justice shall direct that said property be sold at public auction by the inspector, after a notice of ten days, published in a newspaper, should there be one published in said county, or if no newspaper be published in the county, then by written notice, posted at the courthouse door and two or more other places in said county, and the said hides shall be sold to the highest and best bidder. The inspector shall retain twenty-five per cent of the purchase money, after having deducted and paid all necessary expenses incurred by reason of said sale, and he shall deposit the remainder of said purchase money with the county treasurer, and take his receipt therefor. Said treasurer shall place one-half of said sum of money to the credit of the school fund and the other half to the credit of the jury fund of said county. [Id.]

Art. 6994. [7289] [5027] **Property delivered to owner.**—If any person appears and claims any hides or animals imported from Mexico at any time before the same shall have been sold as above directed, and should said claim be established before such judge or justice of the peace of said county, such property shall be delivered to the claimant, and all costs accruing therein shall be paid by the importer; provided that at any time before proceedings shall have been commenced as above directed the importer may be permitted to pay the lawful owner, his agent or attorney, for any hides or animals imported by him from Mexico and presented in any county of this State for inspection, and upon such payment and the fees for inspection such hides or animals shall be released. [Id. Acts 1917, p. 325.]

Art. 6995. [7291] [5029] **Brand recorded once.**—In all cases where application for registration of any mark or brand shall be made, the county clerk shall receive and record the same, unless an examination of the recorded list of marks and brands shows that a similar mark and brand is already upon record in such county, in which event he shall refuse to register or give any certificate for the same; provided, that if such applicant shall have previously had such mark and brand recorded in some other county, and shall have a certificate from the clerk thereof, stating that such brand and mark had been recorded in said county at some time anterior to the time of the registration of the similar mark and brand in the county in which the applicant may desire to have his brand recorded, then said brand and mark

shall be recorded; and the clerk shall make a minute on the record setting forth said facts. [Id.]

Art. 6996. [7292] [5030] **In county of range.**—All marks and brands of cattle shall be recorded in the county or counties in which they usually range. When cattle are gathered near the county line, the bills of sale of the same shall be recorded in both counties. When any stock or cattle is sold, the fact shall be noted on the record opposite or near the record of its mark or brand, giving the name of the vendor and vendee and date of sale, and this shall be done as often as there is a sale. The inspector shall procure certified copies of the marks and brands of this county for himself and his deputies, and monthly have added thereto the marks and brands that may be recorded. [Id.]

Art. 6997. [7293] [5031] **Only one to be used.**—No person owning and claiming stock shall, in originally marking and branding animals, make use of more than one mark and brand. Any person may own and possess animals in many marks and brands, the same having been acquired by him by purchase; and written bills of sale, properly acknowledged from the previous owner or owners shall be sufficient evidence of such purchase, but the increase of such animals, or of any animal counterbranded by such person from other stocks of cattle owned by him, shall be branded or counterbranded by one and the same brand; and when marked by such person shall be marked in one and the same mark. [Id.]

Art. 6998. [7294] [5032] **Counterbranding.**—In all cases where the counterbranding of any cattle shall be deemed necessary or expedient, the person so counterbranding shall counterbrand the existing brand of the animal by which the owner thereof is then known, or by which it is then claimed and owned, by branding below the said brand its facsimile, that is, similar letters, characters or numbers, as the case may be; and he shall also place on said animals the brand of the then owner thereof; but no person shall change or alter the ear marks of any animal, but in counterbranding shall leave the ears bearing the same mark or marks as before counterbranding. [Id.]

Art. 6999. [7295] [5033] **Authority to gather, etc.**—Any person having marks and brands recorded in the office of the county clerk may file with the inspector a list of his recorded marks and brands, certified by the clerk under his seal, to which certified lists shall be attached the names of any person or persons whom the owner of said stock may wish to authorize to gather, drive or otherwise handle his stock. The filing of said list with the inspector shall be deemed sufficient authority to the person or persons named in such list to gather, drive or otherwise handle any animals of the marks and brands therein described. [Id.]

Art. 7000. [7296-7] **Inspections personal.**—In making inspections, the inspector shall not trust to the statement or representations of any persons, but he shall in person carefully in-

spect and examine each animal or hide separately so as to identify the marks and brands, and in case of animals, the ages and sexes. He shall also carefully examine the bills of sale and lists of brands and marks for the cattle inspected by him; and, if satisfied that the person claiming the cattle inspected has correct bills of sale or chain of transfer in writing from the record owner, or is the owner himself in whole or part of the mark and brand of each animal in his drove or herd which should be inspected, and that he has none other in said herd or under his control to be carried with it, he will then, and not until then, make out a certificate, which he shall first enter in his record, under his hand and seal containing the number of cattle in each mark and brand, with their respective ages and sexes, thus inspected, and that they appear to be the property of the person for whom they were inspected, naming him, as appears by bills of sale from recorded owner of the marks and brands on the cattle inspected by him, or the owner of the brand and mark himself, and that he has none other in his herd or under his control that should be inspected; and that he intends to drive or ship them, naming the place in the State for sale or slaughter; or if out of the State, he shall then name the place on the border of the State through which it is proposed to drive or ship such stock. [Id.]

Art. 7001. [7298] [5036] Inspection before export.— Whenever any person shall be about to drive or ship any stock out of the State, if the inspector shall believe or is informed by any credible person that said person has other stock in his herd than those covered by his original certificate of inspection, or by subsequent purchase duly attested by proper bill of sale, the inspector at said point of shipment or border county where said person leaves the State, shall be authorized to inspect said stock in the same manner as in the original inspection; and, if any stock is found in said herd other than those covered by his original certificate of inspection, or by subsequent purchase duly and properly authenticated by bill of sale, the fees of said inspection shall be paid as provided in Article 6988, provided that said inspector shall in no case be authorized to receive or demand more than three cents per head for each head of cattle inspected; but if not, then said fees shall be paid by the person at whose instance said inspection was made; and if said inspection is made by the inspector at his own instance, and no stock is found in said herd, except those properly accounted for under the provisions of this article, then said inspector shall receive no fees for said inspection. [Acts 1879, S. S. p. 19; G. L. Vol. 9, p. 51.]

Art. 7002. [7300] [5038] Seizure of other cattle.—If the inspector at the point of destination shall find upon inspection that the owner of the herd or person in charge has in his herd other cattle besides those inspected originally in the county from which said herd was driven, he shall seize said cattle and take them into possession, and thereupon the same proceedings shall

he had as are prescribed in Article 6981. If the person in charge of any such cattle refuses to deliver the same into the possession of the inspector, such inspector may obtain a writ of sequestration from any justice of the peace, county judge or district judge, according as the value of such cattle may come within the jurisdiction of either. Such writ may be obtained upon the affidavit of the inspector, stating that he believes such cattle have been unlawfully acquired, shall issue without bond, and be forthwith executed by the sheriff or any constable of the county; and thereupon said proceedings shall be had before the officer issuing the writ, either in term time or in vacation. [Acts 1876, p. 302; G. L. Vol. 8, p. 1138.]

Art. 7003. [7302-3] **Proceeds into treasury.**—The net proceeds of the sale of cattle condemned under the preceding article, save one-fourth of such proceeds retained by the inspector for his compensation, shall be paid into the county treasury, subject to the claim of the true owner of such cattle. If no claim be set up and established thereto within one year from the date of its deposit, such proceeds shall pass into the general fund of the county, and all claims thereto shall thereafter be barred. At the time such proceeds are originally deposited in the county treasury the inspector shall accompany such deposit with a certified statement, under his hand and seal, of the number of cattle sold, the mark and brand of each animal, with the amount for which sold. [Id.]

Art. 7004. [7304] [5042] **Change of destination.**—If the owner of the inspected herd desires to sell, slaughter or ship the cattle, or any of them, at any place other than the destination named in the original certificate of inspection, he may do so by first having his herd inspected at the point of destination therein named and a new certificate of inspection issued to him at that point, naming the new point of destination or shipment; and upon his arrival at such new point of destination, like proceedings shall be had in the way of inspection, comparison and return of the certificate of inspection, as are prescribed for the original point of destination. [Id.]

Art. 7005. [7305] [5043] **Counties exempt.**—The counties of Anderson, Angelina, Aransas, Archer, Armstrong, Atascosa, Austin, Bandera, Bastrop, Baylor, Bee, Bell, Bexar, Borden, Bowie, Bosque, Brazoria, Brazos, Brewster, Briscoe, Brown, Burleson, Burnet, Caldwell, Callahan, Calhoun, Cameron, Camp, Carson, Cass, Chambers, Cherokee, Childress, Clay, Cochran, Coke, Collin, Collingsworth, Colorado, Comal, Comanche, Cooke, Coryell, Cottle, Crockett, Crosby, Dallam, Delta, Denton, DeWitt, Dickens, Donley, Duval, Eastland, Ellis, El Paso, Erath, Falls, Fannin, Fayette, Floyd, Foard, Fort Bend, Franklin, Freestone, Frio, Galveston, Gillespie, Goliad, Gonzales, Gray, Grayson, Gregg, Grimes, Guadalupe, Hall, Hamilton, Hardeman, Hardin, Harris, Harrison, Hartley, Hays, Hemphill, Henderson, Hidalgo, Hill, Hockley, Hood, Hopkins, Houston, Howard, Hunt, Irion,

Jackson, Jack, Jasper, Jeff Davis, Jefferson, Johnson, Karnes, Kaufman, Kendall, Knox, Kinney, Lamar, Lamb, Lampasas, Lavaca, Leon, Liberty, Limestone, Lipscomb, Live Oak, Llano, Loving, Lubbock, Lynn, Madison, Marion, Mason, Maverick, Medina, McLennan, Midland, Milam, Mills, Mitchell, Montague, Montgomery, Morris, Motley, Nacogdoches, Navarro, Newton, Oldham, Orange, Palo Pinto, Panola, Parker, Pecos, Polk, Presidio, Rains, Reagan, Red River, Refugio, Robertson, Rockwall, Rusk, Reeves, Sabine, San Augustine, San Jacinto, San Patricio, Schleicher, Shelby, Smith, Shackelford, Somervell, Starr, Scurry, Stephens, Sterling, Tarrant, Terrell, Terry, Throckmorton, Titus, Tom Green, Trinity, Tyler, Uvalde, Upshur, Upton, Val Verde, Van Zandt, Victoria, Walker, Ward, Washington, Wharton, Wheeler, Williamson, Wilson, Wise, Winkler, and Young are hereby exempted from the provisions of this chapter, and from all laws regulating the inspection of hides and animals. [Acts 1921, pp. 43-83.]

Art. 7006. [7306] Local option election.—Whenever twenty-five of the qualified voters of each justice precinct in any county, or a majority thereof, shall petition the commissioners court for an election to determine whether such county shall have a hide and animal inspector, said court shall, either at a general or special term, order such election to be held after thirty days notice having been given by posting such notice in each of such justice precincts and by publishing same in some newspaper published in said county, if there be one so published. The clerk of said court shall prepare said notices and the sheriff shall post same and make and file with said clerk return of such posting showing time and place thereof. [Acts 1909, p. 127.]

Art. 7007. [7307 to 7311] Result.—At the time of ordering said election said court shall appoint two judges, designating one of such as presiding judge, and two clerks, who shall hold said election in the same manner as general elections are held. All qualified voters shall be entitled to vote. The ballots shall have written or printed on same "For inspector," or "Against inspector." The presiding judge shall deliver or cause to be delivered one copy of the result of said election to the county clerk within five days after said election, and retain one copy himself. Within five days after such delivery of such returns to said clerk, the commissioners court shall count the votes and declare the results and enter the same on the election record. The county shall pay the expenses of holding such election. No election shall be held oftener than every two years under this law. If at such election a majority of the votes cast be "For inspector," then the persons holding such offices shall retain same to the next general election until his successor is elected and qualifies. In counties having no inspector, the commissioners court shall appoint one to serve until the next general election. [Id.]

Art. 7008. Fees of inspector.—Each inspector or deputy inspector provided for in this chapter, shall be entitled to receive ten cents for each hide or animal inspected, but if more than

fifty hides or animals are inspected in the same lot, then ten cents each for the first fifty, and three cents each for all above that number. [Acts 1909, p. 127.]

CHAPTER EIGHT.

LIVE STOCK SANITARY COMMISSION.

| | | | |
|--|--------------|--|---------|
| Commission | Article 7009 | Presence of fever tick to be ascer- | Article |
| Repealing clause | 7010 | tained, how | 7025 |
| Tick defined | 7011 | Commission may adopt rules | 7026 |
| Prevention | 7012 | Quarantined | 7027 |
| Sale of biological products | 7013 | Shipment by carriers | 7028 |
| Duties of commissioners' court | 7014 | Shipping from quarantine districts | 7029 |
| Quarantine | 7015 | Moving from quarantine districts | 7030 |
| Appraisers to be appointed | 7016 | Boundary of districts | 7031 |
| To be burned or buried | 7017 | May designate counties | 7032 |
| Election to be ordered | 7018 | Salaries and expenses | 7033 |
| County inspectors | 7019 | Certify to Governor | 7034 |
| Inspector and clerk | 7020 | State to bear expenses of dipping | 7035 |
| Scabies | 7021 | Expense by owner | 7036 |
| Order to dip | 7022 | Definition of premises | 7037 |
| Instructions | 7023 | Carrying arms | 7038 |
| Dipping directions to be delivered | 7024 | Carrying arms | 7039 |
| | | Clean land, etc., defined | 7040 |

Art. 7009. [7312-13] **Commission.**—The Governor with the consent of the Senate shall biennially appoint for a term of two years a Live Stock Sanitary Commission of the State of Texas, composed of three members. Each commissioner shall give a bond payable to the State of Texas in the sum of ten thousand dollars to be approved by the Comptroller. Each Commissioner shall be a bona fide resident of and a practical live stock raiser in the community from which he may be appointed, and shall have been actively engaged in said business for at least five years next preceding the date of his appointment. One of said Commissioners shall be appointed from the West, one from the South, and one from the Eastern portion of Texas. The word "Commission" as used in this chapter shall mean the Live Stock Sanitary Commission of the State of Texas. [Acts 1893, p. 70.]

Art. 7010. **Repealing clause.**—The following Acts be, and same are hereby, repealed, viz: Chapter LX of the General Laws of the Regular Session of the Thirty-fifth Legislature, as amended by Chapter XII of the General Laws of the First Called Session of the Thirty-fifth Legislature, as amended by Chapter IV of the General Laws of the Second Called Session of the Thirty-fifth Legislature, as amended by Chapter XLIV of the General Laws of the Regular Session of the Thirty-sixth Legislature, as amended by Chapter XXVII of the General Laws of the Second Called Session of the Thirty-sixth Legislature, as amended by Chapter XXXVIII of the General Laws of the Third Called Session of the Thirty-sixth Legislature, as amended by Chapter X of the General Laws of the Fourth Called Session of the Thirty-sixth Legislature.

Art. 7011. **Tick defined.**—The word "tick," as used in this Act, is defined to mean the fever-carrying tick (*Magararopic Anulatus*) and no other species of ticks; and the word "cattle," as used in this Act is defined to include horses, mules and asses.

Art. 7012. **Prevention.**—It is hereby made the duty of the commission provided for in Article 7312, Revised Civil Statutes, to protect the domestic animals of the State from all malignant, contagious or infectious diseases, whether said diseases exist in Texas or elsewhere; and, subject to the limitations herein prescribed, said commission, for said purposes, is hereby authorized and empowered to establish, maintain and enforce such protective measures and quarantine lines and sanitary rules and regulations as may be necessary whenever it shall determine upon proper inspection that such diseases exist. It shall also be the duty of said commission to co-operate with the Live Stock Sanitary Commission and officers of other states, and with the United States Secretary of Agriculture in establishing such interstate quarantine lines, rules and regulations, subject to the limitations herein prescribed, as shall best protect the livestock industry of this State against the fever-carrying tick (*Magararopic Annulatus*) and other malignant, contagious, infectious or other communicable diseases of livestock. It shall be the duty of said commission to quarantine any district, county, or part of county or premises within this State when it shall determine, upon proper inspection, the fact that cattle, sheep, or other livestock in such district, county or part of county or premises are infected with any malignant, contagious, infectious or communicable disease, or with the agency of transmission of such disease, and to give written or printed notice of such quarantine to the proper officers of railroad and express companies doing business in or through such quarantine district, county, or part of county within this State, and to publish notices of the establishment of such quarantine in such newspapers in the quarantined district, county, or part of county as the Live Stock Sanitary Commission may select, or to give notice in such other ways as it deems necessary and adequate for the purpose of establishing and maintaining a quarantine service, and no railroad or express company shall receive for transportation, or transport from any quarantined district, county, or part of county within this State into any other district, county, or part of county within this State any cattle, sheep or other livestock except as hereinafter provided for; nor shall any person, company or corporation deliver for transportation to any railroad or express company any cattle, sheep or other livestock from a quarantined area except as hereafter provided; nor shall any person, company or corporation drive on foot, or cause to be driven on foot, or transport in private conveyance, or cause to be transported in private conveyance, or drive, or permit to be driven or permit to go, whether driven or not, from a quarantined district, county, or part of county or premises in this State any cattle, sheep or other livestock except as hereinafter provided. It is hereby made the duty of the Live Stock Sanitary Commission of Texas to make and promulgate rules and regulations which shall permit and govern the inspection, disinfection, certification, treatment, and handling and method and manner of delivery and shipment of cattle and other livestock from and

into a quarantined district, county, or part of county or premises and into any other district, county, or part of county or premises in this State, and said Commission shall make and promulgate rules and regulations which shall permit and govern the movement and shipment of cattle and other livestock from or into a quarantined district, county or part of county or premises into any district, county, part of county or premises in this State, and said rules and regulations shall permit cattle to be shipped from all quarantine areas to State markets, without other condition, for immediate slaughter on being cleaned of ticks under official inspection, and shall permit cattle to be shipped from quarantined areas into non-tick infested areas otherwise than for immediate slaughter upon such cattle being dipped until they are cleaned of ticks and inspected by an authorized inspector of the Live Stock Sanitary Commission, and it is hereby made the duty of the Live Stock Sanitary Commission to promptly furnish official inspection of all cattle tendered for shipment from quarantined areas upon application to it for such inspection by the owner or caretaker of such cattle. It is hereby made the duty of Live Stock Sanitary Commission of Texas to give notice of all of its rules and regulations by proclamation issued by the Governor of Texas and to furnish to any owner of live stock who applies therefor a printed copy of all such rules and regulations. The said Live Stock Sanitary Commission of Texas is hereby empowered to employ a State veterinarian and assistant State veterinarian in times of emergency, and inspectors or other persons as it may deem necessary for the performance of the duties imposed upon said commission and the Live Stock Sanitary Commission; the State veterinarian, assistant State veterinarians and inspectors acting under authority or direction of the commission are hereby empowered and it is made their duty at their discretion to enter upon the premises of any person or persons, company or corporation within this State for the purpose of inspecting, quarantining or disinfecting premises or livestock thereon.

Art. 7013. **Sale of biological products.**—It is hereby provided that the Live Stock Sanitary Commission of Texas shall have the power to control the sale and distribution of all veterinary biological products within this State, and it is hereby made its duty, subject to the limitations herein prescribed, to destroy and eradicate the fever-carrying tick; also to eradicate and eliminate the scabies, sheep scab, hog cholera, glanders, and all other malignant, contagious, infectious and other communicable disease of livestock. For this purpose it is empowered and directed to establish special quarantine districts where such disease or infections of such diseases are known to exist, and notice of the establishment of such special quarantine districts shall be given as provided in Article 7314, Revised Civil Statutes, and in Section 3 of this Act. Said commission shall have the power to quarantine premises or pastures located in said special quarantine districts and the domestic livestock thereon situated in such quarantined districts or elsewhere when

such pasture or quarantined premises or livestock located thereon are infected with or have been exposed to malignant, contagious, infectious or communicable disease or infection thereof; and no livestock shall be moved to or from such special quarantined district or from any pastures or premises located in such special quarantined district in a manner, method or condition other than those prescribed by the Live Stock Sanitary Commission and by this Act. It shall be the duty of the Live Stock Sanitary Commission to prescribe methods for dipping livestock or otherwise treating or disinfecting said premises and the livestock thereon, as in their opinion are necessary and adequate for the eradication of the disease or the infection of the disease for which they are quarantined.

Art. 7014. **Duties of commissioners' court.**—It shall be the duty of the county commissioners' court to co-operate with and assist the Live Stock Sanitary Commission in protecting the livestock for their respective counties from all malignant, contagious and infectious or communicable diseases, whether such diseases exist within or outside of the county, and otherwise to protect the livestock interests of their counties. It shall be the duty of the commissioners' court in these counties which adopt compulsory tick eradication work under the local option provisions of this Act to co-operate with the Live Stock Sanitary Commission and the officers working under the authority or direction of said commission in the suppression and eradication of ticks and all malignant, contagious, infectious or communicable diseases of livestock; provided when it becomes necessary to disinfect any premises, county or subdivision of the county infected with anthrax, hog cholera, glanders, foot and mouth disease, bovine tuberculosis, or contagious abortion, under orders of the Live Stock Sanitary Commission, the county judge of the county where said premises are located shall have such disinfection done at the expense of the county and according to the rules and regulations of the Live Stock Sanitary Commission, and said commissioners' courts are hereby authorized and empowered and directed to appropriate moneys out of the general fund of their counties, to incur indebtedness by the issuance of warrants, and to levy a tax to pay the interest thereon and provide a sinking fund for the payment thereof, for the purpose of purchasing, constructing or leasing necessary public dipping vats within their counties. Said warrants shall draw interest at a rate not exceeding six per cent per annum and shall run not exceeding twenty years from the date hereof.

Art. 7015. **Quarantine.**—It shall be the duty of the Live Stock Sanitary Commission, whenever they have reason to believe or shall receive notice that any malignant, contagious, infectious or communicable diseases exist among any domestic animals in the State, to immediately investigate, and if such disease is found to exist, or if they have reason to believe such disease exists, to immediately quarantine such animals and premises and land upon which they are located. If glanders or

anthrax is found, the State veterinarian or assistant State veterinarian shall make a thorough investigation and shall notify the county judge of the county wherein such animals are located of the number and description of the animals so infected.

Art. 7016. Appraisers to be appointed.—It shall be the duty of the county judge of any county in the State, whenever any horse, mule or ass within their counties is found infected with glanders and have been quarantined by order of the Live Stock Sanitary Commission, to appoint three disinterested parties who shall act as appraisers and fix the value of such animals at their actual value at the time of such appraisement, and make a sworn written report of said appraisement to the county judge, whereupon the commissioners' court shall pass upon such written report, and pay to the owner of the animals their appraised value. The county judge, on receipt of a report of the appraisers, as provided for in this article, shall issue an order to the sheriff, deputy sheriff, or any constable of the county, commanding him to seize said diseased animal or animals, and take same to some secluded place and kill them and burn their carcass or carcasses, and said appraisers and officers shall be paid for their services as provided for in Article 7320, Revised Civil Statutes.

Art. 7017. To be burned or buried.—It shall be the duty of any person, firm or corporation of this State to burn to ashes or bury at a depth of not less than two and one-half feet and to cover with quick lime the carcass or carcasses of any domestic animal or animals dying from any infectious, contagious or communicable disease of any malignant character that may be found upon their premises within twenty-four hours after the death of such animal or animals.

Art. 7018. Election to be ordered.—It shall be the duty of the commissioners' courts of every county in Texas where systematic tick eradication work is not being conducted at the State expense, whenever they deem it expedient, or when petitioned to do so by seventy-five resident land owners and qualified voters in the county, to order an election for the purpose of determining whether the county shall take up and prosecute the work of tick eradication in said county. Said election shall be ordered and held not less than sixty days after the filing of the petition. At said election the ballots shall have printed upon them "For tick eradication in _____ County," and "Against tick eradication in _____ County." The officers of said election shall hold said election and make return thereof as provided by law in cases of other elections, as nearly as may be. Said returns shall be made to the county judge of the county. The commissioners' court shall meet and canvass said returns as soon as practicable after such election, and if they find that a majority of all the votes cast were in favor of tick eradication, under the direction of the Live Stock Sanitary Commission, they shall so certify to said commission and cause publication of the result of said election to be made in

a newspaper published in said county, which publication shall be certified to by the county judge of said county, and said certificate shall be filed with the county clerk of said county, which said certificate shall be admissible in evidence in any court of this State. The county judge of the county shall immediately so notify the Live Stock Sanitary Commission, and upon receipt of such notice from the county judge of the county so holding the election, the Live Stock Sanitary Commission shall cause to be issued a supplemental proclamation signed by the Governor of Texas, and the citizens of said county in co-operation with and under the directions of the Live Stock Sanitary Commission shall begin work of tick eradication within thirty days of the issuance of said supplemental proclamation. Should the commissioners' court find that a majority of the votes cast were against tick eradication, then the county judge shall so notify the Live Stock Sanitary Commission.

Art. 7019. County Inspectors.—The commissioners' court of every county within this State where tick eradication is carried on under the provisions of this Act may nominate for appointments by the Live Stock Sanitary Commission the number of county inspectors found by the Live Stock Sanitary Commission to be necessary to carry on the work of active tick eradication in such county, and when so nominated said Live Stock Sanitary Commission shall appoint them. In the event of the failure or refusal of the commissioners' court to nominate said county inspectors the Live Stock Sanitary Commission is hereby authorized to appoint the number of county inspectors deemed by them to be necessary. Said county inspectors shall be residents of said county, shall work under the direction and orders of the Live Stock Sanitary Commission, and shall be subject to discharge by said Commission, and shall be paid their salaries out of the State Treasury of Texas, their compensation to be fixed by said Commission.

In the event the commissioners' court should nominate any persons who are thereafter appointed such county inspectors and the Live Stock Sanitary Commission find or conclude that the commissioners' court of said county are trying to retard tick eradication or that they are nominating men who are incompetent or negligent in the performance of their duty, then in that event said Live Stock Sanitary Commission is hereby authorized to ignore in the future nominations or recommendations by said commissioners' court of county inspectors. In any event, county inspectors must be residents of the county in which they are appointed to work.

Art. 7020. Inspector and clerk.—The Live Stock Sanitary Commission is hereby empowered to appoint a chief inspector, chief clerk, and such supervising inspectors as they deem necessary to carry on active, systematic tick eradication, and they are authorized and empowered to employ such clerical help as may be deemed necessary to maintain their office, and to appoint a chief veterinarian and such assistant veterinarians as they may deem necessary.

Art. 7021. **Scabies.**—Whenever, any district, county or part of county shall be quarantined by order of the Live Stock Sanitary commission on account of scabies or scab in sheep, every individual premises and the lands of every individual, firm or corporation within such quarantined area shall be quarantined separately, and no cattle or other livestock shall be shipped, driven, drifted, or permitted to be shipped, driven or drifted from any premises where located when such quarantine is declared, without a written permit from an authorized inspector of the Live Stock Sanitary Commission of Texas.

Art. 7022. **Order to dip.**—The Live Stock Sanitary Commission, or its chairman, is hereby authorized and empowered to direct in writing any person or persons, company or corporation owning, controlling or caring for any cattle which are subject to be dipped under the provisions of this Act in the prosecution of the systematic tick eradication work, to dip said cattle under the supervision of an authorized inspector of such Commission in an arsenical solution of a strength not less than seven and one-half pounds, and not more than eight and one-half pounds, of arsenic to each five hundred gallons of water in the said solution for the purpose of destroying, eradicating and removing said fever-carrying tick or exposure, subject to the provisions of this Act. Said dippings shall be administered at regular intervals, but the Live Stock Sanitary Commission shall not require the dipping of cattle at more frequent intervals than every fourteen days.

Art. 7023. **Instructions.**—The written direction issued by the Live Stock Sanitary Commission, or its chairman, requiring the dipping of cattle, as provided for in this Act, shall be dated, showing the date of its issuance, the name of the person, company or corporations to whom the said directions are given, the approximate location of the premises on which the said livestock are located; the name of the county in which said premises are located, and it shall state in clear and intelligible language that the said cattle, which the said person is therein directed to dip, have the fever-carrying tick upon them, or that they are exposed to the said fever-carrying tick, or are on a premise or other place on which the fever-carrying tick is known to exist, or that they have sometime during the nine months next preceding the date of the issuance of said written direction hereinbefore provided been exposed to the said fever-carrying tick, or been on a premise or other place on which the fever-carrying tick is known to exist; and it shall direct the said person, company or corporation to dip the said livestock under the supervision of an authorized inspector of the Live Stock Sanitary Commission, in an arsenical solution of a strength of not less than seven and one-half pounds, nor more than eight and one-half pounds of arsenic to each five hundred gallons of water in the dipping solution in which the said livestock are to be dipped, and it shall designate the place, date and time that said dipping is to be done, and it shall be signed by the Live Stock Sanitary Commission or its chairman.

Art. 7024. **Dipping directions to be delivered.**—The said dipping direction, provided for in this Act, shall be delivered to the person, company or corporation owning controlling or

caring for said cattle required to be dipped at least fourteen full days before the date and time said dipping is to be administered. The person, company or corporation owning, controlling or caring for said cattle required to be dipped under the provisions of this Act may file with the Live Stock Sanitary Commission, or its chairman, a written affidavit at any time within five days after receiving said written direction and not later, denying that said cattle are subject to being dipped under the provisions of law, or that for good and sufficient reason set out in said affidavit the said person, company or corporation is entitled to have said dipping direction rescinded, or to have said dipping postponed, and requesting that the Live Stock Sanitary Commission, or its chairman, withhold the enforcement or said dipping direction and grant him or them a hearing on said matter, or make necessary investigation to determine the correctness of the statement contained in said affidavit. Upon the receipt of said affidavit, the Live Stock Sanitary Commission, or its chairman, shall within five days after receipt of such affidavit grant said affiant a hearing in the office of the chairman of said commission if the affiant so desires it, and give such affiant notice of such hearing, by telegram or registered mail, and which hearing shall be set not less than four days after the service of such notice and the commission shall consider such ex parte affidavits as such owner or caretaker may file with the commission in said hearing, and the commission and its chairman shall make such investigation in person or through its authorized representatives, in reference to such statement as the commission, or chairman thereof, deem necessary, and if such statements are found to be correct, the dipping direction shall be rescinded by the commission or its chairman; otherwise, the dipping direction shall be enforced on the day and at the time specified in said written direction. The commission, or its chairman, after having granted such hearing, or made investigation, shall notify the person, company or corporation in writing of its findings, which notice shall be delivered to the person, company or corporation at least four full days before the day and time he or they are required to dip said cattle by virtue of such written direction. Any person, company or corporation who has been directed to dip the cattle as hereinbefore provided for who shall be dissatisfied with the findings of the Live Stock Sanitary Commission, he or they may apply to a court of proper venue and jurisdiction for injunctive or other relief, which application for injunction upon proper allegations and verification shall be granted and the Live Stock Sanitary Commission shall not enforce the dipping order until the final disposition of such suit.

Art. 7025. Presence of fever tick to be ascertained, how.—The ascertaining of the presence of the fever-carrying tick on any premise, place or livestock, or the ascertaining of exposure of premises, places or livestock to the said fever-carrying tick, shall be done by authorized representative or inspectors of the Live Stock Sanitary Commission, or by the commissioners.

Art. 7026. Commission may adopt rules.—The Live Stock Sanitary Commission is hereby authorized and empowered to

make, adopt and promulgate rules and regulations in conformity with this Act for the carrying out and enforcing the provisions of this Act.

Art. 7027. **Quarantine.**—Whenever the Live Stock Sanitary Commission shall have determined the fact that cattle, or other livestock, are infected with or exposed to splenetic tick fever, bovine tuberculosis, anthrax, glanders, contagious abortion, hemorrhagic septicaemia, scabies, hog cholera, malta fever, or other similar or dissimilar contagious, infectious or communicable disease, or to the agency of transmission thereof, recognized by the veterinary science as being contagious, infectious or communicable, the said commission shall designate the district, county, or part of county or premises necessary to be quarantined, and notice of such quarantine shall be issued by the said commission, or chairman thereof, as provided herein. Publication of such quarantine orders may be made in any newspaper within such area, or if no newspaper is published in such area, then the nearest newspaper thereto. In lieu of such publication the Live Stock Sanitary Commission may give notice of such quarantine by posting a copy of such quarantine notice at the county courthouse door of the county in which said quarantine is to be effective. A written notice of such quarantine delivered to the owner or caretaker of livestock to be quarantined shall be sufficient notice of such quarantine, in lieu of notices above provided. The owner and caretaker of milch cows or dairy cows shall not be required to dip such cattle unless upon examination by an authorized inspector of the Live Stock Sanitary Commission such cattle or a part of them are found to have the fever-carrying tick upon them, or are exposed to said fever-carrying tick, and if the said Live Stock Sanitary Commission shall so find, then said quarantine shall be effective as to the premises of such owner and said person shall be subject to all the provisions of this Act, provided the term milch or dairy cows shall include only such cattle as are actually used for domestic or dairy purposes and does not include stocker or breeding cattle for other purposes.

Art. 7028. **Shipment by carriers.**—Any railway company, or receiver or receivers of any railway company or other common carrier, who shall receive for shipment or who shall haul or transport into any county in this State any cattle, horses, mules or asses, in violation of any quarantine established by the Live Stock Sanitary Commission, or its chairman, or who shall receive for shipment, or who shall transport from any county in this State that is under quarantine to any other county in this State any cattle that have not been certified to by a regular inspector of the Live Stock Sanitary Commission, shall be deemed guilty of a violation of this Act, and in any suit brought in a court of competent jurisdiction by the district or county attorney, either in the county where such shipment was received by said railroad company, receiver, or other common carrier, or in the county to which or through which said shipment may be moved, such county attorney or district attorney is hereby authorized to recover, for the benefit of the State, penalties against

said railway company of not more than fifty dollars per head for such cattle so received, hauled or transported.

Art. 7029. Shipping from quarantine district.—The owner, caretaker or person in charge of any cattle located in any quarantine county, district, area, premises or land, may move said cattle to shipping pens, and may ship same to market for the purpose of immediate slaughter upon one dipping, provided that in the driving or otherwise moving said cattle to the shipping pens, they shall not be moved or transported over or into any land or premises belonging to another that has been declared clean of the fever tick by the Live Stock Sanitary Commission, or over or into any land or premises upon which systematic tick eradication is being carried on by Live Stock Sanitary Commission or the Bureau of Animal Industry.

Art. 7030. Moving from quarantine district.—Any owner or person in charge of any cattle located in quarantined counties in this State may move or ship said cattle to any other quarantined county in this State upon one dipping under official inspection of the Live Stock Sanitary Commission or the Bureau of Animal Industry and so certified as having been inspected by said Live Stock Sanitary Commission or said Bureau of Animal Industry, provided the county to which said cattle are shipped is not engaged in systematic tick eradication, and provided further that in moving said cattle to the shipping pens in the county from which they are shipped and in moving cattle from the shipping pens in the county to which they are shipped they do not go into, through or over any clean land or premises, and provided further that said cattle shall not be unloaded en route in clean pens and shall not be unloaded at the point of destination in any clean pens. Said cattle shall be shipped within forty-eight hours from the time they are dipped. Said cattle shall be dipped in a solution of not less than $8\frac{1}{4}$ pounds and not more than $9\frac{1}{8}$ pounds of arsenic to each 500 gallons of water. Cattle may be driven from one quarantined county to another quarantined county, and when so driven pass through quarantined territory in which no systematic tick eradication is being carried on, and do not pass through or along side of any clean territory, said cattle may be driven without dipping.

Art. 7031. Boundary of districts.—Immediately after this Act becomes effective, the Live Stock Sanitary Commission of Texas shall make out and certify to the Governor of Texas, a list of all counties and portions of counties in Texas which have tick infested territory, land or premises that lie west of the following line, beginning at the mouth of the Brazos River thence with said river to the northwest corner of Robertson County, and a list of all counties lying north or west of the hereinafter described line; commencing at the northwest corner of Robertson County on said Brazos River; thence in an easterly direction with the north lines of Robertson and Leon Counties to the northeast corner of Leon County in the west line of Anderson; thence in a southerly direction, following west line of Anderson County to the southwest corner of said county and the northwest corner of Houston County; thence in an easterly direction

with the dividing line between said counties of Anderson and Houston, to the southeast corner of Anderson County; thence in a northerly direction, following the east line of Anderson County, to the northwest corner of Cherokee County, same being the southwest corner of Smith County; thence in an easterly direction, following the north line of Cherokee County to the northeast corner of same, being the southeast corner of said Smith County in the west line of Rusk County; thence with the west line of Rusk County, in a northerly direction, to the northwest corner of same, said point being the southwest corner of Gregg County; thence in an easterly direction following the north line of Rusk County to where the same intersects the south line of Harrison County; thence with the south line of Harrison County and the north line of Panola County; thence with the south line of Harrison County to the southeast corner of said Harrison County on the Louisiana State line.

Art. 7032. May designate counties.—The Live Stock Sanitary Commission shall designate from time to time, the counties and portion of counties in said area west of said Brazos River and north and west of a line running from the northwest corner of said Robertson County to the southeast corner of Harrison County as set out above in which systematic tick eradication work will be commenced, and the Governor shall thereupon issue his proclamation requiring systematic tick eradication work to begin and be prosecuted in said counties and portions of counties so designated by said Live Stock Sanitary Commission, and thereafter, from time to time, said Live Stock Sanitary Commission shall make out a list of additional counties or portions of counties in which they will carry on systematic tick eradication, if any, and thereupon the Governor shall issue his proclamation requiring systematic tick eradication work to begin in said counties or portions of counties so designated by the Live Stock Sanitary Commission. The expense of said work to be borne as follows:

Art. 7033. Salaries and expenses.—The salaries of all supervising inspectors and such county inspectors as the Live Stock Sanitary Commission may deem necessary, shall be borne by the State of Texas, and the expense of purchasing the necessary dip shall also be borne by the State of Texas. The expense of buying or leasing and maintaining the necessary dipping vats shall be borne by the respective counties in said territory, and said counties shall also bear the expense of constructing and maintaining such necessary pens and other facilities incident to the proper dipping of livestock; and said work of tick eradication in said counties and portions of counties shall be prosecuted until the fever ticks therein are destroyed and said territory is released from quarantine by the Live Stock Sanitary Commission.

Art. 7034. Certify to Governor.—Immediately after this Act becomes effective the Live Stock Sanitary Commission of Texas shall make out, and certify to the Governor of Texas, a list of all counties and portions of counties in Texas which have tick infested territory, land or premises, whereupon the Governor shall issue his proclamation declaring a quarantine in all of said

counties or portions of counties so designated by said Live Stock Sanitary Commission, and no cattle shall be moved from any quarantined area, land or premises within said quarantined counties or parts of counties except as is provided for in this Act, or in accordance with the rules and regulations of the Live Stock Sanitary Commission.

Art. 7035. State to bear expenses of dipping.—In all counties in this State, east of the Brazos River and south of said line running from the northwest corner of Robertson County to the southeast corner of Harrison County, who shall, at an election held for that purpose under the provisions of this Act, declare in favor of tick eradication, the expense of supervising inspectors and county inspectors, as well as the purchase of all necessary dip to carry on the work of tick eradication, shall be borne by the State of Texas, and the buying or leasing and maintaining the necessary dipping vats, shall be borne by the respective counties, the said counties shall also bear the expense of constructing and maintaining such necessary pens and other facilities incident to the proper dipping of livestock.

Art. 7036. Expense by owner.—In all counties and parts of counties in this State in which tick eradication work is being prosecuted under the provisions of this Act, or by virtue of any local option election, it shall be the duty of the owner, owners, or caretakers of such cattle or other livestock within such territory, to gather same, at his or their own expense, and drive, or cause them to be driven, to the dipping vat, and to dip same for the purpose of eradicating said fever ticks.

Art. 7037. Definition of premises.—Premises, as referred to in this Act, is hereby defined as being any lot, block, tract, subdivision, subdivisions, surveys, grants, part or parts thereof, of any kind situated within this State.

Art. 7038. Carrying arms.—No inspector provided for in this Act shall be permitted to carry on or about his person, saddle or in his saddle bags, or automobiles any pistol, dirk, dagger, slung shot, sword, cane, spear or knuckles made of any metal or any hard substance, bowie knife, or any other knife manufactured or sold for the purposes of offense or defense.

Art. 7039. Carrying arms.—In case any inspector secures appointment as deputy sheriff or deputy constable, or any other office that will permit him to carry arms, he shall be at once discharged by the Live Stock Sanitary Commission, and in case they refuse to discharge such inspector, the county judge of the county where such inspector is employed shall discharge him.

Art. 7040. Clean land, etc., defined.—By the term clean land, clean premises, clean area, clean pens and non-tick infested area, is meant those areas, premises, pens or land that have been declared free of the fever-carrying tick by the Live Stock Sanitary Commission. [Acts 1925, p. 310.]

[NOTE.—For penalties for violating the provisions of this Act see Act Thirty-ninth Legislature, Chapter 122, Sec. 8, p. 313; Sec. 10, p. 314; Sec. 13, p. 315; Sec. 20, p. 318; Sec. 21, p. 319; Sec. 23, p. 319; Sec. 23a, p. 320; Sec. 24, p. 321; and Sec. 27, p. 322.]

TITLE 122.

TAXATION.

| Chapter | Page | Chapter | Page |
|-----------------------------|------|--|------|
| 1 Levy of taxes..... | 2019 | 7 Assessment and assessors..... | 2081 |
| 2 Gross receipts..... | 2031 | 8 Collection and Collector..... | 2103 |
| 3 Franchise tax..... | 2045 | 9 Back taxes on unrendered lands..... | 2119 |
| 4 Intangible tax board..... | 2051 | 10 Delinquent taxes..... | 2123 |
| 5 Inheritance tax..... | 2060 | 11 In certain cases..... | 2137 |
| 6 Rendition..... | 2067 | | |

CHAPTER ONE.

LEVY OF TAXES AND OCCUPATION TAXES.

| | Article | | Article |
|-----------------------------------|---------|---|---------|
| Board constituted..... | 7041 | Books of collector..... | 7050 |
| Certificate to Comptroller..... | 7042 | Collector furnished books, etc..... | 7051 |
| Ascertain tax rate..... | 7043 | Pay in advance..... | 7052 |
| Certify rate to tax assessor..... | 7044 | Tax receipts furnished..... | 7053 |
| County rate..... | 7045 | Account of occupation tax receipts..... | 7054 |
| Poll tax..... | 7046 | Transfer of license..... | 7055 |
| Occupation taxes..... | 7047 | Purchaser of unexpired license..... | 7056 |
| County ad valorem, etc..... | 7048 | Revenue duties..... | 7057 |
| Taxes payable in what..... | 7049 | | |

Art. 7041. [7349] **Board constituted.** — The Governor, Comptroller and State Treasurer are constituted a board to calculate the ad valorem tax to be levied and collected each year for State and public free school purposes. [Acts 1907, p. 464.]

Art. 7042. [7350] **Certificate to Comptroller.**—Each tax assessor shall make a statement to the Comptroller on or before July 15th of each year showing as nearly as can be ascertained from his inventories or assessments the total amount of property in each county subject to taxation; provided, that the tax for State and public free school purposes shall not be calculated and carried out upon said rolls. [Acts 1st C. S. 1909, p. 371.]

Art. 7043. [7351] **Ascertain tax rate.**—Within five days after the Comptroller has received such certified statements from every assessor within this State, said board shall meet for the purpose of calculating the ad valorem rate for taxes to be collected for the State and public free school purposes. In calculating said rates the board shall calculate the same by the following rules and upon the following basis; they shall find by adding together all the property subject to taxation in all the counties as shown by the certified statements returned by the assessors, the total valuation of all property within this State subject to ad valorem taxes. They shall find by adding together the sums appropriated by the Legislature, which will or which may become due by the State during the following fiscal year, the total sum which will or which may become due by the State, during the following fiscal year. They shall find, by adding all sums paid into the State treasury as taxes for State purposes from all sources other than as ad valorem taxes during the first half of the current calendar year and the latter half of the preceding calendar year, the total sum paid into the State treasury from said sources during

said time. They shall find by subtracting from the total sum which will or which may become due by the State during the succeeding fiscal year the total sum which was paid into the State treasury as taxes for State purposes during the first half of the current calendar year and the latter half of the preceding calendar year, the total sum for State purposes which must be collected by ad valorem taxes. They shall add to such remainder twenty per cent of said remainder. They shall divide the total sum for State purposes which must be collected by ad valorem taxes added to twenty per cent of such total sum by the quotient of the total valuation of all property within this State divided by one hundred. The quotient shall be the number of cents on the one hundred dollars valuation to be collected for the current year for State purposes; provided, that said quotient shall not be run to more than three decimals. The rate for State purposes shall never exceed the rate fixed by law on the one hundred dollars valuation of property. In calculating the rate to be collected for public free school purposes, said board shall take into consideration the number of children in the State within the scholastic age, to be determined from the most recent official school census; and shall fix a rate that will yield and produce for such fiscal year four dollars per capita for all the children within the scholastic age, as shown by said scholastic census; provided, the rate so fixed for any year shall never exceed the rate fixed by law. [Acts 1st C. S. 1907, p. 464.]

Art. 7044. [7352] **Certify rate to tax assessor.**—The Comptroller shall certify to the tax assessor of each county through registered letter, the rate of taxes for State purposes and for public free school purposes for the current year, and shall also publish immediately such rate for thirty days in some newspaper published in the State and having a general circulation therein; and as soon as such tax assessor has received notice of such rate he shall calculate the taxes due the State for State purposes, and also the taxes due for public free school purposes, on all taxable property within his county as set out in the preceding article, and shall carry the same out upon the copies of the tax rolls of the county to be delivered to the tax collector and to the county clerk, and to be returned to the Comptroller. After he has so completed the said copies of the tax rolls, he shall return to the Comptroller a copy of the same. [Id.]

Art. 7045. [7353] **County rate.**—The commissioners courts of the several counties, all the members thereof being present, at either a regular or special session, may at any time after the tax assessors of their respective counties have forwarded to the Comptroller the said certificate and prior to the time when the tax collector of such county shall have begun to make out his receipts, calculate the rate and adjust the taxes levied in their

respective counties for general purposes to the taxable values shown by the assessment rolls. [Id.]

Art. 7046. [7354] [5048] **Poll tax.**—There shall be levied and collected from every person between the ages of twenty-one and sixty years, resident within this State on the first day of January of each year (Indians not taxed, and persons insane, blind, deaf or dumb, or those who have lost one hand or foot, or are permanently disabled, excepted), an annual poll tax of one dollar and fifty cents, one dollar for the benefit of the free schools, and fifty cents for general revenue purposes. Said tax shall be collected and accounted for by the tax collector each year and appropriated as herein required. No county shall levy more than twenty-five cents poll tax for county purposes. The poll tax due from citizens of unorganized counties shall be paid in the county to which the unorganized county is attached for judicial purposes. [Acts 4th C. S. 1920, p. 11.]

Art. 7047. [7355] [5049] **Occupation taxes.**—There shall be levied on and collected from every person, firm, company or in the following numbered subdivisions of this article, an annual association of persons, pursuing any of the occupations named occupation tax, which shall be paid annually in advance except where herein otherwise provided, on every such occupation or separate establishment, as follows: [Acts 1st C. S. 1897, p. 49.]

1. Itinerant merchants.—From every merchant who may remove from place to place and offer for sale “bankrupt stocks” of goods, or advertising “fire sales” or “water and fire damaged stocks for sale,” for a limited period of time, there shall be collected one hundred dollars per month for the first month, or less than a month, for each place where such business is located; and for each additional month that such sales are continued at any given place, said merchant shall pay an additional sum of twenty dollars. Where they remain for six months or more in any place, in addition to the one hundred dollars charged for the first month, they shall pay an additional sum of ten dollars per month. [Id.]

2. Traveling vendors of patent medicines.—From every traveling person selling patent or other medicines, fifty dollars, and no traveling person shall so sell until said tax is so paid. This tax shall not apply to commercial travelers, drummers, or salesmen making sales or soliciting trade for merchants engaged in the sale of drugs or medicines by wholesale. [Acts 1st C. S. 1897, p. 49; Acts 1917, p. 335.]

3. Itinerant physicians, etc.—From every itinerant physician, surgeon, oculist or medical or other specialist of any kind, traveling from place to place in the practice of his profession, except dentists practicing from place to place in the county of their residence, an annual tax of fifty dollars. [Acts 1907, p. 57.]

4. Peddlers.—From every foot-peddler, five dollars in each county in which he peddles; from every peddler with one horse or one pair of oxen, seven dollars and fifty cents in the county

in which he peddles; from every peddler with two horses or two pair oxen, ten dollars in each county in which said occupation is pursued; from every peddler with sail or other boat in streams, along coasts or bays of this State, ten dollars in each county in which said occupation is pursued. Nothing herein shall be so construed as to include traveling vendors of literature or traveling vendors of poultry, vegetables, fruits or other country produce exclusively, or fruit trees exclusively. [Acts 1st C. S. 1897, p. 49.]

5. Clock peddlers.—From every person or firm who peddles out clocks, agricultural implements, cooking stoves or ranges, wagons, buggies, carriages, surreys, and other similar vehicles, washing machines and churns, an annual tax of two hundred and fifty dollars, to be paid in each county in which said occupation is pursued; provided, that a merchant shall not be required to pay this special tax for selling the articles named in this subdivision when sold in his place of business. [Id.]

6. Auctioneers.—From every auctioneer, ten dollars. [Id.]

7. Selling on commission.—From every person, firm, or association of persons selling on commission, ten dollars. [Id.]

8. Brokers.—From every person, firm or association of person selling on commission, if in a city of more than ten thousand inhabitants, fifty dollars; if in a city or town of less than ten thousand inhabitants, twenty-five dollars. This article is intended to cover every person, firm or association of persons selling on samples only, and who do not carry any stock or merchandise or anything else on hand. This tax shall not apply to commercial travelers or salesmen making sales or soliciting trade from merchants. [Id.]

9. Ship brokers and agents.—From every person, firm or association of persons following the occupation of ship brokers or ship agents, ten dollars. [Id.]

10. Insurance adjusters and general agents.—For each person acting as a general adjuster of losses, or agents of fire and marine insurance companies, who may transact any business as such in this State, an annual occupation tax of fifty dollars. By "general agent" as used in this law, is meant any person or firm, representative of any insurance company in this State, or who may exercise a general supervision over the business of such insurance company in this State, or over the local agency thereof in this State, or any subdivision thereof. [Id.]

11. Lightning rod agents.—From every person, firm or association of persons, dealing in lightning rods, an annual tax of thirty-six dollars to the State and eighteen dollars as a county tax to the county in which such business is carried on; and from every person canvassing for the sale of lightning rods, an annual tax of one hundred dollars to the State and fifty dollars as county tax, in each county in which such canvassing is done. [Id.]

12. Cotton brokers and commission merchants.—From every

person, firm or association of persons following the occupation of cotton broker, cotton factor, or commission merchant in a city of ten thousand inhabitants or over, thirty-five dollars; and in all cities and towns of less than ten thousand inhabitants, an annual tax of eighteen dollars. A "commission merchant," in the meaning of this article, is every person, firm or association of persons, receiving country produce, horses, cattle, sheep, hogs, grain, corn, hay, lumber, shingles, wood, coal, goods, wares and merchandise, or anything else for sale, to be accounted for to the owner when sold, and charging a commission therefor. [Id.]

13. Pawnbrokers.—From every pawnbroker, an annual tax of one hundred and fifty dollars. [Id.]

14. Loan brokers.—From loan brokers, as that term is defined by the laws of this State, an annual tax of one hundred and fifty dollars for each place of business. [Acts 1915, p. 50.]

15. Money lenders.—From every person, firm or association of persons loaning money as agent or agents for any corporation, firm or association, either in this State or out of it, an annual occupation tax of one hundred and fifty dollars for the State, for the principal office, and a county tax of fifteen dollars from each agent for each county in which he may do business, and no additional occupation tax shall be levied by any county, city or town in this State. [Acts 1st C. S. 1897, p. 49.]

16. From each person, party, partnership or corporation engaged in the business of inquiring into and reporting upon the credit or standing of persons engaged in business in this State, or acting as agent or business manager in this State for any such person, party, partnership, joint stock association, or corporation, three hundred dollars. The payment of this tax, evidenced by the receipt of the Comptroller of Public Accounts, shall exempt the party paying the same from the payment of this tax in any other county, or to any city or town; and payment of such tax shall not be required of any sub-agent or correspondent of the party or company carrying on such business in this State.

17. Gas companies.—From each gas company, manufacturing gas in towns and cities of ten thousand or more inhabitants, thirty-five dollars; in a city or town of less than ten thousand inhabitants, twenty dollars. [Id.]

18. Electric light companies.—From each electric light company operating an electric light plant in a town or city of ten thousand inhabitants or more, thirty-five dollars; in a city or town of less than ten thousand and more than six hundred inhabitants, twenty dollars. [Acts 3rd C. S. 1920, p. 27.]

19. Waterworks companies.—From each water works company operating a water works plant in a town or city of ten thousand inhabitants or more, thirty-five dollars; in a city or town of less than ten thousand and more than six hundred inhabitants, twenty dollars. [Id.]

20. Ice dealers.—From each person or corporation who are

wholesale dealers, selling imported or home-made ice to the trade to be sold again, in cities and towns of twenty thousand inhabitants or more, fifty dollars; in cities and towns of less than twenty thousand or more than ten thousands inhabitants, thirty dollars; in cities and towns of less than ten thousand and more than five thousand inhabitants, twenty dollars; in cities and towns of less than five thousand inhabitants ten dollars. [Acts 1st C. S. 1897, p. 49.]

21. Street car companies.—From every street car company in this State, two dollars per mile on each mile of track owned by said company or corporation. [Id.]

22. Theaters.—From the owner, proprietor or operator of every regularly established and recognized opera house, theater, airdome, and other establishd place where moving picture or other entertainments or exhibitions are given for private profit, in cities, towns and villages having the following populations, respectively:

| Population. | Annual Tax. |
|-----------------------|-------------|
| Under 1000..... | \$ 5.00 |
| 1,000 to 2,500..... | 15.00 |
| 2,500 to 5,000..... | 20.00 |
| 5,000 to 10,000..... | 25.00 |
| 10,000 to 15,000..... | 30.00 |
| 15,000 to 20,000..... | 40.00 |
| 20,000 to 30,000..... | 50.00 |
| 30,000 to 40,000..... | 60.00 |
| 40,000 or more..... | 75.00 |

In each case the population shall be determined by the preceding Federal census. Counties, incorporated cities, towns and villages shall each have the power and authority to collect one-half the amount of such State occupation tax. [Acts 3rd C. S. 1923, p. 162.]

23. Panorama or view shows.—From each owner, manager or keeper of every panorama or view show, used for profit, exhibiting in a wagon, room, tent or elsewhere, an annual occupation tax of ten dollars and a county occupation tax of two dollars per annum. A panorama or view show is a show exhibiting pictures, statuary or other works of art which are to be viewed through stereoscopic or magnifying lenses. [Acts 1st C. S. 1897, p. 49.]

24. Circus.—From every circus or wild west show wherein among other acts, broncho-busting, rough riding, equestrian or acrobatic feats are performed or exhibited for which pay for admission is demanded or received, for each day or part thereof on which performances or exhibitions are given where an admission fee of seventy-five cents or over is charged, two hundred and twenty-five dollars; for each day or part thereof on which performances or exhibitions are given where an admission fee of any sum from fifty cents to seventy-five cents is charged, two hundred dollars; for each day or part thereof on

which performances or exhibitions are given where an admission fee of fifty cents or less is charged, one hundred and fifty dollars; provided, that the amount of fee charged for reserved seats shall be considered as a part of such admission fee; provided that where there is a combination of circus and menageries, wild west and menagerie or circus or wild west and other exhibitions, the highest tax fixed by this act for any division or department of the combination shall be collected. Every show or exhibition which advertises itself as a circus, wild west show or menagerie or combination of any of them, shall be held to be such for the purposes of the levy and collection of occupation taxes provided for herein. [Acts 1911, p. 142.]

25. Menagerie, museum, carnival.—From every menagerie, wax works, side shows or exhibition, whether connected with a circus or not, where a separate fee for admission is demanded or received, ten dollars for every performance or exhibition in which fees for admission are received; provided that from any museum, menagerie or zoological exhibition, or a combination thereof, operated and maintained in any city or town and open for admission all day continuously, in which a charge for admission is demanded or received, an annual tax of fifty dollars. Provided that where any carnival, or carnivals, shows, amusements or entertainments are held, under the auspices, direction or control of any chamber of commerce of any city or other similar organization, for not longer during any one year of a period or periods aggregating thirty days, it shall not be necessary for such carnivals, shows or entertainments to pay any tax to the State, city or county during the operation of said show by said chamber of commerce or other similar organization, but there shall be assessed against said chamber of commerce or other similar organization, as the case may be, a State tax of one hundred dollars. [Acts 1915, p. 209.]

26. Waxworks, etc.—From every menagerie, wax-works or exhibition of any kind where a separate fee for admission is demanded or received, ten dollars for every day on which fees for such admission are received; provided that exhibitions by associations organized for promotion of art, science, charity or benevolence, shall be exempt from taxation; and persons who form a museum composed entirely of the products of Texas shall have the right to exhibit the same for a fee without paying any occupation tax. [Acts 1st C. S. 1897, p. 49.]

27. Acrobatic performances.—From every exhibition where acrobatic feats are performed and an admission fee charged for profit, not connected with the circus or theatre, ten dollars for each performance. [Id.]

28. Slight of hand performances.—From every slight of hand performance or exhibition of legerdemain, not connected with the theater or circus, twenty-five dollars. [Id.]

29. Medicine shows, etc.—From each owner, manager or keeper of every show or company of persons giving exhibi-

tions of music, songs, recitations, slight of hand, gymnastic, dancing or other kinds of performances in a tent, house or elsewhere, which said exhibitions are used for profit by sale of medicines, electric belts or other articles of value, whether charge is made only for seats or not, an annual occupation tax of fifty dollars and a county occupation tax of two dollars and fifty cents for every such performance or exhibition; provided, this tax shall not be assessed when these performances are given inside the grounds of any State or county fair during the time that said State or county fair is giving its annual exhibition. [Id.]

30. Concerts, etc.—For every concert where a fee for admission is demanded or received, two dollars; provided, that entertainments when given by the citizens for charitable purposes, or for the support or aid of literary or cemetery associations are exempt. [Id.]

31. Phonographs, etc.—From each owner or manager of every coin operated phonograph, electrical piano, electric battery, graphophone, weighing machine or other machines or instruments where a fee is charged, where such fee is five cents or more, an annual tax of five dollars. From each owner or manager of every such machine as mentioned or referred to herein where the fee charged is a penny, an annual occupation tax of one dollar, provided when an electric battery is used by a regularly authorized physician on a patient, no tax shall be charged. [Acts 2nd C. S. 1923, p. 44.]

32. Ball parks.—From every manager of a base ball park in a city or town containing five thousand or more inhabitants, where an admission fee is charged, twenty-five dollars. [Acts 1st C. S. 1897, p. 49.]

33. Race tracks.—From every owner or manager of every race track, one mile or more in length, used for profit, one hundred dollars; from each owner or manager of every race track, one-half mile or less in length, fifty dollars per annum; provided, this shall not apply to race tracks owned by private individuals and used only for training purposes, or in connection with agricultural fairs and expositions. [Id.]

34. Skating rinks.—From each and every owner or keeper of any skating rink used for profit, twenty-five dollars. [Id.]

35. Shooting gallery.—From every person or firm keeping a shooting gallery at which a fee is paid or demanded, an annual tax of thirty dollars in each county. [Id.]

36. Nine and ten pin alleys.—From every nine or ten pin or other alley used or operated for profit by whatever name called, constructed or operated upon the principal of a bowling alley upon which pins, pegs, balls, rings, hoops or other devices are used, without regard to the number of tracks or alleys in the same building or place, or whether the balls or other devices are rolled or used by hand or otherwise, one hundred dollars. Any alley used in connection with any drug store, or place where to-

bacco in any form is sold, or upon which money or other things of value are paid or charged for the privilege of playing shall be regarded as used and operated for profit. [Acts 1917, p. 385.]

37. Hobby horses, etc.—From all persons keeping or using for profit any hobby horse, flying-jenny, or device of that character, with or without name, fifteen dollars for each county wherein the same are kept or used. [Acts 1st. C. S. 1897, p. 49.]

38. Tax on dealers in cannon crackers, etc.—From every person, firm or corporation engaged in the occupation of selling cannon crackers, or toy pistols used for shooting or exploding cartridges, within this State, an annual tax of five hundred dollars, and counties and incorporated cities or towns in which such business is located shall have the power to levy a tax of one-half the above amount as now provided by law in addition to the above tax, and such person, firm or corporation so selling such cannon crackers shall be required to pay an additional tax in the above amount and take out an additional license for each separate establishment or place in which such cannon crackers shall be sold. By the term “cannon cracker” is meant any fire cracker or other combustible package more than two inches in length, and more than one inch in circumference commonly sold and exploded for purposes of amusement. Nothing herein shall be so constructed as to prohibit the sale of, or to place a tax on, the sale of cartridges, combustible packages or explosives commonly used for firearms or artillery, mining, excavating earth or stone, scientific purposes or for any public or private work. [Acts 1909, p. 174.]

39. Cigarette dealers.—From all dealers in cigarettes in this State, ten dollars, a cigarette being the same as defined by the laws of the United States government; provided, that this tax shall be in addition to any other tax levied under the law. Each dealer shall be required to procure an annual license from the county clerk of the county where he proposes to sell cigarettes, which shall be granted for no shorter or longer term than one year. The license shall describe the house and locality where the dealer proposes to sell cigarettes. [Acts 1st C. S. 1897, p. 49.]

Art. 7048. [7357] [5050] **County ad valorem, etc.** — Each commissioners court shall have power to levy, for county revenue purposes, a tax of one-fourth of one per cent, and, for roads and bridges, fifteen cents on the one hundred dollars valuation of all property subject to a State tax by the provisions of this title; and, for the payment of debts incurred prior to September 1883, and for the erection of public buildings and other permanent improvements they shall have power to levy a tax not to exceed twenty-five cents on the one hundred dollars valuation in any one year, and for the improvement of public roads, under the restrictions provided by law for the levy of a road

tax, a tax not to exceed fifteen cents on the one hundred dollars valuation, and shall have power to levy a special tax for the further maintenance of public free schools, and the erection within each school district of school buildings therein in counties not exempt from the district school system; provided, that two-thirds of the qualified property tax paying voters of the district, voting at an election to be held for that purpose, shall vote such tax not to exceed in any one year twenty cents on the one hundred dollars valuation of the property subject to taxation in such district, and shall have the right to levy one-half of the occupation tax levied by the State upon all occupations not herein otherwise specially exempted; provided any one wishing to pursue any of the vocations named in this chapter, upon which any county occupation tax may be levied, may do so by paying the same quarterly. The receipt of the proper officer under seal shall be prima facie evidence of the payment of such taxes as are herein named. The provisions of this law shall not be deemed to affect the provisions of any law specially authorizing any commissioners court to levy a different rate of tax. No person shall be allowed license for keeping any nine or ten pin alley, or anything of the kind used for profit, for a period of less than twelve months. The governing body of any incorporated town or city shall in no case levy a greater tax on any occupation than that authorized by this chapter to be levied by the commissioners court. In all cases where any dealer in merchandise, wares or goods of any kind, subject to ad valorem or occupation taxes, or both, under the provisions of this law, who shall after the rendition of said merchandise, wares or goods for taxation, or after becoming liable for any occupation tax, become bankrupt or make assignment of said merchandise, wares or goods, then the tax collector shall at once demand of the receiver or assignee of said dealer payment of the amount due for said taxes by said dealer; and in case of failure of said receiver or assignee to at once pay the amount of said taxes, the said collector shall levy upon, seize and sell from the said merchandise, wares or goods, enough to satisfy the amount of said taxes, and said taxes, until paid, shall constitute a prior lien on said merchandise, goods and wares in default of said taxes. [Acts 1885, p. 105; G. L. Vol. 9, p. 725; Acts 1891, p. 51.]

Art. 7049. [7358] [5051] **Taxes payable in what.**—The taxes levied by this chapter are payable in currency or coin of the United States; provided, that persons holding scrip issued to them for services rendered the county may pay their county ad valorem taxes in such scrip. [Acts 1st C. S. 1897, p. 38.]

Art. 7050. [7359] [5052] **Books of collector.**—The tax collector shall keep a book of such size and character as may be necessary, in which shall be entered quarterly, at the following dates, to-wit: January 1st, April 1st, July 1st, and October 1st, or within ten days thereafter, in which to require the returns

to be made under the provisions of this chapter, the several amounts as shown by such returns for which and upon which any person, firm or association of persons is or may be liable to a tax upon occupations under this chapter; and within fifteen days from the time of receiving and making up the several amounts and the sums due upon such amounts as occupation tax, the collector shall forward to the Comptroller a transcript or duplicate of the return and the amount as shown by his record, this transcript and record from which it is taken to show the amount of such quarterly returns and the tax due thereon from every person, firm or association of persons liable to such tax. Nothing contained in this article is intended to affect the liability which, in the absence of this statute, would be incurred under any special enactment of this State. [Acts 1879, p. 143; G. L. Vol. 8, p. 1443.]

Art. 7051. [7360] Collector furnished books, etc.—The Comptroller shall furnish tax collectors the necessary books and blanks required to be used by such collectors under the provisions of this chapter. [Id.]

Art. 7052. [7361] [5054] Pay in advance.—The payment of the specific tax herein provided for shall be required by the tax collector to be made before any person, firm or association of persons shall be allowed to engage in any occupation requiring a license under any provision of this law, this payment to be made for a period not less than three months. All arrearages of taxes that may be due by reason of any such business having been carried on shall be a lien upon all the stock and fixtures owned or used in making a part of any business or vocation liable to such tax under the provisions of this chapter, and which lien shall authorize the collector to sell, after due notice, so much of the stock or other personal property of any person, firm or association of persons owing taxes under the provisions of this chapter, as will satisfy such claim, together with the cost of such proceeding. [Id.]

Art. 7053. [7362] [5055] Tax receipts furnished.—The Comptroller shall cause occupation tax receipts for each occupation to be printed with his signature, for all occupations, payable to the collectors, annual receipts for those that are paid annually, and quarterly receipts for all that can be paid quarterly; such receipts shall state the name of the occupation and the amount of the tax, and have blanks for the year, month and name of licensee, and also have a blank space for the signature of the collector; these receipts shall each have a stub attached, stating briefly the substance of the attached receipt, and shall be bound in books; and he shall forward to each collector a proper number of said receipts, and charge him with the amount represented therein, and cause him to account therefor. The collector whenever collecting any occupation tax, shall fill the blanks in the receipt and stub by writing thereon the time for which he collects and the name of the licensee, and shall sign the receipt and stub

officially. No person shall pursue any occupation, unless he has a receipt signed as herein provided by the Comptroller and collector; and every person, firm or corporation keeping an office or having a local place of business shall keep posted up in a conspicuous place his or their said license. [Id.]

Art. 7054. [7363] Account of occupation tax receipts.—When the Comptroller furnishes collectors with blank occupation tax receipts, he shall furnish the commissioners courts with the numbers and value of the receipts furnished to their respective collectors; and such courts shall charge their respective collectors with the number and such proportion of the value of the receipts so furnished as shall apply to the county tax, when such collectors shall make their settlements with the Comptroller. The Comptroller shall furnish the commissioners court with the numbers and value of the receipts returned, and with the amount of the occupation taxes collected by their respective collectors. [Acts 1st C. S. 1897, p. 49.]

Art. 7055. [7364] [5056] Transfer of license.—Any person, firm, corporation, or association of persons, who shall be the legal owners or holders of any unexpired occupation license issued in accordance with the laws of this State, may transfer the same on the books of the officer by whom the same was issued. [Acts 1885, p. 27; G. L. Vol. 9, p. 647.]

Art. 7056. [7365] [5057] Purchaser of unexpired license. The assignee or purchaser of such unexpired occupation license shall be authorized to pursue such occupation under such unexpired license for and during the unexpired term thereof, provided that such assignee or purchaser shall, before following such occupation, comply in all other respects with the requirements of the law provided for in the original applications for such licenses. Nothing in this law shall be so construed as to authorize two or more persons, firms, corporations or associations of persons to follow the same occupation under one license at the same time. Whenever any person, firm, corporation or association of persons following an occupation shall be closed out by legal process, the occupation license shall be deemed an asset of said person, firm, corporation or association of persons, and sold as other property belonging to said person, firm, corporation, or association; and the purchaser thereof shall have the right to pursue the occupation named in said license, or transfer it to any other person; provided, such occupation license shall under no circumstances be transferred more than one time. [Id.]

Art. 7057. [7366-67-68] Revenue duties.—The Governor may, whenever in his judgment the public service demands it, direct the Comptroller to investigate books and accounts of the assessing and collecting officers of this State, and all officers and persons disbursing, receiving or having in their possession public funds, and to make such other investigations and perform such other duties in the interest of the public revenues as the Governor may direct. Whenever any such investigation is ordered by the

Governor, the Comptroller shall report to him in writing the results thereof, and point out the particulars, if any, wherein the revenue laws have been violated or their enforcement neglected, together with the names of those delinquent therein. Whereupon the Governor shall institute civil and criminal proceedings through the Attorney General in the name of the State against such delinquent parties who are reported by the Comptroller to be delinquent. The Comptroller shall have power at any time to examine and check up all and any expenditures of money appropriated for any of the State institutions or for any other purpose or for improvements made by the State on State property or money received and disbursed by any board authorized by law to receive and disburse any State money. The Comptroller shall also have power and authority, and it is hereby made his duty, to fully investigate any State institution when so directed by the Governor or required by information coming to his own knowledge. He shall investigate the manner of conducting the same and the policy pursued by those in charge thereof, and the conduct or efficiency of any person employed therein by the State. He shall examine into and report upon the character and manner as well as the amount of expenditures thereof, and investigate and ascertain all sums of money due the State from any source whatever, the ascertainment and collection of which does not devolve upon other officers of this State under existing law; and he shall report all such facts to the Governor. When the Comptroller, acting under the direction of the Governor, calls on any person connected with the public service to inspect his accounts, records or books, said person so called upon shall submit to said agent all books, records and accounts so called for without delay.

The Comptroller shall receive his actual traveling expenses, which shall be paid on the approval of the same by the Governor; provided he shall not be allowed traveling expenses for any service connected with the examination and investigation of the accounts of any institution in Travis County. [Acts 1891, p. 87; Acts 1899, p. 26; Acts 4th C. S. 1918, p. 197.]

CHAPTER TWO.

TAXES BASED UPON GROSS RECEIPTS.

| | Article | | Article |
|---|---------|---|---------|
| Express companies | 7058 | Telephone companies | 7070 |
| Telegraph companies | 7059 | Gross production tax on oil..... | 7071 |
| Gas, electric light, power or water-works | 7060 | Terminal companies | 7072 |
| Collecting or commercial agency..... | 7061 | Tax paid when business is begun after beginning of quarter..... | 7073 |
| Car companies | 7062 | Penalty for failure to report..... | 7074 |
| Sleeping, palace or dining car companies | 7063 | Penalty for failure to pay tax..... | 7075 |
| Insurance companies | 7064 | Penalties recovered by suit..... | 7076 |
| Tax on gasoline | 7065 | Permit not granted until tax paid..... | 7077 |
| Tax on sulphur | 7066 | Tax in addition to all other taxes..... | 7078 |
| Interurban and electric railway companies | 7067 | Additional reports | 7079 |
| Dealers in pistols | 7068 | Permit | 7080 |
| Text book publishers | 7069 | Issuance of permit | 7081 |
| | | Suspension of permit | 7082 |
| | | Penalties | 7083 |

Art. 7058. [7369] Express companies.—Each individual, company, corporation or association doing an express business,

by railroad or water, in this State shall on or before the first day of March of each year, make a report to the Comptroller under oath of the individual or of the president, treasurer or superintendent of such company, corporation or association, showing the amount of gross receipts from charges and freights within this State paid to or collected by such individual, company, corporation or association on account of money, goods, merchandise or other character of freight carried within this State during the twelve months next preceding. Said individuals, companies, corporations or associations at the time of making said report, shall pay to the State Treasurer an occupation tax for the year beginning on said date equal to two and one-half per cent of said gross receipts as shown by said report. [Acts 1st C. S. 1907, p. 479.]

Art. 7059. [7370] **Telegraph companies.**—Each individual, company, corporation or association owning, operating, controlling or managing any telegraph lines in this State, or owning, operating, controlling or managing what is known as wireless telegraph stations, for the transmission of messages or aerograms and charging for the transmission of such messages or aerograms, shall make quarterly, on the first days of January, April, July and October of each year, a report to the Comptroller under oath of the individual, or of the president, treasurer or superintendent of such companies, corporation or association, showing the gross amount received from all business within this State during the preceding quarter, in the payment of telegraphic or aerographic charges, including the amount received on full rate messages and aerograms and half rate messages and aerograms, and from the lease or use of any wires or equipment within the State during said quarter. Said individuals, companies, corporations and associations, at the time of making said report, shall pay to the Treasurer of this State an occupation tax for the quarter beginning on said date equal to two and three-fourths per cent of said gross receipts as shown by said report. [Id.]

Art. 7060. [7371] **Gas, electric light, power or waterworks.**—Each individual, company, corporation or association, owning, operating or managing or controlling any gas, electric light, electric power or waterworks, or water and light plant, within this State and charging for gas, electric lights, electric power or water, shall make quarterly, on the first days of January, April, July and October of each year, a report to the Comptroller under oath of the individual or of the president, treasurer or superintendent of such company, corporation or association showing the gross amount received from the business done within this State in the payment of charges for gas, electric lights, electric power and water for the quarter next preceding. Said individual, company, corporation or association, at the time of making said report for any town or city of ten thousand inhabitants and less than twenty-five thousand inhabitants, shall

pay to the Treasurer of this State an occupation tax for the quarter beginning on said date equal to one-fourth of one per cent of said gross receipts, as shown by said report; and, for any town or city of twenty-five thousand inhabitants or more, the said individual, company, corporation or association, at the time of making said report, shall pay to the Treasurer of this State an occupation tax for the quarter beginning on said date an amount equal to one-half of one per cent of said gross receipts as shown by said report. Nothing herein shall apply to any gas, electric light, electric power or waterworks or water and light plant within this State owned by any city or town. [Id.]

Art. 7061. [7372] **Collecting or commercial agency.**—Each individual, company, corporation or association, owning, operating, managing or controlling any collecting agency, commercial agency or commercial reporting credit agency within this State, and charging for collections made, or business done, or reports made, shall make quarterly, on the first days of January, April, July and October of each year, a report to the Comptroller under oath of the individual or of the president, treasurer, or superintendent of such company, corporation or association, showing from business done within this State the gross amount received in the payment of charges for collections made and business done and reports made during the quarter next preceding. Such individuals, companies, corporations or associations at the time of making said report shall pay to the Treasurer of this State an occupation tax for the quarter beginning on said date equal to one-half of one per cent of said gross receipts as shown by said report. [Id.]

Art. 7062. [7373] **Car companies.**—Each individual, company, corporation or association, residing without this State, or incorporated under the laws of any other State or territory, or nation, and owning stock cars, refrigerator and fruit cars of any kind, tank cars of any kind, coal cars of any kind, furniture cars or common box cars and flat cars, and leasing, renting or charging mileage for the use of such cars within the State of Texas, shall make quarterly, on the first days of January, April, July and October of each year, and report to the Comptroller under oath of the individual or of the president, treasurer or superintendent of such company, corporation or association, showing the amount of gross receipts from such rentals, or mileage, or from other sources of revenue received from business done within this State, during the quarter next preceding. Said individuals, companies and corporations, and associations, at the time of making said report, shall pay to the Treasurer of this State an occupation tax for the quarter beginning on said date equal to three per cent of said gross receipts as shown by said report. [Id.]

Art. 7063. [7375] **Sleeping, palace or dining car companies.**—Every sleeping car company, palace car company, or dining

car company doing business in this State, and each individual, company, corporation or association leasing or renting, owning, controlling or managing any palace cars, dining cars, or sleeping cars within this State for the use of the public, for which any fare is charged, shall, on the first days of January, April, July and October of each year, report to the Comptroller, under oath of the individual or of the president, treasurer or superintendent of such company, corporation or association, showing the amount of gross receipts earned from any and all sources whatever within this State, except from receipts derived from buffet service, during the quarter next preceding. Said individuals, companies, corporations and associations, at the time of making said report, shall pay to the Treasurer of this State an occupation tax for the quarter beginning on said date equal to five per cent of said gross receipts as shown by said report. The tax herein provided for shall be in lieu of all other taxes now levied upon sleeping car, palace car or dining car companies, except the tax of twenty-five cents on the one hundred dollars of capital stock of such car companies as provided by law. [Id.]

Art. 7064. [7376] Insurance companies.—Every insurance company transacting the business of fire, marine, marine inland, accident, credit, title, live stock, fidelity, guaranty, surety, casualty, or any other kind or character of insurance business other than the business of life insurance, within this State and other than fraternal benefit associations, at the time of filing its annual statement, shall report to the Commissioner of Insurance the gross amount of premiums received in the State upon property, and from persons residing in this State during the preceding year, and each of such companies shall pay an annual tax upon such gross premium receipts as follows: shall pay a tax of two and six-tenths per cent, provided, that any company doing two or more kinds of insurance business herein referred to, shall pay the tax herein levied upon its gross premiums received from each of said kinds of business; and the gross premium receipts where referred to in this law are understood to be the premium receipts reported to the Commissioner of Insurance by the insurance companies upon the sworn statement of two principal officers of such companies, less return premiums paid policy holders, and the premiums paid for re-insurance in companies authorized to do business in this State. Upon receipt by him of sworn statements, showing the gross premium receipts by such companies, the Commissioner shall certify to the State Treasurer the amount of taxes due by each company, which tax shall be paid to the State Treasurer on or before the first of March following, and the receipt of the Treasurer shall be evidence of the payment of such taxes. No such insurance company shall receive a permit to do business in this State until such taxes are paid. If any such insurance company shall have as much as one-fourth of its entire assets, as shown by said sworn statement, invested in any or all of the following securities: real estate in this State, bonds of this State or

of any county, incorporated city or town of this State, or other property in this State in which by law such companies may invest their funds, then the annual tax of any such companies shall be one per cent of its said gross premium receipts; and if any such company shall invest as aforesaid as much as one-half of its assets, then the annual tax of such company shall be one-half of one per cent of its gross premium receipts, as above defined. No occupation tax shall be levied on insurance companies herein subjected to a gross premium receipt tax by any county, city or town. All mutual fraternal benevolent associations, now or hereafter doing business in this State under the lodge system and on the assessment plan, whether organized under the laws of this State or a foreign State or country, are exempt from the provisions of this article. The taxes aforesaid shall constitute all taxes and license fees collectible under the laws of this State against any such insurance companies, and no other occupation or other taxes shall be levied on or collected from any insurance company by any county, city or town, but this law shall not be construed to prohibit the levy and collection of State, county and municipal taxes upon the real and personal property of such companies. Purely co-operative or mutual fire insurance companies carried on by the members thereof solely for the protection of their own property, and not for profit, shall be exempt from the provisions of this law. [Id. Acts 1911, p. 216.]

Art. 7065. [7377] Tax on gasoline.—Every person selling at wholesale in intrastate commerce in this State any gasoline shall pay to the State of Texas an occupation tax equal to one cent per gallon of all such gasoline so sold by such person. Such tax shall be due and payable at the office of the Comptroller at Austin on the 25th day of each month, based on such sales made during the calendar month next preceding. Every such person so selling gasoline shall, on or before the 25th day of each month make and deliver to the Comptroller a report sworn to as correct by such person before an officer authorized to administer oaths in this State (or, if other than an individual, so sworn to by its president, secretary, treasurer, or other duly authorized officer, or by its representative in charge of such intrastate sales of such gasoline), on such forms as said Comptroller shall prescribe, of the total number of gallons of gasoline sold at wholesale in intrastate commerce in this State by such person during the next preceding calendar month. The term "selling at wholesale" or "sold at wholesale" or "sales at wholesale" as used in this law shall include:

1. Any and all sales of gasoline in any quantity whatsoever in intrastate commerce in this State to the retailer to be sold by such retailer to the consumer in any quantity whatsoever.

2. Any and all sales to consumer in intrastate commerce in this State of gasoline refined, compounded, manufactured, blended or prepared in this State where such sales are made by

the person so refining, compounding, manufacturing, blending or preparing same whether such sales are made in such person's own name or in the name of others or in the name of a representative, agent or employee of such person.

3. Any and all sales in any quantity whatsoever to the consumer in intrastate commerce in this State of gasoline brought into the State from outside the State, except that gasoline which is sold in intrastate commerce to the retailer for sale to the consumer, the selling of which latter mentioned is covered by subdivision 1 hereof.

Failure of the Comptroller to furnish any person affected by this law with a form for any report required to be made by such person shall not relieve such person of liability for penalties for failure to comply with this law as to any such report. Every person required to pay said tax shall keep a complete record of all sales at wholesale made upon which the occupation tax herein levied is measured or computed, which record shall be in a permanently bound book or books (not loose leaf) and shall show the date of each such sale; the amount of same; to whom (except as to sales to the consumer) each such sale was made; from what place such gasoline was shipped and the name of the place of delivery of same. All of which records shall be open at all times to official inspection and examination of the Comptroller, or the Attorney General, or any authorized employe or representative of such Comptroller or Attorney General. Any such person failing to keep such record or records as herein required shall forfeit to the State as a penalty an amount not exceeding one thousand dollars; and for each day such person so fails to keep such record or records a separate penalty shall accrue. Any person required to pay an occupation tax by this law failing to pay such tax on or before the date same is due and payable, shall pay to the State as a penalty an additional ten per cent of the amount of the tax due on said date and such tax and penalty shall draw interest at the rate of eight per cent per annum from due date until paid.

Any person required to make any report under this law failing to make the same in the manner or within the time prescribed by this law shall forfeit to the State a penalty of not to exceed one thousand dollars. Such penalty shall draw eight per cent interest from due date until paid. The occupation taxes herein levied shall be placed in the State Treasury by the Comptroller as provided in this law immediately upon the collection of same. One-fourth of such occupation tax shall go to the available free school fund and three-fourths of same shall be placed to the credit of the State highway fund for the construction and maintenance of the public highways of the State constituting a part of the State system of public highways as designated by the State Highway Commission, and said funds shall be set aside in a separate fund from the general revenue fund for the two purposes herein mentioned, and shall be sub-

ject to disbursement in accordance with the statute controlling the distribution of such available school fund and State highway fund, respectively. The Attorney General shall bring suit in behalf of the State in any court of competent jurisdiction in Travis County to recover the amount of taxes, penalties and interest past due and payable by any person affected by this law. The word "gasoline" as used in this law means gasoline or gasoline substitute refined, compounded, manufactured, blended or prepared in whole or part from petroleum or natural gas or in whole or part from any derivative fraction or product of petroleum or natural gas; and shall also include what is commercially known as gasoline so refined, compounded, manufactured, blended or prepared. The word "person" as used in this law shall include persons, firms, partnerships, companies, corporations, associations, receivers, common law trusts, those operating under a declaration of trust, or other concern by whatever name known or howsoever organized, formed or created. It is the purpose and intent of this law to levy an occupation tax that will not operate to burden the industry with the tax every time any particular gasoline is sold, but to place the tax on only one transaction as to any particular gasoline, to the end that the tax will bear equally and uniformly on the gasoline industry. [Acts 3rd C. S. 1923, p. 158.]

Art. 7066. **Tax on sulphur.**—Each person who owns, controls, manages, leases or operates any sulphur mine or mines, wells or shafts, or who produces sulphur by any method, system, or manner, within this State shall make quarterly, on the first days of January, April, July and October of each year, a report to the Comptroller, sworn to by such person before an officer authorized to administer oaths in this State, or if such person be other than an individual, so sworn to by its president, secretary or other duly authorized officer, on such forms as said Comptroller shall prescribe, showing the total amount of sulphur produced during the quarter next preceding, and the average market value thereof, which shall include any bonus or premiums paid or promised during said quarter, and at the time of making said report shall pay to the Treasurer of this State an occupation tax for the quarter beginning on said date on amount equal to two per cent of the total amount of sulphur produced by such person in this State during said quarter at the average market value thereof, including any bonus or premiums paid as shown by said report. If for any reason the Comptroller is not satisfied with any report so received, he may require additional or supplemental reports containing information and data upon such matters as he may need or deem necessary to ascertain the true and correct amount of all taxes due from such person or concern, which additional or supplemental reports shall be made under oath as above provided. Should any person subject to the occupation tax herein levied begin business after the beginning of a quarter, the amount of tax which such person or concern shall pay for the first quarter immediately succeeding the

quarter in which the business was begun shall be ascertained by taking the total value of the sulphur produced within the last quarter, dividing the same by the number of days such person or concern was engaged in the business during said preceding quarter, and multiplying the quotient by 90, taking two per cent of the product. Each person subject to the payment of the occupation tax levied and required to be paid by this law shall cause to be made and to be kept and preserved, a full and complete record of all sulphur produced in this State during the time so engaged in its production, all of which record shall be open at all times to official inspection and examination of the Comptroller or the Attorney General, or any employe or representatives of such Comptroller or Attorney General. Any person failing to keep such record or records as herein required shall forfeit to the State of Texas as a penalty any sum not less than five hundred nor more than fifteen hundred dollars, payable to the State of Texas, and each ten days of failure to keep such records shall constitute a separate offense and subject the offender to additional penalties. Any person subject to the payment of said tax on sulphur failing to pay the tax levied in this article within thirty days after same is due and payable, shall pay to the State as a penalty an additional amount equal to ten per cent of the taxes due and such tax and penalty shall draw interest at the rate of six per cent per annum from the due date until paid. The Attorney General or any district or county attorney at the direction of the Attorney General, shall bring suit in behalf of the State to recover the amount of taxes, penalties and interest past due and payable by any person affected by this law. The word "person" as used in this law shall include persons, firms, partnerships, companies, corporations, associations, common law trusts, those operating under a declaration of trust, or other concern by whatever name known or howsoever organized, formed or created. [Acts 3rd C. S. 1923, p. 176.]

Art. 7067. [7378] **Interurban and electric railway companies.**—Each individual, company, corporation or association, owning, operating or controlling any interurban, trolley, traction or electric street railway in this State and charging for transportation on said railway, shall make quarterly, on the first days of January, April, July and October of each year, a report to the Comptroller, under oath of the individual or of the president, treasurer, or superintendent of such company, corporation or association, showing the amount of gross receipts from said charges for transportation on said railway paid to or uncollected by said individuals, company, corporation or association for the quarter next preceding. Said individual, company, corporation or association, at the time of making said report, if in or if connecting any town or city of less than twenty thousand inhabitants, shall pay to the State Treasurer as an occupation tax for the quarter beginning on said date equal to one-half of one per cent of said gross receipts as shown by said re-

port; if in a city of more than twenty thousand inhabitants, said individual, company or corporation or association, at the time of making said report, shall pay to the Treasurer of the State of Texas an occupation tax for the quarter beginning on said date equal to three-fourths of one per cent of said gross receipts as shown by said report; provided, that in ascertaining the population of any city or town, the same shall be ascertained by the preceding Federal census. Where any interurban railroad shall connect any town having a population of more than twenty thousand with another of less population that it shall be liable for the taxes measured by the population of the largest town; provided, that the provisions of this law shall not apply to any street railway or traction company wholly within any town of less than ten thousand inhabitants. [Acts 1st C. S. 1907, p. 479.]

Art. 7068. [7380] Dealers in pistols.—Each individual, company, corporation or association created by the laws of this or any other State, who shall engage in his own name or in the name of others, or in the names of its representatives or agents in this State, in the business of a wholesale or retail dealer of pistols, shall make quarterly, on the first days of January, April, July and October of each year, a report to the Comptroller, under oath of the individual or of the president, treasurer or superintendent of said company, corporation or association, showing the gross amount collected and uncollected from any and all sales made within this State of all such firearms during the quarter next preceding. Such individuals, companies, corporations and associations, at the time of making said report, shall pay to the State Treasurer an occupation tax for the quarter beginning on said date equal to fifty per cent of said gross receipts from sales of all firearms as shown by said report. [Id.]

Art. 7069. [7381] Text book publishers.—Each individual, company, corporation or association, whether incorporated under the laws of this State, or of any other state or nation, engaged in publishing, printing and selling such text books as are used, or will be used, in the schools of this State, or owning, controlling or managing any such business, within the State or out of it, and having State agencies within this State for the purpose of selling any such books, to be used in any of the schools of this State, shall make quarterly, on the first days of January, April, July and October of each year, a report to the Comptroller, under oath of the individual or of the president, treasurer or superintendent of such company, corporation or association, or of the person owning, controlling or managing any such business, showing the gross amount received from such business done within this State from any and all sources during the quarter next preceding. Said individuals, companies, corporations and associations, at the time of making said report, shall pay to the State Treasurer an occupation tax for the

quarter beginning on said date equal to one per cent of said gross receipts as shown by said report; provided that after September 1, 1929, no further tax shall be assessed under the provisions of this article, but all taxes accruing under the provisions hereof prior to said date shall nevertheless be paid. The provisions of this article shall not apply to any corporation organized by the students and faculty of any State supported institution of learning and which has no capital stock and pays no dividends and is organized for the purpose of supplying books and other school supplies to the students of such institution and whose assets on the dissolution of the corporation pass to the governing board of the institution as a trust fund to be used for the benefit of the institution. [Id. Acts 1923, p. 352.]

Art. 7070. [7382] Telephone companies.—Each individual, company, corporation or association owning, operating, managing or controlling any telephone line or lines or any telephones within this State, and charging for the use of the same, shall make quarterly, on the first days of January, April, July and October of each year, a report to the Comptroller, under oath of the individual or of the president, treasurer or superintendent of such company, corporation or association, showing the gross amount received from all business within this State during the preceding quarter in the payment of charges for the use of its line or lines, telephone and telephones, and from the lease or use of any wires or equipment within this State during said quarter. Said individuals, companies, corporations and associations, at the time of making said report, shall pay to the State Treasurer an occupation tax, for the quarter beginning on said date, equal to one and one-half per cent of said gross receipts, as shown by said report. [Acts 1st C. S. 1907, p. 479.]

Art. 7071. [7383] Gross production tax on oil.—

1. Each person owning, controlling, managing, operating or leasing in this State any oil well, or any person who produces in any other manner any oil by taking it from the earth in this State, shall make quarterly on the first days of January, April, July and October of each year, a report to the Comptroller, under oath of such person or if the producer is other than a natural person, under oath of the president, treasurer, superintendent or person in charge of such production, showing the total amount of oil produced by such person from each well, or otherwise, during the quarter next preceding and the average market value thereof during said quarter. Each such person on said first days of January, April, July, and October shall pay to the Treasurer of this State an occupation tax for the quarter beginning on said date equal to two per cent of the value of the total amount of oil produced in this State by such person during the quarter next preceding such first days of January, April, July and October at the average market value thereof.

2. Each person mentioned and included in subdivision 1 of this article shall make, keep and preserve a full and complete record of all such oil produced in this State during the time so engaged in its production, and said record shall be open at all times to the inspection of all tax officers of this State. Any person failing to comply with this requirement shall be subject to a penalty not less than five hundred and not more than fifteen hundred dollars payable to the State of Texas, and such penalty shall accrue for each ten days of failure to comply with this subdivision of said article and such penalty shall accrue for failure to comply with this subdivision with reference to each separate oil well.

3. In each report required to be made by this article such person making the same shall show in detail the disposition made of any such oil, if disposed of, and if not, shall show where it is stored. Said report shall show to whom any such oil was sold or delivered, the date of sale and delivery, the amount delivered to each, and shall show the name and location of the person, refinery, pipe line, establishment, plant, factory, railroad, institution or place to which or to whom delivery was made.

4. The word "person" as used in this article shall include any person, firm, concern, receiver, receivers, trustee, executor, administrator, agent, institution, association, partnership, company corporations, and persons acting under declarations of trust as well as the trustees acting under such declarations of trust.

5. The market value of oil as that term is used herein shall be the actual market value of the same, and among other things proper to be considered any bonus or premium paid or which the oil will reasonably bring shall not be excluded in arriving at the market value.

6. Any person failing to make proper and accurate report for thirty days from the date when said report is required herein to be made shall forfeit and pay to the State of Texas a penalty of ten per cent of the amount of the tax due for the quarter for which said report is required by law to be made.

7. Any person failing to pay any tax provided for herein within thirty days from the date when said tax is required herein to be paid shall forfeit and pay to the State of Texas a penalty of ten per cent upon the amount of such tax and six per cent interest upon the amount of such tax and penalty from date when due and payable until paid.

8. The word "oil" as used in this law means petroleum oil, mineral oil, or other oil taken from the earth.

9. For the occupation tax, penalties and interest herein provided for, the State shall have a lien on any leasehold interest, ownership of the oil rights or interest owned by the person owing any tax herein provided for. [Acts 1907, p. 479; Acts 1919, p. 128; Acts 1923, 2nd C. S., p. 98.]

Art. 7072. [7384] **Terminal companies.**—Each and every individual, company, corporation or association, whether incorporated under the laws of this or any other State or territory, or of the United States, or any foreign country, which owns, controls, manages or leases any terminal companies, or any railroad doing a terminal business within this State, shall make quarterly, on the first days of January, April, July and October of each year, a report to the Comptroller, under oath of the individual or of the president, treasurer, or superintendent of such company, corporation or association, showing the total amount of its gross receipts from all sources whatever within this State, during the quarter next preceding, and the average market value thereof during said quarter. Said individuals, companies, corporations and associations, at the time of making said report, shall pay to the Treasurer of the State of Texas an occupation tax for the quarter beginning on said date equal to one per cent of the total amount of its gross receipts from all sources whatever as shown by said report. [Acts 1st C. S. 1907, p. 479.]

Art. 7073. [7385] **Tax paid when business is begun after beginning of quarter.**—If any individual, company, corporation, firm, or association, in this chapter mentioned, shall begin and engage in any business for which there is an occupation tax herein imposed, on or after the beginning day of the quarter for which said tax is imposed, then, and in all such cases, the amount of such tax for said beginning quarter shall be and is hereby fixed at the sum of fifty dollars, payable to the State Treasurer in advance; but for the next succeeding quarter, and all other succeeding quarters, the tax shall be determined by reports to the Comptroller of the business for the preceding quarter, or part thereof, as herein otherwise in this chapter provided; and reports and payments of such tax shall be made subject to all other provisions of this chapter. [Id.]

Art. 7074. [7386] **Penalty for failure to report.**—Any person, company, corporation or association, or any receiver or receivers, failing to make report for thirty days from the date when said report is required by this chapter to be made, shall forfeit and pay to the State of Texas a penalty of not exceeding one thousand dollars. [Id.]

Art. 7075. [7387] **Penalty for failure to pay tax.**—Any person, company, corporation or association, or any receiver or receivers, failing to pay any tax for thirty days from the date when said tax is required by this chapter to be paid, shall forfeit and pay to the State of Texas a penalty of ten per cent upon the amount of such tax. [Id.]

Art. 7076. [7388] **Penalties recovered by suit.**—The penalties provided for by this chapter shall be recovered by the Attorney General in a suit brought by him in the name of the State of Texas; and venue and jurisdiction of such suit is hereby conferred upon the courts of Travis County. [Id.]

Art. 7077. [7389] **Permit not granted until tax paid.**—No individual, company, corporation or association, failing to pay all taxes imposed by this chapter, shall receive a permit to do business in this State, or continue to do business in the State; until the tax hereby imposed is paid. The receipt of the State Treasurer shall be evidence of the payment of such tax. [Id.]

Art. 7078. [7390] **Tax in addition to all other taxes.**—Except as herein stated, all taxes levied by this chapter shall be in addition to all other taxes now levied by law; provided, that nothing herein shall be construed as authorizing any county or city to levy an occupation tax on the occupation and business taxed by this chapter. [Id.]

Art. 7079. [7391] **Additional reports.**—If for any reason the Comptroller is not satisfied with any report from any such person, company, corporation, co-partnership or association, he may require additional or supplemental reports containing information and data upon such matters as he may need or deem necessary to ascertain the true and correct amount of all taxes due by any such person, firm or corporation. Every statement or report required by this chapter shall have affixed thereto the affidavit of the president, vice-president, secretary or treasurer of the person, corporation, co-partnership or association, or one of the persons or members of the partnership making the same, to the effect that the statement is true. The Comptroller shall prepare blanks to be used in making the reports required by this chapter. [Id.]

Art. 7080. **Permit.**—Every person, company, firm, partnership, corporation, or unincorporated company or association, engaged in any business within this State, upon which the laws of this State require the payment of a tax on gross receipts, shall be required to have a permit to transact such business, to be issued by the Secretary of State, which permit shall be and remain posted, subject to the view of the public at the principal office of such person to whom the same is issued. The permit shall be issued in such form as the Attorney General may prescribe, shall show the name of the person or concern to whom issued, the business to be transacted, and that the holder thereof has complied with this law. [Acts 4th C. S. 1918, p. 177.]

Art. 7081. **Issuance of permit.**—Permits to transact business shall be issued by the Secretary of State upon applications made upon form prescribed by the Secretary of State, which application shall show, to the satisfaction of the Secretary of State, the facts required to be shown in the permit; and shall show that the applicant has paid the gross receipts taxes prescribed by law, or that if the applicant is the vendee of a going business that his vendor has paid all his gross receipts taxes due, or to become due; such taxes are to be shown to be paid for the current quarter, or such other period of time as said taxes may be paid. The Secretary of State shall make such in-

vestigation as necessary to determine that such taxes have been paid and shall then issue a permit to transact business, authorizing the party to whom issued to transact business until the 31st day of December of the current year, after which date new permits for each year must be obtained, as in the first instance. When a permit has been issued as herein provided, the Secretary of State shall immediately certify such fact to the Comptroller. [Id.]

Art. 7082. **Suspension of permit.**—Within thirty days after gross receipts taxes may become due by anyone transacting or authorized to transact business hereunder, if such tax remains unpaid, the Comptroller shall certify such fact to the Secretary of State, whose duty it shall be to notify the delinquent tax payer that his name has been certified to the Secretary of State as a delinquent and that unless the tax is paid to the Comptroller within ten days from the date of such notice the permit to transact business of the delinquent will be suspended by the Secretary of State. The notice herein provided for shall be given by the Secretary of State, mailing to the delinquent at his last known address a printed or written notice, and the mailing of such notice shall be a sufficient compliance of this law. If the tax, with accrued penalties, is not paid within fifteen days after the mailing of the notice, the Secretary of State shall note on his records that the permit to transact business of the delinquent has been suspended, giving the date upon which such action was taken by the Secretary of State. The Secretary of State shall then immediately certify such suspension to the Comptroller and to the Attorney General. After the permit to transact business has been suspended it shall be unlawful for the delinquent to continue to transact business, and it shall be the duty of the Secretary of State to cause to be published in some daily or weekly paper, published in the county of the delinquent's place of business, or if there is no newspaper published in such county, then in some daily newspaper of State-wide circulation, notice that the delinquent's permit to transact business has been suspended. [Id.]

Art. 7083. **Penalties.**—Any person, company, firm, partnership, corporation, unincorporated company or association, transacting business in this State upon which a gross receipts tax is required by law to be paid, without having first obtained a permit to do so, or transacting such business after its permit so to do has been suspended, as provided by this law, shall be liable to a penalty of not less than \$50.00 nor more \$500.00 daily for each day's business which is transacted in violation of this law. The Attorney General shall bring suits for all penalties authorized by this law, and the courts of Travis County shall have concurrent jurisdiction over all violations of this law. [Id.]

CHAPTER THREE.

FRANCHISE TAX.

| | Article | | Article |
|-----------------------------------|---------|-------------------------------------|---------|
| Paid by domestic corporation..... | 7084 | Notice of forfeiture..... | 7092 |
| Paid by foreign corporation..... | 7085 | Foreign corporations may with- | 7093 |
| Only part of tax to be paid..... | 7086 | draw..... | 7094 |
| Affidavits required..... | 7087 | Corporations exempt..... | 7095 |
| Reports filed..... | 7088 | Attorney General to bring suit..... | 7096 |
| Report of corporation..... | 7089 | Forfeiture of charter..... | 7097 |
| Supplemental tax..... | 7090 | Corporations in process of liquida- | 7098 |
| Failure to pay tax..... | 7091 | tion..... | 7099 |

Art. 7084. [7393] Paid by domestic corporation.—Except as herein provided, each private domestic corporation heretofore or that may hereafter be chartered under the laws of this State, shall on or before the first day of May of each year, pay in advance to the Secretary of State a franchise tax for the year following, which shall be computed as follows, viz: fifty cents on each one thousand dollars, or fractional part thereof, of the authorized capital stock of such corporation unless the total amount of the capital stock of such corporation actually paid in, plus its surplus and undivided profits, shall exceed its authorized capital stock; and in that event the franchise tax of such corporation for the year following shall be fifty cents on each one thousand dollars of capital stock of such corporation actually paid in, plus its surplus and undivided profits; provided, that such franchise tax shall not in any case be less than ten dollars. Where the authorized capital exceeds one million dollars, such franchise tax shall be fifty cents for each one thousand dollars up to and including one million dollars, and for each additional one thousand dollars in excess of one million dollars, it shall be twenty-five cents. Where a domestic corporation does business outside of the State, the franchise tax of such corporation shall be computed upon that proportion of the authorized capital stock plus the surplus and undivided profits, if any, of such corporation, as the total gross receipts of such corporation from its business done in Texas bears to the total gross receipts of the corporation from all sources. [Acts 1st C. S. 1907, p. 503; Acts 1919, p. 100.]

Art. 7085. [7394] Paid by foreign corporations.—Except as herein provided, each foreign corporation authorized, or that may hereafter be authorized, to do business in this State, shall, on or before the first day of May of each year, pay in advance to the Secretary of State a franchise tax for the year following which shall be computed as follows: the authorized capital stock, surplus and undivided profits, if any, of such corporation, the total gross receipts of such corporation from all its business and the total gross receipts from all of its business done in Texas for the calendar year immediately preceding shall be ascertained by the Secretary of State from sworn reports of the officers of such corporation or by such other method as may satisfy the Secretary of State, and the capital stock of such corporation upon which the franchise tax herein provided is based shall be that

proportion of the authorized capital stock, plus the surplus and undivided profits, if any, of such corporation, as the gross receipts from the Texas business of such corporation done within this State bears to the total gross receipts of such corporation from its entire business and the capital stock assignable to the Texas business and upon which the fees hereinafter provided shall be calculated and based being thus ascertained, the franchise tax which is hereby provided shall be computed as follows: one dollar on each one thousand dollars or fractional part thereof up to and including one hundred thousand dollars; fifty cents on each one thousand dollars or fractional part thereof in excess of one hundred thousand dollars up to and including one million dollars and twenty-five cents on each one thousand dollars or fractional part thereof in excess of one million dollars; provided that the minimum franchise tax to be paid by any foreign corporation shall be twenty-five dollars; provided, however, that where such corporation has a surplus or undivided profits the same shall be added to the entire capital stock of such corporation and shall be taken and computed as a part thereof in determining the amount of such entire capital stock. Where a foreign corporation applying for a permit has theretofore done no business in Texas, the franchise tax herein provided shall not be payable until the end of one year from the date of such permit at which time the franchise tax shall be computed upon that proportion of the authorized capital stock, plus the surplus and undivided profits, if any, of such corporation ascertained as above required as the gross receipts from its Texas business bears to the gross receipts of the corporation from its entire business done for the same period; and the second payment of such franchise tax shall be made for the period intervening between the date of such first payment and the first day of May following, the proportion of authorized capital stock, plus the surplus and undivided profits, if any, of such corporation, upon which the same shall be computed to be the same proportion that the gross receipts from the Texas business for such period bears to the gross receipts of the corporation from its entire business for the same period, and that thereafter such franchise tax shall be payable annually on the first day of May for the year succeeding computed upon that portion of the authorized capital stock, plus the surplus and undivided profits, if any of such corporation which the gross receipts for the Texas business of such corporation bears to its entire gross receipts for the calendar year preceding as hereinabove provided. [Acts 1st C. S. 1907, p. 503; Acts 1917, p. 168; Acts 1919, p. 75.]

Art. 7086. [7395] Only part of tax to be paid.—Whenever a private domestic corporation is chartered in this State, and whenever a foreign corporation is authorized to do business in this State, such corporation shall be required to pay in advance to the Secretary of State, as its franchise tax from that time down to and including the thirtieth day of April next following, only

such proportionate part of its annual franchise tax, as hereinabove prescribed, as the period of time between the date of filing of its articles of incorporation or the issuance of its permit to do business, as the case may be, and on the first day of May following, bears to a calendar year. [Acts 1st C. S. 1907, p. 503.]

Art. 7087. [7396] Affidavits required.—To determine the amount of the first franchise tax payment required by this chapter of any domestic corporation which may be hereafter chartered, or of any foreign corporation which may hereafter apply for a permit to do business within this State, and also to determine the correctness of any report which is provided for in this chapter, the Secretary of State may, whenever he deems it necessary or proper to protect the interests of the State, require any one or more of the officers of such corporations to make and file in the office of the Secretary of State an affidavit setting forth fully the facts concerning the amount of the surplus and undivided profits, respectively, if any, of such domestic or foreign corporation; and until the Secretary of State shall be fully satisfied as to the amount of such surplus and undivided profits, respectively, if any, he shall not file the articles of incorporation of such proposed domestic corporation, or issue such permit, or accept such franchise tax. [Id.]

Art. 7088. [7397] Reports filed.—For the purpose of ascertaining and determining the amount of any annual franchise tax prescribed by this chapter, excepting only the first tax to be paid by any domestic corporation which may hereafter be chartered, or of any foreign corporation which may hereafter be authorized to do business in this State, the president, vice-president, general manager, secretary, treasurer and superintendent of each domestic or foreign corporation embraced within the provisions of this chapter, shall annually and between the first and tenth days of March, and also whenever called upon by the Secretary of State to do so, report to the Secretary of State, in writing, and under oath as required by the preceding article, the total amounts of the capital stock issued and outstanding, and the surplus and undivided profits, respectively, if any, of such corporation on the first day of March next preceding; and the Secretary of State may ascertain such facts from other sources; and, if true aggregate of such amounts shall exceed the authorized capital stock of such corporation as disclosed by its then current original or amended articles of incorporation, the amount of its annual franchise tax for the year beginning the first day of May next thereafter shall be thereon collected and paid; otherwise, its annual franchise tax shall be calculated and paid upon the amount of its authorized capital stock as shown by its aforesaid original or amended articles of incorporation. The making and filing by any one of such officers of such corporation of the record required by this article shall relieve the other officers of such corporation from the duty

of making any report required by this article, except such report or reports as the Secretary of State may require. [Id.]

Art. 7089. Report of corporation.—Except as herein provided, all corporations that are now required by law to pay an annual franchise tax, shall, between January 1st, and March 15th, of each year, be required to make a sworn report to the Secretary of State, on blanks furnished by him, showing the condition of such corporation on the 31st. day of December preceding. The Secretary of State may, for good cause shown by any corporation, extend such time to any date up to the first day of May. Said report shall be signed officially and shall give the authorized capital stock of the corporation, the capital stock actually paid in, its surplus and undivided profits, if any, the name and address of each officer and director of the corporation, the amount of mortgages, bonded or other indebtedness of such corporation, and the amount of the last annual, semi-annual or quarterly dividend provided, that domestic corporations having a permit or permits to do business outside the State, shall include in such report the gross receipts of such corporation from all sources and the gross receipts of the corporation from its business done in Texas, for the calendar year preceding; provided, that foreign corporations shall include in such report, the total gross receipts of the corporation from all sources and the gross receipts of the corporation in Texas for the calendar year preceding. Where a foreign corporation has not theretofore done business in this State and is granted a permit to do business in Texas, it shall file its first report to the Secretary of State at the end of one year from the date of such permit. Any corporation which shall fail or refuse to make said report shall be assessed a penalty of ten per cent of the amount of franchise tax due by such corporation payable to the Secretary of State, together with its franchise tax. Said reports shall be deemed to be privileged and not for the inspection of the general public but one interested in the subject matter of any report may secure a copy of same upon valid request in writing made to the Secretary of State. The following officers of each corporation shall be deemed competent to make said report; the president, vice-president, secretary, treasurer or general manager. [Acts 1913, p. 327; Acts 1919, p. 82; Acts 1921, p. 173.]

Art. 7090. [7398] Supplemental tax.—In the event of increase in the authorized capital stock of any domestic or foreign corporation, it shall also pay in advance a supplemental franchise tax thereon for the remainder of the year down to and including the thirtieth day of April next thereafter, the amount of which shall be determined as is provided in the third article of this chapter in case of the first franchise tax payment to be made by a domestic corporation which may be hereafter authorized to do business within this State. [Acts 1st. C. S. 1907, p. 503.]

Art. 7091. [7399] Failure to pay tax.—Any corporation, either domestic or foreign, which shall fail to pay any franchise

tax provided for in this chapter when the same shall become due and payable under the provisions of this chapter, shall thereupon become liable to a penalty of twenty-five per cent of the amount of such franchise tax due by such corporation. If the amount of such tax and penalty be not paid in full on or before the first day of July thereafter, such corporation shall for such default forfeit its right to do business in this State; which forfeiture shall be consummated without judicial ascertainment by the Secretary of State entering upon the margin of the record kept in his office relating to such corporation, the words, "right to do business forfeited," and the date of such forfeiture. Any corporation whose right to do business shall be thus forfeited shall be denied the right to sue or defend in any court of this State, except in a suit to forfeit the charter of such corporation. In any suit against such corporation on a cause of action arising before such forfeiture, no affirmative relief shall be granted to such corporation, unless its right to do business in this State shall be revived as provided in this chapter. Each director and officer of any corporation whose right to do business within this State shall be so forfeited shall, as to any and all debts of such corporation which may be created or incurred, with his knowledge, approval and consent, within this State, after such forfeiture by any such directors or officers, and before the revival of the right of such corporation to do business, be deemed and held liable thereon in the same manner and to the same extent as if such directors and officers of such corporation were partners. [Id.]

Art. 7092. [7400] Notice of forfeiture.—The Secretary of State shall, during the month of May of each year, notify each domestic and foreign corporation which may be or become subject to a franchise tax under any law of this State, which has failed to pay such franchise tax on or before the first day of May, that unless such overdue tax together with said penalty thereon shall be paid on or before the first day of July next following, the right of such corporation to do business in this State will be forfeited without judicial ascertainment. Such notice may be either written or printed and shall be verified by the seal of the office of the Secretary of State, and shall be addressed to such corporation and mailed to the post office named in its articles of incorporation as its principal place of business, or to any other known place of business of such corporation. A record of the date of mailing such notice shall be kept by the Secretary of State. Such notice and record thereof shall constitute legal and sufficient notice thereof for all the purposes of this chapter. Any corporation whose right to do business may have been forfeited, as provided in this chapter, shall be relieved from such forfeiture by paying to the Secretary of State any time within six months after such forfeiture the full amount of the franchise tax and penalty due by it, together with an additional amount of five per cent of such tax for each month, or fractional part of a month, which shall elapse after such for-

feiture; provided, that such amount shall in no case be less than five dollars. When such tax and all penalties shall be fully paid to the Secretary of State, he shall revive the right of the corporation to do business within this State by cancelling the words, "right to do business forfeited," upon his record and endorsing thereon the word, "revived," and the date of such revival. If any domestic corporation whose right to do business within this State shall hereafter be forfeited under the provisions of this chapter shall fail to pay the Secretary of State, on or before the first day of January next following the revival, the amounts necessary to entitle it to have its right to do business revived under the provisions of this chapter, such failure shall constitute sufficient ground for the forfeiture, by judgment of any court of competent jurisdiction, of the charter of such domestic corporation. [Id.]

Art. 7093. [7401] Foreign corporations may withdraw.—Should any foreign corporation which has or may obtain a permit to do business within this State desire at any time to withdraw from doing business in this State, it may surrender such permit to the Secretary of State, who shall mark or stamp such permit "surrendered," dating and signing same officially, and shall endorse upon the record of such permit in his office the word, "surrendered," and the date thereof; and thereafter such corporation may, by complying with the provisions of this chapter, secure a new permit to do business in this State without having made any further payment of the franchise tax under such old permit. [Acts 1st C. S. 1907, p. 503.]

Art. 7094. [7403] Corporations exempt.—The franchise tax imposed by this chapter shall not apply to any insurance company, surety, guaranty or fidelity company, or any transportation company, or any sleeping, palace car and dining car company which is now required to pay an annual tax measured by their gross receipts, or to corporations having no capital stock and organized for the exclusive purpose of promoting the public interest of any city or town, or to corporations organized for the purpose of religious worship, or for providing places of burial not for private profit, or corporations organized for the purpose of holding agricultural fairs and encouraging agricultural pursuits, or for strictly educational purposes, or for purely public charity. [Id.]

Art. 7095. [7404] Attorney General to bring suit.—The Attorney General shall bring suit therefor against any such corporation which may be or become subject to or liable for any franchise tax or penalty under this law; and, in case there may now be or shall hereafter exist valid grounds for the forfeiture of the charter of any domestic private corporation, or failure to pay any franchise tax or franchise taxes or penalty or penalties to which it may have become or shall hereafter be or become subject or liable under this or former law, he shall bring suit for a forfeiture of such charter; and, for the purpose of enforcing the provisions of this chapter by civil suits, venue is

hereby conferred upon the courts of Travis county, concurrently with the courts of the county in which the principal office of such corporation may be located as shown by its articles or amended articles of incorporation. Such courts shall also have authority to restrain and enjoin a violation of any provision of this chapter. In any case in which any court having jurisdiction thereof shall make and enter judgment forfeiting the charter of any such corporation, the court may appoint a receiver thereof and may administer such receivership under the laws regulating receiverships. [Id.]

Art. 7096. [7405] Forfeiture of charter.—Upon the rendition by the district court of any judgment of forfeiture under the provisions of this chapter, the clerk of that court shall forthwith mail to the Secretary of State a certified copy of such judgment; and, upon receipt thereof, he shall endorse upon the record of such charter in his office the words, "Judgment of forfeiture," and the date of such judgment. In the event of an appeal from such judgment by writ of error or otherwise, the clerk of the court from which such appeal is taken shall forthwith certify to the Secretary of State the fact that such appeal has been perfected, and he shall endorse upon the record of such charter in his office the word, "appealed," and the date upon which such appeal was perfected. When final disposition of such appeal shall be made, the clerk of the court making such disposition thereof shall forthwith certify such disposition and the date thereof to the Secretary of State, who shall briefly note same upon the record of such charter in his office and the date of such final disposition.

Art. 7097. [7606] Corporations in process of liquidations.—If a corporation is actually in process of liquidation, such corporation shall only be required to pay a franchise tax calculated upon the difference between the amount of stock actually issued and the amount of liquidating dividends actually paid upon such stock; provided, that the president and secretary of such corporation shall make affidavit as to the total amount of capital stock issued and as to the amount of liquidating dividends actually paid and that such corporation is in an actual bona fide state of liquidation. [Id.]

CHAPTER FOUR.

INTANGIBLE TAX BOARD.

| | Article | | Article |
|-------------------------------|---------|---------------------------------------|---------|
| State Tax Board | 7098 | Additional statements | 7108 |
| Bond of Commissioner | 7099 | Statements placed before Board..... | 7109 |
| Secretary | 7100 | Passing upon statement | 7110 |
| Duties of Board | 7101 | Other duties regarding statement..... | 7111 |
| Visits | 7102 | Capital, how ascertained | 7112 |
| Powers of Board | 7103 | Board to certify to assessors..... | 7113 |
| Failure to obey subpoena..... | 7104 | Failure to make statement | 7114 |
| Tax on intangible assets..... | 7105 | Receivers and trustees in bank- | |
| Statement required | 7106 | ruptcy to report..... | 7115 |
| Statement, contents | 7107 | Relieved of other taxes | 7116 |

Art. 7098. [7407] State Tax Board.—The State tax board shall be composed of the Comptroller, the Secretary of State,

and a third member to be known as Tax Commissioner of the State of Texas. Except as herein otherwise provided, such tax commissioner shall be appointed by the Governor in accordance with and subject to the provisions of section twelve of article four of the Constitution, and shall hold his office for two years. A record of the proceedings of said board shall be kept at the State Capitol, and shall be open to the inspection of the public. [Acts 1905, p. 35; Acts 1st C. S. 1907, p. 469.]

Art. 7099. [7408] **Bond of Commissioner.**—Before he enters upon his official duties, the tax commissioner shall execute a bond payable to the State of Texas at Austin, in Travis County, in the sum of ten thousand dollars, with two or more good and sufficient sureties, to be approved by the Governor, conditioned for the faithful discharge of his official duties as such tax commissioner, and shall take and subscribe the official oath. [Id.]

Art. 7100. [7409] **Secretary.**—Said board may employ for not more than four months in each year a secretary, who shall be an expert stenographer, and who shall receive one hundred dollars a month for his services as secretary and stenographer. [Id.]

Art. 7101. [7410] **Duties of Board.**—It shall be the duty of said tax board:

1. To make such rules and regulations as said board shall deem proper with respect to its own meetings and procedure, and to effectually carry out the purposes for which said board is constituted.

2. To examine all books, papers and accounts and to interrogate under oath, or otherwise, any and all persons whom said board, or any member thereof, may desire to examine for the purpose of obtaining or acquiring any information that may in any way aid in securing a compliance with any tax law or revenue law of this State by any and all persons, companies, corporations or associations liable to taxation or to pay any license fee under any law of this State, which is now in force, or which may hereafter be enacted.

3. To make diligent investigation and inquiry concerning the revenue laws and systems of other states and countries, so far as the same are made known by published reports, or statistics, or can be ascertained by correspondence with officers thereof; and, with the aid of information thus or otherwise obtained, together with experience and observation of the operation of the laws of this State, to recommend to the legislature at each regular session thereof, such amendments, changes or modifications of the laws of this State, and such additional laws as may to said board, or any member thereof, seem necessary or proper to remedy injustice or irregularity in taxation, and to facilitate the assessment of taxes and collection of public revenues.

4. To report to the legislature, at each regular session thereof, the whole amount of State revenues collected in this State

for all purposes, and the sources thereof, the amount of such revenues which may be lost to the State through failure to make collection and the cause of such losses, a summary of the proceedings of said board since the date of its last report, and such other matters concerning the public revenues as said board, or any member thereof may deem to be of public interest. [Id.]

Art. 7102. [7411] **Visits.**—Said Tax Board, or any member thereof, or the Comptroller under the direction of said board, or of the Governor, shall, at least once in each year, visit such counties of the State as said board or the Governor may direct, for the purpose of investigating into and aiding in the enforcement of all revenue laws of this State, and especially those concerning the rendition, assessment and collection of taxes. [Id.]

Art. 7103. [7412] **Powers of board.** Each member of said board shall have power to administer oaths and to subpoena and examine witnesses, and to issue subpoenas duces tecum, and shall have access to and power to order the production before such board, or any member thereof, of any and all books, documents and papers which may be in the possession or under the control of any person, company, corporation or receiver, assignee, trustee in bankruptcy, or bailee, whenever such board, or any member thereof, may consider same necessary or proper in the prosecution of any inquiry under or in the execution of any provision of this chapter and all such process shall be served under the provisions of law governing the service of process in civil cases, in so far as applicable. [Id.]

Art. 7104. [7413] **Failure to obey subpoena.**—Any person who shall disobey any such subpoena, or subpoena duces tecum, issued by any member of said board, or any such order of said board, or who shall fail or refuse to attend as by such subpoena directed, or to testify when so required to do so by any member of said board, under the provisions of this chapter, shall be deemed guilty of contempt, and may be punished therefor by said board under the provisions of laws applicable to the district courts in such cases. [Id.]

Art. 7105. [7414] **Tax on intangible assets.**—Each incorporated railroad company, ferry company, bridge company, turn-pike or toll company, doing business wholly or in part within this State, whether incorporated under the laws of this State, or of any other state, territory, or foreign country, and every other individual, company, corporation or association doing business of the same character in this State, in addition to the ad valorem taxes on intangible properties which are or may be imposed upon them, respectively, by law, shall pay an annual tax to the State, beginning with the first day of January of each year, on their intangible assets and property, and local taxes thereon to the counties in which its business is carried on; which additional tax shall be assessed and levied upon such intangible assets and property in the manner provided in this

chapter. The county or counties in which such taxes are to be paid, and the manner of apportionment of the same, shall be determined in accordance with the provisions of this chapter. [Id.]

Art. 7106. [7415] Statement required.—Between the second day of January and the first day of March of each year, every individual, company, corporation and association embraced within the provisions of the next preceding article of this chapter, or coming within its scope and intent, shall make out and deliver into the possession of said tax commissioner a statement containing the information required of it by this chapter, which statement shall be duly verified by the affidavit of the individual, or one of the officers of the company, corporation or association in whose behalf it is made, or by the receiver, assignee, or trustee in bankruptcy thereof. [Id.]

Art. 7107. [7416] Contents of statement. — Each such statement shall show the following items and particulars as the same stood on the first day of January next preceding, to-wit:

1. The name of the individual, company, corporation, or association making such statement, and the character of its business.

2. If incorporated, the authority by which it was incorporated and the purposes of its incorporation as expressed in its original or amended articles of incorporation or articles of association.

3. The locality of its principal office and the amount and kind of business done by it in this State and the total gross receipts derived from its business within this State, including a due proportion of its interstate business, if it has done any business of that character.

4. Its total authorized capital stock and the number of shares thereof, which have been issued and are outstanding, and the par face value of each such share, and the amount of the capital actually employed in the aforesaid business within the State.

5. The market value of said shares of stock, or, if they have no market value, the actual value thereof.

6. The assessed value and also the true value of all the tangible property owned by such individual, company, corporation or association in each county in this State and the total assessed value and also the true value thereof.

7. The assessed value and also the true value of the tangible property of such individual, company, corporation or association, outside of this State, and not specifically used in the business of such individual, company, corporation or association, same to be given by states, and the total assessed value and also the true value of the same.

8. A statement of each and every existing lien, mortgage or other charge upon the whole, or any part, of the property of such individual, company, corporation or association, and of the property thereby charged or encumbered, and of the amount

of unpaid debt secured by each such mortgage, lien or charge, and of the interest charged thereon, and to what extent such interest has been paid, and of the true and fair market value of every such debt.

9. A statement of the gross receipts and net income and earnings for the next preceding twelve months, including therein all interest on investments, and all rents, fruits, revenues and receipts from every source whatsoever, and a statement of the income used for repairs, and of the amounts used for betterments, and the amount used for extensions within that period of time.

10. Every such railroad company shall also show in each statement made by it:

11. The total length of all lines of said company, whether within or without this State.

12. The total length of such lines as are within the State.

13. The length of its lines in each of the counties in this State into which its lines extend. [Id.]

Art. 7108. [7417] **Additional statements.**—The tax commissioner shall receive all tax statements rendered to him under the provisions of this chapter, and shall indorse upon each the date of receipt thereof, signing such indorsement officially. Said board shall examine all such statements as soon as may be practicable; and, if said board shall deem any of them insufficient, or shall believe other or further information necessary or proper, said board shall at once demand of such individual, company or corporation, or association, such additional statements and such further information as it may think proper. [Id.]

Art. 7109. [7418] **Statements placed before board.**—On the first Monday after the first day of March of each year, or as soon thereafter as may be practicable, said tax commissioner shall place before said board all such statements, facts and information as may have come into its possession or knowledge under the provisions of this chapter. [Id.]

Art. 7110. [7419] **Passing upon statement.**—Said board shall thereupon carefully examine and consider the said statements, facts and information; and, if they deem it advisable to do so, shall hear evidence, and shall require such individual, company, corporation or association to make such additional reports, if any, as such board may deem proper, and shall otherwise secure further additional information so far as may be in its power, to show the true value of the properties aforesaid, and the true value of that portion of every such property which is situated within the State and within the respective counties thereof, sufficient to enable said board to make the preliminary estimate herein provided for; and, for that purpose as well as for the purpose of carrying into effect any provision of this chapter, said board, and each member thereof, may require and compel, any and all such individuals, companies, corporations and associations, and the officers and agents thereof, and such

receivers, trustees in bankruptcy, assignees and bailees, to appear before such board at a time or times to be designated by said board, with any and all such books, papers, documents and information as said board may require, and to submit themselves to examination by said board. Upon consideration of such statements and information and such additional evidence, books, papers, documents and information, if any, said board shall make in accordance with the provisions of this chapter, a preliminary estimate, valuation and apportionment of the true value of the intangible property within this State, of each of said individuals, companies, corporations, or associations, and shall, on or before the thirty-first day of May of each year, by registered mail, notify each and every such individual, company, corporation or association, receiver or assignee, trustee in bankruptcy, or other person holding such property for the benefit of creditors, of such preliminary estimate, valuation and apportionment, and the amounts thereof; and all such individuals, companies, corporations, associations, receivers, assignees, trustees and other persons shall have fifteen days from the time of mailing such notice by registered mail to appear before such board, at Austin, on a date to be fixed by such notice, and request of such board a change or changes in such valuation and apportionment, or cancellation of such valuation and apportionment; and said individuals, companies, corporations, association, receivers, assignees, trustees, and other persons may appear before such board, in person or by attorney, or in person and by attorney, and introduce evidence. Said board may, upon its own motion, or upon the written request of any interested party, and each member of said board, may summon, swear and examine witnesses under the same rules which govern the summoning, swearing and examination of witnesses in the district courts of this State; and, such board shall have the same jurisdiction, authority and power, under the same penalties, to require the production and to secure the examination of any and all books, documents and papers of such individuals, companies, corporations and associations, receivers, assignees, trustees and other persons as is now or may hereafter be conferred by the laws of this State upon the Railroad Commission of Texas. Upon or after such hearing, said board may change such valuation and apportionment, or either, or cancel such valuation and apportionment, as said board may deem just and proper in the premises. [Id.]

Art. 7111. [7420] Other duties regarding statement.—In so far as the other evidence and information adduced before said board does not make it appear to the members of said board to be improper or unjust to do so, said board shall, in fixing the true value of the entire property of such individual, company, corporation or association embraced within the provisions of this chapter, take as a basis therefor the aggregate market or true value of all its shares of stock, adding thereto

the aggregate market or true value of all indebtedness secured by any mortgage, lien or other charge upon its property or assets, and the sum so produced shall be deemed and treated as the true value of said entire property. And where the individual, company, corporation or association does business and has property, both within this State and outside of it, in ascertaining the true value of its property within this State, said board shall next ascertain from said statements, reports and evidence, if any, or otherwise, the true value, in the locality where the same is situated, of each such several pieces of real estate situated outside of this State, and of its other properties, if any, outside thereof, and not specifically used in the business of said individual, company, corporation or association, and the aggregate of said value shall be deducted from the gross value of the property as above ascertained; and the result of the said deduction and the sum or value thereby obtained shall be deemed and treated as the true value of all property of such individual, company, corporation or association in actual use in its business. Said board shall then fix the true value of the property of such individual, company, corporation or association within this State, using as a basis and being guided so far as it shall not believe it unjust to do so, by the proportion which it finds to exist between the total lines or total receipts within this State and outside of it, and lines controlled or operated, or the receipts obtained, entirely within this State, so that there shall be apportioned to this State, as the true value of the property within its borders of each individual, company, corporation and association doing business within and outside of its limits, such proportion of the true value of all the property of such individual, company, corporation or association which is specifically used in its business, as is borne by its total lines or total receipts within this State when compared with the total lines or total receipts both inside and outside of the State of Texas. From the entire value of the property within this State, when ascertained as directed by this chapter, said board shall deduct the true value of all the tangible property of such individual, company, corporation or association within this State, as so ascertained by said board, and the residue and remainder of value shall be by said board fixed, determined and declared as the true value of the intangible properties owned and held by such individual, company, corporation or association within this State. Said board shall apportion the sum of the said total taxable values within this State to the counties in which such individual, company, corporation or association does business, in proportion to the amount of business done in and the receipts derived from each such company, except that, in case of a railroad company, the apportionment to each county shall be in proportion to the line or lines of such individual, company, corporation or association therein. In apportioning the value of the aforesaid properties, said board shall consider all evidence

which may be put before it and all material facts at its command; and, if it shall believe that some method of calculation other than that specifically prescribed in this chapter is necessary in order to produce just and lawful results, said board shall follow that method of calculation which it believes best calculated, under all circumstances, to bring about a just, fair, equitable and lawful valuation and apportionment of such property. [Id.]

Art. 7112. [7421] Capital, how ascertained.—Whenever any person, or association of persons, not being a corporation, nor having a capital stock, shall engage in this State in any character of business embraced within the provisions of the eighth article of this chapter, then the capital and property, or the certificate or other evidences of the rights or interests of such person or association of persons engaged in such business, shall be deemed and treated as the capital stock of such person, or association of persons, for the purpose of taxation, and for all other purposes, under this chapter, and shall be estimated and valued; and the intangible property of such person or association of persons, when ascertained, shall be apportioned, distributed, assessed and taxed under the provisions of this chapter, in like manner as if such person or association of persons were a corporation; and each such person and association of persons shall, annually, within the time and in the manner provided in this chapter, make the statements and reports and furnish and supply the information required by this law of the aforesaid companies, corporations and associations, and shall be subject in like manner as the aforesaid companies, corporations and associations to all the terms and provisions of this chapter, including penalties. [Id.]

Art. 7113. [7422] Board to certify to assessor.—Thereafter, and not later than the twentieth day of June of each year, said board shall make, in accordance with the provisions and requirements of this chapter, a final valuation and apportionment of the intangible assets aforesaid, of each and every such individual, company, corporation and association, and shall, as soon after such twentieth day of June as practicable, certify to the tax assessor of each county to which any portion of such intangible assets of any such individual, company, corporation or association is found by said board to be apportionable for taxation and so apportioned, the amount thereof as fixed, determined and declared by said board, and thereunto apportioned by said board, together with the name and place of residence or place of business of the owner or owners of the property embraced in such valuation and apportionment; provided, that such final valuation and apportionment of such intangible assets, properly apportionable and apportioned by such board to any unorganized county shall be by said board so certified to the tax assessor of the county to which such unorganized county is attached for judicial purposes. The tax assessor of such county,

upon receiving such certificate or certificates of said board, shall place, set down and list, upon forms prescribed by the Comptroller for such purpose, upon the tax rolls of his county, and of each unorganized county which is attached to his county for judicial purposes, as the case may be, any and all such intangible assets, at the value so fixed, determined, declared and certified by said board. Such county tax assessor shall extend and prorate upon said rolls the State and county taxes upon all such intangible assets in the same manner as taxes upon other property are extended and prorated. Said assessment, valuation and apportionment of such intangible assets so fixed, determined, declared and certified by such board shall not be subject to review, modification or change by the tax assessor of such county, nor by the board of equalization of such county; and the State and county taxes thereon shall be collected by the tax collector of such county and accounted for by him in the same manner and under the same penalties as taxes upon other property. All State and county ad valorem taxes upon all intangible property in this State belonging to any individual, company, corporation or association embraced by this chapter, shall be assessed under its provisions and not otherwise; but ad valorem taxes upon all other property of any and all such individuals, companies, corporations and associations shall be assessed as is or as may be provided by law. [Id.]

Art. 7114. [7424] Failure to make statement.—Any individual, company, corporation or association, embraced within the provisions of this chapter, which shall fail to make any return, statement and report provided for by this chapter, within fifteen days after the day on which it is required by this chapter to be made, or to make any additional report or statement, or to furnish any additional information which may be required by said board, or any member thereof, under the provisions of this chapter, within fifteen days after the mailing of a registered notice or demand therefor in writing, signed by any member of said board and addressed to such individual, company or corporation or association, at its proper post-office address or principal place of business, shall forfeit and pay to the State of Texas not more than five thousand dollars, which amount may be recovered by suit which may be brought therefor in behalf of the State by the Attorney General; and venue of such suits is hereby fixed within the county of Travis. [Id.]

Art. 7115. [7425] Receivers and trustees in bankruptcy to report.—If the property of any such individual, company, corporation or association shall be in the hands of any receiver, assignee, trustee in bankruptcy, or other person holding under any court, or for the benefit of any creditor or creditors, then the statements, reports, information, books, and papers aforesaid shall be furnished by such receiver, assignee, trustee or other person, by some officer or agent acting under him, in the same manner and to the same extent as is hereinbefore pro-

vided in cases where an individual, company or association is in possession; and as to such receiver, assignee, trustee in bankruptcy or other person, officer or agent, all of the provisions of this chapter, in so far as they are applicable, shall apply and govern. [Id.]

Art. 7116. [7426] Relieved of other taxes.—Whenever any individual, company, corporation or association, embraced within the eighth article of this chapter, shall pay in full, and within the year for which same may be assessed, all its State and county taxes for that year upon all its intangible properties as determined, fixed and assessed under the provisions of this chapter, such individual, company, corporation or association shall thereby be relieved from liability for and from payment of any and all occupation taxes measured by gross receipts for or accruing during that year under any law of this State; but no such individual, company, corporation or association shall be entitled to any such exemption, except for the year for which it shall, before same shall become delinquent, pay all its aforesaid intangible State and county taxes for that year. [Id.]

CHAPTER FIVE.

INHERITANCE TAX.

| Article | Article | | |
|------------------------------------|---------|-----------------------------------|------|
| Property subject | 7117 | Fixing tax | 7131 |
| Class A—Wife and children..... | 7118 | Payment of tax | 7132 |
| Class B—Domestic bequest | 7119 | Lien | 7133 |
| Class C—Brother or sister..... | 7120 | Foreclosure | 7134 |
| Class D—Uncle or aunt..... | 7121 | Final accounts | 7135 |
| Class E—Foreign bequest..... | 7122 | Delivery of securities | 7136 |
| Divided estate | 7123 | Delivery before payment | 7137 |
| Bequest to trustee | 7124 | Offsets after distribution | 7138 |
| Deductions | 7125 | False report | 7139 |
| Preliminary report | 7126 | Duty of attorneys | 7140 |
| Inventory | 7127 | Attorney's fees..... | 7141 |
| If administration unnecessary..... | 7128 | Tax collector's fees | 7142 |
| Securities of non-resident..... | 7129 | Disposition of tax..... | 7143 |
| Appraisal | 7130 | Comptroller to furnish forms..... | 7144 |

Art. 7117. Property subject.—All property within the jurisdiction of this State, real or personal, corporate or incorporate, and any interest therein, whether belonging to inhabitants of this State or to persons who are not inhabitants, regardless of whether property is located within or without this State, which shall pass absolutely or in trust by will or by the laws of descent or distribution of this or any other State, or by deed, grant, sale or gift made or intended to take effect in possession or enjoyment after the death of the grantor or donor, shall upon passing to or for the use of any person, corporation or association, be subject to a tax for the benefit of the State's general revenue fund in accordance with the following classifications. [Acts 2nd C. S. 1923, p. 63.]

Art. 7118. Class A—Wife and children.—If passing to or for the use of husband or wife, or any direct lineal descendant or ascendent of the decedent, or to legally adopted child or children, or to the husband of a daughter or the wife of a son, the tax shall be one per cent on any value in excess of twenty-five

thousand dollars, and not exceeding fifty thousand dollars; two per cent on any value in excess of fifty thousand dollars, and not exceeding one hundred thousand dollars; three per cent on any value in excess of one hundred thousand dollars, and not exceeding two hundred thousand dollars; four per cent on any value in excess of two hundred thousand dollars and not exceeding five hundred thousand dollars; five per cent on any value in excess of five hundred thousand dollars, and not exceeding one million dollars; and six per cent on any value in excess of one million dollars. [Id.]

Art. 7119. Class B—Domestic bequest.—If passing to a religious, educational or charitable organization located within this State and the bequest is to be used within this State, or to any city, town or county within this State, or to the State of Texas, or to the United States, to be used in this State, the tax shall be one per cent on any value in excess of twenty-five thousand dollars, and not exceeding fifty thousand dollars; two per cent on any value in excess of fifty thousand dollars and not exceeding one hundred thousand dollars; three per cent on any value in excess of one hundred thousand dollars and not exceeding two hundred thousand dollars; four per cent on any value in excess of two hundred thousand dollars and not exceeding five hundred thousand dollars; five per cent on any value in excess of five hundred thousand dollars and not exceeding one million dollars; and six per cent on any value in excess of one million dollars. [Id.]

Art. 7120. Class C—Brother or sister.—If passing to or for the use of a brother or sister or a direct lineal descendant of a brother or sister, of the decedent, the tax shall be three per cent on any value in excess of ten thousand dollars and not exceeding twenty-five thousand dollars; four per cent on any value in excess of twenty-five thousand dollars and not exceeding fifty thousand dollars; five per cent on any value in excess of fifty thousand dollars and not exceeding one hundred thousand dollars; six per cent on any value in excess of one hundred thousand dollars and not exceeding two hundred and fifty thousand dollars; seven per cent on any value in excess of two hundred and fifty thousand dollars and not exceeding five hundred thousand dollars; eight per cent on any value in excess of five hundred thousand dollars and not exceeding seven hundred and fifty thousand dollars; nine per cent on any value in excess of seven hundred and fifty thousand dollars and not exceeding one million dollars; and ten per cent on any value in excess of one million dollars. [Id.]

Art. 7121. Class D—Uncle or aunt.—If passing to or for the use of an uncle or aunt, or a direct lineal descendant of an uncle or aunt of the decedent, the tax shall be four per cent on any value in excess of one thousand dollars and not exceeding ten thousand dollars; five per cent on any value in excess of ten thousand dollars and not exceeding twenty-five thousand dol-

lars; six per cent on any value in excess of twenty-five thousand dollars and not exceeding fifty thousand dollars; seven per cent on any value in excess of fifty thousand dollars and not exceeding one hundred thousand dollars; ten per cent on any value in excess of one hundred thousand dollars and not exceeding five hundred thousand dollars; twelve per cent on any value in excess of five hundred thousand dollars and not exceeding one million dollars; and fifteen per cent on any value in excess of one million dollars. [Id.]

Art. 7122. **Class E—Foreign bequest.**—If passing to any other person within or without this State, or to any religious, educational or charitable organization located without the State, or to any religious, educational or charitable organization located in this State, or to the United States, and the bequest is to be used without this State, or to any other corporation or association not included in any of the classes mentioned in the preceding four articles, the tax shall be five per cent on any value in excess of five hundred dollars and not exceeding ten thousand dollars; six per cent on any value in excess of ten thousand dollars and not exceeding twenty-five thousand dollars; eight per cent on any value in excess of twenty-five thousand dollars and not exceeding fifty thousand dollars; ten per cent on any value in excess of fifty thousand dollars and not exceeding one hundred thousand dollars; twelve per cent on any value in excess of one hundred thousand dollars and not exceeding five hundred thousand dollars; fifteen per cent on any value in excess of five hundred thousand dollars and not exceeding one million dollars; and twenty per cent on any value in excess of one million dollars. [Id.]

Art. 7123. **Divided estate.**—If the property passing as aforesaid shall be divided into two or more estates, as an estate for years or for life and a remainder, the tax shall be levied on each estate or interest separately, according to the value of the same at the death of the decedent. The value of estates for years, estates for life, remainders and annuities, shall be determined by the "Actuaries Combined Experience Tables," at four per cent compound interest. [Id.]

Art. 7124. **Bequest to trustee.**—If a testator bequeaths or devises to his executor or trustee property in lieu of commission, the value of such property in excess of reasonable compensation, as determined by the county judge and the Comptroller, shall be subject to taxation under this chapter. [Id.]

Art. 7125. **Deductions.**—The only deductions permissible under this law are the debts due by the estate, funeral expenses, expenses incident to last illness of deceased, and all Federal, State and county and municipal taxes due at the time of the death of decedent. A full statement of the facts authorizing deductions must be made in duplicate under oath by the executor, administrator or trustee, and one copy filed with the

county clerk, and the other with the Comptroller, before any deductions will be allowed. [Id.]

Art. 7126. Preliminary report.—Every executor, administrator or trustee of the estate of a decedent leaving property subject to taxation under this chapter, and every other person coming into possession of any portion of such estate where there is no administration of such estate, shall file a preliminary report within one month after coming into possession of any such property, giving the date of the death of such decedent, the approximate value and character of his estate and the persons entitled to receive same. Such report shall be in duplicate, one of which shall be filed with the Comptroller, and the other with the county clerk of the county wherein such decedent resided at the time of his death or wherein the principal part of his estate is located. The county clerk shall immediately notify the county judge of the filing of such report. [Id.]

Art. 7127. Inventory.—Within six months after the executor, administrator or trustee or other person comes into full possession of such estate, he shall make report in duplicate and shall file the same in the manner provided in the preceding article. Said report must be made under oath and recorded as a permanent record in the Probate Court of the county wherein filed, and must give the following information:

(1) A list of all real estate located in Texas, including improvements thereon, and the true and full value of such real estate and all improvements thereon at the date of the death of decedent;

(2) A complete list of all live stock showing the location, kind and value thereof;

(3) All moneys on hand or in the bank, regardless of location, whether in this State or outside of Texas;

(4) All notes, bonds, certificates, mortgages, stocks and other securities or evidences of indebtedness due the estate, showing the name and residence of those owing the estate, and the kind of bonds owned, the kind of notes, mortgages and stocks and other securities, and the name of the corporation, association or company in which stock or any interest is owned;

(5) The name and address of all persons entitled to such property and the value of such property to each beneficiary. [Id.]

Art. 7128. If administration unnecessary.—If for any reason the administration of the estate of a decedent leaving property subject to taxation under this chapter, shall not be necessary in this State except to carry out the provisions of this law, it shall be in the discretion of the county judge and Comptroller to dispense with the appointment of an administrator, upon filing with each of them a satisfactory inventory of the taxable property by the trustee or owner. Upon the filing of such inventory, the appraisalment and other proceedings required by this chapter shall be had as in other cases. [Id.]

Art. 7129. Securities of non-resident.—In case of the death of a non-resident of Texas, owning no property in this State except stocks or bonds in a domestic corporation or association, and such fact is shown to the satisfaction of the Comptroller, such officer shall value said property. The administrator, executor or trustee may pay said tax when notified of the amount by the Comptroller, direct to such officer at Austin. The Comptroller shall then issue and deliver proper receipt therefor to the State Treasurer who shall keep a record of such payment and forward receipts to the trustee. [Id.]

Art. 7130. Appraisal.—The judge of the county court having jurisdiction of the estate of the decedent shall appoint two competent disinterested persons, to be approved by the Comptroller, as appraisers to fix the value of the property of such decedent subject to taxation hereunder; or upon agreement of the parties interested to dispense with the appointment of appraisers, the county judge and Comptroller shall appraise the property and make and file a report of such appraisement. The appraisers, being first sworn, shall forthwith give notice to all persons known to have any claim or interest in the property to be appraised, including the executor, administrator or trustee, of the time and place when they will appraise the same. At such time and place, said appraisers shall appraise such property at its actual market value if it has a market value, and in case it has none, then its real value at the time of the death of the decedent, and shall thereupon make a report thereof in writing to said county judge and Comptroller, who shall file and keep such report. If the same decedent shall leave property taxable hereunder to more than one person, said appraisement and report shall be made for the property of each of such persons. Each appraiser shall be paid, on the certificate of the county judge, five dollars for each day employed in such appraisal, together with his actual necessary expenses incurred therein. [Id.]

Art. 7131. Fixing tax.—Immediately after the filing of the appraisal report, or as soon thereafter as practical, the county judge shall calculate and determine the tax due on such property, according to the value thereof as shown in such appraisement, and shall furnish a statement of the same to the Comptroller for verification. If the Comptroller finds the tax to be correct, he shall so advise the county judge, whereupon it shall immediately become the duty of the county judge to certify such amount to the collector of taxes, to the executor, administrator or trustee, and to the person to whom or for whose use, the property passes, and said tax shall be a lien upon such property from the death of the decedent until paid. [Id.]

Art. 7132. Payment of tax.—All taxes received under this law by any executor, administrator or trustee, shall be paid by him to the tax collector of the county whose county court has jurisdiction of the estate of the decedent. Upon such payment, the collector shall make duplicate receipts thereof and shall de-

liver one to the party making payment, the other he shall send to the Comptroller, who shall charge the collector with the amount thereof and shall countersign and affix his seal to such receipt and transmit same to the party making payment. [Id.]

Art. 7133. **Lien.**—A lien shall exist on all property subject to taxation under this law to secure the payment of all taxes, penalties and costs provided for in this chapter. All persons acquiring any portion of said property shall be charged with notice of the existence of all such unpaid taxes, penalties and costs, and of the lien securing their payment, which may be enforced in any suit brought for the collection of said taxes, penalties and costs. [Id.]

Art. 7134. **Foreclosure.**—If the amount of tax due hereunder, as shown by such assessment furnished by the county judge and Comptroller, is not paid within three months from the date of said assessment, same shall draw two per cent interest per month until paid, beginning with the date of notice of such assessment, and shall be added to said tax and collected as a penalty. If said tax and penalty are not paid within nine months from the date of such assessment, the Comptroller shall so advise the county attorney, or if there is no county attorney then the district attorney, who must immediately file suit in the district court to foreclose the tax lien, as other tax liens are foreclosed. [Id.]

Art. 7135. **Final accounts.**—No final account of any executor, administrator or trustee shall be allowed by the county judge unless such account shows and said judge finds that all taxes imposed under this law on any property or interest passing through his hands as such have been paid. Neither shall the county judge close any estate, or permit the delivery of any property to the legatee or heir without first ascertaining whether or not a tax is due under this chapter, and if no tax is due such fact must be shown by an instrument in writing filed with the final papers closing said estate. [Id.]

Art. 7136. **Delivery of securities.**—No notes, bonds, certificates, mortgages, stocks, securities or other evidences of indebtedness due the estate of deceased persons and subject to taxation hereunder, shall be transferred or delivered to any legatee or heir until the Comptroller issues a notice to the executor, administrator or trustee of such estate, or to their bondsmen, stating that all the inheritance taxes due this State have been paid. Such notice shall be authority for any administrator, executor or trustee to deliver such property to the proper legatees or heirs. [Id.]

Art. 7137. **Delivery before payment.**—Should any domestic corporation or association transfer to any legatee or heir, or should an administrator, executor or trustee deliver to any legatee or heir, the stocks or bonds of any domestic corporation or association, or deliver any other property, before the inheritance tax thereon due this State is paid, the corporation or asso-

ciation, or the administrator, executor, trustee and their bondsmen, shall be liable for said tax and penalty and all cost of collection. [Id.]

Art. 7138. Offsets after distribution.—Whenever any debts shall be proved against the estate of the decedent after the distribution of the property on which the tax has been paid and a refund is made by the distributee, due proportion of the tax so paid shall be repaid to him by the executor, administrator or trustee if still in his hands, or by the Comptroller upon warrant on the State Treasurer, if said tax has been paid. [Id.]

Art. 7139. False report.—If any person charged with the duty of filing a report hereunder shall knowingly make a false report, he shall be liable for a penalty of not exceeding one thousand dollars, which shall be collected by the county attorney, or district attorney where there is no county attorney, in the name of this State by suit in the county in which the administration is pending. Twenty per cent of such penalty shall be retained by the attorney prosecuting such suit as attorney's fees, and the remainder shall be distributed as the taxes collected under this law are distributed. [Id.]

Art. 7140. Duty of attorneys.—It shall be the duty of the county attorney, or district attorney where there is no county attorney, of each county in this State to carefully investigate and keep informed concerning the estates subject to the payment of taxes and to see that proper reports are filed as required in this chapter. [Id.]

Art. 7141. Attorney's fees.—For the services performed under the provisions of this chapter, the county attorney and the county judge shall each be allowed two per cent of the taxes collected not to exceed thirty dollars in any one estate. If suit be brought, the county or district attorney prosecuting same shall receive as compensation therefor five per cent on the amount of the taxes payable hereunder not to exceed in any one case the sum of one hundred dollars, which fee shall be added and collected from said estate in addition to the taxes and penalties herein provided for, and such compensation shall be in addition to all other fees and compensation provided by this law. The aggregate of fees received under this law shall not exceed in any one year two thousand dollars, and any fees earned in addition to said sum shall be considered a portion of the tax and penalties collected, and be distributed in the same manner. [Id.]

Art. 7142. Tax collector's fees.—The collector of taxes of each county shall, on or before the fifteenth day of each month, pay to the State Treasurer all taxes received by him under this law before the first day of the month, deducting therefrom all lawful disbursements made by him under this law, and also his compensation at the rate of one per cent of all taxes collected hereunder. [Id.]

Art. 7143. Disposition of tax.—All moneys received by the State Treasurer under this chapter shall be deposited in the

State Treasury to the credit of the general revenue fund. [Id.]

Art. 7144. **Comptroller to furnish forms.**—The Comptroller shall prescribe and furnish all forms necessary in making the reports and collecting the tax provided for by this law. [Id.]

CHAPTER SIX.

PROPERTY SUBJECT TO TAXATION AND RENDITION.

| | | | |
|-----------------------------|--------------|---|--------------|
| All property taxed | Article 7145 | Certain credits and stocks not to be listed | Article 7163 |
| "Real property" | 7146 | Rendition of real estate | 7164 |
| "Personal property" | 7147 | Assessment of personal property of bank | 7165 |
| Assessment of merchandise | 7148 | Assessment of real estate by banks | 7166 |
| Definition of terms | 7149 | Deductions | 7167 |
| Exemption from taxation | 7150 | Assessment by railroads | 7168 |
| When to be rendered | 7151 | Railroads to return sworn statements | 7169 |
| How rendered | 7152 | Corporate property | 7170 |
| Where rendered | 7153 | Assessments in owner's name | 7171 |
| Rendered in but one county | 7154 | Lien for taxes | 7172 |
| Livestock | 7155 | Leasehold interests in public lands | 7173 |
| Taxes not to be paid twice | 7156 | Valuation of property for taxation | 7174 |
| Vessels | 7157 | Currency and coin | 7175 |
| Deposits with State | 7158 | Assessed as money on hand | 7176 |
| Railroads, telegraphs, etc. | 7159 | | |
| Listing for others | 7160 | | |
| Sworn list | 7161 | | |
| Requisites | 7162 | | |

Art. 7145. [7503] [5061] **All property taxed.**—All property, real, personal or mixed, except such as may be hereinafter expressly exempted, is subject to taxation, and the same shall be rendered and listed as herein prescribed. [Acts 1876, p. 275; G. L. Vol. 8, p. 1111.]

Art. 7146. [7504] [5062] **"Real property."**—Real property for the purpose of taxation, shall be construed to include the land itself, whether laid out in town lots or otherwise, and all buildings, structures and improvements, or other fixtures of whatsoever kind thereon, and all the rights and privileges belonging or in any wise appertaining thereto, and all mines, minerals, quarries and fossils in and under the same. [Id.]

Art. 7147. [7505] [5063] **"Personal property."**—Personal property, for the purposes of taxation, shall be construed to include all goods, chattels and effects, and all moneys, credits, bonds and other evidences of debt owned by citizens of this State, whether the same be in or out of the State; all ships, boats and vessels belonging to inhabitants of this State, if registered in this State, whether at home or abroad, and all capital invested therein; all moneys at interest, either within or without the State, due the person, to be taxed over and above what he pays interest for, and all other debts due such person over and above his indebtedness; all public stock and securities; all stock in turn-pikes, railroads, canals and other corporations (except national banks) out of the State, owned by inhabitants of this State; all personal estate of moneyed corporations, whether the owners thereof reside in or out of this State, and the income of any annuity, unless the capital of such annuity be taxed within this State; all shares in any bank organized or that may be organized under the laws of the United States; all improvements made by persons upon lands held by

them, the title to which is still vested in the State of Texas, or in any railroad company, or which have been exempted from taxation for the benefit of any railroad company, or any other corporation whose property is not subject to the same mode and rule of taxation as other property. [Acts 1879, p. 39; G. L. Vol. 8, p. 1339.]

Art. 7148. Assessment of merchandise.—Any person, co-partnership, association, or corporation, doing business in this State, and carrying and possessing any stock of goods of whatsoever nature, shall upon demand by the tax assessor of the county in which such stock of goods is located, furnish said tax assessor with a verified copy of the last inventory of said stock of goods, together with the inventory value thereof.

The affidavit to the inventory shall state that said inventory includes every article in the stock carried by such person, co-partnership, association, or corporation and that no part of such stock is owned, operated or controlled by any person, co-partnership, association, or corporation other than the person furnishing such inventory.

Any persons, co-partnerships, associations or corporations who have space leased in which merchandise or any character of business is or was operated on January 1st so making such inventory, shall further state, if such is the case, what persons, associations, co-partnerships or corporations own or control any part of the stock of goods offered for sale and their residence in conjunction with the stock of goods owned by the person, co-partnership, association, or corporation rendering such inventory and not contained in such inventory.

Any person or agent or representative of such co-partnership, association, or corporation who shall fail to furnish such inventory and information as set forth above upon demand by the tax assessor of the county in which such property is located, shall be subject to all the penalties now existing against any person for making a false rendition of property for the purpose of taxation. [Acts 3rd C. S. 1923, p. 172.]

Art. 7149. [7506] [5064] Definition of terms.—The term, "money," or "moneys," wherever used in this title shall, besides money or moneys, include every deposit which any person owning the same or holding in trust and residing in this State, is entitled to withdraw in money on demand.

"Credits."—The term, "credits," wherever used in this title, shall be held to mean and include every claim and demand for money or other valuable thing, and every annuity or sum of money receivable at stated periods, due or to become due, and all claims and demands secured by deed or mortgage, due or to become due.

"Tract or lot."—The term, "tract or lot," and "piece or parcel," of real property, and "piece and parcel" of land, wherever used in this title, shall each be held to mean any quantity of land

in possession of, owned by or recorded as the property of the same claimant, person, company or corporation.

“Town or district.”—The words, “town or district,” wherever used shall be held to mean village, city, ward or precinct, as the case may be.

“Value.”—The term, “true and full value,” wherever used shall be held to mean the fair market value, in cash, at the place where the property to which the term is applied shall be at the time of assessment, being the price which could be obtained therefor at private sale, and not at forced or auction sale.

“Person.”—The term, “person,” shall be construed to include firm, company or corporation. [Acts 1876, p. 275; G. L. Vol. 8, p. 1111.]

Art. 7150. [7507] [5065] **Exemption from taxation.**—The following property shall be exempt from taxation, to-wit:

1. Schools and churches.—Public school houses and houses used exclusively for public worship, the books and furniture therein and the grounds attached to such buildings necessary for the proper occupancy, use and enjoyment of the same, and not leased or otherwise used with a view to profit. All public colleges, public academies, all buildings connected with the same, and all the lands immediately connected with public institutions of learning, and all endowment funds of institutions of learning and religion not used with a view to profit, and when the same are invested in bonds or mortgages, or in land or other property which has been or shall hereafter be bought in by such institutions under foreclosure sales made to satisfy or protect such bonds or mortgages; provided, that such exemption of such land and property shall continue for two years after the purchase of the same at such sale by such institutions and no longer; and all such buildings used exclusively and owned by persons or associations of persons for school purposes. This provision shall not extend to leasehold estate of real property held under authority of any college or university of learning. [Acts 1907, p. 302.]

2. Christian Associations.—Young Mens' Christian Association Buildings, and Young Womens' Christian Association Buildings, used exclusively for the purpose of furthering religious work, and acting under the approval and co-operation of the State and International Young Mens' Christian Association committees and the Young Womens' Christian Association committees, the books and furniture contained in such buildings, and the grounds attached thereto necessary for the proper occupancy of such buildings, use and enjoyment of the same, and not leased or otherwise used with a view to profit other than for the purpose of maintaining the buildings and Association, and all endowment funds of the above mentioned religious institutions, not used with a view to profit, but for the purpose of maintaining the Association and buildings in doing religious work. [Acts 1913, p. 153.]

3. Cemeteries.—All lands used exclusively for graveyards or grounds for burying the dead, except such as are held by any person, company or corporation with a view to profit, or for the purpose of speculating in the sale thereof. [Acts 1907, p. 302.]

4. Public property.—All property, whether real or personal, belonging exclusively to this State, or any political subdivision thereof, or the United States, except that in each county in this State, where the State of Texas has or may acquire and own land for the purpose of establishing thereon State farms and employing thereon convict labor on State account, the penitentiary board or board of penitentiary commissioners, or other officers of the penitentiary having the management of the same, shall render said land for taxes to the tax assessor of said county; and the taxes on same shall be assessed and collected in the manner required by law for the assessment and collection of other taxes; provided, that said taxes shall be assessed and collected for county purposes only; and said county taxes shall be paid annually out of the revenue derived from such State farms respectively by the officer having the management thereof, and same shall be charged to the expense account of operating such farm. No debt shall be created against the general revenue of the State in case of the failure to pay said taxes out of the revenue of any such farm. In arriving at the amount to be paid in taxes to the counties the value of the land only shall be considered and not the value of the buildings and other improvements owned by the State and situated on said land. [Id. Acts 1910, S. S. p. 122.]

5. County buildings.—All buildings belonging to counties for holding courts, for jails, or for county officers, with the land belonging to and on which such buildings are erected. [Acts 1907, p. 302.]

6. Poor-houses.—All lands, houses and other buildings belonging to any county, precinct or town, used exclusively for the support or accommodation of the poor. [Id.]

7. Public charities.—All buildings belonging to institutions of purely public charity, together with the lands belonging to and occupied by such institutions not leased or otherwise used with a view to profit, unless such rents and profits and all moneys and credits are appropriated by such institutions solely to sustain such institutions and for the benefit of the sick and disabled members and their families and the burial of the same, or for the maintenance of persons when unable to provide for themselves, whether such persons are members of such institutions or not. An institution of purely public charity under this article is one which dispenses its aid to its members and others in sickness or distress, or at death, without regard to poverty or riches of the recipient, also when the funds, property and assets of such institutions are placed and bound by its laws to relieve, aid and administer in any way to the relief of its members when in want, sickness and distress, and provide homes for its

helpless and dependent members and to educate and maintain the orphans of its deceased members or other persons. [Id.]

8. Public libraries.—All public libraries and personal property belonging to the same. [Id.]

9. Market houses, etc.—All market houses, public squares, or other public grounds, town or precinct houses or halls used exclusively for public purposes, and all works, machinery or fixtures belonging to any town used for conveying water to such town. [Id.]

10. Fire engines.—All fire engines and other implements owned by towns and cities used for the extinguishment of fires, with the buildings used exclusively for the safekeeping thereof. [Id.]

11. Furniture.—All household and kitchen furniture not exceeding at their true and full value two hundred and fifty dollars to each family, in which may be included one sewing machine. [Id.]

12. Pensions.—All annual pensions granted by the State or the United States. [Id.]

13. Buffalo and catalo.—All buffalo and all catalo now in captivity in this State, by whomsoever owned, where such animals are kept and used for experimental purposes in crossing same with cattle for the purpose of producing a better strain of beef animals, or where such animals are kept in parks to preserve the species, and not for profit. [Acts 1917, p. 384.]

14. Art Galleries, etc.—All property belonging to Art Leagues and Societies of Fine Arts, whether incorporated or not, which are devoted wholly and without charge to the promotion of education and learning, including Art Galleries and exhibits therein contained, the land upon which the same are situated, which is devoted exclusively to such purposes, and also all land, money, pictures and other works of art and all other personal property which may be necessary and in actual use for the purpose of carrying out said educational feature. [Acts 1921, p. 97.]

15. Property of Boy Scouts.—Hereafter the property of the organization known as the Boy Scouts of America or any local organization affiliated with such organization, shall be exempt from taxation in this State. [Acts 1925, p. 255.]

Art. 7151. [7508] [5066] **When to be rendered.**—All property shall be listed for taxation between January 1 and April 30 of each year, when required by the assessor, with reference to the quantity held or owned on the first day of January in the year for which the property is required to be listed or rendered. Any property purchased or acquired on the first day of January shall be listed by or for the person purchasing or acquiring it. If any property has, by reason of any special law, contract or fact, been exempt or has been claimed to be exempted from taxation for any period or limit of time, and such period of exemption shall expire between January 1, and December 31 of any year, said property shall be assessed and listed for taxes as other

property; but the taxes assessed against said property shall be for only the pro rata of taxes for the portion of such year remaining. [Acts 1909, p. 373.]

Art. 7152. [7509] [5067] **How rendered.**—All property shall be listed or rendered in the manner following:

1. By the owner.—Every person of full age and sound mind, being a resident of this State, shall list all of his real estate, moneys, credits, bonds or stock of joint stock or other companies (when the property of such company is not assessed in this State), moneys loaned or invested, annuities, franchises, royalties, and all other property.

2. As agent.—He shall also list all lands or other real estate, all moneys and other personal property invested, loaned or otherwise controlled by him as agent or attorney, or on account of any other person, company or corporation whatsoever, and all moneys deposited subject to his order, check, or drafts and credits due from or owing by any person, body corporate or politic.

3. Minor.—The property of a minor child shall be listed by his guardian, or by the person having such property in charge.

4. Wife.—The property of a wife, by her husband, if of sound mind; if not, by herself.

5. Idiot.—The property of an idiot or lunatic, by the person having charge of such property.

6. Cestui que trust.—The property of a person for whose benefit it is held in trust by the trustee of the estate; of a deceased person, by the executor or administrator.

7. Receivers.—The property of corporations whose assets are in the hands of receivers, by such receivers.

8. Corporations.—The property of a body politic or corporate, by the president or proper agent or officer thereof.

9. Copartnership.—The property of a firm or company, by a partner or agent thereof.

10. Manufactories.—The property of manufacturers and others in the hands of an agent, by such agent, in the name of his principal, as real, personal and merchandise.

11. Nurseries.—The stock of nurseries, growing and otherwise, in the hands of nurserymen shall be listed and assessed as merchandise. [Id.]

Art. 7153. [7510] [5068] **Where rendered.**—All property, real and personal, except such as is required to be listed and assessed otherwise, shall be listed and assessed in the county where it is situated; and all personal property, subject to taxation and temporarily removed from the State or county, shall be listed and assessed in the county of the residence of the owner thereof, or in the county where the principal office of such owner is situated. [Acts 1897, p. 203; G. L. Vol. 10, p. 1257.]

Art. 7154. [7511] [5069] **Rendered in but one county.**—Lands lying on county boundaries, which have not been accurately and legally surveyed, determined or fixed, shall not be as-

essed or taxed in more than one county. [Acts 1879, p. 153; G. L. Vol. 8, p. 1453.]

Art. 7155. [7512] [5070] **Livestock.**—All persons, companies and corporations owning pastures in this State which lie on county boundaries shall be required to list for assessment, all livestock of every kind owned by them in said pastures in the several counties in which such pastures are situated, listing in each county such portion of said stock as the land in such county is of the whole pasture. All persons, companies and corporations owning any kind of livestock in pasture not their own shall list said livestock in the several counties in which such pastures are situated in the same manner; and in both cases the tax upon such livestock shall be paid to the tax collector of the several counties in which such livestock is listed and assessed. [Acts 1889, p. 29; G. L. Vol. 9, p. 1057.]

Art. 7156. [7513] [5071] **Taxes not to be paid twice.**—Any lands which may have been assessed in any county according to the abstract of land titles, and the taxes paid thereon according to law, shall not be afterwards subject to the payment of taxes for the same period in a different county, although a subsequent survey and determination of the county boundaries may show said lands to be in a different county from that in which they were originally assessed; and any sales of such lands for alleged delinquency shall be illegal and void. [Acts 1879, p. 153; G. L. Vol. 8, p. 1453.]

Art. 7157. [7514] [5072] **Vessels.**—All persons, companies and corporations in this State owning steamboats, sailing vessels, wharf boats and other water craft shall be required to list the same for assessment and taxation in the county in which the same may be enrolled, registered or licensed, or kept when not enrolled, registered or licensed. [Acts 1876, p. 277; G. L. Vol. 8, p. 1113.]

Art. 7158. **Deposits with State.**—All securities of every kind and character, and all moneys, required or permitted by law to be deposited by any person, firm residing in this State, or corporation organized under the laws of Texas, with the State Treasurer, or other State officer or department, shall be taxed in the county in which the person owning same resides, or where such firm has its place of business, or at the domicile of such corporation, and at no other place. [Acts 4th C. S. 1918, p. 69.]

Art. 7159. [7515] [5073] **Railroads, telegraphs, etc.**—All railroad, telegraph, plank road and turnpike companies shall list all of their real and personal property, giving the number of miles of roadbed and line in the county where such roadbed and line is situated, at the full and true value, except when such company may own personal property or real estate in an unorganized county or district, then they shall list such property to the Comptroller. [Acts 1876, p. 277; G. L. Vol. 8, p. 1113.]

Art. 7160. [7516] [5074] **Listing for others.**—Persons required to list property on behalf of others shall list it in the

same manner in which they are required to list their own, but they shall list it separately from their own, specifying in each case the name of the person, estate, company or corporation to whom it belongs. [Id.]

Art. 7161. [7517] [5075] **Sworn list.**—Each person required by law to list property shall make and sign a statement, verified by his oath, as required by law, of all property, both real and personal, in his possession, or under his control, and which he is required to list for taxation, either as owner or holder thereof, or as guardian, parent, husband, trustee, executor, administrator, receiver, accounting officer, partner, agent or factor. [Id.]

Art. 7162. [7518] [5076] **Requisites.** — Such statement shall truly and distinctly set forth:

1. The name of the owner, and a description sufficient for the identification of any real estate belonging to such owner.
2. The number of acres.
3. The value of the land.
4. The number of the lot or lots.
5. The number of the block.
6. The value of town lots.
7. The name of the city or town.
8. The number of miles of railroad in the county.
9. The value of railroads and appurtenances.
10. Number of miles of telegraph in the county.
11. Value of telegraph and appurtenances in the county.
12. Number and amount of land certificates and value thereof.
13. Number of horses and mules and the value thereof.
14. Number of cattle and the value thereof.
15. Number of jacks and jennets and value thereof.
16. Number of sheep and value thereof.
17. Number of goats and value thereof.
18. Number of hogs and dogs and value thereof.
19. Number of carriages, buggies, wagons, automobiles, bicycles, motorcycles, or other vehicles of whatsoever kind and the value of each one thereof.
20. Number of sewing machines and knitting machines and value thereof.
21. Number of clocks and watches and value thereof.
22. Number of organs, melodeons, piano fortes, and all other musical instruments of whatsoever kind and value thereof.
23. The value of household and kitchen furniture over and above the amount of two hundred and fifty dollars.
24. Office furniture and the value thereof.
25. The value of gold and silver plate.
26. The value of diamonds and jewelry.
27. Every annuity or royalty, the description and value thereof.

28. Number of steamboats, sailing vessels, wharf boats, barges or other water craft, and the value thereof.

29. The value of goods, wares and merchandise of every description which such person is required to list as a merchant (in hand on the first day of January of each year.)

30. Value of materials and manufactured articles which such person is required to list as a manufacturer.

31. Value of manufacturers' tools, implements and machinery other than boilers and engines, which shall be listed as such.

32. Number of steam engines, including boilers, and the value thereof.

33. Amount of moneys of bank, banker, broker or stock jobber.

34. Amount of credits of bank, banker, broker or stock jobber.

35. Money on hand or on deposit, in or out of the State, with banks, trust companies, corporations, firms or individuals, and subject to order, check or draft, including certificates of deposit.

36. Amount of credits other than of bank, banker, broker or stock jobber.

37. Amount and value of bonds and stocks other than United States Bonds.

38. Amount and value of shares of capital stock companies and associations not incorporated by the laws of this State.

39. Value of all property of companies and corporations other than property hereinbefore enumerated.

40. Value of stock and furniture of hotels and eating houses.

41. Value of every billiard, pigeon hole, bagatelle or other similar tables, together with the number thereof.

42. Every franchise, the description and value thereof.

43. Value of all other property not enumerated above. [Acts 1876, p. 278; Acts 1905, p. 357; G. L. Vol. 8, p. 1114.]

Art. 7163. [7519] [5077] Certain credits and stocks not to be listed.—No person shall be required to list or render a greater portion of his credits than he believes will be received or can be collected, or to include in his statement as a part of his personal property which is required to be listed any share or portion of the capital stock or property of any company or corporation which is required to list or return its capital and property for taxation. [Id.]

Art. 7164. [7520] [5078] Rendition of real estate.—Persons listing or rendering real estate shall make a statement, duly signed and under oath, which shall truly and distinctly set forth:

1. The name of the owner, abstract number, number of survey, the number of the certificate, the name of the original grantee, the number of acres, and the true and full value thereof.

2. The number of the lot and block and the true and full value thereof, together with the name of the town or city.

3. When the name of the original grantee, or abstract number, or number of certificate, or number of survey is unknown, say "unknown," and give such description so that land or lot can be identified and the true and full value thereof can be determined. [Id.]

Art. 7165. [7521] [5079] Assessment of personal property of bank, etc.—Every bank, whether of issue or deposit, banker, broker, dealer in exchange, or stock jobber, shall at the time fixed by this chapter for listing personal property, make out and furnish the assessor of taxes a sworn statement showing:

1. If a national bank, the president or some other officer of such bank shall furnish to the assessor of the county in which such bank is located a list of the names of all the shareholders of the stock, together with the number and amount of the shares of each stockholder of stock in said bank; and the shareholders of the stock in national banks shall render to the tax assessor of the county in which said bank is located the number of their shares and the true and full value thereof. All shares of stocks in national banks not rendered to the assessor of taxes in the county where such bank is located within the time prescribed by law for listing property for taxes shall be assessed by the assessor against the owner or owners thereof as unrendered property is assessed; but the tax roll shall show the name of the owner or owners thereof as per statement furnished by the president or other officers of said bank.

2. National banks shall render all other bonds and stocks of every kind, except United States bonds, and all shares of capital stocks or joint stock or stocks of other companies or corporations held as an investment or in any way representing assets, together with all other personal property belonging or pertaining to said bank, except such personal property as is specially exempted from taxation by the laws of the United States.

3. National banks shall be required to render all of their real estate as other real estate is rendered; and all the personal property of said national banks herein taxed shall be valued as other personal property is valued.

4. All other banks, bankers, brokers, or dealers in exchange, or stock jobbers shall render their list in the following manner:

(1) The amount of money on hand or in transit or in the hands of other banks, bankers, brokers or others subject to draft, whether the same be in or out of the State.

(2) The amount of bills receivable, discounted or purchased and other credits due or to become due, including accounts receivable, interest accrued but not due, and interest due and unpaid.

(3) From the aggregate amount of the items named in the first and second of the last two subdivisions shall be deducted the amount of money on deposit.

(4) The amount of bonds and stocks of every kind, except United States bonds, and all shares of capital stocks or joint stocks of other companies or corporations held as an investment or in any way representing assets.

(5) All other property belonging or appertaining to said bank or business, including both personal property and real estate, shall be listed as other personal property and real estate. [Acts 1895, p. 37; G. L. Vol. 10, p. 767.]

Art. 7166. [7522] [5080] Assessment of real estate by banks.—Every banking corporation, State or national, doing business in this State shall, in the city or town in which it is located, render its real estate to the tax assessor at the time and in the manner required of individuals. At the time of making such rendition the president or some other officer of said bank shall file with said assessor a sworn statement showing the number and amount of the shares of said bank, the name and residence of each shareholder, and the number and amount of shares owned by him. Every shareholder of said bank shall, in the city or town where said bank is located, render at their actual value to the tax assessor all shares owned by him in such bank; and in case of his failure so to do, the assessor shall assess such unrendered shares as other unrendered property. Each share in such bank shall be taxed only for the difference between its actual cash value and the proportionate amount per share at which its real estate is assessed. The taxes due upon the shares of banking corporations shall be a lien thereon, and no banking corporation shall pay any dividend to any shareholder who is in default in the payment of taxes due on his shares; nor shall any banking corporation permit the transfer upon its books of any share, the owner of which is in default in the payment of his taxes upon the same. Nothing herein shall be so construed as to tax national or State banks, or the shareholders thereof, at a greater rate than is assessed against other moneyed capital in the hands of individuals. [Acts 1885, p. 106; G. L. Vol. 9, p. 726.]

Art. 7167. [7523] [5081] Deductions.—No person, company or corporation shall be entitled to any deduction on account of any bond, note or obligation of any kind given to any mutual insurance company, nor on account of any unpaid subscription to any religious, literary, scientific or charitable institution or society, nor on account of any subscription to or installment payable on the capital stock of any company, whether incorporated or unincorporated. [Acts 1876, p. 280; G. L. Vol. 8, p. 1116.]

Art. 7168. [7524] [5082] Assessment by railroads.—Every railroad corporation in this State shall deliver a sworn statement, on or before the thirtieth day of April of each year, to the

assessor of each county and incorporated city or town, into or through which any part of their road may run or in which they own or are in possession of real estate, a classified list of all real estate owned by or in possession of said company in said county, town or city, specifying:

1. The whole number of acres of land; lot or lots, exclusive of their right of way and depot grounds, owned, possessed or appropriated for their use, with a valuation affixed to the same.

2. The whole length of the railroad and the value thereof per mile, which valuation shall include right of way, roadbed, superstructure, depots and grounds upon which said depots are situated, and all shops and fixtures of every kind used in operating said road.

3. All personal property of whatsoever kind or character, except the rolling stock belonging to the company or in their possession in each respective county, listing and describing the said personal property in the same manner as is now required of citizens of this State. [Acts 1909, p. 373.]

Art. 7169. [7525] [5083] **Railroads to return sworn statements.**—Every railroad corporation in this State shall deliver a sworn statement on or before the first day of April of each year, to the assessor of the county in which its principal office is situated, setting forth the true and full value of the rolling stock of said railroad, together with the names of all the counties through which it runs, and the number of miles of roadbed in each of said counties; and said statement shall be submitted to the board of equalization of the county in which its principal office is situated for review, on the first Monday in June in each year, or as soon thereafter as practicable; and such board shall certify such final valuation when made without delay to the Comptroller, who shall proceed at once to apportion the amount of such valuation among the said counties in proportion to the distance such roads shall run through any such county, and shall certify such apportionment to the assessors of such counties, and the same shall constitute part of the tax assets of such counties; and the assessor of each of said counties shall list and enter the same upon the rolls for taxation as other personal property situated in said county. And said railroad corporation shall also report in a separate sworn statement all rolling stock operated by it, under rental, hire, lease or other form of contract, which it does not render for taxation, giving the true and full value of such rolling stock and the amount paid or promised to be paid for rental, hire, lease or use under other form of contract, together with the name of person, firm, corporation or association owning such rolling stock, and together with the post-office address of such person or firm, or if it be a corporation or association, then the city, county and State of its principal office; and if from said statement it appears that said rolling stock belongs to any

person residing in this State, or to any firm doing business in this State, or to any corporation or association organized under the laws of this State, then said statement shall be certified by the tax assessor to whom it is made to the tax assessor of the county in which such person lives, or such firm does business, or such corporation or association has its principal office; and said statement shall be, by the tax assessor to whom it is certified, submitted to the board of equalization of the county for review, and the same shall be equalized by the board of equalization of such county, and certified to the Comptroller, and apportioned by the Comptroller in the same manner as other rolling stock is certified and apportioned under the preceding provisions of this article; and, if it appears from said statement that the person, firm, corporation or association owning such rolling stock is a non-resident of this State, then said statement shall be submitted to the board of equalization of the county in which the principal office of the railroad company using the same under rental, hire, lease or other form of contract is situated, which statement shall be reviewed by said board of equalization, and said property assessed against the owner, and certified to the Comptroller, and the valuation apportioned against said owner by the Comptroller, in the same manner as rolling stock belonging to the railroad corporation furnishing the list. [Acts 1885, p. 30; Acts 1907, p. 192; G. L. Vol. 9, p. 650.]

Art. 7170. [7526] [5084] Corporate property.—All property of private corporations, except in cases where some other provision is made by law, shall be assessed in the name of the corporation; and in collecting the taxes on the same all the personal property of such corporation shall be liable to be seized whenever the same may be found in the county, and sold in the same manner as the property of individuals may be sold for taxes. All statements and lists made by corporations that are required to be sworn to shall be verified by the affidavit and signature of the secretary of said corporation, and, if they have no secretary, the officer who discharges the duties of secretary of said corporation. [Acts 1876, p. 280; G. L. Vol. 8, p. 1116.]

Art. 7171. [7527] [5085] Assessments in owner's name.—All real property subject to taxation shall be assessed to the owners thereof in the manner herein provided; but no assessment of real property shall be considered illegal by reason of the same not being listed or assessed in the name of the owner or owners thereof. [Id.]

Art. 7172. [7528] [5086] Lien for taxes.—All taxes upon real property shall be a lien upon such property until the same shall have been paid. And should the assessor fail to assess any real estate for any one or more years, the lien shall be good for every year that he should fail to assess for; and he may, in listing property for taxes any year thereafter, assess all the back

taxes due thereon, according to the provisions of this title. [Id.]

Art. 7173. [7529] [5087] Leasehold interests in public lands.—Property held under a lease for a term of three years or more, or held under a contract for the purchase thereof, belonging to this State, or that is exempt by law from taxation in the hands of the owner thereof, shall be considered for all the purposes of taxation, as the property of the person so holding the same, except as otherwise specially provided by law. Timber held by persons or corporations, heretofore or hereafter purchased from the State under the various laws for that purpose, shall likewise be subject to assessment for taxes, and the value thereof for taxation shall be ascertained as the value of other property is ascertained. And should the owner of such timber fail or refuse to pay the taxes assessed against it, the same shall be sold for the taxes thereon, as provided in this title for the sale of personal property for taxes, provided that the same can be found by the collector; but, if the timber can not be found, then the collector shall collect the taxes due as the taxes on other personal property are collected; provided, further, that the Land Commissioner shall furnish by the first of January each year to the various commissioners courts and the tax assessors of this State a full and complete list of all timber sold by the State belonging to the school funds, giving the number of acres, price and to whom sold, in the respective counties where the timber so sold is situated. In case of the sale of such timber for taxes as herein provided, the purchaser shall take and hold the same under the same terms and conditions as the original purchaser thereof from the State. [Acts 1905, p. 72.]

Art. 7174. [7530] [5088] Valuation of property for taxation.—Each separate parcel of real property shall be valued at its true and full value in money, excluding the value of crops growing or ungathered thereon.

In determining the true and full value of real and personal property the assessor shall not adopt a lower or different standard of value because the same is to serve as a basis of taxation, nor shall he adopt as a criterion of value the price for which such property would sell at auction or a forced sale or in the aggregate with all the property in his county; but he shall value each tract or lot by itself, and at such sum and price as he believes the same to be fairly worth in money at the time such assessment is made.

In valuing any real property on which there is a coal or other mine or stone or other quarry, or springs possessing medicinal properties, the same shall be valued at such price as such property, including a mine, or quarry or spring, would probably sell at a fair voluntary sale for cash.

Taxable leasehold estates shall be valued at such a price as they would bring at a fair voluntary sale for cash.

Personal property of every description shall be valued at its true and full value in money.

Money, whether in possession or on deposit, or in the hands of any member of the family, or any other person whatsoever, shall be entered in the statement at the full amount thereof.

Every credit for a sum certain, payable either in money or property of any kind, shall be valued at the full value of the same so payable. If for a specified article or for a specified number or quantity of property of any kind, it shall be valued at the current price of such property at the place where payable. Annuities or moneys payable at stated periods shall be valued at the price that the person listing the same believes them to be worth in money. [Id.]

Art. 7175. [7531] **Currency and coin.**—Circulating notes of national banking associations and United States legal tender notes and other notes and certificates of the United States, payable on demand and circulating or intended to circulate as currency, and gold, silver and other coin, shall be hereafter subject to taxation as money on hand or on deposit, under the laws of this State. [Acts 1895, p. 49; G. L., Vol. 10, p. 49.]

Art. 7176. [7532] **Assessed as money on hand.**—The assessor of taxes shall assess the same in the same manner as money on hand or on deposit or other personal property, as provided for in the general assessment laws of this State. [Id.]

CHAPTER SEVEN.

ASSESSMENT AND ASSESSORS.

| | Article | | Article |
|---------------------------------------|---------|---|---------|
| Election and term | 7177 | Assessor to follow instructions..... | 7210 |
| Oath and bond | 7178 | Equalization of assessments..... | 7211 |
| New bond | 7179 | Boards may equalize | 7212 |
| Bond for county taxes..... | 7180 | Neglect of duty by assessor..... | 7213 |
| May appoint deputies..... | 7181 | Oath of assessor | 7214 |
| Authority of deputies | 7182 | Oath of board | 7215 |
| May administer oaths | 7183 | Neglect of duty cause for removal..... | 7216 |
| The oath | 7184 | To furnish list of delinquents..... | 7217 |
| Where oath may be made..... | 7185 | To submit lists to board | 7218 |
| Failure to administer or attest | | Shall make out rolls in triplicate..... | 7219 |
| oath, etc. | 7186 | Also rolls of unrendered property..... | 7220 |
| Fraud upon public revenue..... | 7187 | And add up columns..... | 7221 |
| Taxpayer to make oath..... | 7188 | Return and oath | 7222 |
| When assessment made..... | 7189 | Lists, etc., filed..... | 7223 |
| Irregular assessments valid..... | 7190 | Rolls, how distributed | 7224 |
| If taxpayer is absent..... | 7191 | Penalties for neglect of duty..... | 7225 |
| Or refuses to list..... | 7192 | Lands of non-residents in unorgan- | |
| Duty in such cases..... | 7193 | ized counties, etc..... | 7226 |
| Land office to furnish abstracts..... | 7194 | Canceling subdivisions..... | 7227 |
| Books furnished assessors | 7195 | Lands in unorganized counties..... | 7228 |
| How filled by assessor..... | 7196 | Duties of Comptroller..... | 7229 |
| Blocks and lots in cities..... | 7197 | List of unrendered lands..... | 7230 |
| Assessing | 7198 | May appeal from assessment..... | 7231 |
| To be kept in office..... | 7199 | May levy upon and sell, when..... | 7232 |
| Lands not on abstract..... | 7200 | Sale | 7233 |
| Certificate from board..... | 7201 | May be bought by State..... | 7234 |
| Substitute employed | 7202 | Redemption | 7235 |
| Unorganized counties | 7203 | Tax deed | 7236 |
| Manner and form of assessing..... | 7204 | Deed shall vest title | 7237 |
| Assessment of property not ren- | | County taxes paid, where | 7238 |
| dered..... | 7205 | Comptroller to keep taxes | 7239 |
| Boards of equalization..... | 7206 | Payment by Comptroller | 7240 |
| Assessment of real property for | | Special deposit made by Comp- | |
| previous years | 7207 | troller | 7241 |
| Assessment of back taxes on per- | | In new counties | 7242 |
| sonal property | 7208 | Assessment of property stored..... | 7243 |
| Supplemental roll | 7209 | Mutual life insurance company..... | 7244 |

Art. 7177. [7533] [5089] **Election and term.**—The qualified electors of each county at each general election shall elect

an assessor of taxes for a term of two years. [Acts 1876, p. 265; G. L., Vol. 8, p. 1101.]

Art. 7178. [7535] [5091] **Oath and bond.**—Every assessor of taxes, within twenty days after he shall have received notice of his election or appointment, and before entering upon the duties of his office, shall execute a bond, payable to the Governor and his successors in office, in a sum which shall be equal to one-fourth the amount of the State tax of the county, as shown by the last preceding assessment, but not to exceed ten thousand dollars, with at least three good and sufficient sureties, to be approved by the commissioners court of his county, conditioned that he will faithfully discharge all the duties of said office; and said bond and his official oath shall be recorded in the office of the county clerk of the said county, and be forwarded by the county judge of the county to the Comptroller, to be deposited in his office. [Id.]

Art. 7179. [7537] [5093] **New bond.**—Assessors of taxes may be required to furnish a new bond and additional security whenever, in the opinion of the commissioners court, it may be advisable. If any assessor of taxes fails to give a new bond and additional security when required, he shall be suspended from the further discharge of his duties by the commissioners court of his county, and be removed from office in the mode prescribed by law for the removal of county officers. [Id.]

Art. 7180. [7538] [5094] **Bond for county taxes.**—The assessor of taxes shall give a like bond with like conditions to the county judges of their respective counties and their successors in office, in a sum not less than one-fourth of the amount of the county tax of the county, as shown by the last preceding assessment, but not to exceed five thousand dollars, with at least three good and sufficient sureties, to be approved by the commissioners court of his county. A new bond and additional security may be required, and the assessor of taxes may be removed from office for a failure to furnish a new bond or additional security in the manner prescribed by law. [Id.]

Art. 7181. [7539] [5095] **May appoint deputies.**—Each assessor of taxes may appoint one or more deputies to assist him in the assessment of taxes, and may require such bond and security from the person so appointed as he deems necessary for his indemnity; and the assessor of taxes shall in all cases be liable and accountable for the proceedings and misconduct of his deputies. [Id.]

Art. 7182. [7540] [5096] **Authority of deputies.**—The deputies appointed in accordance with the provisions of the preceding article shall do and perform all the duties imposed and required by law of assessors of taxes; and all acts of such deputies done in conformity with law shall be as binding and valid as if done by the assessor of taxes in person. [Id.]

Art. 7183. [7541-7567] **May administer oaths.**—Assessors of taxes are hereby authorized and empowered to administer

all oaths necessary to obtain a full, complete and correct assessment of all taxable property situated in their respective counties. [Id. Acts 1895, p. 103; G. L., Vol. 10, p. 33.]

Art. 7184. [7542] [5098] **The oath.**—The assessor of taxes shall also require each person rendering a list of taxable property to him for taxation, under the assessment laws, to subscribe to the following oath or affirmation, which shall be written or printed at the bottom of each inventory, to-wit: “I, _____ (filling the blank with the name of the person subscribing) do solemnly swear or affirm that the above inventory rendered by me contains a full, true and complete list of all taxable property owned or held by me in my own name (or for others, as the case may be, naming the person or firm for whom he rendered the list) in this county, subject to taxation in this county and personal property not in this county subject to taxation in this county by the laws of this State, on the first day of January, A. D. 19_____ (filling the blank with the year), and that I have true answers made to all questions propounded to me touching the same. So help me God.” [Id. Acts 1897, p. 204.]

Art. 7185. [7543] [5099] **Where oath may be made.**—The owner or agent who is required under the laws of this State to render any property for taxation may render the same in the county where the same is situated by listing the same and making oath thereto, as required in this title, before any officer authorized to administer oaths in this State, or any officer out of this State that is authorized by law to take acknowledgments of instruments for record in this State, and may forward the same to the assessor of the county by mail or otherwise, and the assessor shall enter the said property on his tax rolls. If the assessor is satisfied with the valuation as rendered in said list, he shall so enter the same; if he is not satisfied with the valuation, he shall refer the same to the board of equalization of the county for their action, and shall immediately notify the person from whom he received said list that he has referred said valuation to the board of equalization. [Acts 1876, p. 267; G. L., Vol. 8, p. 1102.]

Art. 7186. [7544] [5100] **Failure to administer or attest oath, etc.**—The assessor of taxes, for every failure or neglect to administer the oath or affirmation prescribed in the second preceding article to each person rendering a list of taxable property to him, unless the person refuses to qualify, shall forfeit fifty dollars, to be deducted out of his commissions upon satisfactory information furnished the county judge; and for each failure or neglect to attest the oath subscribed to as provided in said article, shall forfeit the sum of fifty dollars upon satisfactory information furnished the county judge. The forfeitures imposed by this article shall be deducted from the assessor's commissions on the assessment for county taxes. [Id.]

Art. 7187. [7545] [5101] **Fraud upon public revenue.**—Any evasions by means of artifice or temporary or fictitious sale, exchange or pretended transfer upon any bank books, of gold and

silver coin, bank notes or other notes or bonds subject to taxation under the laws of this State for United States non-taxable treasury notes or any notes or bonds not so subject to taxation, and any such pretended sale, exchange or transfer not made in good faith, and by actual exchange and delivery of the funds so sold, exchanged or transferred and made only by entry on bank books, or by any express or implied understanding not to immediately make a bona fide and permanent sale, shall be deemed prima facie to be a fraud upon the public revenue of this State. [Acts 1891, p. 39; G. L., Vol. 10, p. 41.]

Art. 7188. [7546] [5102] **Taxpayer to make oath.**—Each assessor of taxes shall require all taxpayers when assessed by them to make oath as to any such sale, exchange or transfer made by them on the first day of January or within sixty days before said first day of January of any year for which any such assessment is made, as to the good faith and bona fide business transaction of any such sale, exchange or transfer, as above set forth, if any such should have been made by them; and, if it should be disclosed that any such pretended sale, exchange or transfer has been made for the purpose of evading taxation, then and in that event the assessor shall list and render against such person the coin, bank notes or other notes or bonds subject to taxation under the laws of this State. [Id.]

Art. 7189. [7547] [5103] **When assessments made.**—Assessors of taxes shall, between the first day of January and the thirtieth day of April of each year, proceed to take a list of taxable property, real and personal, in his county and assess the value thereof in the manner following, to-wit: By calling upon the person, or by calling at the office, place of business or the residence of the person, and listing the property required by law in his name, and requiring such person to make a statement under said oath of such property in the form hereinafter prescribed. [Acts 1876, p. 265; Acts 1909, p. 373; G. L., Vol. 8, p. 1103.]

Art. 7190. [7548] [5104] **Irregular assessments valid.**—Should any property be listed or assessed for taxation after April 30th of any year, or should the assessor of taxes or his deputy fail to administer the requisite oath or attest the same in the mode prescribed by law, or should the party rendering property for taxation fail to subscribe to the list, yet the assessment shall, nevertheless, be as valid and binding to all intents and purposes as if made in strict pursuance of law. [Id.]

Art. 7191. [7549] [5105] **If taxpayer is absent.**—If any person who is required by this title to list property shall be sick or absent when the assessor calls for a list of his property, the assessor shall leave at the office or usual place of residence or business of such person, a written or printed notice requiring such person to meet him and render a list of his property at such time and place as the assessor of taxes may designate

in said notice. The tax assessor shall carefully note in a book the date of leaving such notice. [Id.]

Art. 7192. [7550] [5106] Or refuses to list.—In every case where any person whose duty it is to list any property for taxation has refused or neglected to list the same when called on for that purpose by the assessor of taxes, or has refused to subscribe to the oath in regard to the truth of his statement of property, or any part thereof, when required by the tax assessor, the assessor shall note in a book the name of such person who refused to list or to swear; and in every case where any person required to list property for taxation has been absent or unable from sickness to list the same, the tax assessor shall note in a book such fact, together with the name of such person. [Id.]

Art. 7193. [7551] [5107] Duty in such cases.—In all cases of failure to obtain a statement of real and personal property from any cause, the assessor of taxes shall ascertain the amount and value of such property and assess the same as he believes to be the true and full value thereof; and such assessment shall be as valid and binding as if such property had been rendered by the proper owner thereof. [Id.]

Art. 7194. [7552] [5108] Land office to furnish abstracts.—The Land Commissioner shall furnish to each assessor of taxes a correct abstract of all the surveys of land and number of acres therein in their respective counties; and on the first day of January of each year said commissioner shall furnish said assessors an additional list of all new valid surveys in his county during the year. If the records of the land office do not show the number of acres in a survey, the county surveyor shall furnish said assessor a certified statement of the number of acres therein. [Acts 1879, p. 24; G. L., Vol. 8, p. 1324.]

Art. 7195. [7553] [5109] Books furnished assessors.—Each commissioners court shall procure and furnish the assessor three well bound books of not less than six hundred and forty pages each, and an index book for same, and such other stationery as may be necessary; said books to be of the best material and make, and shall have printed headings as per following form: [Id.]

Abstract No. *Assessor's Abstract for* *Co.*

| • PATENT | | | | | | | | | | CERTIFICATE | | | | |
|----------|------|----------------|-------|-----|------|-------|-----|-------|-----------|----------------|------|------------------|-------|-------|
| No. | Vol. | To Whom Issued | Date | | | Acres | No. | Class | Character | To Whom Issued | Year | By Whom Rendered | Acres | Value |
| | | | Month | Day | Year | | | | | | | | | |
| | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | |

Rendered for Taxation

| Year | By Whom Rendered | Acres | Value | Year | By Whom Rendered | Acres | Value |
|------|------------------|-------|-------|------|------------------|-------|-------|
| | | | | | | | |
| | | | | | | | |

Art. 7196. [7554] [5110] **How filled by assessor.** — The blanks to be filled by the assessor with the abstract number, name of party to whom the certificate was issued, the number, class and character of the certificate, the name of the party to whom the patent issued, number of volume of patent, the month, day and year it was issued, and the number of acres each survey contains; which whole survey shall stand as a debit against the assessor. [Id.]

And the said assessor shall draw a plot of each block in the blank space left for that purpose, giving the number of each lot. And the whole of said block or subdivision shall be a debit against the assessor. [Id.]

Art. 7198. [7556] [5112] **Assessing.**—Each assessor, when he shall have made the assessment of his county for each year, shall, on the first day of June of each year, or as soon thereafter as practicable, carry from each person's assessment the number of acres and its value on each survey of lands, lots or blocks to that particular survey, lot or block found on the abstract books provided in Articles 7196, 7197 and 7205; and all the parts of each survey or block placed on said abstract books shall be a credit to the assessor on that particular survey. Said assessor shall deduct the total number of acres rendered on each survey or block from the total number of acres of the whole survey or block as is shown by said abstract; and, if any part is left unrendered, then he shall assess the same to the owner or owners thereof, if known, and, if unknown, then to "unknown owners," and the value thereof shall be affixed by him, sanctioned by the board of equalization; provided, that the owner or owners of any survey and grant of land may show that the survey and grant in which they are interested does not contain the full complement of acres, showing how many acres are in fact embraced within the calls of the particular survey and grant. [Id.]

Art. 7199. [7557] [5113] **To be kept in office.**—The assessor's abstracts shall be kept in his office at the county seat of his county, as records of his office, and shall be at all times subject to the inspection of the public. The index book shall show the original grantee, the number of acres, the abstract number, and the volume and page in which each survey is placed. [Id.]

Art. 7200. [7558] [5114] **Lands not on abstract.**—Should there be any survey of lands, lots or blocks not on the abstract book or books which are by law subject to taxation, the assessor shall enter such lands, lots or blocks on the assessment list as though the same appeared on said abstract books. [Id.]

Art. 7201. [7559] [5115] **Certificate from board.**—Each assessor of taxes shall procure from the board of equalization of his county a certificate that all the surveys and parts of surveys of lands in his county, and all the lots and blocks of the cities and towns of his county, are rendered for taxation; which certificate shall be forwarded to the Comptroller before he shall issue to said assessor a draft on the tax collector of his county. The same rule shall apply to the commissioners court before they issue drafts on the county treasurer for his pay for assessing the county taxes. [Id.]

Art. 7202. [7560] [5116] **Substitute employed.**—The board of equalization or the commissioners court shall, if the assessor fails to perform the duties required by this chapter within a reasonable time, employ some other competent person to have

the requirements of this law carried out, and the compensation therefor shall be deducted from the assessor's pay for that year.
[Id.]

Art. 7203. [7561] [5117] **Unorganized counties.** — The Comptroller shall be required to have this law carried out in the unorganized counties of this State, where lands are located.
[Id.]

Art. 7204. [7562] [5118] **Manner and form of assessing.**
—The manner and form for assessing property for taxation shall be substantially as follows, to-wit:

1. The name of the owner.
2. Abstract number.
3. From whom and how acquired.
4. The name of the original grantee.
5. The number of acres.
6. The value of the land.
7. The number of the lot or lots.
8. The number of the block.
9. The value of town lots.
10. The name of the city or town.
11. Number of miles of railroad in the county.
12. The value of railroads and appurtenances, including the proportionate amount of rolling stock to the county after the assessment of such rolling stock and its apportionment among the several counties by the Comptroller as hereinafter provided.
13. Number of miles of telegraph in the county.
14. Value of telegraph and appurtenances in the county.
15. Number of horses and mules and value thereof.
16. Number of cattle and value thereof.
17. Number of jacks and jennets, and value thereof.
18. Number of sheep and value thereof.
19. Number of goats and value thereof.
20. Number of hogs and value thereof.
21. Number of carriages, bicycles or tricycles, buggies or wagons of whatsoever kind and value thereof.
22. Number of sewing machines and knitting machines and the value thereof.
23. Number of clocks and watches and the value thereof.
24. Number of organs, melodeons, pianos, and all other musical instruments of whatsoever kind and value thereof.
25. The value of household and kitchen furniture over and above the amount of two hundred and fifty dollars.
26. Office furniture and the value thereof.
27. The value of gold and silver plate.
28. The value of diamonds and jewelry.
29. Every annuity or royalty, the description and value thereof.
30. Number of steamboats, sailing vessels, wharves, boats, barges, or other water craft, and the value thereof.
31. The value of goods and merchandise of every description

which such person is required to list as a merchant in hand on the first day of January of each year.

32. The value of material and manufactured articles which such person is required to list as a manufacturer.

33. The value of manufactures, tools, implements and machinery other than boilers and engines, which shall be listed as such.

34. Number of steam engines and boilers and value thereof.

35. The amount of moneys of bank, banker, broker, stock jobber or any other person.

36. The amount of solvent credits of bank, banker, broker stock jobber or any other person.

37. The amount and value of bonds and stocks other than United States bonds.

38. The amount and value of shares of capital stock companies and associations not incorporated by the laws of this State.

39. The value of property of companies and corporations other than property hereinbefore enumerated.

40. The value of stock and furniture of hotels and eating houses.

41. Every franchise, the description and value thereof.

42. The value of all other property not enumerated as above. [Acts 1876, p. 268; Acts 1895, p. 38; G. L. Vol. 8, p. 1104.]

Art. 7205. [7563] [5119] **Assessment of property not rendered.**—If the assessor of taxes discovers any real property in his county subject to taxation which has not been listed to him, he shall list and assess such property in the manner following, to-wit:

1. The name of the owner; if unknown, say "unknown."

2. Abstract number and number of certificate.

3. Number of the survey.

4. Name of the original grantee.

5. Number of acres.

6. The true and full value thereof.

7. The number of lot or lots.

8. The number of the block.

9. The true and full value thereof.

10. The name of the city or town, and give such other description of the lot or lots or parcels of land as may be necessary to better describe the same; and such assessment shall be as valid as if rendered by the owner thereof. [Acts 1876, p. 269; G. L. Vol. 8, p. 1105.]

Art. 7206. [7564] [5120] **Boards of equalization.**—Each commissioners court shall convene and sit as a board of equalization on the second Monday in May of each year, or as soon thereafter as practicable before the first day of June, to receive all the assessment lists or books of the assessors of their counties for inspection, correction or equalization and approval.

1. They shall cause the assessor to bring before them at such

meeting all said assessment lists, books, etc., for inspection, and see that every person has rendered his property at a fair market value, and shall have power to send for persons, books and papers, swear and qualify persons, to ascertain the value of such property, and to lower or raise the value on the same.

2. They shall have power to correct errors in assessments.

3. They shall equalize improved lands in three classes, first-class to embrace the better quality of land and improvements, the second-class to embrace the second quality of lands and improvements, and the third-class to embrace lands of but small value or inferior improvements. The unimproved lands shall embrace first, second and third class, and all other property made as nearly uniform as possible.

4. After they have inspected and equalized as nearly as possible, they shall approve said lists or books and return same to the assessors for making up the general rolls, when said board shall meet again and approve the same if same be found correct.

5. Whenever said board shall find it their duty to raise the assessment of any person's property, they shall order the county clerk to give the person who rendered the same written notice that they desire to raise the value of same. They shall cause the county clerk to give ten days written notice before their meeting by publication in some newspaper, but, if none is published in the county, then by posting a written or printed notice in each justice's precinct, one of which must be at the court house door.

6. The assessors of taxes shall furnish said board on the first Monday in May of each year, or as soon thereafter as practicable, a certified list of names of all persons who either refuse to swear or to qualify or to have signed the oath required by law, together with the assessment of said person's property made by him through other information; and said board shall examine, equalize and correct assessments so made by the assessor, and when so revised, equalized and corrected, the same shall be approved. [Acts 1879, p. 44; Acts 1909, p. 373; G. L. Vol. 8, p. 1344.]

Art. 7207. [7565] Assessment of real property for previous years.—If the assessor of taxes shall discover in his county any real property which has not been assessed or rendered for taxation for any year since 1870, he shall list and assess the same for each year for which it has not been assessed, in the manner prescribed in the preceding article; and such assessment shall be as valid and binding as though it had been rendered by the owner thereof; but no such real property shall be assessed by the assessor unless he has ascertained by the certificate of the Comptroller the fact that the records of his office do not show that the property has been rendered or assessed for the year in which he assesses it. [Acts 1888, p. 4; G. L. Vol. 9, p. 1002.]

Art. 7208. [7566] [5121] Back taxes on personal property.—If the assessor of taxes shall discover in his county any property, or outside of his county but belonging to a resident of the county, any personal property which has not been assessed or rendered for taxation every year for two years past, he shall list and assess the same for each year thus omitted which it has belonged to said resident, in the manner prescribed for assessing other property; and such assessment shall be as valid and binding as though it had been rendered by the owner thereof. [Acts 1887, p. 127; G. L. Vol. 9, p. 925.]

Art. 7209. [7567] Supplemental roll.—Collectors of taxes of counties, cities and towns, when any taxpayer applies to them to ascertain the amount of his taxes, and the collector finds that his name or his property does not appear on the tax roll, shall assess said taxpayer then and there, collect the taxes and enter the same upon a supplemental tax roll to be made by him. He shall make out, on forms to be furnished by the Comptroller, three copies of such supplemental roll, one copy to be delivered to the Comptroller, one to be delivered to the county clerk, and one to be filed in the collector's office. Said supplemental tax roll shall be made out and delivered to the commissioners court with all other papers pertaining to the final settlement of said tax collector, and the same shall be examined and approved by the commissioners court, in like manner as upon the tax roll of the tax assessor. The oath shall be the same as is administered by tax assessors under existing law. The tax collector shall receive the following compensation for his services on all assessments made by him under this Act, to-wit: For assessing the State and county taxes, four cents for each one hundred dollars of property so assessed, and for assessing the poll tax, five cents for each poll; which fee shall be paid in the same way as the tax assessor's fee in Article 3937. [Acts 1895, p. 103; G. L. Vol. 10, p. 833.]

Art. 7210. [7568] [5122] Assessor to follow instructions.—Tax assessors in the execution of their duties shall use the forms and follow the instructions which the Comptroller shall from time to time prescribe, and furnished to them by the county judge in pursuance of law. [Acts 1876, p. 265; G. L. Vol. 8, p. 1101.]

Art. 7211. [7569] [5123] Equalization of assessments.—Hereafter when any person, firm or corporation renders his, their or its property in this State for taxation to any tax assessor, and makes oath as to the kind, character, quality and quantity of such property, and the said officer accepting said rendition from such person, firm or corporation of such property is satisfied that it is correctly and properly valued according to the reasonable cash market value of such property on the market at the time of its rendition, he shall list the same accordingly; but, if the assessor is satisfied that the value is below the reasonable cash market value of such property, he shall at once place on said

rendition opposite each piece of property so rendered an amount equal to the reasonable cash market value of such property at the time of its rendition, and if such property shall be found to have no market value by such officer, then at such sum as said officer shall deem the real or intrinsic value of the property; and if the person listing such property or the owner thereof is not satisfied with the value placed on the property by the assessor, he shall so notify the assessor, and if desiring so to do make oath before the assessor that the valuation so fixed by said officer on said property is excessive; such officer to furnish such rendition, together with his valuation thereon and the oath of such person, firm or officer of any corporation, if any such oath has been made, to the commissioners' court of the county in which said rendition was made, which court shall hear evidence and determine the true value of such property on January First, 19____ (here give year for which assessment is made) as is herein provided; such officer or court shall take into consideration what said property could have been sold for any time within six months next before the first day of January of the year for which the property is rendered. [Acts 1925, pp. 48 and 382.]

Art. 7212. [7570] [5124] **Boards may equalize.**—The boards of equalization shall have power, and it is made their official duty, to supervise the assessment of their respective counties, and, if satisfied that the valuation of any property is not in accordance with the laws of the State, to increase or diminish the same and to affix a proper valuation thereto, as provided for in the preceding article; and, when any assessor in this State shall have furnished said court with the rendition as provided for in the preceding article, it shall be the duty of such court to call before it such persons as in its judgment may know the market value or true value of such property, as the case may be, by proper process, who shall testify under oath the character, quality and quantity of such property, as well as the value thereof. Said court, after hearing the evidence, shall fix the value of such property in accordance with the evidence so introduced and as provided for in the preceding article; and their action in such case or cases shall be final. [Id.]

Art. 7213. [7571] **Neglect of duty by assessor.**—If any tax assessor in this State shall fail, refuse or neglect to place upon any rendition as provided in Article 7211 of this chapter, the true value or market value in accordance with the method of fixing such value as provided for herein, or shall fail, refuse or neglect to return to the commissioners court such rendition, together with the oath of the owner or person listing such property for taxes when such oath has been made, as provided for in this chapter, or if the assessor accepts the rendition from any person rendering property for taxation without reading to such person the oath and having it signed and sworn to as provided by law, such failure, refusal or neglect shall be deemed mal-

feasance on the part of such officer, and shall be cause for his removal from office. [Acts 1907, p. 459.]

Art. 7214. [7572] **Oath of assessor.**—Every tax assessor and deputy tax assessor in this State, in addition to the oath prescribed by the Constitution of this State, shall, before entering upon the duties of his office, take and subscribe to the following oath: “I, _____, tax assessor (or deputy tax assessor, as the case may be) in and for _____ County, Texas, do solemnly swear that I will personally view and inspect all the real estate and improvements thereon subject to taxation, lying in said county, that may be rendered to me for taxation by any corporation or individual, or by their agent or representative, as fully as may be practicable, and that I will, as fully as is practicable, view and inspect all other taxable property in said county rendered to me as aforesaid; that I will to the best of my ability make a true estimate of the cash value, the market value of such property, if such property has a market value, and if it has no market value, then the real value of all such property, both real and personal, on the first day of January next preceding; and that I will make up and attach to each assessment sheet made up and sworn to by the said property owners, their agents or representatives, a true assessment and valuation of said property, together with a memoranda of all facts which I may learn bearing upon the value of said taxable property, and that I will make all possible inquiry relative to the true value of such property; and that I will attach said memoranda and statement of facts that I may ascertain as aforesaid to the said assessment sheets of the respective property owners. That I have read and understand the several provisions of the Constitution and laws of this State relative to the valuation of taxable property, and that I will faithfully do and perform every duty required of me as tax assessor (or deputy tax assessor), by the Constitution and laws of this State. So help me God.” This oath shall be administered by the county clerk and shall be in duplicate; the original shall be by the clerk filed and recorded in the records of the county, and the duplicate shall be retained by the assessor, or the deputy, as the case may be. [Id.]

Art. 7215. [7573] **Oath of board.**—When a commissioners court convenes as a board of equalization, before considering the subject of equalization of property values for the purposes of taxation, each member of the court, including the county judge, shall take and subscribe to the following oath: “I, _____, a member of the board of equalization of _____ County, for the year A. D. —, hereby solemnly swear that, in the performance of my duties as a member of such board for said year, I will not vote to allow any taxable property to stand assessed on the tax rolls of said county for said year at any sum which I believe to be less than its true market value, or, if it has no market value, then its real value; that I will faithfully

endeavor and as a member of said board will move to have each item of taxable property which I believe to be assessed for said year at less than its true market value, or real value, raised on the tax rolls to what I believe to be its true cash market value, if it has a market value, and if not, then to its real value; and that I will faithfully endeavor to have the assessed valuation of all property subject to taxation within said county stand upon the tax rolls of said county for said year at its true cash market value, or, if it has no market value, then its real value. I further solemnly swear that I have read and understand the provisions contained in the Constitution and laws of this State relative to the valuation of taxable property, and that I will faithfully perform all the duties required of me under the Constitution and laws of this State. So help me God." Said oath shall be filed and recorded in the commissioners court record as a part of the proceedings of that term of court. [Id.]

Art. 7216. [7574] **Neglect of duty cause for removal.**—If, in passing upon the value of any property by a commissioners court sitting as a board of equalization in this State, the court shall fix a value upon any property for the purpose of taxation and a minority of said court do not concur in the judgment of the court, the clerk shall record in the minutes of the court the names of the members, including the county judge, who do not concur in fixing such values (if the county judge shall cast the deciding vote in such matter); and, if any tax assessor or member of any commissioners court shall knowingly fail or refuse to fix the value of property rendered for taxes in compliance with this chapter, and all other laws of this State, such failure, neglect or refusal shall constitute malfeasance in office on the part of such assessor or member or members of said court, and such failure, neglect or refusal shall be cause for his or their removal from office. Whenever the fact is brought to the knowledge of the Attorney General that any tax assessor, deputy tax assessor, county judge, or member of the commissioners court, has failed, refused or neglected to comply with the provisions of this chapter, he shall at once file suit for the removal from office of such officer thus offending. Such proceedings for the removal of such officer or officers herein provided for shall be brought in the district court of the county of such officer's residence; and such suit shall be brought by or under the direction of the Attorney General. [Id.]

Art. 7217. [7575] [5125] **To furnish list of delinquents.**—The assessor of taxes shall furnish the board of equalization on the first Monday in June of each year, or as soon thereafter as practicable, a certified list of names of all persons who either refused to swear or qualify or to sign the oath as prescribed in this title; also a list of the names of those persons who refused to render a list of taxable property as required by this title. Should any person so failing or refusing to take the oath pre-

scribed, or to render a list of their property, or to subscribe to the oath, as required by the provisions of this title, fail to give satisfactory reasons for such failure or refusal to the board of equalization within one month from the date of the filing of said list by the assessor, as required by this article, the board of equalization shall return a list of all persons who have failed to give satisfactory reasons for such failure or refusal to render, qualify or subscribe to the oath to the assessor of taxes, who shall present the said list to the next grand jury of his county. [Acts 1876, p. 270; G. L. Vol. 8, p. 1106.]

Art. 7218. [7576] [5126] **To submit lists to board.**—The assessor of taxes shall submit all the lists of property rendered to him prior to the first Monday in June to the board of equalization of his county on the first Monday in June or as soon thereafter as practicable, for their inspection, approval, correction or equalization. After said board shall have returned the corrected and approved lists of taxable property, the assessor of taxes shall proceed to assess all the unrendered property of his county as provided for in this title, and shall proceed to make out and prepare his roles or books of all the real and personal property listed to him, in the form and manner prescribed by the Comptroller. [Id.]

Art. 7219. [7577] [5127] **Shall make out rolls in triplicate.**—As soon as the board of equalization shall have examined, corrected and approved the assessor's list, the assessor of taxes shall prepare and make out a roll or book, as may be required by the Comptroller, from the list so corrected and approved, and three exact copies of the same, the original to be furnished to the collector of taxes, the second to the Comptroller, and the third to be filed in the county clerk's office for the inspection of the public. He shall also prepare a roll or book, and two exact copies thereof, to be distributed, the first to the collector of taxes, the second to the Comptroller, the third to be filed in the county clerk's office, of all the real and personal property which has not been listed to him. [Id.]

Art. 7220. [7578] [5128] **Also rolls of unrendered property.**—The assessor of taxes shall, after his list of unrendered real and personal property shall have been examined, corrected and approved by the board of equalization as provided by law, prepare and make out his rolls or books of all unrendered real and personal property listed by him in the manner and form prescribed by the Comptroller. [Id.]

Art. 7221. [7579] [5129] **And add up columns.**—The assessor of taxes shall add up and note the aggregate of each column on his roll or book, and he shall also make in each book or roll, under proper headings, a tabular statement showing the footings of the several columns upon each page, and he shall add up and set down under the respective headings the total of the several columns. [Id.]

Art. 7222. [7580] [5130] **Return and oath.**—The assessor

of taxes shall, on or before the first day of August of each year for which the assessment is made, return his rolls or assessment books of the taxable property rendered to him or listed by him for that year, after they have been made in accordance with the provisions of this title, to the county board of equalization, verified by his affidavit, substantially on the following form:

The State of Texas,
_____ County.

I, _____, assessor of _____ county, do solemnly swear that the rolls (or books) to which this is attached contain a correct and full list of the real and personal property subject to taxation in _____ county, so far as I have been able to ascertain the same; that I have sworn every person listing property to me in the county, or caused the same to be done in manner and form as provided by law, and that the assessed value set down in the proper column opposite the several kinds and descriptions of property is the true and correct valuation thereof as ascertained by law, and the footings of the several columns in said books and the tabular statement returned is correct, as I verily believe. [Id. Acts 1897, p. 204; G. L. Vol. 10, p. 1258.]

Art. 7223. [7581] [5131] Lists, etc., filed.—The assessor of taxes shall at the same time deliver to the board of equalization all the lists, statements of all property which shall have been made out or received by him, and arranged in alphabetical order, together with the roll withdrawn to aid him in the past assessment. The lists and statements shall be filed in the county clerk's office, and remain there for the inspection of the public. [Acts 1876, p. 271; G. L. Vol. 8, p. 1107.]

Art. 7224. [7582] [5132] Rolls, how distributed.—After the board of equalization shall have examined the rolls or assessment books and made all corrections, if any be necessary, the assessor shall send one copy of each to the Comptroller, one copy of each to the collector of his county, and he shall file the other copies in the county clerk's office until the next assessment, when the assessor shall have the right to withdraw them and use as provided in this title. [Id.]

Art. 7225. [7586] [5136] Penalties for neglect of duty.—Should any assessor of taxes fail or neglect to make out and return his rolls or books to the commissioners court in the time and manner provided for in this chapter, it shall be competent for the commissioners court to deduct from his compensation such amount as they may deem proper and right for such neglect or failure; and, should his rolls or books, when presented for approval to the commissioners court, prove to be imperfect or erroneous, the court shall have the same corrected or perfected, either by the assessor or some other person than the assessor of taxes. Such person so employed by the commissioners shall be entitled to such part of the commissions to which such as-

essor is entitled as the court may allow; and said court shall so certify to the Comptroller, who shall pay such person in the same manner as the assessor of taxes is paid; and the amount so paid shall be deducted by the Comptroller from the commissions of the assessor of taxes, whose duty it was to have performed such work. [Id. Acts 1879, p. 44; G. L. Vol. 8, p. 1344.]

Art. 7226. [7587] [5137] Lands of non-residents in unorganized counties, etc.—Lands lying in and owned by non-residents of unorganized counties, and lands lying in the territory not laid off into counties, shall be assessed by the Comptroller in accordance with such regulations as he may adopt and establish for that purpose. [Const., Art. 8, Sec. 12.]

Art. 7227. Canceling subdivisions.—Any person, firm, association or corporation owning lands in this State, which lands have been subdivided into lots and blocks or small subdivisions, may make application to the commissioners court of the county wherein any such lands are located, for permission to cancel all or any portion of such subdivision or subdivisions, so as to throw the said lands back into acreage tracts as it existed before such subdivisions were made. When such application is made by the owner or owners of such land, and it is shown that a cancellation of such subdivisions, or portion thereof, will not interfere with the established rights of any purchaser owning any portion of such subdivisions, or if it be shown that said person or persons agreed to such cancellation, said commissioners court shall enter an order, which order canceling said subdivisions shall be spread upon the minutes of such court, authorizing such owner or owners of such lands to cancel the same by written instrument describing such subdivisions, or portions thereof, so cancelled as designated by said court. When such cancellation is filed and recorded in the deed records of such county, the tax assessor of such county shall assess such property as though it had never been sub-divided. When such application is so filed, said court shall cause notice to be given of such application by publishing such application in some newspaper, published in the English language, in such county for at least three weeks prior to action thereon by said court, and action shall be taken on such petition or petitions at a regular term of said court. Such notice, in addition to said publication, shall command any person interested in such lands to appear at the time specified in such notice to protest if desired against such action. If such lands are delinquent for taxes for any preceding year, or years, and such application is granted as hereinbefore provided, the owner or owners of said land shall be permitted to pay such delinquent taxes upon an acreage basis, the same as if said lands had not been subdivided, and for the purpose of assessing lands for such preceding years the county assessor of taxes shall back assess such lands upon an acreage basis. This law shall not apply to

any lands or lots included in an incorporated city or town. [Acts 1919, p. 160.]

Art. 7228. [7588] [5138] **Lands in unorganized counties.**—All lands and other property situated in the unorganized counties of this State, owned by residents of such unorganized counties, shall be assessed by the assessor of the organized county to which such unorganized county is attached for judicial purposes, and the taxes collected by the collector of such organized county; and the same remedies for the enforcement of the assessment and collection of such taxes shall apply as the law directs for the assessment and collection of the taxes on property situated in organized counties of this State. [Acts 1879, p. 141; G. L. Vol. 8, p. 1441.]

Art. 7229. [7589-90] **Duties of Comptroller.**—The Comptroller is authorized, empowered and required to assess and collect the State and county taxes on all lands which are situated in unorganized counties and owned by non-residents thereof, in the manner hereinafter provided. The Comptroller may at any time prior to the return of the assessment rolls to his office of the organized county to which such unorganized county or counties are attached for judicial purposes, receive the assessment of and collect the taxes on any lands situated in such unorganized county or counties which are owned by non-residents thereof. [Id. Acts 1897, p. 43; G. L. Vol. 10, p. 1097.]

Art. 7230. [7591-2] **List of unrendered lands.**—As soon as the tax rolls of the organized county to which unorganized counties are attached for judicial purposes shall have been received by the Comptroller, he shall, by comparing the lands rendered to the assessor of the organized county by the residents of such unorganized county or counties with those previously rendered to him by non-residents, make out a list of all unrendered lands situated in such unorganized county, and place such value upon the lands thus found to be unrendered as he may deem just and fair. Nothing in this law shall be so construed as to prevent the Comptroller from receiving the assessment and taxes due at any time prior to the completion of the unrendered list of such unorganized county. After the completion of the unrendered list provided for in this chapter, the owner or owners must pay according to the value and assessment made thereon by the Comptroller. [Id.]

Art. 7231. [7593] [5143] **May appeal from assessment.**—Assessment of lands rendered to the Comptroller under the provisions of this chapter shall be made by the party rendering the same under oath as to their value; but if the Comptroller thinks the valuation too low he shall object; and if the Comptroller and the party rendering the land cannot agree, then the Comptroller shall assess the same at such value as he may think it is worth; and, if the party rendering feels that the assessment is too high, he may appeal to the board of equaliza-

tion, which for such purposes shall consist of the Governor, Attorney General and the Secretary of State, and their decision shall be final. [Id.]

Art. 7232. [7594] [5144] May levy upon and sell, when.—Three months after the completion of the unrendered list of each unorganized county, respectively, the Comptroller shall proceed to levy upon and advertise all lands in such counties upon which the taxes are due and unpaid, giving notice of the amount due upon each separate tract of land, and giving such description of the land upon which taxes are due and unpaid as he may be in possession of; such notice to be given by publication in some weekly newspaper published in the State for four consecutive weeks; said notice to state that on a certain day therein named the Comptroller will proceed to sell the land therein described, or so much thereof as may be necessary to pay the State and county taxes due, and the cost of advertising the same. [Id.]

Art. 7233. [7595] [5145] Sale.—The sale shall commence on the day named in said notice, and may continue from day to day (Sundays and legal holidays excepted) until completed; such sale shall be had in front of the Comptroller's office, in the city of Austin, between the hours of eight o'clock A. M. and four o'clock P. M. of each day. [Id.]

Art. 7234. [7596] [5146] May be bought by State.—Should there be no purchaser of said lands, then the Comptroller shall bid in the same for the State for the taxes due thereon and the costs of sale, and make a deed to the State to the same, including in one deed all lands bid in. [Id.]

Art. 7235. [7597] [5147] Redemption.—Should the lands bid in by the Comptroller for the State not be redeemed by the owner thereof or his agent within two years, by the party redeeming the same paying double the amount for which the said land was sold, then the said lands thus sold and unredeemed shall become vacant and revert to and become a part of the public free school fund. [Id.]

Art. 7236. [7598] [5148] Tax deed.—The Comptroller shall give to the purchaser of any lands, the sale of which is provided for in this chapter, a deed to the same, giving in such deed such description of the land as may be necessary to identify the same, or such description as he may be in possession of. [Id.]

Art. 7237. [7600] [5150] Deed shall vest title.—The deed given to the purchaser or purchasers by the Comptroller under the provisions of this chapter shall vest a good and sufficient fee simple title in the purchaser or purchasers, subject to be impeached only for actual fraud; provided, the former owner or owners thereof do not redeem the same within two years from the date of the deed, either by paying to the purchaser or purchasers double the amount for which said land was sold, or by making a tender of the same to him or his agent, or by de-

positing with the Comptroller before the expiration of the two years double the amount for which such land was sold, to be paid by the Comptroller, when called upon, to the purchaser or purchasers thereof. [Id.]

Art. 7238. [7601] [5151] **County taxes paid, where.**—All county taxes collected under the provisions of Article 7235 shall be paid into the county treasury of the organized county to which the unorganized county is attached for judicial purposes. [Id.]

Art. 7239. [7602] [5152] **Comptroller to keep taxes.**—All county taxes, other than taxes to pay pro rata of indebtedness to parent county, due unorganized counties, collected by the Comptroller, shall be kept by him to the credit of such unorganized county until the total sum to the credit of the county shall reach the sum of five thousand dollars. Then he shall upon the demand of the treasurer of the former unorganized county, when the same shall have organized, pay said sum, or whatever amount is held to the credit of said county, over to said treasurer. And all county taxes collected by the Comptroller after the amount to the credit of such unorganized county shall reach the amount of five thousand dollars shall be paid into the county treasury of the organized county to which the unorganized county is attached for judicial purposes. [Id. Acts 1897, p. 43; G. L., Vol. 10, p. 1097.]

Art. 7240. [7603] [5152a] **Payment by Comptroller.**—Where the amount to the credit of any unorganized county now exceeds five thousand dollars, the Comptroller shall keep said sum to be paid to the treasurer of such unorganized county when the same shall organize; and all county taxes, other than taxes collected to pay pro rata of indebtedness to parent county, hereafter collected by the Comptroller in such counties, shall be paid into the county treasury of the organized county to which such county is attached for judicial purposes. [Acts 1897, p. 43; G. L., Vol. 10, p. 1097.]

Art. 7241. [7604] [5153] **Special deposit made by Comptroller.**—All moneys received by the Comptroller on deposit for the redemption of land sold and bought by individuals shall be by him deposited in the State Treasury as a special deposit, subject to the order of the party to whom the conditional deed to such land was given. So also shall all county taxes collected by the Comptroller under the provisions of this law be deposited in the State Treasury as a special fund, subject to the order of the Comptroller, to be paid to the county treasurers as provided in this chapter. [Id.]

Art. 7242. [7722-26] **In new counties.**—When any county is created or organized, those in charge of the assessor's roll embracing the new county shall allow the person appointed by the commissioners court for such purpose access to the rolls to make the transcripts herein provided for. Such appointee shall make from such rolls two transcripts of the unpaid assessments,

both on person and property, in that portion of the new county formerly embraced within the unorganized county or the territory from which the new county was created, and shall receive such pay for his services as he may agree on with said court. The proper collector shall examine and verify said transcripts and attest their correctness over his official signature, and shall receive therefor twenty dollars from the new county, to be paid on the order of its commissioners court. Said collector shall also have the commissioners court of his county approve said transcripts, and shall deliver one of them to the collector of the new county, and forward the other to the Comptroller. On receipt of same the Comptroller shall be authorized to give proper credit to the collector of the old county and to charge the same to the collector of the new county. The collector of the new county shall receive the same compensation, and shall have the same authority to collect and enforce the collection of the taxes found to be due by such transcripts as is enjoyed by the collectors of other counties. [Acts 1885, p. 107; G. L., Vol. 9, p. 727.]

Art. 7243. Assessment of property stored.—Any person, co-partnership, association or corporation doing business in this State as a warehouseman or operating or controlling a warehouse or place of storage, shall, upon demand of the tax assessor of the county in which said business is operated or in which property is so stored, on January 1st of each year, furnish to the said tax assessor, a list of the property so stored in such warehouse or place of storage, together with a list of the owners of such property and their residence. The term “place of storage” as used herein shall also include all cold storage or refrigeration plants wherein goods of any nature are stored. Any person or agent or representative of such co-partnership, association, or corporation who shall fail to furnish such list and information as set forth above upon demand by the tax assessor of the county in which such property is located, shall be subject to all the penalties now existing against any person for making a false rendition of property for the purpose of taxation. [Acts 3rd C. S. 1923, p. 165.]

Art. 7244. [4825] Mutual life insurance companies.—For the purpose of State, county and city taxation, the amount of the reserve and contingency reserve of all mutual life insurance companies shall be treated as debts due by them to their policyholders, and the total value of their property for such purposes shall be ascertained by deducting from the total amount of their gross assets the amount of such reserves and contingency reserves. [Acts 1st C. S. 1909, p. 292; Acts 1921, p. 153.]

CHAPTER EIGHT.

COLLECTION AND COLLECTOR.

| | Article | | Article |
|---|---------|------------------------------------|---------|
| Election and term | 7245 | If property is insufficient..... | 7274 |
| Sheriff a collector..... | 7246 | Sales of real property..... | 7275 |
| Bond for State taxes..... | 7247 | Advertisement of real property for | |
| New Bond..... | 7248 | sale..... | 7276 |
| Bond for county taxes..... | 7249 | List posted..... | 7277 |
| Depository shall pay treasurer..... | 7250 | Sale continued..... | 7278 |
| All bonds to be first approved..... | 7251 | Homesteads liable..... | 7279 |
| Deputies..... | 7252 | Sales of land..... | 7280 |
| Rolls to be a warrant..... | 7253 | Tax deed..... | 7281 |
| Collector for all taxes..... | 7254 | Sales reported..... | 7282 |
| Collections, when to begin..... | 7255 | Redemption..... | 7283 |
| Office at county seat..... | 7256 | Redemption from private purchas- | |
| Tax receipt..... | 7257 | ers..... | 7284 |
| Recording tax receipts..... | 7258 | Receipt of collector, notice..... | 7285 |
| Record books furnished..... | 7259 | Relief..... | 7286 |
| Monthly reports..... | 7260 | Certificate of redemption..... | 7287 |
| Duties of clerk and collector..... | 7261 | Lands bid in for State..... | 7288 |
| Report not approved, unless..... | 7262 | May redeem..... | 7289 |
| List of delinquents and insolvents..... | 7263 | If not redeemed..... | 7290 |
| To collect delinquent list..... | 7264 | May redeem by paying costs..... | 7291 |
| Non-residents..... | 7265 | Board of inquiry..... | 7292 |
| Forced collections to begin..... | 7266 | Lands of non-residents in unor- | |
| Personal property pointed out..... | 7267 | ganized counties..... | 7293 |
| Property about to be removed..... | 7268 | Payment of State moneys..... | 7294 |
| Tax lien superior..... | 7269 | Payment of other money..... | 7295 |
| Execution in other counties..... | 7270 | Notification to pay..... | 7296 |
| Credit for delinquent taxes..... | 7271 | Duty to sue..... | 7297 |
| All property liable for taxes..... | 7272 | Limitation not available..... | 7298 |
| Sales of personal property..... | 7273 | | |

Art. 7245. [7605] [5154] [4729] **Election and term.**—In each county having ten thousand inhabitants, to be determined by the preceding Federal census, there shall be elected at the regular biennial election a collector of taxes, who shall hold his office for two years. [Const., Art. 8, Sec. 16; Acts 1876, p. 259; G. L., Vol. 8, p. 259.]

Art. 7246. [7607] [5156] [4731] **Sheriff a collector.**—In each county having less than ten thousand inhabitants, the sheriff of such county shall be the collector of taxes, and shall have and exercise all the rights, powers and privileges, be subject to all the requirements and restrictions, and perform all the duties imposed by law upon collectors; and he shall also give the same bonds required of a collector of taxes elected. [Const., Art. 8, Sec. 16; Id.]

Art. 7247. [7608] [5157] [4732] **Bond for State taxes.**—Each collector of taxes, within twenty days after he shall have received notice of his election or appointment, and before entering upon the duties of his office, shall give bond based upon unincumbered real estate of the sureties, subject to execution, payable to the Governor and his successors in office, in a sum which shall be equal to forty per cent of the whole amount of the State tax of the county as shown by the last preceding assessment, provided said bond shall not exceed one hundred thousand dollars, with at least three good and sufficient sureties, to be approved by the commissioners court of his county, which shall be further subject to the approval of the Comptroller, and his official oath together with said bonds shall be recorded in the office of the county clerk of said county, and be forwarded by the county judge of the county to the Comptroller,

to be deposited in his office. Said bond shall be conditioned for the faithful performance of the duties of his office as collector of taxes for and during the full term for which he was elected or appointed. [Acts 1876, p. 259; Acts 1915, p. 190; Acts 1917, p. 353; G. L., Vol. 8, p. 1095.]

Art. 7248. [7609] [5158] [4733] **New bond.**—The tax collector may be required to furnish a new bond or additional security whenever in the opinion of the commissioners court or the Comptroller, it may be advisable. Should any tax collector fail to give a new bond and additional security when required, he shall be suspended from office by the commissioners court of his county, and immediately thereafter be removed from office in the mode prescribed by law. [Acts 1876, p. 259; G. L., Vol. 8, p. 1095.]

Art. 7249. [7610] [5159] [4734] **Bond for county taxes.**—Collectors of taxes shall give a like bond, with like conditions to the county judge of their respective counties and their successors in office in a sum not less than forty per cent of the whole amount of the county tax, as shown by the last preceding assessment, provided said bond shall not exceed one hundred thousand dollars, with at least three good and sufficient sureties, to be approved by the commissioners court of his county. A new bond and additional security may be required, and for failure to give such new bond or additional security, the collector of taxes may be removed from office in the manner prescribed by law. If said bonds required are executed by a satisfactory surety company or companies or by any private party or parties as surety or sureties thereon in counties with a total taxable valuation of thirty million dollars or more, the county of which the principal in said bond or bonds is tax collector shall pay a reasonable amount as premium on said bond or bonds, which amount shall be paid out of the general revenue of the county upon presentation of the bill therefor to the commissioners court of the county properly authenticated as required by law in other claims against the county. If there be any controversy as to the reasonableness of the amount claimed, as such premium, such controversy may be determined by any court of competent jurisdiction. [Acts 1876, p. 260; Acts 1915, p. 190; Acts 1917, p. 354; G. L., Vol. 8, p. 1096.]

Art. 7250. **Depository shall pay treasurer.**—Except as to compensation due such tax collector as shown by his approved reports, tax money deposited in county depositories shall be paid by such depositories only to treasurers entitled to receive the same, on checks drawn by such tax collector in favor of such treasurer. [Id.]

Art. 7251. [7611] [5160] [4735] **All bonds to be first approved.**—No collector shall enter upon the discharge of the duties of the office until all of the bonds required of him by law for the collection of any taxes, State, county or special, shall have been given and approved.

Art. 7252. [7612] [5161] [4736] **Deputies.**—Each tax collector may appoint one or more deputies to assist him in the collection of taxes, and may take such bond and security from the person so appointed as he deems necessary for his indemnity; and the collectors in all cases shall be allowable and accountable for his proceedings and misconduct in office. [Acts 1876, p. 260; G. L., Vol. 8, p. 1096.]

Art. 7253. [7613] [5162] [4737] **Rolls to be a warrant.**—When any tax collector shall have received the assessment rolls or books of the county, he shall receipt to the commissioners court for the same; and said rolls or books shall be full and sufficient authority for said collector to receive and collect the taxes therein levied. [Id.]

Art. 7254. [7614] [5163] [4738] **Collector for all taxes.**—The tax collector shall be the receiver and collector of all taxes assessed upon the tax list in his county, whether assessed for the State or county, school, poor house or other purposes; and he shall proceed to collect the same according to law, and place the same when collected to the proper fund, and pay the same over to the proper authorities, as hereinafter provided. [Id.]

Art. 7255. [7615] [5164] [4739] **Collections, when to begin.**—Each tax collector shall begin the collection of taxes annually on the first day of October, or so soon thereafter as he may be able to obtain the proper assessment rolls, books or data upon which to proceed with the business; and he shall post up notices—not less than three—at public places in each voting or justice precinct in his county, at least twenty days previous to the day said taxpayers are required to meet him for the purpose of paying their taxes, stating in said notice the times and places the same are required to be paid; and said collector or his deputy shall attend at such times and places for the purposes aforesaid, and shall remain at each place at least two days. If the collector from any cause shall fail to meet the taxpayers at the time and place specified in the first notice, he shall in like manner give a second notice. [Id.]

Art. 7256. [7616] [5165] [4740] **Office at county seat.**—Each tax collector shall keep his office at the county seat of his county; and it shall be the duty of every person who has failed to attend and to pay his taxes at the times and places in his precinct named by the collector, as provided in the preceding article, to call at the office of the collector and pay the same before the last day of December of the same year for which the assessment is made. [Acts 1887, p. 127; G. L., Vol. 9, p. 925.]

Art. 7257. [7617] [5166] [4741] **Tax receipt.**—The tax collector or his deputy, whenever any tax is paid, shall give to the person paying the same a receipt therefor, specifying the amount of State, county and district taxes, and the year or years for which such tax was assessed; said receipt shall also show the number of acres of land in each separate tract, number, abstract and name of original grantee and any city or town

lot and name of city or town, and total value of all property assessed. Said receipt shall have a duplicate to be retained by the collector. The collector shall provide himself with a seal, on which shall be inscribed a star with five points, surrounded by the words "Collector of Taxes, _____ county" (the blank to be filled with the name of the county), and shall impress said seal on each receipt and duplicate given by him for taxes collected on real estate; and said receipt having the seal attached shall be admissible to record in the county in which the property is situated in the same manner as deeds duly authenticated, and when so recorded shall be full and complete notice to all persons of the payment of said tax. The collector, when any taxes are paid, shall insert in the margin of the tax rolls the words and figures as follows: "Taxes paid _____ day of _____," No. of receipt _____ (dates to be filled and receipt number to be given) and signed by the collector; and such entry shall be notice to all the world of the payment of such tax, and such entries may be used in evidence on issues involving the payment of same. [Acts 1876, p. 261; G. L., Vol. 8, p. 1097; Acts 1921, p. 136.]

Art. 7258. Recording tax receipts.—Every receipt for the payment of taxes on property, real, personal or mixed, hereafter paid, as well as those heretofore paid, collected by State, county or municipal officers, may be recorded in the office of the county clerk of the county where the property is situated. On presentation of a tax receipt to the county clerk he shall immediately file the same in the same manner of filing a deed to land, and enter and record such receipt in full in a record book kept by him for the purpose of recording tax receipts, to be called "Tax Receipt Record," and shall have the name and number written thereon, and such record shall be notice to all the world of the payment of such tax, and certified copies thereof may be used in evidence on issues involving the same under like rules admitting certified copies of deeds in evidence. [Acts 1915, p. 137.]

Art. 7259. Record books furnished.—Each commissioners court shall furnish the county clerk tax receipt record books which may be made in form as books for recording deeds or in form with printed blanks conforming to the form of the tax receipts as provided by law for tax collectors, or in any form suitable to the purposes of this law, in the discretion of said court, with the name "Tax Receipt Record" indorsed on the same, with successive numbers on each separate volume, and said clerk shall properly index said record alphabetically in the name of the holder of the tax receipt. [Id.]

Art. 7260. [7618] [5167] [4742] Monthly reports.—

1. At the end of each month the tax collector shall, on forms to be furnished by the Comptroller, make an itemized report under oath to the Comptroller, showing each and every item of ad valorem, poll and occupation taxes collected by him during

said month, accompanied by a summarized statement showing full disposition of all State taxes collected, provided that said itemized reports for the months of December and January of each year may not be made for twenty-five days after the end of such months if same can not be completed by the end of such respective months.

2. He shall present such report, together with the tax receipt stubs to the county clerk, who shall within two days compare said report with said stubs, and if same agree in every particular as regards names, dates and amounts, he shall certify to its correctness, for which examination and certificate said clerk shall be paid by the commissioners court twenty-five cents for each certificate and twenty-five cents for each two hundred taxpayers on said report.

3. The tax collector shall then immediately forward his reports so certified to the Comptroller, and shall pay over to the State Treasurer all moneys collected by him for the State during said month, excepting such amounts as he is allowed by law to pay in his county, reserving only his commissions on the total amount collected, and to enable him to do so, he may, at his own risk, send the same to the State Treasurer at the least cost to the State, on which he shall be allowed credit by the Comptroller upon filing receipt showing actual amount of exchange paid. The tax collector may, in making remittances of funds to the State Treasurer or any other State officer, board, commission or employe of the State, make the same by sending cash or a check on the county depository, if the funds are in the county depository, or if the same, in due course, are required to be in such depository. No State or county funds shall be used to pay exchange on, or expense of transmitting or collecting money by, any check or exchange or draft which may be used to make any such remittances. If such funds are sent in cash, by registered letter, by post-office money order, express money order or by bank draft or bank check or depository check, in such event the liability of the persons sending the same shall not cease until the same money is actually received by the State Treasurer or the duly authorized State depository or other authorized officer in due course of business. The State Treasurer, whenever he may receive a remittance from a tax collector, shall promptly pay the money so remitted to the State Treasury, on the deposit warrant of the Comptroller, and the money when so deposited shall be a credit to the said tax collector.

4. The tax collector shall pay over to the State Treasurer all balances in his hands belonging to the State, and finally adjust and settle his account with the Comptroller on or before the first day of May of each year, and to enable him to do so, the commissioners court shall convene on or before the third Monday in April for the purpose of examining and approving his final settlement papers.

5. The allowance to a tax collector of credit for the unpaid taxes shown on his delinquent and insolvent lists prepared under Articles 7263 and 7336 shall not absolve any taxpayer or property appearing upon either of said lists from liability for and payment of such taxes, nor absolve the tax collector from the duty of collecting same, and the provisions of Articles 7264, 7266, 7267, 7268, 7269, 7270, 7272, 7273, 7274, and 7336 pertaining to the levy upon and seizure and sale by the tax collector of personal property to enforce the payment of taxes shall be applicable to the enforced collection of such taxes. As such taxes are collected, the tax collector shall issue special tax receipts therefor to be furnished by the Comptroller, which blank receipts shall be numbered and charged to the tax collector, who shall account for same at his next annual settlement in the same manner as occupation tax receipts. The tax collector shall make in triplicate itemized monthly reports of all such collections, using blanks for that purpose furnished by the Comptroller. One of said triplicates shall be retained by the tax collector as a record of his office, one shall be filed with and preserved by the county clerk as a record of his office, and one shall be sent to the Comptroller and preserved as a record of his office. There shall be entered upon or attached to each copy of said reports the affidavit of the tax collector that he has fully complied with and exhausted all resources authorized and provided by law for the seizure and sale of personal property for the collection of all unpaid taxes shown upon the delinquent and insolvent lists of his county, and that he does not know of any personal property belonging to any person or persons against whom such taxes remain unpaid that he is authorized by law to seize, levy upon and sell for the purpose of enforcing the payment of such taxes or any part thereof.

6. The Comptroller shall prescribe and furnish the forms to be used by the collectors of taxes, and the mode and manner of keeping and stating their accounts, and shall adopt such regulations as he may deem necessary in regard thereto. He shall enforce a strict observance of each provision of these articles.

7. The Comptroller shall notify the district attorney of the district or the county attorney of the county in which the collector resides, and the sureties on the bond of the collector, of any failure to comply with any provision of this article. [Acts 1893, p. 90; G. L., Vol. 10, p. 520; Acts 1915, p. 190; Acts 3rd C. S. 1923, pp. 157 and 188.]

Art. 7261. [7619] [5168] [4743] **Duties of clerk and collector.—**

1. The tax collector shall at the end of each month make like reports to the commissioners court of all the collections made for the county, conforming as far as applicable and in like manner to the requirements as to the collection and report of taxes collected for the State. The county clerk shall likewise, within two days after the presentation of said report by the collector,

examine said report and stubs, and certify to their correctness as regards names, dates and amounts; for which examination and certificate he shall be paid by the collector fifty cents each month, which amount shall be allowed to the collector by the commissioners court.

2. The clerk shall file said report intended for the commissioners court, together with the tax receipt stubs, in his office for the next regular meeting of the commissioners court.

3. The tax collector shall immediately pay over to the county treasurer all taxes collected for the county during said month, after reserving his commissions for collecting the same, and take receipts therefor, and file with the county clerk.

4. At the next regular meeting of the commissioners court, the tax collector shall appear before said court and make a summarized statement, showing the disposition of all moneys, both of the State and county, collected by him during the previous three months. Said statement must show that all taxes due the State have been promptly remitted to the State Treasury at the end of each month, and all taxes due the county have been paid over promptly to the county treasurer and shall file proper vouchers and receipts showing same.

5. The commissioners court shall examine such statement and vouchers, together with an itemized report and tax receipt stubs filed each month, and shall compare the same with the tax rolls and tax receipt stubs. If found correct in every particular, and if the tax collector has properly accounted for all taxes collected, as provided above, the commissioners court shall enter an order approving said report, and the order approving same shall be recorded in the minutes.

6. The tax collector shall finally adjust and settle his account with the commissioners court for the county taxes collected, at the same time and in the same manner as is provided in the foregoing article in his settlement with the State. [Acts 1893, p. 90; G. L. Vol. 10, p. 520.]

Art. 7262. [7620] [5169] Report not approved, unless.—If any tax collector shall have failed at the end of each month, or within three days thereof, to promptly remit to the State Treasurer the amount due by him to the State, or pay over to the county treasurer the amount due by him to the county, the commissioners court, at the next regular meeting, shall ascertain the facts; and if the tax collector fails or refuses to pay or remit the same and file proper vouchers therefor, as provided in the foregoing article, the commissioners court shall not approve his reports and accounts, but shall ascertain the amounts due by him, both to the State and county, and enter an order requiring him to pay the same to the proper treasurers, as is provided in Articles 7294 and 7295, and notify such collector, as is provided for in Article 7296 under penalty for failure to do so. Whenever the tax collector shall fail or refuse to remit to the State

Treasurer the amounts due the State, when requested, the Comptroller shall notify him. [Acts 1893, p. 90; G. L. Vol. 10, p. 520.]

Art. 7263. [7621] [5170] [4744] **List of delinquents and insolvents.**—The tax collector shall make out on forms to be furnished for that purpose by the Comptroller, between April first and the fifteenth of each year, list of delinquent or insolvent taxpayers, the caption of which shall be, the “list of delinquent or insolvent taxpayers.” In this list he shall give the name of the person, firm, company, or corporation from whom the taxes are due, in separate columns; and he shall post one copy of these delinquent or insolvent lists at the courthouse door of the county, and one list at the courthouse door, or where court is usually held, in each justice precinct in his county; and the tax collector, upon the certificate of the commissioners court that the persons appearing on the insolvent or delinquent lists have no property out of which to make the taxes assessed against them, or that they have moved out of the county, and that no property can be found in the county belonging to such persons, out of which to make the taxes due, shall be entitled to a credit on final settlement of his accounts for the amounts due by the persons, firms, companies, or corporations certified to by the commissioners court, as above provided for. [Id.]

Art. 7264. [7622] [5171] [4745] **To collect delinquent list.**—The allowance of an insolvent list to the collector in accordance with the provisions of the preceding article shall not absolve any taxpayer or property thereon from the payment of taxes; but the collector shall use all necessary diligence to collect the amounts due on the insolvent list after it is allowed, and report and pay over to the proper officers all amounts collected on the same. [Id.]

Art. 7265. [7623] [5172] **Non-residents.**—Non-residents of counties, owing State or county taxes, are hereby authorized to pay the same to the Comptroller; provided, that all taxes due by said non-residents shall be paid at the Comptroller’s office on or before the first day of January next after the assessment of such taxes. The tax collectors shall be entitled to the commissions on all moneys paid by non-residents to the Comptroller, due their counties respectively. [Acts 1879, p. 41; G. L. Vol. 8, p. 1341.]

Art. 7266. [7624] [5173] [4746] **Forced collections to begin.**—If any person shall fail or refuse to pay the taxes imposed upon him or his property by law, until the first day of January next succeeding the return of the assessment roll of the county to the Comptroller, the tax collector shall, by virtue of his tax roll, seize and levy upon and sell so much personal property belonging to such person as may be sufficient to pay his taxes, together with all costs accruing thereon; provided, there shall be no levy on property when the owner thereof has the right to pay at the Comptroller’s office, until a list of the persons who

have paid their taxes at said office has been furnished the tax collector by the Comptroller. The Comptroller shall forward said list of paid taxes on or before the first day of February of each year; and the tax collector shall, immediately on receipt of said list from the Comptroller, levy on and sell the property of such non-residents as have not paid their taxes, in accordance with the law regulating the sale of property for taxes. [Acts 1887, p. 127; G. L. Vol. 9, p. 128.]

Art. 7267. [7625] [5174] [4747] Personal property pointed out.—If any person shall point out to the tax collector sufficient personal property belonging to him to pay all taxes assessed against him before the first day of January of any year, the collector shall immediately levy upon and sell such property so pointed out, in accordance with the laws regulating tax sales of a similar class of property. [Id.]

Art. 7268. [7626] [5175] [4748] Property about to be removed.—If it comes to the knowledge of the tax collector that any personal property assessed for taxes on the rolls is about to be removed from the county, and the owner of such property has not other property in the county sufficient to satisfy all assessments against him, the collector shall immediately levy upon a sufficiency of such property to satisfy such taxes and all costs, and the same sell in accordance with the law regulating sales of personal property for taxes unless the owner of such property shall give bond, with sufficient security payable to and to be approved by the collector, and conditioned for the payment of the taxes due on such property, on or before the first day of January next succeeding. [Id.]

Art. 7269. [7627] Tax lien superior.—In all cases where a taxpayer makes an assignment of his property for the payment of his debts, or where his property is levied upon by creditors, by writs of attachments or otherwise, or where the estate of a decedent is or becomes insolvent, and the taxes assessed against such person or property, or against any of his estate remain unpaid in part or in whole, the amount of such unpaid taxes shall be a first lien upon all such property; provided, that when taxes are due by an estate of a deceased person, the lien herein provided for shall be subject to the allowances to widows and minors, funeral expenses, and expenses of last sickness. Such unpaid taxes shall be paid by the assignee, when said property has been seized by the sheriff, out of the proceeds of sale in case such property has been seized under attachment or other writ, and by the administrator or other legal representative of decedents; and, if said taxes shall not be paid, all said property may be levied on by the tax collector and sold for such taxes in whomsoever's hands it may be found.

Art. 7270. [7628] Execution in other counties.—Whenever it shall appear to any tax collector that any person who is delinquent in the payment of his or her taxes has no property in his

county out of which said amount of taxes can be collected, such collector shall make out from the assessment list a true and complete list or schedule of the taxes due by said delinquent, which shall be certified to under the official seal and signature of said collector, and forward the same to the tax collector of any county or counties where he shall have reason to believe said delinquent has property of any description, and if said property is in any of the unorganized counties of this State, then to the collector of the county to which said unorganized county is attached for judicial purposes; and, when received by said collector, he shall at once proceed to the collection of said tax by seizure and sale in the same manner as if said taxes were originally assessed and due in his said county, and shall report to the collector from whom said list was received the taxes so collected by him. [Acts 1905, p. 317.]

Art. 7271. [7629] **Credit for delinquent taxes.**—The provisions of this chapter pertaining to the duty of tax collectors in the matter of the collection of delinquent and insolvent taxes shall apply as well to taxes owing by persons who own real property as to those who do not own real property, and no tax collector in this State shall be entitled to or be allowed either by the county or by the Comptroller credit as approved by Article 7263 for any taxes reported or returned as either delinquent or insolvent under Article 7263 or 7336 until he makes affidavit entered upon or attached to both his lists of insolvent tax payers prepared under said Article 7263 and his lists of delinquent lands prepared under Article 7336, that said lists are true and correct and that he has fully complied with and exhausted all resources to collect such taxes as authorized and required by Articles 7264, 7266, 7267, 7268, 7269, 7270, 7272, 7273, 7274, and 7336, and does not know of, and has made diligent inquiry and has been unable to learn of, any personal property belonging to any person or persons against whom such taxes are shown on said lists to be unpaid that he was authorized by law to seize, levy upon and sell for the purpose of enforcing the payment of such taxes or any part thereof, nor until the commissioners court of his county, after full consideration and investigation, has entered upon or attached to both the insolvent lists and lists of delinquent lands the certificate required by said Article 7263, and no compensation that at the time, or at any time thereafter, may be due or owing to the tax collector, either by the State or county, shall be retained by or paid to the tax collector until he has made the affidavits as provided by this article. Nothing in this article is intended or shall be construed as requiring any tax collector to levy upon and sell real property for the purpose of enforcing the payment of such taxes. [Id. Acts 3rd C. S. 1923, p. 168.]

Art. 7272. [7630] [5176] **All property liable for taxes.**—All real and personal property held or owned by any person in this State shall be liable for all State and county taxes due by the owner thereof including taxes on real estate, personal prop-

erty, and poll tax; and the tax collector shall levy on any personal or real property to be found in his county to satisfy all delinquent taxes, any law to the contrary notwithstanding. [Acts 1879, p. 46; G. L. Vol. 8, p. 138.]

Art. 7273. [7631] [5177] [4749] **Sales of personal property.**—In making sales of personal property for taxes, the collector shall give notice of the time and place of sale, together with a brief description of the property levied on and to be sold, for at least ten days previous to the day of sale, by advertisements in writing to be posted at the courthouse door, and at two other public places in the county; and such sale shall take place at the courthouse door of the county in which the assessment is made, by public auction. [Acts 1876, p. 259; G. L. Vol. 8, p. 1095.]

Art. 7274. [7632] [5178] [4750] **If property is insufficient.**—If personal property levied upon prove insufficient to satisfy the taxes and penalties due and costs accrued thereon, the collector shall levy upon and sell so much other personal taxable property belonging to the person as will be sufficient to satisfy such taxes, penalties and costs in the same manner as an original levy and sale, and, in all cases of sales for taxes, if there be an excess remaining in the hands of the collector, after satisfying all taxes, penalties and costs, the same shall be paid over to the original owner by the collector, or deposited in the hands of the county treasurer subject to the order of such owner. [Id.]

Art. 7275. [7633] [5179] [4751] **Sales of real property.**—If the delinquent is not possessed of a sufficiency of personal property in the county subject to seizure and sale to satisfy all taxes due by him, the tax collector shall seize so much of the real estate of such delinquent, situated in the county, as will be sufficient to satisfy such taxes and all costs, and sell the same in accordance with the provisions of the succeeding article. [Id.]

Art. 7276. [7634] [5180] [4752] **Advertisement of real property for sale.**—In making sales of real property for taxes, the collector shall advertise the same for sale in some newspaper published in the county where the land is to be sold, for three successive weeks, if there be one; and the publisher of such newspaper shall receive as compensation not exceeding twenty-five cents for each tract or parcel of land so advertised to be taxed as other costs of sale against such land. The cost of advertising in a newspaper shall be deducted from the fee allowed the collector for advertising. The Comptroller shall allow the collector twenty-five cents per tract for each tract of land bid off by the State. If there be no newspaper published in the county, or, there being a newspaper published in the county and the publisher thereof refuses to publish the advertisement at the price herein fixed, then the advertisement shall be made by posting the same for thirty days previous to the day of sale, at the courthouse door and three other public

places in the county where the land or lots are situated, giving in said advertisement such description as is given to the same on the tax rolls in his hands, stating the name of the owner if known, and if unknown say "unknown," together with the time, place, and terms of sale; said sale to be for cash, to the highest bidder, at public outcry at the courthouse door, and between legal hours, on the first Tuesday of the month. [Acts 1881, p. 12; G. L. Vol. 9, p. 252.]

Art. 7277. [7635] [5181] **List posted.**—Prior to the sale of any real property for taxes in any county in this State, the tax collector shall advertise the same by posting a list of the names of the delinquents for thirty days as follows: one copy at the courthouse door of the county, and a copy at two other public places in the county where the lands or lots are situated. [Acts 1879, S. S., p. 46; G. L. Vol. 8, p. 1346.]

Art. 7278. [7636] [5182] [4753] **Sale continued.**—As far as may be practicable, all the lands and town lots levied upon for taxes shall be advertised in one notice and be sold on the same day; and such sales may be continued from day to day until concluded; but at the close of each day's sale the tax collector shall make proclamation of such continuance on the following day. No sale shall be considered complete until the payment of the purchase money; and, if the same is not made before the completion of the tax sales, the collector shall re-sell the property, and continue such sale until the same is complete. [Acts 1876, p. 262; G. L. Vol. 8, p. 1098.]

Art. 7279. [7637] [5183] [4754] **Homesteads liable.**—No real estate set apart, used or designated as a homestead shall be sold for taxes other than the taxes due on such homestead. [Id.]

Art. 7280. [7638] [5184] [4755] **Sales of land.**—The tax collector, in making sales for taxes due upon real estate, shall sell at auction, at the time and place appointed, so much of said real estate as may be necessary to pay the taxes and penalties due and all costs accruing thereon, and shall offer said real estate to the bidder, who will pay the taxes and penalties due, and costs of sale and execution of deed, for the least amount of said real estate, who shall be deemed the highest bidder. Should a less amount of said real estate than the whole tract or parcel of said real estate levied upon be sold for the taxes and penalties due and all costs of sale and execution and deed, the collector shall, in making his deed to the purchaser begin at some corner of said tract or parcel of land or town lot and designate the same in a square as near as practicable. [Id.]

Art. 7281. [7639] [5185] [4756] **Tax deed.**—The tax collector shall execute and deliver to the purchaser, upon the payment of the amount for which the estate was sold, and the cost and penalties, a deed for the real estate sold, which deed shall vest a good and perfect title to said land in the purchaser, if not redeemed in two years, as provided by law, which deed shall

state the cause of sale, the amount sold, the price for which the real estate was sold, the name of the person, firm, company or corporation on whom the demand for taxes was made, provided the name is known, and if unknown say "unknown," the same description of the land as is given in the tax rolls, and such other description as may be practicable for better identification; and when real estate has been sold, he shall convey, subject to the right of redemption provided for in Article 7283, all the right and interest which the former owner had therein at the time when the assessment was made. [Const., Art. 8, Sec. 13; Id.]

Art. 7282. [7640] [5186] [4757] **Sales reported.**—When the collector shall have made sale of any real estate under this chapter, he shall make immediate return of said sale to the commissioners court, stating in said return the land sold, the name of the owner, if known, and if unknown, state the fact, the time of sale, the amount for which said sale was made, together with the name of the purchaser, which return shall be entered of record on the minute books of said court. [Id.]

Art. 7283. [7641] [5187] [4758] **Redemption.**—The owner of real estate sold for the payment of taxes, or his heirs or assigns or legal representatives, may, within two years from the date of sale redeem the estate sold by paying or tendering to the purchaser, his heirs or legal representatives, double the amount of money paid for the land. [Id.]

Art. 7284. [7643] [5188] **Redemption from private purchasers.**—Any person having the right to redeem any land sold at a tax sale may do so by payment, within the time prescribed by law, to the tax collector of the county in which the said land was sold, of the amount which the law requires to be paid; provided, that the owner of said land, or his agent, shall first have made affidavit that he has made diligent search in the county where said land is situated for the purchaser thereof at the tax sale, and has failed to find him, or that the purchaser at such tax sale is not a resident of the county in which the land is situated, or that he and the purchaser cannot agree on the amount of redemption money. In such cases only shall the owner or agent be authorized to redeem the same by the payment to the collector of taxes. [Acts 1879, S. S., p. 29; G. L. Vol. 9, p. 61.]

Art. 7285. [7644] [5189] **Receipt of collector, notice when.**—Each tax collector to whom payment is made under the provisions of this chapter shall give a receipt therefor, signed by him officially in the presence of two witnesses; which receipt when duly recorded, shall be notice to all persons that the land therein described has been redeemed; and said collector shall on demand pay over to the purchaser at said tax sale the money thus received by him. [Id.]

Art. 7286. [7645-46] **Relief, when.**—Any person whose land has been rendered for taxation, whether the same was

rendered in the name of the original grantee or not, and has also been placed upon the unrendered rolls for the same year, shall be entitled to relief upon complying with the requirements herein indicated. If any such lands shall have been sold for the taxes charged upon the unrendered rolls, and bought by the State, the owner thereof, his agent or attorney, shall present to the tax collector of the county in which the land is situated an affidavit to the effect that the same land has been rendered for taxation, and placed upon the regular assessment rolls for the year mentioned. Said affidavit shall contain an accurate description of the land and be accompanied with the certificate of the assessor that the same is true and correct; and the tax collector shall thereupon present such person with a written statement, officially signed, that the said tax has been cancelled, and make a note of the same upon the unrendered rolls; provided, the provisions of this article shall apply to all such lands at any time after the collector shall receive the rolls until the same shall have gone into the hands of a private purchaser; and if the owner shall have paid the taxes charged upon the unrendered rolls at any time previous, he shall be entitled to the warrant of the Comptroller for the amount so paid in the same manner as is provided in Article 7287 of this chapter, in cases of redemption from individual purchasers. The tax collector shall make no charge whatever for the duties herein mentioned. [Acts 1881, p. 107; G. L. Vol. 9, p. 199.]

Art. 7287. [7647] [5192] Certificate of redemption.—When the owner of such lands shall have redeemed the same from a private purchaser, the tax collector shall furnish him a certificate to that effect; and upon presentment of said certificate to the Comptroller, the Comptroller shall issue to him a warrant upon the State Treasury for the amount of such tax. This warrant shall be receivable for all taxes to the State. For issuing the certificate provided for in this article, the tax collector shall be allowed the sum of fifty cents to be paid by the applicant. [Id.]

Art. 7288. [7648] [5193] [4759] Lands to be bid in for State.—Should the tax collector fail to make sale of any real estate for want of a purchaser, he shall bid the same off for the State for the taxes and penalties due, and all costs accruing thereon, and execute a deed to the State; and one deed shall include all tracts of land bid off to the State at such tax sale, and make due return thereof, under such forms and directions as the Comptroller may furnish and direct. After sale and purchase by the State of any real estate, it shall not be lawful for said collector to levy upon or advertise or sell the same for any remaining or accrued taxes due thereon until the same shall have been redeemed by the owner or is sold by the State. Said collector shall, on final settlement of his accounts with the commissioners court and the Comptroller, be entitled to a credit for the amount of taxes due the State and county, respectively,

for which the lands and lots were bid off to the State. [Acts 1879, S. S., p. 36; G. L. Vol. 9, p. 68.]

Art. 7289. [7649] [5194] **May redeem.**—The owner of any lands that may have been conveyed to the State under the provisions of the foregoing article, or his agent, desiring to redeem the same, may do so by depositing with the collector of the county in which the lands were sold double the amount of the purchase money and all accrued taxes thereon, within two years from the date of the deed to the State; and such collector shall execute a receipt to such owner, or agents, giving therein the amount of money received, and a description of the land so as to identify the same, and sign and seal the same officially; and, upon presentation of such receipt to the Comptroller, he shall execute to the owner a relinquishment under his signature and seal of office, which may be admitted to record in like manner with other conveyances of land. [Id.]

Art. 7290. [7650] [5195] **If not redeemed.**—In case said land shall not have been redeemed as provided in Article 7289, then the same may be sold as provided in Article 7288. [Id.]

Art. 7291. [7651] [5196] **May redeem by paying costs.**—The owner of real estate which has been bought in by the State for taxes, or his heirs or assigns, may redeem the same at any time prior to the sale thereof, by the payment to the collector of the county in which such real estate is situated, or to the Comptroller, if in an unorganized county, of the amount designated by the Comptroller as due thereon with costs of advertisement; and if it shall at any time appear to the satisfaction of the Comptroller that any land has been sold to the State for taxes which have been paid, or that the sale has not been made in accordance with the law authorizing the sale of land for taxes, he shall upon the payment of the amount that may be due thereon, cancel such sale; and deliver to the owner of the land, or his agent, a certificate under seal of his department, setting forth the fact that such land has been redeemed, or that such sale has been cancelled; which certificate shall release the interest of the State and the same may be recorded in the proper county as other conveyances of real estate are recorded. [Id.]

Art. 7292. [7652] [5197] **Board of inquiry.**—Each commissioners court shall, at the regular terms of said courts sit as a court of inquiry in cases where land has been erroneously rendered for taxes; and any land owner whose land has been or may be sold to the State for taxes may appear before said court in person or by proxy and show to the satisfaction of a majority of said court that the taxes for which his lands have been sold have been paid, although the same was rendered in an incorrect abstract number or survey or original grantee; thereupon said court shall issue to said land owner a certificate setting forth fully said facts, which certificate shall be signed officially by the county judge of said county; and, upon presentation of said certificate to the Comptroller, he shall execute and

deliver to said land owner a valid deed relinquishing all the right, title and interest the State may have acquired in and to said land by reason of such tax sale. [Acts 1889, p. 31; G. L. Vol. 9, p. 1058.]

Art. 7293. [7657] [5209] [4769] Lands of non-residents in unorganized counties.—The taxes upon lands lying in and owned by non-residents of unorganized counties, and upon lands situated in the territory not laid off into counties, shall be paid and collected at the office of the Comptroller, under such regulations as he may adopt for that purpose. [Const., Art. 8, Sec. 12.]

Art. 7294. [7658] [5210] Payment of State moneys.—All tax collectors and other officers or appointees authorized to receive public moneys shall account for all moneys in their hands belonging to the State, and pay the same over to the State Treasurer whenever and as often as they may be directed so to do by the Comptroller; provided that tax collectors shall have thirty days from the date of such direction within which to comply with the same. [Acts 1879, S. S., p. 5; G. L. Vol. 9, p. 37.]

Art. 7295. [7659] [5211] Payment of other money.—All tax collectors and other officers or appointees authorized to receive public moneys shall account for all moneys in their hands belonging to their respective counties, cities or towns, and pay the same over to the respective county treasurers or city treasurers whenever and as often as they may be directed to do so by the respective county judges, or county commissioners courts or mayor or board of aldermen; provided that tax collectors shall have ten days from the date of such direction within which to comply with the same. [Id.]

Art. 7296. [7660] [5212] Notification to pay.—The notification and direction provided for in the two preceding articles may be verbal, written or by telegram; and if written or by telegram, proof of the deposit in the post office or telegraph office of such notification and direction, with postage or charges duly prepaid and correctly addressed, shall be prima facie evidence of the fact of such notification and direction having been given, and of the time when the same was given. [Id.]

Art. 7297. [7661] [5212a] Duty to sue.—The district or county attorney of the respective counties of this State, by order of the commissioners court, shall institute suit in the name of the State for recovery of all money due the State and county as taxes due and unpaid on unrendered personal property; and in all suits where judgments are obtained under this law, the person owning the property on which there are taxes due the State and county shall be liable for all costs. The State and county shall be exempt from liability for any costs growing out of such action. All suits brought under this article for the recovery of taxes due on personal property shall be brought against the person or persons who owned the property at the

time such property should have been listed or assessed for taxation. No suit shall be brought until after demand is made by the collector for taxes due, and no suit shall be brought for an amount less than twenty-five dollars. Such suits may be brought for all taxes so due and unpaid for which such delinquent tax payer may be in arrears for and since the year 1886.

Art. 7298. [7662] **Limitation not available.**—No delinquent tax payer shall have the right to plead in any court or in any manner rely upon any statute of limitation by way of defense against the payment of any taxes due from him or her either to the State, or any county, city or town. [Acts 1st C. S. 1895, p. 6; G. L. Vol. 10, p. 1052.]

CHAPTER NINE.

BACK TAXES ON UNRENDERED LANDS.

| | Article | | Article |
|-------------------------------------|---------|----------------------------|---------|
| Back taxes on unrendered lands..... | 7299 | Land sold, how | 7309 |
| Annual list | 7300 | Sale may be continued..... | 7310 |
| List forwarded | 7301 | Deed executed | 7311 |
| Board to value such lands..... | 7302 | Execution of deed | 7312 |
| Making of rolls | 7303 | Effect of deed | 7313 |
| Collector to give notice..... | 7304 | Report of sales | 7314 |
| Collections enforced | 7305 | Proceeds of sale | 7315 |
| List of lands sold to State..... | 7306 | Collections applied | 7316 |
| Sale | 7307 | Costs deducted | 7317 |
| Advertisement and redemption..... | 7308 | Unsold land reported | 7318 |

Art. 7299. [7663] [5213] **Back taxes on unredeemed lands.**—In all cases where lands or real estate have not been assessed for taxation for any year since the year one thousand eight hundred and seventy, the same shall be assessed and the taxes thereon collected in the mode prescribed in this chapter. [Acts 1876, p. 214; G. L. Vol. 8, p. 1050.]

Art. 7300. [7664] [5214] **Annual list.**—On the first day of July of each year, the Comptroller shall cause to be prepared a list of all unrendered lands in each county subject to taxation and not assessed, in which shall be specified the name of the original grantee, the abstract number, the number of acres, the year for which such lands were unrendered, and the rate of State and county taxes for such year. [Id.]

Art. 7301. [7665] [5215] **List forwarded.**—Upon completion of such lists, the Comptroller shall forward the same to the board of equalization of the respective counties, with the verification that the said list is a true and correct statement of all the unrendered land and real estate in _____ county for the year _____, as shown by the records of his office. [Id.]

Art. 7302. [7666] [5216] **Board to value such lands.**—Upon receipt of such list or lists by the board of equalization of such county, they shall value each tract of land or parcel of real estate so mentioned and described in the said lists at their true and full value, as near as can be ascertained, for the year it was omitted to have been rendered. [Id.]

Art. 7303. [7667] [5217] **Making of rolls.**—When the board of equalization completes the valuation, they shall cause to

be made out three separate rolls, in such manner as the Comptroller may prescribe; they shall place one in the hands of the tax collector, forward one to the Comptroller, and file one in the office of the county clerk for the inspection of the public. [Id.]

Art. 7304. [7668] [5218] **Collector to give notice.**—Upon receipt of the rolls by the tax collector, he shall advertise in some weekly newspaper published in his county, and, if no paper is published in his county, by posting printed circulars in not less than eight public places in his county, for four consecutive weeks, that the rolls for the collection of taxes on unrendered land and real estate have been placed in his hands, and that unless the taxes are paid within sixty days after the date of said notice he will proceed to collect the same as provided by law for the collection of delinquent taxes. [Id.]

Art. 7305. [7669] [5219] **Collections enforced.**—After the expiration of said sixty days, if the taxes on any such lands are not paid, the tax collector shall proceed to enforce the collection of said taxes in the mode provided in this title for the enforced collection of delinquent taxes; and he shall be entitled to the same fees and penalties as are allowed him for the collection of other delinquent taxes. [Id.]

Art. 7306. [7670] [5220] **List of lands sold to State.**—The Comptroller on or before the first day of each year, shall make out and forward to the tax collector of each county a full and complete list of all real estate situated in said county that has been previously, at tax sales, bid off to the State for taxes assessed in the county where the land is situated, since the thirty-first day of December, 1876, the owners of which have failed to redeem the same within two years from the date of said sale by payment or tender of payment to the proper officer of double the amount of taxes and costs for which said real estate was bid off to the State, together with all subsequent taxes that have become due on the same from the date of sale to the last date on which the same could have been redeemed. [Acts 1879, p. 79; G. L. Vol. 8, p. 1379.]

Art. 7307. [7671] [5221] **Sale.**—Each tax collector, within ninety days after receipt of said list, shall call to his aid the county surveyor of his county, and, as near as may be, ascertain if any lands contained in said list do not in fact exist in said county, or are embraced in other surveys conflicting therewith, and upon which the taxes have been paid; and, after deducting the same from said list, he shall proceed to sell each tract of land therein described, whether belonging to residents or non-residents, for the payment of such sums of money as may be designated on said list as due thereon, together with all costs that may accrue in advertising and selling the same as herein provided. [Id.]

Art. 7308. [7672] [5222] **Advertisement and redemption.**—The tax collector shall, prior to the sale of any real estate that has been previously bid off to the State at tax sales, the

owners of which have failed to redeem the same, advertise the real estate to be sold in some newspaper published in the county for six successive weeks, if there be such newspaper published therein, otherwise he shall post advertisements of said sale at the courthouse door and at one public place in each justice's precinct of his county for at least six weeks, giving in said advertisement, whether published or posted, such description of the lands to be sold as shall be given on the Comptroller's list, and stating the time, place and terms of sale, which shall be between legal hours on the first Tuesday of some specified month at the courthouse door at public outcry, to the highest bidder for cash; provided, that no real estate shall in any case be sold for less than the amount designated by the Comptroller as due thereon, together with all costs of advertisements and sale. The former owner of any such real estate, his heirs or assigns, may redeem the same at any time prior to the sale thereof, by the payment to the collector of the county in which such real estate is situated, or to the Comptroller, if in an unorganized county, of the amount designated by the Comptroller as due thereon, with costs of advertisement. If it shall at any time appear to the satisfaction of the Comptroller that any land has been sold to the State for taxes which have been paid, or that the sale has not been made in accordance with the law authorizing the sale of land for taxes, he shall, upon the payment of the amount that may be due thereon, cancel such sale; and in all cases he shall deliver to the owner of the land, or his agent, a certificate under the seal of his department, setting forth the fact that such land has been redeemed, or that such sale has been canceled, which certificate shall release the interest of the State, and the same may be recorded in the proper county as other conveyances of real estate are recorded. [Acts 1884, S. S. p. 31; Id. G. L. Vol. 9, p. 563.]

Art. 7309. [7673] [5223] **Land sold, how.**—At the time and place appointed for said sale, the tax collector shall offer for sale each separate parcel of the real estate advertised, and shall sell the same to the bidder who will offer the largest amount of money therefor. [Acts 1879, p. 79; G. L. Vol. 8, p. 1379.]

Art. 7310. [7674] [5224] **Sale may be continued.**—If the sale of the real estate advertised as provided herein shall not be completed on the day it is commenced, said sale may be continued for ten consecutive days, from day to day, by announcement of the tax collector to that effect; and the said collector may, if there be on any day a less number than three bidders present, adjourn said sale to the first Tuesday in the following month. [Id.]

Art. 7311. [7675] [5225] **Deed executed.**—When a sale has been made of any real estate as herein provided, the tax collector, upon payment of the amount bid for the same, shall make, execute and deliver to the purchaser a deed for such real estate, specifying in said deed the cause and date of sale, the

number of acres sold if the same can be ascertained, the name of the person, firm, corporation or company in whose name the land was assessed, and all such descriptive information as may be necessary to identify the property conveyed; provided, that the purchaser may, after payment, as described in this article, ask a delay of sixty days within which to have said real estate surveyed by the county surveyor, said survey to be made at the expense of the purchaser, and, upon a certificate from the collector directed to the surveyor, that the person named in the certificate has purchased and paid for the same, not to exceed one dollar for each survey, to be paid for out of the sale of such survey. [Id.]

Art. 7312. [7676] [5226] **Execution of deed.**—When a survey has been made, as provided in the preceding article, and a copy of the field notes, certified to as true and correct by the county surveyor, filed with the tax collector, the said collector shall thereupon make, execute and deliver to the purchaser a deed to said real estate, which deed shall, in addition to the requisite hereinabove named, contain the field notes certified by the county surveyor. [Id.]

Art. 7313. [7677] [5227] **Effect of deed.**—Deeds made, executed and delivered by tax collectors under the authority of this chapter shall be held to vest a good and perfect title to the real estate therein described in the purchaser, and may be impeached only for fraud; provided, that the former owner shall have two years from the date of said deed to redeem the same by paying to the purchaser double the amount paid for said land by the purchaser at such sale, together with all subsequent taxes paid by the purchaser, with eight per cent interest on the amount of such subsequent taxes. [Id.]

Art. 7314. [7678] [5228] **Report of sales.**—Within thirty days after sales made under the provisions of this chapter, the tax collector shall make a report to the commissioners court of his county, and also to the Comptroller, giving in said reports such description of the real estate sold as is given in the Comptroller's list, and stating the amounts due the State, county and collector respectively, and the amount for which said land was sold, and the name of the party to whom each tract was sold. [Id.]

Art. 7315. [7679] [5229] **Proceeds of sale.**—Tax collectors shall, within sixty days after payments for real estate sold under the provisions of this chapter, after deducting from the proceeds of sale all costs due to them or their predecessors in said office, pay into the county treasury of the county in which said real estate is situated the amount of taxes shown by the Comptroller's list to be due to said county, and the balance of said proceeds shall be paid by him into the State Treasury within the said sixty days, in such manner as may be directed by the Comptroller. [Id.]

Art. 7316. [7680] [5230] **Collections applied.**—Taxes col-

lected by the State or county, by sales made under the provisions of this chapter, shall be placed to the credit of the different funds for which originally assessed under the direction respectively of the Comptroller and the commissioners court of the county in which the sale is made; the balance of the proceeds, after satisfying all taxes, penalties and costs accrued, shall, under the direction of the Comptroller, be placed in the State Treasury, subject to be reclaimed by the owner of the land on proof as required in case of escheated estates. [Acts 1884, S. S. p. 31; G. L. Vol. 9, p. 563.]

Art. 7317. [7681] [5231] **Costs deducted.**—The tax collector shall be entitled to deduct and retain out of the proceeds of sale of each separate parcel of real estate sold, as hereinbefore provided:

1. Such amount as may be designated in the Comptroller's list as costs due thereon to the collector.

2. If the advertisement of sale is published in a newspaper, such a proportion of the actual amount paid for advertising as the number of acres in such separate parcel sold bears to the whole number of acres advertised; or, if the advertisements are posted, the sum of one dollar.

3. Two dollars for every deed made, executed, and delivered under the provisions of this chapter. [Acts 1879, p. 79; G. L. Vol. 8, p. 1379.]

Art. 7318. [7682] [5232] **Unsold land reported.**—If, after the expiration of ninety days after the receipt by the tax collector of the Comptroller's list, any real estate described in said list shall remain unsold, the said collector shall make separate reports of such fact to the commissioners court of his county and the Comptroller respectively; and the said parcels of real estate shall be embraced in the next list furnished by the Comptroller to the tax collector. [Id.]

CHAPTER TEN.

DELINQUENT TAXES.

| Article | Article |
|--------------------------------------|---------------------------------------|
| "Real property" | Fees taxed as costs..... |
| A lien on land..... | "Tract"..... |
| Listed by tax collector..... | Contract with attorney |
| Delinquent tax record..... | Penalty..... |
| Delinquent tax list published..... | Cities may avail |
| Notice to owners of delinquency..... | Exemptions from this chapter..... |
| Notice, how made up..... | May redeem before sale..... |
| Suits to foreclose tax lien..... | May redeem from State..... |
| Unknown owner..... | Evidence of title to redeem land..... |
| Proceedings in tax suits..... | Unknown or non-resident..... |
| Defense to tax suits..... | Similar proceedings by cities and |
| Sheriff to execute deeds..... | independent school districts..... |
| Fees of tax collector..... | Lands platted and numbered..... |
| Other fees..... | Separate payments..... |
| | |

Art. 7319. [7683] **"Real property."**—For the purpose of taxation, real property shall include all lands within this State, and all buildings and fixtures thereon and appertaining thereto, except such as are expressly exempted by law. [Acts 1895, p. 50; Acts 1897, p. 132; G. L. Vol. 10, pp. 780-1186.]

Art. 7320. [7684] **A lien on land.**—All lands or lots which have been returned delinquent or reported sold to the State, or to any city or town, for taxes due thereon since the first day of January, 1885, or which may hereafter be returned delinquent or reported sold to the State, or to any city or town, shall be subject to the provisions of this chapter, and said taxes shall remain a lien upon the said land, although the owner be unknown, or though it be listed in the name of a person not the actual owner; and though the ownership be changed, the land may be sold under the judgment of the court for all taxes, interest, penalty and costs shown to be due by such assessment for any preceding year. [Acts 1897, p. 132.]

Art. 7321. [7685] **Listed by tax collector.**—The commissioners court of each county shall cause to be prepared by the tax collector, at the expense of the county (the compensation for making out the delinquent tax record to be fixed by the commissioners court) a list of all lands, lots or parts of lots sold to the State for taxes since the first day of January, 1885, and which have not been redeemed in their respective counties and unorganized counties attached thereto, and have such lists recorded in books to be called the "Delinquent Tax Record," showing when the lands or lots were reported delinquent or sold to the State for taxes, also the name of the owner at the time of such sale or delinquency, if known, the number of acres, the amount of taxes due when first sold, and the amount of all taxes assessed against the owner thereof and returned delinquent for each year as shown by the records of the tax collector's office; and, in making up the list or lists contemplated by this chapter, corrections and omissions in the description of any real estate embraced in such list or lists shall be made, so that when the corrections are made and the omissions supplied, the description will be such as is given in the abstracts of all the titled and patented lands in the State of Texas, or such as may be furnished by the Land Commissioner, and it shall be required, in bulk assessments, to apportion to each tract or lot of land separately, its pro rata share of the entire tax, penalty and cost. The list for each county, when certified to by the county judge, and the assessment rolls and books on file in the tax collector's office, shall be prima facie evidence that all the requirements of the law have been complied with by the officers charged with any duty thereunder, as to the regularity of listing, assessing, levying of all taxes therein mentioned, and reporting as delinquent or sold to the State any real estate whatsoever, and that the amount alleged against said real estate is a true and correct charge; and, in case the description of the property in said list or assessment rolls or books is not sufficient to properly identify the same, and of which property there is sufficient description in the inventories in the assessor's office, then said inventories shall be admissible as evidence of the description of said property. This delinquent tax record for each county shall be

delivered to and preserved by the county clerk in his office; and the commissioners court shall cause a duplicate of same to be sent to the Comptroller; provided, where the records are incomplete in any county, the Comptroller shall furnish such county with a certified copy of the delinquent list for any year or years. [Id.]

Art. 7322. [7686] Delinquent tax record.—On receipt of such delinquent tax record the county clerk of each of the counties of this State, respectively, shall certify the same to the commissioners court for examination and correction, and he shall thereafter cause the same to be recorded in a book labeled the "Delinquent Tax Record of _____ County." The delinquent tax record shall be arranged numerically as to abstract numbers, and shall be accompanied by an index showing the names of delinquents in alphabetical order. [Id.]

Art. 7323. [7687] Delinquent tax list published.—Upon the completion of said delinquent tax record by any county in this State the commissioners court may, in their discretion, cause the same to be published in some newspaper published in the county once each week for three consecutive weeks, but if no newspaper is published in the county, such list may be published in a newspaper outside the county to be designated by the commissioners court, by contract duly entered into, and a publisher's fee of twenty-five cents shall be taxed against each such tract or parcel of land so advertised, which fee, when collected, shall be paid into the county treasury; and the commissioners court of said county shall not allow for said publication a greater amount than twenty-five cents for each tract of land so advertised and such publication and any other publication in a newspaper provided for in this chapter may be proved by affidavit of the printer of the newspaper in which the publication was made, his foreman or principal clerk, annexed to a copy of the publication, specifying the times when and the paper in which publication was made. All corrections made in said record under this article shall be noted in the minutes of the commissioners court, and shall be certified by the county clerk to the Comptroller, who shall note the same upon his delinquent tax record. If such delinquent tax record be not published correctly, in accordance with the copy furnished such newspaper, then no compensation shall be allowed for such publication, but failure to so publish such list shall be no defense to a suit for taxes due. [Id. Acts 2nd. C. S. 1923, p. 33.]

Art. 7324. Notice to owners of delinquency.— During the months of April and May each year, or as soon thereafter as practicable the collector of taxes in each county of this State shall mail to the address of each record owner of any lands or lots situated in the county a notice showing the amount of taxes delinquent or past due and unpaid against all such lands and lots as shown by the delinquent tax record of the county on file in the office of the tax collector, a duplicate of which shall also

have been filed in the office of the Comptroller of the State and approved by such officer, but failure to send or receive such notice shall be no defense to a suit brought for taxes. Such notice shall also contain a brief description of the lands and lots appearing delinquent and the various sums or amounts due against such lands and lots for each year they appear to be delinquent, according to such records, and it shall also recite that unless the owner of such lots or land described therein shall pay to the tax collector the amount of taxes, interest, penalties and costs set forth in such notice within thirty days from the date of notice, that the county or district attorney will institute suits for the collection of such moneys and for the foreclosure of the constitutional lien against such lands and lots. Each tax collector, as soon after mailing such notice as practicable, shall furnish to the county or district attorney duplicates of all such notices mailed to the tax payers in accordance with the provisions of this law, and also, lists of lands and lots located in the county appearing on the delinquent tax records in the name of "unknown" or "unknown owners," or in the name of persons whose correct address or place of residence in or out of the county said collector is unable by the use of diligence to discover or ascertain, against which taxes are delinquent, past due, and unpaid, and such lists or statements shall show the amount of State and county taxes delinquent, past due, and unpaid against each such tract or lot of land for each year they appear to be delinquent according to the delinquent tax records of the county, and shall likewise contain a brief description of all such lands and lots. The tax collector shall furnish on demand of any person, firm or corporation like statements with reference to any particular lot or tract of land for whatever purpose desired, which shall be in all instances certified by him with the seal of his office attached. Whenever any person, or persons, firm or corporation shall pay to the tax collector all the taxes, interest, penalties and costs shown by the delinquent tax records of the county to be due and unpaid against any tract, lot or parcel of land for all the years for which taxes may be shown to be due and unpaid, prior to the institution of suit for the collection thereof, the tax collector shall issue to such person or persons, firm or corporation, a receipt covering such payment as is now required by law. [Acts 1915, p. 250; Acts 2nd. C. S. 1919, p. 184; Acts 2nd C. S. 1923, p. 32.]

Art. 7325. Notice, how made up.—In making up the notices or statements provided for in the preceding article, each tax collector shall rely upon the delinquent tax records compiled as required by law, approved by the commissioners court, and a duplicate of which has been filed in the office of the Comptroller, and which has or may be approved by the Comptroller. The tax collector, whenever there shall be one year or more of back taxes that have not been included in such delinquent tax

records, shall prepare or cause to be prepared a supplement to such records which shall be prepared in duplicate, one copy to be filed in the office of the county clerk and one copy thereof to be furnished to the Comptroller subject to his approval; and whenever said supplement shall have been approved by the commissioners court and by the Comptroller, the tax collector shall rely thereon for the data covering delinquent taxes for said years in making out the notices or statements provided for in the preceding article. Said tax collector, in making up said delinquent tax record and supplement, shall examine the records of the district court and county clerk's office of his county, and no tract of land shall be shown delinquent on any delinquent tax record for any year where the records of the district court or the county clerk's office show that the taxes for said year have been paid. It shall be the duty of each tax assessor to enter the post-office address of each and every tax-payer after his name on the tax rolls, and the Comptroller shall provide a column for the entry of such addresses on the sheets furnished the assessors for making up the tax rolls. [Acts 1915, p. 250; Acts 2nd. C. S. 1923, p. 33.]

Art. 7326. [7688] Suits to foreclose tax lien.—Whenever any taxes on real estate have become delinquent it shall be the duty of the county attorney upon the expiration of the thirty days notice provided for in the two preceding articles or as soon thereafter as practicable, to file suit in the name of the State of Texas in the district court of the county where such real estate is situated, for the total amount of taxes, interest, penalty and costs that have remained unpaid for all years since the thirty-first day of December, 1908, with interest computed thereon to the time fixed for the trial thereof at the rate of six per cent per annum, and shall pray for judgment for the payment of the several amounts so specified therein and shown to be due and unpaid by the delinquent tax records of said county; and also that such land be sold to satisfy said judgment for all taxes, interest, penalty and costs, and for such other relief as the State may be entitled to under the law and facts. All suits to enforce the collection of taxes as provided in this law shall include all lands in the county where the suit is brought, owned by the same person on which delinquent taxes are due, and shall take precedence over all other suits pending in said district court. If through mistake, oversight or otherwise any tax due on any land owned by the defendant is omitted from such suit, such omission shall not be any defense against the collection of the tax due and sued for. All delinquent tax records of said county in any county where such suit is brought shall be prima facie evidence of the true and correct amount of taxes and costs due by the defendant or defendants in such suit, and the same or certified copies thereof shall be admissible in the trial of such suit as evidence thereof. Such suit shall be brought as an ordinary foreclosure for debt, with averments as to the ex-

istence of a lien upon such land for such taxes, with interest at the rate of six per cent per annum, and shall pray for judgment for the foreclosure of the said lien and sale of said lands as under ordinary execution. The county attorney, or the attorney employed by the commissioners court, shall sign such petition as attorney for plaintiff. The county tax collector and county tax assessor shall furnish all affidavits, certified copies of the records of their respective offices and such other evidence as may be in their possession by virtue of such office as may be applied for by the proper attorney prosecuting such suit, and shall be allowed a fee of fifty cents for each certified copy furnished upon such application. If the amount of taxes delinquent is not more than five dollars the commissioners court may have such suit for five dollars or less instituted or not as said court may deem to be for the best interests of the county. [Acts 1895, p. 50; Acts 1897, p. 132; Acts 2nd C. S. 1923, p. 34; Acts 3rd C. S. 1923, p. 184.]

Art. 7327. Unknown owner.—In respect to lands and lots appearing on lists furnished by the tax collector to the county or district attorney in accordance with the provisions of this law, as lands and lots located in the county which appear on the delinquent tax record in the name of "unknown" or "unknown owner," or in the name of persons whose correct address or place of residence in or out of the county said collector has been unable, by due diligence to discover or ascertain, the county attorney or in the counties having no county attorney, the district attorney, immediately after the lists of such lands have been furnished him by the collector shall proceed to collect all taxes, penalty, interest and costs then due against the same in the manner prescribed in this chapter. [Acts 2nd C. S. 1919, p. 166.]

Art. 7328. [7689] Proceedings in tax suits.—The proper persons, including all record lien holders, shall be made parties defendant in such suit, and shall be served with process and other proceedings had therein as provided by law in ordinary foreclosure suits in the district courts of this State; and in case of foreclosure an order of sale shall issue and the land sold thereunder as in other cases of foreclosure; but if the defendant or his attorney shall, at any time before the sale, file with the officer in whose hands any such order of sale shall be placed, a written request that the property described therein shall be divided and sold in smaller tracts than the whole, together with the description of such smaller tracts, then such officer shall sell the lands in such subdivisions as defendant may request, and in such case shall sell only as many subdivisions, as near as may be, as are necessary to satisfy the judgment, interest, penalty and costs; and after the payment of the taxes, interest, penalty and costs adjudged against it, the remainder of the purchase price, if any, shall be paid by the sheriff to the clerk of the court out of which said execution or other final process is-

sued to be retained by him subject to the order of the court for a period of two years, unless otherwise ordered by the court, after which time the court may order the same to be paid to the State Treasurer, who shall hold same in trust to be paid to the owner against whom said taxes were assessed; provided, any one claiming the same shall make proof of his claim to the satisfaction of the State Treasurer within three years after the sale of said land or lots, after which the same shall be governed by the law regulating escheat. If there shall be no bidder for such land the county attorney, sheriff or other officer selling the same, shall bid said property off to the State for the amount of all taxes, penalty, interest and costs adjudged against such property, and the district clerk shall immediately make report of such sale in duplicate, one to the Comptroller and one to the commissioners court, on blanks to be prescribed and furnished by the Comptroller. Where the property is bid off to the State, the sheriff shall make and execute a deed to the State, using forms to be prescribed and furnished by the Comptroller, showing in each case, the amount of taxes, interest, penalty and costs for which sold, and the clerk's fees for recording deeds. He shall cause such deeds to be recorded in the record of deeds by the county clerk in his county, and when so recorded, shall forward the same to the Comptroller. The county clerk shall be entitled to a fee of one dollar for recording each such deed to the State, to be taxed as other costs. When land thus sold to the State shall be redeemed the tax collector shall make the proper distribution of the moneys received by him in such redemption, paying to each officer the amount of costs found to be due, and to the State and county the taxes, interest and penalty found to be due each respectively. If any of the land thus sold to the State is not redeemed within the time prescribed by this law, the sheriff shall sell the same at public outcry to the highest bidder for cash at the principal entrance to the court house in the county wherein the land lies, after giving notice of sale in the manner now prescribed for sale of real estate under execution, provided when notice is given by posting notices, one of the said notices shall be posted in a conspicuous place upon the land to be sold. Said notice shall contain a legal description of the land to be sold; the date of its purchase by the State, the price for which the land was sold to the State; that it will be sold at public outcry to the highest bidder for cash, date and place of sale. All sales contemplated herein shall be made in the manner prescribed for the sale of real estate under execution, except that they must be made between the hours of two o'clock p. m. and 4 o'clock p. m. and the sheriff is hereby authorized, and it is hereby made his duty to reject any and all bids for said land when in his judgment the amount bid is insufficient or inadequate, and in event said bid or bids are rejected the land shall be re-advertised and offered for sale as provided for herein, but the acceptance by the sheriff of the bid

shall be conclusive and binding on the question of the sufficiency of the bid, and no action shall be sustained in any court of this State to set aside said sale on grounds of the insufficiency of the amount bid and accepted. Nothing herein shall be construed as prohibiting the State, acting through the county attorney of the county wherein the land lies, or its Attorney General, from instituting an action to set aside the said sale on the grounds of fraud or collusion between the officer making the sale and the purchaser. The sheriff shall send the amount received from such sale to the State Treasurer after deducting the amount of the county taxes, interest and penalty of the county tax which he shall pay to the county treasurer. The sheriff, in behalf of the State, shall execute a deed conveying title to said property when sold and paid for. [Acts 1895, p. 50; Acts 1897, p. 132; Acts 2nd C. S. 1923, p. 35; Acts 3rd C. S., p. 181.]

Art. 7329. Defense to tax suits.—There shall be no defense to a suit for collection of delinquent taxes, as provided for in this chapter except:

1. That the defendant was not the owner of the land at the time the suit was filed.
2. That the taxes sued for have been paid, or
3. That the taxes sued for are in excess of the limit allowed by law, but this defense shall apply only to such excess. [Acts 2nd C. S. 1923, p. 36.]

Art. 7330. Sheriff to execute deeds.—In all cases in which lands have been sold, or may be sold, for default in the payment of taxes, the sheriff selling the same, or any of his successors in office, shall make a deed or deeds to the purchaser or to any other person to whom the purchaser may direct the deed to be made, and any such deed shall be held in any court of law or equity in this State to vest good and perfect title in the purchaser thereof, subject to be impeached only for actual fraud. [Acts 1895, p. 50; G. L., Vol. 10, p. 780; Acts 1897, p. 132; G. L., Vol. 10, p. 1186.]

Art. 7331. [7691] Fees of tax collector.—For preparing the annual delinquent list of assessments charged to the tax collector upon the tax roll, but which have not been collected at the time of his annual settlement with the State and county, separating the property previously sold to the State from that reported sold as delinquent for preceding years and for prorating the State taxes into State revenue, State school and State pension, calculating the penalty, extending it and adding it in with other taxes, balancing the delinquent lists and certifying it to the commissioners court and the Comptroller, the tax collector shall be entitled to a fee of one dollar for each correct assessment of land to be sold, said fee to be taxed as costs against the delinquent. Provided, that in no case shall the State or county be liable for said fee which shall be additional and cumulative of all other fees now allowed by law and shall not be accounted

for under the fee bill as fees of office. For checking up and taking off delinquency, separating and assorting various tracts or each assessment, prorating the taxes thereon, arranging the items by abstract numbers or lot and block numbers, and compiling the delinquent tax record herein required to be compiled whenever there shall be as many as two years of back taxes that have not been included in the delinquent record, the tax collector shall be paid out of the general fund of the county, five cents for each written line of the original of such delinquent record, not to exceed twenty-five cents for any one tract or abstract rendered, returned delinquent and owned by one taxpayer; such fee to be taxed as costs, and to be paid back into the general fund of the county when collected. For issuing notices to taxpayers, furnishing copies to the county, district or delinquent tax attorneys, issuing statements in regard to particular tracts of land required by this law, preparing and issuing cancellations, calculating and preparing redemption certificates, and receipts, reporting and crediting redemptions, posting Comptroller redemption numbers on the delinquent record, mailing certificates of redemption to taxpayers after approval by the Comptroller, the tax collector shall receive five per cent of all delinquent taxes collected by him, which, together with five cents per line compensation for compiling the delinquent record as above provided shall be accounted for as fees of office, and shall not be retained by such tax collectors so as to increase the maximum compensation now allowed by law for such respective office. [Acts 3rd C. S. 1923, p. 182.]

Art. 7332. [7691] **Other fees.**—The county attorney or district attorney shall represent the State and county in all suits against delinquent taxpayers that are provided for in this law, and all sums collected shall be paid immediately to the county collectors. In all cases the compensation for said attorney shall be five dollars for the first tract in one suit, and one dollar for each additional tract involved in the same suit; provided, that those county attorneys who have or may institute said suits shall be entitled to an equal division with their successors in office of the fees allowed herein on all suits instituted by them where the judgment has not been obtained prior to the vacation of their office. The sheriff shall be entitled to a fee of one dollar for selling and making deed thereto to each purchaser of land that he sells under judgment for taxes; and for executing citation he shall receive the same fees allowed by law for similar services in tax suits. The district clerk shall be entitled to a fee of one dollar and fifty cents in each case to be taxed as costs of suit. The county clerk, for making out and recording the data of each delinquent assessment and for certifying same in the minutes of the commissioners court and for all other services rendered in such suits shall receive the sum of one dollar. Where such suits are brought against delinquents to recover taxes due by them to

the State and county, and the said delinquent pays the amount of tax, interest, penalties, and all accrued costs to the county collector during the pendency of such suit, then the county attorney shall receive as compensation therefor two dollars for the first tract and one dollar for each additional tract embraced in said suit; and the district clerk shall receive only one dollar in each case; but these fees shall be paid in lieu of the fees provided for officers where such suits are brought as herein provided. All fees provided for the officers herein mentioned shall be in addition to fees allowed by law to such officers, and shall not be accounted for by said officers as "fees of office." [Id.]

Art. 7333. [7691] **Fees taxed as costs.**—In each case such fees shall be taxed as costs against the land to be sold under judgment for taxes, and paid out of the proceeds of sale of same after the taxes, penalty and interest due thereon are paid, and in no case shall the State or county be liable therefor. [Id.]

Art. 7334. [7691] **"Tract."**—The term "tract" shall mean all lands or lots in any survey, addition or subdivision or part thereof owned by the party being sued for delinquent taxes. [Id.]

Art. 7335. [7691] **Contract with attorney.**—Whenever the commissioners court of any county after thirty days written notice to the county attorney or district attorney to file delinquent tax suits and his failure to do so, shall deem it necessary or expedient, said court may contract with any competent attorney to enforce or assist in the enforcement of the collection of any delinquent State and county taxes for a per cent on the taxes, penalty and interest actually collected, and said court is further authorized to pay for an abstract of property assessed or unknown and unrendered from the taxes, interest and penalty to be collected on such lands, but all such payment and expenses shall be contingent upon the collection of such taxes, penalty and interest. It shall be the duty of the county attorney, or of the district attorney, where there is no county attorney, to actively assist any person with whom such contract is made, by filing and pushing to a speedy conclusion all suits for collection of delinquent taxes, under any contract made as herein above specified; provided that where any district or county attorney shall fail or refuse to file and prosecute such suits in good faith, he shall not be entitled to any fees therefrom, but such fees shall nevertheless be collected as a part of the costs of suit and applied on the payment of the compensation allowed the attorney prosecuting the suit, and the attorney with whom such contract has been made is hereby fully empowered and authorized to proceed in such suits without the joinder and assistance of said county or district attorneys. [Acts 2nd C. S. 1923, p. 37; Acts 3rd C. S. 1923, p. 182.]

Art. 7336. [7692] **Penalty.**—If any person fail or refuse to

pay the taxes imposed upon him or his property by law until after the thirty-first day of January next succeeding the return of the assessment rolls of the county to the Comptroller, a penalty of ten per cent on the entire amount of such taxes shall accrue, which penalty, when collected, shall be paid proportionately to the State and county; and the collector of taxes shall by virtue of his tax rolls seize and levy upon and sell so much personal property belonging to such person as may be sufficient to pay his taxes, together with the penalty above provided, interests and all costs accruing thereon. If no personal property be found for seizure and sale as above provided, the collector shall, on the thirty-first day of March of each year for which the State and county taxes for the preceding year remain unpaid, make up a list of the lands and lots on which the taxes for such preceding years are delinquent, charging against the same all taxes and penalties assessed against the owner thereof. Said list shall be made in triplicate and shall be presented to the commissioners court for examination and correction of any errors that may appear, and when so examined and corrected by the commissioners court, such lists in triplicate shall be approved by said court, and one copy thereof shall be filed with the county clerk, and one copy retained and preserved by the collector and one copy forwarded to the Comptroller with his annual settlement reports. Such lists as furnished by the tax collector and corrected by the commissioners court, and the rolls or books on file in the collector's office, or either said list or assessment rolls or books, shall be prima facie evidence that all the requirements of the law have been complied with by the officers of courts charged with any duty thereunder as to the regularity of listing, assessing, levying all taxes therein mentioned and reporting as delinquent any real estate whatsoever, and that the amount alleged against said real estate is a true and correct charge; and, in cases in which the description of the real estate in said list or assessment rolls or books is not sufficient to identify the same, and of which property there is a sufficient description in the inventories of the assessor's office, then said inventories shall be admissible as evidence of the description of said property. [Acts 1895, p. 50; G. L. Vol. 10, p. 780; Acts 1897, p. 132; G. L. Vol. 10, p. 1186; Acts 2nd C. S. 1923, p. 39.]

Art. 7337. [7693] Cities may avail.—Any incorporated city or town or school district shall have the right to enforce the collection of delinquent taxes due it under the provisions of this chapter. [Acts 1897, p. 132; G. L. Vol. 10, p. 1186.]

Art. 7338. [7694] Exemptions from this chapter.—Real estate which may have been rendered for taxes and paid under erroneous description given in assessment rolls, or lands that may have been duly assessed and taxes paid on one assessment, or lands which may have been assessed and taxes paid thereon in a county other than the one in which they are lo-

cated, or lands which may have been sold to the State and upon which taxes have been paid and through error not credited in the assessment rolls, shall not be deemed subject to the provisions of this chapter. When called upon, the Land Commissioner shall furnish the county judge of any county compiling its own delinquent tax record with such information as may enable him to determine the validity or locality of such surveys and grants as have not been shown by the printed abstracts of the Land Office. [Id.]

Art. 7339. [7695] May redeem before sale.—Any delinquent taxpayer whose lands have been returned delinquent or reported sold to the State for taxes due thereon, or any one having an interest therein, may redeem the same at any time before his lands are sold under the provisions of this chapter, by paying to the collector the taxes due thereon since January first, 1885, with interest at the rate of six per cent per annum and all costs and the penalty of ten per cent. [Id.]

Art. 7340. [7696-97] May redeem from State.—Where lands or lots shall hereafter be sold to the State or to any city or town for taxes under decree of court in any suit or suits brought for the collection of taxes thereon or by a collector of taxes, or otherwise, the owner or any one having an interest in such lands or lots shall have the right at any time within two years from the date of sale to redeem the same upon payment of the amount of taxes for which sale was made, together with all costs and penalties required by law, and also payment of all taxes, interest, penalties and costs on or against said land or lots at the time of the redemption. [Acts 1897, p. 132, Sec. 14; Acts 1905, p. 323; Acts 1907, p. 282; Acts 2nd C. S. 1909, p. 400; Acts 1st C. S. 1913, p. 25; Acts 1st C. S. 1915, p. 58; Acts 4th C. S. 1918, p. 155; Acts 3rd C. S. 1920, p. 103.]

Art. 7341. [7701] Evidence of title to redeem land.—In all cases where lands in this State have been or may be sold for taxes, and the owner of the land, at the time of such sale, shall desire to redeem the same, under the provisions of the Constitution, or of laws enacted on that subject, it shall be sufficient to entitle such owner to redeem from the purchaser or purchasers thereof for him to have had a paper title to such land, or to have been in possession of such land in person or by tenant, at the time of the institution of the suit under which sale was made, or when such sale was made; and the existence of such facts and conditions shall be sufficient prima facie evidence of ownership to entitle the party so claiming ownership to the right to redeem such land; and he shall not be required to deraign title from the sovereignty, or shall any hiatus or defect in his chain of title defeat the offered redemption. Nothing herein shall be held to limit the right of one offering to redeem to prove ownership otherwise than herein provided, nor prevent any one having the superior title from redeeming such land within two years from the date of the tax sale by paying to the person who has

previously redeemed such lands the amounts provided by law. [Acts 1905, p. 118.]

Art. 7342. [7698] **Unknown or non-resident.**— Whenever the owner or owners of any lands or lots that have been or may be returned delinquent or reported sold to the State for the taxes due thereon for any year or number of years, are non-residents of the State, or the name of the owner or owners of said lands or lots be unknown, then, upon affidavit of the attorney for the State setting out that the owner or owners are non-residents, or that the owner or owners are unknown to the attorney for the State and after inquiry cannot be ascertained, said parties shall be cited and made parties defendant by notice in the name of the State and county, directed to “all persons owning or having or claiming any interest in the following described land delinquent to the State of Texas and county of _____, for taxes, to-wit: (here set out description of the land as contained on the assessment roll and such further description obtainable in the petition),” and further stating “which said land is delinquent for taxes for the following amounts, \$_____ for State taxes, and \$_____ for county taxes and you are hereby notified that suit has been brought by the State for the collection of said taxes, and you are commanded to appear and defend such suit at the _____ term of the district court of _____ County, and State of Texas, and show cause why judgment shall not be rendered condemning said land (or lot), and ordering sale and foreclosure thereof for said taxes and costs of suit,” which notice shall be signed by the clerk and shall be published in some newspaper published in said county one time a week for three consecutive weeks. If there is no newspaper published in the county, then notice may be given by publication in a paper in an adjoining county. A maximum fee of two and one-half cents per line (seven words to count a line) for each insertion may be taxed for publishing said citation. If the publication of such citation cannot be had for such fee, then publication of the citation herein provided may be made by posting a copy at three different places in the county, one of which shall be at the courthouse door. It shall be lawful in all cases to set forth in the petition the names of all parties interested as far as ascertained, and make them parties, and also to join and make defendants all persons having or claiming any legal or equitable interest in the land described in the petition. Such suit, after such publication, shall be proceeded with as in other cases; and whether any party or parties make defense or not on the trial of said case, the State and county shall be entitled to prove the amount of taxes due, and shall have a decree for the sale of said land or lot as in those cases where defendant owners have been personally served and defend suit. A sale of said land or lot shall be had and be as binding as where defendants are personally served with process. In all suits for taxes due, the defendant shall be entitled to credits he can show due him for any year or

number of years for which he may be able to produce receipts or other positive proof showing the payment of such taxes. [Acts 1897, p. 138; G. L. Vol. 10, p. 1192.]

Art. 7343. [7699] **Similar proceedings by cities and independent school districts.**—In any incorporated city or town in which any tracts, lots, outlots or blocks of land, situated within the corporate limits of said city or town have been returned delinquent, or reported sold to said city or town for the taxes due thereon, the governing body may prepare or cause to be prepared lists of delinquents in the same manner as provided in this chapter, and such lists shall be certified to as correct by the mayor of said city or town, if any, and if said city or town has no mayor, by the presiding officer of the governing body. After said lists have been properly certified to, the governing body of the city may cause lists of delinquents to be published in a newspaper as provided for State and county delinquent taxes in this law. When twenty days from the date of last publication of said list or lists of delinquents has elapsed, the governing body of the city or town may direct the city attorney to file suits for collection of said taxes, or said governing body may employ some other attorney of the county to file suits and the city attorney or other attorney filing said suits shall be entitled to the same fees as allowed the county attorney or district attorney in suits for collection of State and county taxes, to be taxed as costs in the suit. Independent school districts may collect their delinquent taxes as above provided for cities and towns, the school board performing the duties above described for the governing body of cities, and the president of the school board performing the duties above prescribed for the mayor or other presiding officer. The school board may, when the delinquent tax lists and records are properly prepared and ready for suits to be filed, instruct the county attorney to file said suits. If the school board instructs the county attorney to file said suits and he fails or refuses to do so within sixty days the school board may employ some other attorney of the county to file suit. The county attorney, or other attorney, filing tax suits for independent school districts, shall be entitled to the same fees as provided by law in suits for State and county taxes. No other county officer shall receive any fees unless services are actually performed, and in that event he shall only receive such fees as are now allowed him by law for similar services in civil suits. The employment of an attorney to file suit for taxes for cities, towns or independent school districts shall authorize said attorney to file said suits, swear to the petitions and perform such other acts as are necessary in the collection of said taxes.

All laws of this State for the purpose of collecting delinquent State and county taxes are by this law made available for, and when invoked shall be applied to, the collection of delinquent taxes of cities and towns and independent school districts in so

far as such laws are applicable. [Id.; Acts 3rd C. S. 1920, p. 48; Acts 2nd. C. S. 1923, p. 39.]

Art. 7344. [7700] **Land platted and numbered.**—In counties in which the subdivisions of surveys are not regularly numbered, and in cities or towns in which the blocks or subdivisions are not numbered, or are so irregularly numbered as to make it difficult or impossible for the assessor to list the same, the commissioners court of such counties may have all the blocks and subdivisions of surveys platted and numbered so as to identify each lot or tract, and furnish the assessor with maps showing such numbering; and an assessment of any property by such numbering on said maps shall be sufficient description thereof for all purposes. Such maps or a certified copy of same or any part thereof, shall be admissible as evidence in all courts. The cost of making said survey and plats shall be defrayed by the county in which said property is situated, and of which said commissioners court ordered the said surveys and plat made and the cost of any map of a town or city shall be paid by such city or town when ordered by the town or city. [Acts 1897, p. 139; G. L. Vol. 10, p. 1193.]

Art. 7345. **Separate payments.**—When two or more lots or blocks or tracts of land are rendered in the same rendition with separate valuations, and the taxes due thereon become delinquent the tax collectors shall, when tendered, accept payment of the taxes due on each lot or block or tract of land having such separate valuation. [Acts 3rd. C. S. 1923, p. 185.]

CHAPTER ELEVEN.

IN CERTAIN CASES.

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| Property omitted from rolls..... | Article 7346 | Property listed by Comptroller..... | Article 7353 |
| Property listed assessed | 7347 | List to be posted | 7354 |
| List to operate a lien | 7348 | Unrendered lands assessed | 7355 |
| To be advertised | 7349 | Duty of commissioners court..... | 7356 |
| Assessments reduced | 7350 | Supplemental tax rolls | 7357 |
| Bulk assessments validated | 7351 | Fees of assessor | 7358 |
| Delinquent tax record published..... | 7352 | City may use county officers..... | 7359 |

Art. 7346. [7702] **Property omitted from rolls.**—Whenever any commissioners court shall discover through notice from the tax collector or otherwise that any real property has been omitted from the tax rolls for any year or years since 1884, or shall find that any previous assessments on any real property for the years mentioned are invalid, or have been declared invalid for any reason by any district court in a suit to enforce the collection of taxes on said properties, they may, at any meeting of the court, order a list of such properties to be made in triplicate and fix a compensation therefor; the said list to show a complete description of such properties and for what years such properties were omitted from the tax rolls, or for what years the assessments are found to be invalid and should be canceled and re-assessed, or to have been declared invalid and

thereby canceled by any district court in a suit to enforce the collection of taxes. No re-assessment of any property shall be held against any innocent purchaser of the same if the tax records of any county fail to show any assessment (for any year so re-assessed) by which said property can be identified and that the taxes are unpaid. The above exception, with the same limitation, shall also apply as to all past judgments of district courts canceling invalid assessments. [Acts 1905, p. 318.]

Art. 7347. [7703] Property listed assessed. — When said list has been so made up the commissioners court may, at any meeting, order a cancellation of such properties in said list that are shown to have been previously assessed, but which assessments are found to be invalid and have not been canceled by any former order of the commissioners court, or by decree of any district court; and shall then refer such list of properties to be assessed or re-assessed to the tax assessor who shall proceed at once to make an assessment of all said properties, from the data given by said list (the certificate of the Comptroller as to assessments or re-assessments made by the tax assessor shall not be necessary as required under Article 7207, but he shall furnish all blank forms needed, that uniformity may be had in all counties), and when completed shall submit the same to the commissioners court, who shall pass upon the valuations fixed by him; and, when approved as to the values, shall cause the taxes to be computed and extended at the tax rate in effect for each separate year mentioned in said list; and, in addition thereto, shall cause to be added a penalty equal in amount to what would be six per cent interest to the date of making said list from the date such properties would have been delinquent had same been properly rendered by the owner thereof at the time and for the years stated in said list; provided, that the certificate of any tax collector given during his term of office that all taxes have been paid to the date of such certificate on any certain piece of property, which is fully described in such certificate, or if the tax rolls of any county fail to show any assessments against such property sufficient to identify it, and that the same was unpaid at the dates such rolls may have been examined to ascertain the condition of any property as to taxes unpaid, this shall be a bar to any re-assessment of such property under this law for any years prior to the date of such certificate, or such examinations; provided, that the property referred to, when re-assessed, shall be held by an innocent purchaser, who has relied upon the correctness of such certificate, or the tax rolls heretofore referred to. [Id.]

Art. 7348. [7704] List to operate a lien. — The said list, when complete in all respects, and filed with the tax collector, shall constitute a valid lien against all the properties mentioned in said list for the full amount of taxes, penalties, officers costs, advertising and six per cent interest from the date of said list to the date of the payment of the full sum due on each separate

piece of property. A copy of said list and all cancellation orders shall be furnished to the Comptroller, and a copy filed with the county clerk. [Id.]

Art. 7349. [7705] To be advertised.—The commissioners court shall proceed to have such list of properties advertised in the manner provided in Article 7323 after which, suit may be filed in the same manner as provided by law for the enforced collection of delinquent taxes. [Id.]

Art. 7350. [7706] Assessments reduced.—In all cases of delinquent taxes of unrendered and unknown property, where there appears to be an assessment of the same at a valuation excessive and unreasonable, the commissioners court shall be authorized to correct or reduce such values on the request of the tax collector with a full statement of the facts in each case; which statement and the action had thereon and the name of each commissioner voting for or against the reduction in valuation asked for shall be entered upon the minutes of the court; and a certified copy of the action had thereon shall be furnished to the Comptroller, and, when the values are so corrected or reduced, payment of taxes shall be accepted in accordance with such reduction, to which shall be added interest, penalty, advertising and costs as provided by law. [Id.]

Art. 7351. [7708] Bulk assessments validated.—In all suits to enforce the collection of delinquent taxes, where the assessment of any property for any year is invalidated by reason of the failure of the assessor to comply with the provisions of law for the description of any lot, block or tract of land, or to give a separate value on each lot, block or tract of land, known as “bulk assessments” or to enter upon the lists (similar to that used for the listing of rendered property, to be signed by the owner) all items of property assessed to unknown owners, all such assessments are hereby validated and given the same force and effect as if the descriptions, the separate valuations and the listing were in all respects strictly in compliance with law; provided, as to description, that the descriptions given are sufficient to identify the property, as to separate values, that the valuations and the taxes shown upon the tax rolls (in what are called “bulk assessments”) can be fairly prorated to each separate lot, block or tract of land; and, as to listing, that the valuation given on the tax rolls upon properties assessed as unknown are found to have been entered upon the assessor’s block book as the original assessment, instead of listing as in rendered assessments, and then entering upon the tax rolls. [Id.]

Art. 7352. [7709] Delinquent tax record published.—The various counties which have not heretofore made and published a delinquent tax record, under provisions of chapter 103, acts of the regular session of the twenty-fifth legislature, are hereby authorized and it shall be their duty to make and publish the same to date hereof, and, when so done, it shall have the same force and effect as if made and published under that Act; and any county which has heretofore made a delinquent tax record

for any number of years is hereby authorized and empowered to re-compile the same to date hereof, and may compile each year thereafter under the provisions of said act. [Id.]

Art. 7353. [7710] Property listed by Comptroller.—Whenever it shall appear to the Comptroller from an inspection of the tax rolls of any county or otherwise, that any lands in such county subject to taxation have not been assessed for taxation for any year since and including the year 1900, he shall make a list of such lands and send the same to the tax assessor of such county by registered letter, accompanying such list with instructions to such tax assessor to assess such lands for taxes for the years for which they have not been assessed as shown by said list. [Acts 1905, p. 321.]

Art. 7354. [7711] List to be posted.—Upon receipt of such list, the tax assessor shall immediately post a copy of such notice and list at the court house door of his county, noting upon such copy the date of such posting; and the owners of the lands embraced in such list shall have the right, at any time within twenty days of such posting, to render the same to the tax assessor for the taxes for the years for which they have not been assessed for taxes, or for any of such years as shown by such notice, in the same manner as is provided for the rendition of other property for taxes under the provisions of the general laws for that purpose. [Id.]

Art. 7355. [7712] Unrendered lands assessed.—Should any of the said lands remain unrendered by the owners or owner thereof, under the provisions of the preceding article for any of the years for which the same have not been assessed according to said notice and lists, for twenty days after the date of the posting of such notice, it shall be the duty of the tax assessor, immediately upon expiration of such time, to assess for taxes at their true value such lands so remaining unrendered and unassessed for each of the years since and including the year 1900, and including the year such lists are made up by the Comptroller, listing the same in the name of unknown owners, and charging up to said lands the taxes, State and county, for which they are liable for each of such years, valuing such lands at their true and full value as provided in Article 7174. If any of said lands are lands purchased from the State as belonging to the school fund, the University, or any of the asylums of the State, and held under such contract of purchase upon which a part of the purchase money is still due, such lands being unpatented, no deduction shall be made in the value of said lands for, or on account of, such unpaid purchase money, but they shall be valued at their full and true value as though paid out and patented. [Id.]

Art. 7356. [7713] Duty of commissioners' court.—The tax assessor shall make up lists showing such assessments, and deliver the same to the county judge, who shall at once, unless a regular session is held within ten days thereafter, call a meeting of the commissioners court in special session, as a board

of equalization for the purpose of passing upon said assessment lists in the manner provided in case of regular assessments in so far as the provisions of the statute with regard thereto are applicable. The commissioners court without delay shall act upon said supplemented assessment lists, as to the value of the property embraced, and, when said values have been equalized as required by law, approve the same, and approve the rolls made up by the tax assessor in accordance therewith; provided, that the commissioners court shall have no authority to alter said assessment lists, or in any way interfere with such assessments, except as to the values of property embraced therein, in equalizing the same as provided by law, and to strike therefrom any lands that have been already assessed for taxes at their true market value for the years for which they are assessed on said supplemental rolls and such taxes paid. [Id.]

Art. 7357. [7714] Supplemental tax rolls.—After such supplemental assessment lists have been passed upon by the board of equalization as herein provided, supplemental tax rolls shall be prepared by the tax assessor and approved by the commissioners court as is required by law in case of the regular assessment for taxes; and thereafter the taxes due according to such supplemental rolls shall be collected as in case of other taxes, and, if not paid, such proceedings shall be had for their collection as in case of other taxes. [Id.]

Art. 7358. [7715] Fees of assessor.—For making the supplemental assessments provided herein, the tax assessor shall be entitled to the same fees to be paid in the same manner as is provided by law in case of regular assessments. [Id.]

Art. 7359. City may use county officers.—Any incorporated city, town or village in this State is hereby authorized by ordinance to authorize the county tax assessor and county tax collector of the county in which said city, town or village is situated, to act as tax assessor and tax collector respectively for said city, town or village. The property in said city, town or village utilizing such county assessor and collector shall be assessed at the same value as it is assessed for county and State purposes. When an ordinance is so passed making available their services, said assessor shall assess the taxes for said city, town or village and perform the duties of tax assessor for said city, town or village according to the ordinances of said city, town or village and according to law; and said collector shall collect the taxes and assessments for said city, town or village and turn over as soon as collected to the city depository of said city or other authority authorized to receive such taxes or assessments, all taxes or money so collected, and shall perform the duties of tax collector of said city, town or village according to the ordinances thereof and according to law, deducting from the taxes so collected his fees provided for herein; and they shall respectively receive for such services one per cent of the taxes so collected. [Acts 1921, p. 128.]

TITLE 123.

TIMBER.

| | | | |
|----------------------|---------|----------------------------------|---------|
| | Article | | Article |
| Log brands | 7360 | Written report to be filed | 7362 |
| To be recorded | 7361 | Evidence of ownership | 7363 |

Art. 7360. [7727] [5244] **Log brands.**—Whoever engages in floating or rafting timber upon the waters of any river or creek of this State shall have a log brand with which to brand every log or stick that he may float or haul and put into the waters for sale or market, the same to be distinctly branded. [Acts 1879, p. 81, Sec. 1; G. L. Vol. 8, p. 1381.]

Art. 7361. [7728] [5245] **To be recorded.**—He shall have said brand recorded in every county in which he cuts any of said timber, and in the county where he proposes to sell or market said timber, by the county clerk, in a book to be kept by said clerk for that purpose, for which said clerk shall receive a fee the same as is by law allowed for recording stock brands. [Id. Sec. 2.]

Art. 7362. [7729] [5246] **Written report to be filed.**—Any person who floats any logs or timber in this State shall, on the first day of April, first day of July, first day of September, and on the first day of January of each year, or within fifteen days of said dates, make a written report under oath showing the number of logs cut or floated during the next preceding three months, the survey or surveys of land from which they were cut or carried, and the number cut from each, and a description of the brand placed thereon, and shall file the same with the county clerk of the county in which the timber was cut; and such clerk shall record the same in a book kept for that purpose, and index it, and receive therefor the sum of fifty cents from the party presenting the same. This law shall not apply to pickets, posts, rails or firewood. [Id. Sec. 3.]

Art. 7363. [7730] [5247] **Evidence of ownership.**—A certificate under the hand of the county clerk, containing a description of a log brand and the name of the owner thereof, with a transfer on the back of it signed and acknowledged by such owner, or proved as other instruments for record, shall be prima facie evidence that the person to whom transfer is made owns the logs described thereon. [Id. Sec. 4.]

TITLE 124.

TRESPASS TO TRY TITLE.

1. THE PLEADINGS AND PRACTICE.

| Article | Article | | |
|---|---------|--------------------------------------|------|
| Method of trying titles..... | 7364 | Abstract shall state what..... | 7378 |
| Rules in other cases observed..... | 7365 | Amended abstract..... | 7379 |
| Requisites of petition..... | 7366 | Surveyor appointed, etc..... | 7380 |
| Indorsement on petition..... | 7367 | Survey unnecessary when..... | 7381 |
| Warrantor, etc., may be made a | | Common source of title..... | 7382 |
| party..... | 7368 | Judgment by default..... | 7383 |
| Landlord may become defendant..... | 7369 | Proof ex parte..... | 7384 |
| The possessor shall be defendant..... | 7370 | When defendant claims part only..... | 7385 |
| May join as defendants, whom..... | 7371 | When plaintiff proves part..... | 7386 |
| May file plea of "not guilty" only..... | 7372 | May recover a part..... | 7387 |
| Proof under such plea..... | 7373 | The judgment..... | 7388 |
| Answer taken as admitting posses- | | Damages..... | 7389 |
| sion..... | 7374 | Claim for improvements..... | 7390 |
| What is sufficient title..... | 7375 | Final judgment conclusive..... | 7391 |
| May demand abstract of title..... | 7376 | Former laws shall govern, when..... | 7392 |
| Time to file abstract..... | 7377 | | |

Art. 7364. [7731] [5248] [4784] **Method of trying titles.**
—All fictitious proceedings in the action of ejectment are abolished. The method of trying titles to lands, tenements or other real property shall be by action of trespass to try title. [Act Feb. 5, 1840; G. L. Vol. 2, p. 310.]

Art. 7365. [7732] [5249] [4785] **Rules in other cases observed.**—The trial shall be conducted according to the rules of pleading, practice and evidence in other cases in the district court, and conformably to the principles of trial by ejectment, except as herein otherwise expressly provided. [Id.]

Art. 7366. [7733] [5250] [4786] **Requisites of petition.**—The petition shall state:

1. The real names of the plaintiff and defendant and their residence, if known.

2. It shall describe the premises by metes and bounds, or with sufficient certainty to identify the same, so that from such description possession thereof may be delivered, and state the county or counties in which the same are situated.

3. The interest which the plaintiff claims in the premises, whether it be a fee simple or other estate; and, if he claims an undivided interest, he shall state the same and the amount thereof.

4. That he was in possession of the premises or entitled to such possession.

5. That the defendant afterward unlawfully entered upon and dispossessed him of such premises, stating the date, and withholds from him the possession thereof.

6. If rents and profits or damages are claimed, such facts as show the plaintiff to be entitled thereto and the amount thereof.

7. It shall conclude with a prayer for the relief sought. [Id. P. D. 5292.]

Art. 7367. [7734] [5251] [4787] **Indorsement on petition.**
—The plaintiff shall indorse on his petition that the action is brought as well to try title as for damages. [Id. P. D. 5294.]

Art. 7368. [7735] [5252] [4788] **Warrantor, etc., may be made a party.**—When a party is sued for lands, the real owner or warrantor may make himself, or may be made, a party defendant in the suit, and shall be entitled to make such defense as if he had been the original defendant in the action.

Art. 7369. [7736] [5253] [4789] **Landlord may become defendant.**—When such action shall be commenced against a tenant in possession, the landlord may enter himself as the defendant, or he may be made a party on motion of such tenant; and he shall be entitled to make the same defense as if the suit had been originally commenced against him. [Id. P. D. 5296.]

Art. 7370. [7737] [5254] [4790] **The possessor shall be defendant.**—The defendant in the action shall be the person in possession if the premises are occupied, or some person claiming title thereto in case they are unoccupied.

Art. 7371. [7738] [5255] **May join as defendants, whom.**—The plaintiff may join as a defendant with the person in possession, any other person who, as landlord, remainderman, reversioner or otherwise, may claim title to the premises, or any part thereof, adversely to the plaintiff.

Art. 7372. [7739] [5256] **May file plea of "not guilty" only.**—The defendant in such action may file only the plea of "not guilty," which shall state in substance that he is not guilty of the injury complained of in the petition filed by the plaintiff against him, except that if he claims an allowance for improvements, he shall state the facts entitling him to the same. [Acts 1844, p. 70; P. D. 5307; G. L. Vol. 2, p. 982.]

Art. 7373. [7740] [5257] **Proof under such plea.**—Under such plea of "not guilty" the defendant may give in evidence any lawful defense to the action except the defense of limitation, which shall be specially pleaded. [Id.]

Art. 7374. [7741] [5258] **Answer taken as admitting possession.**—Such plea or any other answer to the merits shall be an admission by the defendant, for the purpose of that action, that he was in possession of the premises sued for, or that he claimed title thereto at the time of commencing the action, unless he states distinctly in his answer the extent of his possession or claim, in which case it shall be an admission to such extent only. [Act Feb. 5, 1840; P. D. 5297; G. L. Vol. 2, p. 310.]

Art. 7375. [7742] [5259] **What is sufficient title.**—All certificates for head-right, land scrip, bounty warrant, or any other evidence of right to land recognized by the laws of this State, which have been located and surveyed, shall be deemed and held as sufficient title to authorize the maintenance of the action of trespass to try title.

Art. 7376. [7743] [5260] **May demand abstract of title.**—After answer filed, either party may, by notice in writing, duly served on the opposite party or his attorney of record, not less than ten days before the trial of the cause, demand an abstract

in writing of the claim or title to the premises in question upon which he relies.

Art. 7377. [7744] [5261] Time to file abstract.—Such abstract of title shall be filed with the papers of the cause within twenty days after the service of the notice, or within such further time as the court on good cause shown may grant; and, in default thereof, no evidence of the claim or title of such opposite party shall be given on trial.

Art. 7378. [7745] [5262] Abstract shall state what.—The abstract mentioned in the two preceding articles shall state:

1. The nature of each document or written instrument intended to be used as evidence and its date; or,
2. If a contract or conveyance, its date, the parties thereto and the date of the proof of acknowledgment, and before what officer the same was made; and,
3. Where recorded, stating the book and page of the record.
4. If not recorded in the county when the trial is had, copies of such instrument, with the names of the subscribing witnesses, shall be included.

If such unrecorded instrument be lost or destroyed, it shall be sufficient to state the nature of such instrument and its loss or destruction.

Art. 7379. [7746] [5263] Amended abstract.—The court may allow either party to file an amended abstract of title, under the same rules which authorize the amendment of pleadings so far as they are applicable; but in all cases the documentary evidence of title shall at the trial be confined to the matters contained in the abstract of title.

Art. 7380. [7747] [5264] Surveyor appointed, etc.—The judge of the court may, either in term time or in vacation, at his own discretion, or on motion of either party to the action, appoint a surveyor, who shall survey the premises in controversy pursuant to the order of the court, and report his action under oath to such court. If said report be not rejected for good cause shown, the same shall be admitted as evidence on the trial. [Act Feb. 5, 1840; P. D. 5294; G. L. Vol. 2, p. 310.]

Art. 7381. [7748] [5265] Survey unnecessary when.—Where there is no dispute as to the lines or boundaries of the land in controversy, or where the defendant admits that he is in possession of the lands or tenements included in the plaintiff's claim or title, an order of survey shall be unnecessary. [Id. P. D. 5308.]

Art. 7382. [7749] [5266] Common source of title.—It shall not be necessary for the plaintiff to deraign title beyond a common source. Proof of a common source may be made by the plaintiff by certified copies of the deeds showing a chain of title to the defendant emanating from and under such common source. Before any such certified copies shall be read in evidence, they shall be filed with the papers of the suit three days before the trial, and the adverse party served with notice of

such filing as in other cases. Such certified copies shall not be evidence of title in the defendant unless offered in evidence by him. The plaintiff may make any legal objection to such certified copies, or the originals thereof, when introduced by the defendant. [Acts 1871, S. S. p. 3; P. D. 6829; G. L. Vol. 7, p. 5.]

Art. 7383. [7750] [5267] **Judgment by default.**—If the defendant, who has been personally served with citation according to law, fails to appear and answer by himself or attorney within the time prescribed by law for other actions in the district court, the proper judgment by default may be entered against him and in favor of the plaintiff for the title to the premises, or the possession thereof, or for both, according to the petition, and for all costs, without any proof of title by the plaintiff.

Art. 7384. [7751] [5268] **Proof ex parte.**—If the defendant has been cited only by publication, and fails to appear and answer by himself, or by attorney of his own selection, or if any defendant, having answered, fails to appear by himself or attorney when the case is called for trial on its merits, the plaintiff shall make such proof as will entitle him prima facie to recover, whereupon the proper judgment shall be entered.

Art. 7385. [7752] [5269] **When defendant claims part only.**—Where the defendant claims part of the premises only, the answer shall be equivalent to a disclaimer of the balance.

Art. 7386. [7753] [5270] **When plaintiff proves part.**—Where the defendant claims the whole premises, and the plaintiff shows himself entitled to recover part, the plaintiff shall recover such part and costs.

Art. 7387. [7754] [5271] **May recover a part.**—When there are two or more plaintiffs or defendants, any one or more of the plaintiffs may recover against one or more of the defendants the premises, or any part thereof, or any interest therein, or damages, according to the rights of the parties.

Art. 7388. [7755] [5272] **The judgment.**—Upon the finding of the jury, or of the court where the case is tried by the court, in favor of the plaintiff for the whole or any part of the premises in controversy, the judgment shall be that the plaintiff recover of the defendant the title or possession, or both, as the case may be, of such premises, describing them, and where he recovers the possession, that he have his writ of possession.

Art. 7389. [7756] [5273] **Damages.**—Where it is alleged and proved that one of the parties is in possession of the premises, the court or jury, if they find for the adverse party, shall assess the damages for the use and occupation of the premises. If special injury to the property be alleged and proved, the damages for such injury shall also be assessed, and the proper judgment shall be entered therefor, on which execution may issue; but damages shall not be assessed under this article for use and occupation or for injuries done over two years prior to the

commencement of the suit. [Acts 1871, S. S., p. 3; G. L. Vol. 7, p. 5.]

Art. 7390. [7757] [5274] Claim for improvements.—When the defendant or person in possession has claimed an allowance for improvements in accordance with the provisions of the succeeding subdivision, the claim for use and occupation and damages mentioned in the preceding article shall be considered and acted on in connection with such claim by the defendant or person in possession.

Art. 7391. [7758] [5275] Final judgment conclusive.—Any final judgment rendered in any action for the recovery of real estate shall be conclusive as to the title or right of possession established in such action upon the party against whom it is recovered, and upon all persons claiming from, through or under such party, by title arising after the commencement of such action.

Art. 7392. [7759] [5276] Former laws shall govern, when.—Nothing in this title shall be so construed as to alter, impair or take away the rights of parties, as arising under the laws in force before the introduction of the common law, but the same shall be decided by the principles of the law under which the same accrued, or by which the same were regulated or in any manner affected. [Acts 1871, S. S. p. 3; G. L. Vol. 7, p. 5.]

2. CLAIM FOR IMPROVEMENTS.

| | | | |
|----------------------------------|---------|----------------------------------|---------|
| | Article | | Article |
| Claim of improvements | 7393 | Failure of plaintiff to pay..... | 7398 |
| Issue as to | 7394 | Defendant failing to pay..... | 7399 |
| Rents and profits as offset..... | 7395 | Judgment | 7400 |
| Judgment for excess | 7396 | Duty of the clerk | 7401 |
| Writ of possession | 7397 | | |

Art. 7393. [7760] [5277] Claim of improvements.—The defendant in any action of trespass to try title may allege in his pleadings that he and those under whom he claims have had adverse possession in good faith of the premises in controversy for at least one year next before the commencement of such suit, and that he and those under whom he claims have made permanent and valuable improvements on the lands sued for during the time they have had such possession, stating the improvements and their value respectively, and stating also the grounds of such claim. [Act Feb. 5, 1840; G. L. Vol. 2, p. 310.]

Art. 7394. [7761] [5278] Issue as to.—Where the defendant has filed his claim for an allowance for improvements in accordance with the preceding article, if the court or jury find that he is not the rightful owner of the premises sued for, but that he and those under whom he claims have made permanent and valuable improvements thereon, being possessors thereof in good faith, the court or jury shall at the same time estimate from the testimony:

1. The value at the time of trial of such improvements as were so made before the filing of the suit not exceeding the amount to which the value of the premises is actually increased thereby.

2. The value of the use and occupation of the premises during the time the defendant was in possession thereof (exclusive of the improvements thereon made by himself or those under whom he claims), and also, if authorized by the pleadings, the damages for waste or other injury to the premises committed by him, not computing such annual value for a longer time than two years before suit, nor damages for waste or injury done before said two years.

3. The value of the premises recovered without the improvements made as aforesaid. [Id.]

Art. 7395. [7762] [5279] Rents and profits as offset.—If the sum estimated for the improvements exceeds the damages estimated against the defendant and the value of the use and occupation as aforesaid, there shall then be estimated against him, if authorized by the testimony, the value of the use and occupation and the damages for injury done by him or those under whom he claims, for any time before the said two years, so far as may be necessary to balance the claim for improvements, but no further; and he shall not be liable for the excess, if any, beyond the value of the improvements.

Art. 7396. [7763] [5280] Judgment for excess.—If it shall appear from the finding of the court or jury under the two preceding articles that the estimated value of the use and occupation and damages exceed the estimated value of the improvements, judgment shall be entered for the plaintiff for the excess and costs in addition to a judgment for the premises; but should the estimated value of the improvements exceed the estimated value of the use and occupation and damages, judgment shall be entered for the defendant for the excess.

Art. 7397. [7764] [5281] Writ of possession.—In any action of trespass to try title, when the lands or tenements have been adjudged to the plaintiff, and the estimated value of the improvements in excess of the value of the use and occupation and damages has been adjudged to the defendant, no writ of possession shall be issued for the term of one year after the date of the judgment, unless the plaintiff shall pay to the clerk of the court for the defendant the amount of such judgment in favor of the defendant, with the interest thereon. [Act Feb. 5, 1840; P. D. 5301; G. L. Vol. 2, p. 310.]

Art. 7398. [7765] [5282] Failure of plaintiff to pay.—If the plaintiff shall neglect for the term of one year to pay the amount of said judgment in favor of the defendant, with the interest thereon as directed in the preceding article, and the defendant shall within six months after the expiration of said year, pay to the clerk of the court for the plaintiff the value of the lands or tenements, without regard to the improvements as estimated by the court or jury, then the plaintiff shall be forever barred of his writ of possession, and from ever having or maintaining any action whatever against the defendant, his

heirs or assigns, for the lands or tenements recovered by such suit.

Art. 7399. [7766] [5283] Defendant failing to pay.—If the defendant or his legal representatives shall not, within six months aforesaid, pay to the clerk for the plaintiff the estimated value of the lands or tenements, as directed in the preceding article, then the plaintiff may sue out his writ of possession as in ordinary cases.

Art. 7400. [7767] [5284] Judgment.—The judgment shall recite the estimated value of the premises without the improvements, and shall also include the conditions, stipulations and directions contained in the three preceding articles, so far as applicable to the case before the court.

Art. 7401. [7768] [5285] Duty of the clerk.—If payment is made to the clerk of the court by the plaintiff or defendant, as provided in the preceding articles, such clerk shall enter a memorandum of such payment, with the date thereof, on the page of the record on which the judgment was entered; and he shall, on demand, pay the money to the party entitled, taking his receipt therefor, dated and signed on the page of the record aforesaid.

TITLE 125.

TRIAL OF RIGHT OF PROPERTY.

| Article | Article | | |
|-------------------------------------|-------------|--|-------------|
| Claimant must make affidavit..... | 7402 | Proceedings | 7415 |
| Bond | 7403 | Burden of proof | 7416 |
| Condition of bond | 7404 | Damages | 7417 |
| Property delivered to claimant..... | 7405 | If value of property exceeds judg- | |
| Return of oath and bond..... | 7406 | ment | 7418 |
| Out-county levy | 7407 | Copy of writ evidence..... | 7419 |
| Return of original writ | 7408 | Failure to establish title..... | 7420 |
| Jurisdiction | 7409 | Execution shall issue | 7421 |
| Docketing cause | 7410 | Time of execution | 7422 |
| Issue to be made up..... | 7411 | Return of property by claimant..... | 7423 |
| Requisites of issue..... | 7412 | Claim is a release of damages..... | 7424 |
| Judgment by default | 7413 | Levy on other property..... | 7425 |
| Judgment of non-suit | 7414 | | |

Art. 7402. [7769] [5286] [4822] Claimant must make affidavit.—Whenever a writ of execution, sequestration, attachment or other like writ is levied upon personal property, and such property, or any part thereof, shall be claimed by any person who is not a party to such writ, such person or his agent or attorney may make affidavit that such claim is made in good faith, and present such affidavit to the officer who made such levy. [Acts 1848, p. 140; P. D. 5310; G. L. Vol. 3, p. 140.]

Art. 7403. [7770] [5287] [4823] Bond.—He shall also execute and deliver to the officer who made such levy, his bond, with two or more good and sufficient sureties, to be approved by such officer, payable to the plaintiff in such writ, for an amount equal to double the value of the property so claimed, to be assessed by such officer. When more than one writ has been levied, the bond may be made payable to all the plaintiffs in the several writs levied. Said bond shall inure to the benefit of all the plaintiffs in the several writs according to their respective priorities in time of levy. Upon the approval of such bond and delivery of the property to the claimant, the same shall be deemed in custodia legis, and shall not be taken out of his possession by any other like writ or writs; but said writs may be levied on the same by giving notice to the claimant; and in such cases the claimant's bond shall also inure to the benefit of the several plaintiffs in such writs according to their respective priorities. [Acts 1887, p. 104; G. L. Vol. 9, p. 902.]

Art. 7404. [7771] [5288] [4824] Condition of bond.—The bond shall be conditioned that the party making such claim in case he fails to establish his right to such property, shall return the same to the officer making the levy, or his successor, in as good condition as he received it, and shall also pay the reasonable value of the use, hire, increase and fruits thereof from the date of said bond, or, in case he fails so to return said property and pay for the use of the same, that he shall pay the plaintiff the value of said property, with legal interest thereon from the date of the bond, and shall also pay all damages and costs that may be awarded against him.

Art. 7405. [7772] [5289] [4825] Property delivered to

claimant.—The officer receiving such oath and bond shall deliver the property so claimed to the person so claiming it. [Id.]

Art. 7406. [7773] [5290] [4826] **Return of oath and bond.**—Whenever any person shall claim property and shall duly make the oath and give the bond, if the writ under which the levy was made was issued by a justice of the peace or a court of the county where such levy was made, the officer receiving such oath and bond shall indorse on the writ that such claim has been made and oath and bond given, and by whom; and shall also indorse on such bond the value of the property as assessed by himself, and shall forthwith return such bond and oath to the proper court having jurisdiction to try such claim. [Id.]

Art. 7407. [7776] [5293] [4829] **Out-county levy.**—Whenever any person shall claim property and shall make the oath and give the bond as provided for herein, if the writ under which such levy was made was issued by a justice of the peace or a court of another county than that in which such levy was made, then the officer receiving such oath and bond shall indorse on such bond the value of the property as assessed by himself, and shall forthwith return such bond and oath with a copy of the writ, to the justice or court of the county in which such levy was made having jurisdiction according to the value of the property as assessed by said officer.

Art. 7408. [7777] [5294] [4830] **Return of original writ.**—The officer taking such bond shall also indorse on the original writ that such claim has been made and oath and bond given, stating by whom, the names of the sureties and to what justice or court the bond has been returned; and he shall forthwith return such original writ to the tribunal from which it issued.

Art. 7409. [7778] [5295] [4831] **Jurisdiction.**—Cases arising under this chapter shall be tried in courts having jurisdiction of the amount involved. [Const. Art. 5, Secs. 8, 16, 19.]

Art. 7410. [7779] [5296] [4832] **Docketing cause.**—Whenever any oath and bond for the trial of the right of property shall be returned, the clerk of the court, or such justice of the peace, shall docket the same in the name of the plaintiff in the writ as the plaintiff, and the claimant of the property as defendant. [Acts 1848, p. 140; P. D. 5312; G. L. Vol. 3, p. 140.]

Art. 7411. [7780] [5297] [4833] **Issue to be made up.**—At the first term of the court thereafter, if both parties appear, the court or justice shall direct a written issue to be made up between the parties and tried as in other cases. [Id.]

Art. 7412. [7781] [5298] [4834] **Requisites of issue.**—Said issue shall consist of a brief statement of the authority and right by which the plaintiff seeks to subject the property levied on to his execution, and of the nature of the claim of the defendant thereto. [Id.]

Art. 7413. [7782] [5299] [4835] **Judgment by default.**—If the plaintiff appears and the defendant fails to appear or neglects or refuses to join issue under the direction of the court

or justice within the time prescribed for pleading, the plaintiff shall have judgment by default. [Id.]

Art. 7414. [7783] [5300] [4836] **Judgment of non-suit.**—If the plaintiff does not appear at the first term, the case shall be continued to the next term, when, if he appears, the like proceedings may be had as at the first term; but if he does not then appear on or before the appearance day of the third term, he shall be non-suited. [Id.]

Art. 7415. [7784] [5301] [4837] **Proceedings.**—The proceedings and practice on the trial shall be as nearly as may be the same as in other cases before such court or justice.

Art. 7416. [7785-7786] **Burden of proof.**—If the property was taken from the possession of the claimant, the burden of proof shall be on the plaintiff. If it was taken from the possession of the defendant in such writ, or any other person than the claimant, the burden of proof shall be on the claimant. [Id.]

Art. 7417. [7787] [5304] [4840] **Damages.**—In all trials of the right of property under the provisions of this title, if the claimant shall fail to establish his right to the property, the court or justice trying the same shall give judgment against all the obligors in the claimant's bond for ten per cent damages on the value of the property. [P. D. 5314.]

Art. 7418. [7788] [5305] [4841] **If value of property exceeds judgment.**—When such value is greater than the amount claimed under the writ, by virtue of which such property was levied upon, the damages shall be on the amount claimed under said writ. [Id.]

Art. 7419. [7789] [5306] [4842] **Copy of writ evidence.**—In all trials of the right of property, under the provisions of this title, in any county other than that in which the writ issued under which the levy was made, the copy of the writ herein required to be returned by the officer making the levy shall be received in evidence in like manner as the original could be.

Art. 7420. [7790] [5307] [4843] **Failure to establish title.**—Where any claimant of property shall fail to establish his right thereto, judgment shall be rendered against him and his sureties for the value of the property, with legal interest thereon from the date of such bond. Such judgment shall be rendered in favor of the plaintiff in the writ, or of the several plaintiffs, if more than one, and shall fix the amount of each plaintiff's claim. [Acts 1887, p. 104; G. L. Vol. 9, p. 902.]

Art. 7421. [7791] [5308] **Execution shall issue.**—If such judgment should not be satisfied by a return of the property, then execution shall issue thereon in the name of the plaintiff for the amount of his claim, or of all the plaintiffs for the sum of their several claims, provided the amount of such judgment exceeds such claim or sum. In such cases the excess of such judgment shall inure to the benefit of any person who shall show superior right or title to the property claimed as against the claimant; but if such judgment be for a less amount than the

sum of the several plaintiffs' claims, then the respective rights and priorities of the several plaintiffs shall be fixed and adjusted in the judgment. [Id.]

Art. 7422. [7792] [5309] [4844] **Time of execution.**—No execution shall issue for ten days on such judgment.

Art. 7423. [7793] [5310] [4845] **Return of property by claimant.**—If, within ten days from the rendition of said judgment, the claimant shall return such property in as good condition as he received it, and pay for the use of the same together with the damages and costs, such delivery and payment shall operate as a satisfaction of such judgment.

Art. 7424. [7794] [5311] [4846] **Claim is a release of damages.**—A claim made to property, under the provisions of this chapter, shall operate as a release of all damages by the claimant against the officer who levied upon said property.

Art. 7425. [7795] [5312] [4847] **Levy on other property.**—Proceedings for the trial of the right of property, under the provisions of this title, shall in no case prevent the plaintiff in the writ from having a levy made upon any other property of the defendant. [P. D. 5318.]

TITLE 126.

TRUSTS—CONSPIRACIES AGAINST TRADE.

1. DEFINITIONS, FORFEITURES AND OTHER PROVISIONS.

| | Article | | Article |
|----------------------------------|---------|------------------------------------|---------|
| "Trusts" | 7426 | Foreign corporations | 7433 |
| "Monopoly" | 7427 | Quo warranto proceedings | 7434 |
| Conspiracies against trade | 7428 | Rights of convicted foreign corpo- | |
| Acts illegal | 7429 | rations | 7435 |
| Charters forfeited | 7430 | Penalties; venue; fees | 7436 |
| Quo warranto proceedings | 7431 | All agreements in violation of, | |
| Successors prohibited from doing | | void | 7437 |
| business | 7432 | Actföns to have precedence..... | 7438 |

Art. 7426. [7796] "Trusts."—A "trust" is a combination of capital, skill or acts by two or more persons, firms, corporations or associations of persons, or either two or more of them for either, any or all of the following purposes:

1. To create, or which may tend to create, or carry out restrictions in trade or commerce or aids to commerce or in the preparation of any product for market or transportation, or to create or carry out restrictions in the free pursuit of any business authorized or permitted by laws of this State.

2. To fix, maintain, increase or reduce the price of merchandise, produce or commodities, or the cost of insurance, or of the preparation of any product for market or transportation.

3. To prevent or lessen competition in the manufacture, making, transportation, sale or purchase of merchandise, produce or commodities, or the business of insurance, or to prevent or lessen competition in aids to commerce, or in the preparation of any product for market or transportation.

4. To fix or maintain any standard or figure whereby the price of any article or commodity of merchandise, produce or commerce, or the cost of transportation, or insurance, or the preparation of any product for market or transportation, shall be in any manner affected, controlled or established.

5. To make, enter into, maintain, execute or carry out any contract, obligation or agreement by which the parties thereto bind, or have bound themselves not to sell, dispose of, transport or to prepare for market or transportation any article or commodity, or to make any contract of insurance at a price below a common standard or figure or by which they shall agree in any manner to keep the price of such article or commodity or charge for transportation or insurance, or the cost of the preparation of any product for market or transportation at a fixed or graded figure, or by which they shall in any manner affect or maintain the price of any commodity or article or the cost of transportation or insurance, or the cost of the preparation of any product for market or transportation between them or themselves and others, to preclude a free and unrestricted competition among themselves or others in the sale or transportation of any such article or commodity, or business of transportation or insurance, or the preparation of any product

for market or transportation, or by which they shall agree to pool, combine or unite any interest they may have in connection with the sale or purchase of any article or commodity, or charge for transportation or insurance or charge for the preparation of any product for market or transportation whereby its price or such charge might be in any manner affected.

6. To regulate, fix or limit the output of any article or commodity which may be manufactured, mined, produced or sold, or the amount of insurance which may be undertaken, or the amount of work that may be done in the preparation of any product for market or transportation.

7. To abstain from engaging in or continuing business, or from the purchase or sale of merchandise, produce or commodities partially or entirely within the State of Texas, or any portion thereof. [Acts 1903, p. 119.]

Art. 7427. [7797] **“Monopoly” defined.**—A monopoly is a combination or consolidation of two or more corporations when effected in either of the following methods:

1. When the direction of the affairs of two or more corporations is in any manner brought under the same management or control for the purpose of producing, or where such common management or control tends to create a trust as defined in the first article of this chapter.

2. Where any corporation acquires the shares or certificates of stock or bonds, franchise or other rights, or the physical properties or any part thereof, of any other corporation or corporations, for the purpose of preventing or lessening, or where the effect of such acquisition tends to affect or lessen competition, whether such acquisition is accomplished directly or through the instrumentality of trustees or otherwise. [Id.]

Art. 7428. [7798] **Conspiracies against trade.**—Either or any of the following acts shall constitute a conspiracy in restraint of trade.

1. Where any two or more persons, firms, corporations or associations of persons, who are engaged in buying or selling any article of merchandise, produce or any commodity enter into an agreement or understanding to refuse to buy from or sell to any person, firm, corporation or association of persons, any article of merchandise, produce or commodity.

2. Where any two or more persons, firms, corporations or associations of persons, shall agree to boycott or threaten to refuse to buy from or sell to any person, firm, corporation or association of persons for buying from or selling to any other person, firm, corporation or association of persons. [Id.]

Art. 7429. [7799] **Acts illegal.**—Any and all trusts, monopolies and conspiracies in restraint of trade, as herein defined, are prohibited and declared to be illegal. [Id.]

Art. 7430. [7800] **Charters forfeited.**—The charter of any corporation chartered under the laws of this State, adjudged guilty of violating any provision of this subdivision may be for-

feited at the request of the Attorney General, if in the judgment of the court before whom the litigation is pending, the public interest requires it, provided, the forfeiture of the charter shall be in addition to all other penalties prescribed by law. [Acts 1903, p. 119; Acts 1923, p. 12.]

Art. 7431. [7801] **Quo warranto proceedings.**—For a violation of any provision of this subdivision or any anti-trust laws of this State, by any corporation, it shall be the duty of the Attorney General, when in his judgment the public interest requires it, upon his motion and without leave or order of any judge or court, to institute suit, or quo-warranto proceedings in Travis County, or at the county seat of any county in the State which the Attorney General may select, for the forfeiture of its charter rights and privileges, and the dissolution of its corporate existence, and for such purpose venue is hereby given to each district court in the State of Texas. [Acts 1903, p. 119; Acts 1909, p. 281; Acts 1923, p. 12.]

Art. 7432. [7802] **Successors are prohibited from doing business.**—When a corporation organized under the laws of this State shall have been convicted of a violation of any provision of this subdivision and its charter and franchise has been forfeited, no other corporation to which the defaulting corporation may have transferred its properties and business, or which has assumed the payment of its obligations, shall be permitted to incorporate or do business in Texas. [Acts 1903, p. 119.]

Art. 7433. [7803] **Foreign corporations.**—When any foreign corporation is adjudged guilty of violating any provision of this subdivision or any anti-trust law of this State, the Attorney General may bring suit in the district court of Travis County for the purpose of enjoining and forever prohibiting such corporation from doing business in this State, and if in the judgment of the court the public interest requires it, the injunction shall be granted, provided the denial of the right to do business in this State to any foreign corporation adjudged guilty of violating the anti-trust laws shall be in addition to all other penalties prescribed by law. [Acts 1903, p. 119; Acts 1923, p. 12.]

Art. 7434. [7804] **Quo-warranto proceedings.**—The laws governing quo-warranto, shall, except in so far as they conflict herewith, govern and control the proceedings when instituted to forfeit any charter under this title. [Id.]

Art. 7435. [7805] **Rights of convicted foreign corporations.**—When any foreign corporation has been convicted of a violation of any of the provisions of this subdivision and its right to do business in this State has been forfeited, as provided in the second preceding article, then, before such corporation or any other corporation to which such corporation may have transferred its properties and business or which has assumed its obligations, shall be permitted to incorporate or do business in

Texas, it shall be required to go into the court where the original judgment of forfeiture was entered and show that it has fully obeyed the decree of court forfeiting its charter and has satisfied in full all fines and penalties assessed against it. It shall further show that it has so organized or reorganized its affairs and business that if permitted to do business in Texas, it can and will do so without violating any law of this State; and particularly that it has no connection with any person, firm, or corporation engaged in violating the laws against trusts and monopolies, and is not itself so engaged. No such action shall be instituted within five years from the date of such original conviction. Any corporation which shall be convicted a second time of a violation of any provision of this title shall be forever barred from instituting any such action hereunder. Whereupon and after a hearing had, after the notice to the Attorney General herein provided, the court may modify or reform such judgment so as to permit such corporation to incorporate, or secure a permit and do business in Texas, and such modified or reformed judgment shall be by the clerk of said court certified to the Secretary of State for action by him in conformity therewith. Nothing in this article shall in any manner affect any judgment hereafter rendered by any court against any corporation, its agent, or employes or successors.

Notice of filing of such proceeding and the taking of evidence shall be served upon the Attorney General whose duty it shall be to represent the State in such proceeding. The court may require the production of all books and records and may appoint a commission to take testimony, either within or without the State. The expense of the entire proceeding, including reasonable attorney's fees, the amount of which to be determined by the judge trying the case, and the same to be paid to the attorney representing the State, and same to be delivered by such attorney to the State Treasurer and by him deposited to the account of the general revenue fund of the State. The court, after modifying or reforming the judgment, as provided herein, shall retain jurisdiction of the case and at any time thereafter shall, upon showing that said corporation is violating the laws against trusts or monopolies, or has connection with any person, firm, or corporation engaged in violation of the laws against trusts or monopolies, set aside any order or judgment entered, in which event all proceedings based thereon, including all transfers of any and all properties shall be nullified, and it shall be the duty of the Attorney General, for good cause, to enter proceedings to set aside and nullify the modified judgment of the court and its proceedings, as herein provided. If the Court shall, after the hearing provided for, refuse to modify or reform such judgment, no permit shall be issued by the Secretary of State to such corporation or to any other corporation to which its properties or business have been transferred or which has as-

sumed the payment of its obligations. [Acts 1903, p. 119; Acts 1917, p. 63; Acts 1919, p. 48.]

Art. 7436. [7806] Penalties; venue; fees.—Each firm, person, corporation or association of persons, who shall in any manner violate any provision of this subdivision shall, for each day that such violation shall be committed or continued, forfeit and pay a sum of not less than fifty nor more than fifteen hundred dollars, which may be recovered in the name of the State of Texas in the district court of any county in the State of Texas, and venue is hereby given to such district courts. When any such suit shall have been filed in any county and jurisdiction thereof acquired, it shall not be transferred to any other county, except upon change of venue allowed by the court. It shall be the duty of the Attorney General or the district or county attorney under the direction of the Attorney General, to prosecute for the recovery of the same. The fees of the district or county attorney for representing the State in all anti-trust proceedings, or for the collection of penalties for the violation of the anti-trust laws of this State, shall be ten per cent of the amount collected up to and including the sum of fifty thousand dollars, and five per cent of all sums in excess of the first fifty thousand dollars, to be retained by him when collected, and all such fees which he may collect shall be over and above the fees allowed under the general fee bill. The provisions of this subdivision as to fees allowed the prosecuting attorney shall not apply to any case in which judgment has heretofore been rendered in any court nor to any monies to be hereafter collected upon such judgment heretofore rendered in any court, whether such judgment or judgments are pending upon appeal or otherwise. The district or county attorney who joins in the institution or prosecution of any suit for the recovery of penalties for a violation of any of the anti-trust laws of this State, who shall, previous to the collection of such penalties, cease to hold office, shall be entitled to an equal division with his successor of the fee collected in said cause. In case of the employment of special counsel by any such district or county attorney, the contract so made shall be binding upon such prosecuting officer making such contract and thereafter retiring from office. In case any suit is compromised before any final judgment in the trial court is had, then the fees herein provided for shall be reduced one-half. [Acts 1903, p. 119; Acts 1909, p. 281.]

Art. 7437. [7807] All agreements in violation of, void.—Any contract or agreement in violation of any provision of this subdivision shall be absolutely void and not enforceable either in law or equity. [Acts 1903, p. 119.]

Art. 7438. [7808] Actions to have precedence.—All actions authorized and brought under this subdivision on motion of the attorney for the State, shall have precedence of all other business, civil or criminal, except criminal cases where the defendants are in jail. [Id.]

2. EVIDENCE IN TRUST CASES.

| | Article | | Article |
|--|---------|--------------------------------------|---------|
| Evidence preliminary to prosecutions | 7439 | Special commission to take testimony | 7444 |
| Testimony; books and papers | 7440 | Notice to witnesses | 7445 |
| Taking evidence | 7441 | Witnesses exempt from prosecution | 7446 |
| Judgment on failure to produce records | 7422 | Provisions cumulative | 7447 |
| Notice on failure to produce | 7443 | | |

Art. 7439. [7810] Evidence preliminary to prosecutions.—

Upon the application of the Attorney General, or of any of his assistants, or of any district or county attorney, acting under the direction of the Attorney General made to any county judge or any justice of the peace in this State, stating that he has reason to believe that a witness who is to be found in the county in which such county judge or justice of the peace is an officer, knows of a violation of any provision of the preceding subdivision, it shall be the duty of such county judge or justice to have summoned as in criminal cases and to have examined such witness in relation to violations of any provision of said subdivision. The said witness shall be duly sworn; and the county judge, or justice of the peace, shall cause the statements of the witness to be reduced to writing and signed and sworn to before him, and such sworn statement shall be delivered to the attorney upon whose application the witness was summoned. Should the witness summoned as aforesaid fail to appear or to make sworn statements of the facts within his knowledge or to sign the same after it has been reduced to writing, he shall be guilty of contempt of court and may be fined not exceeding one hundred dollars, and may be attached and imprisoned in jail until he shall make a full statement of all the facts within his knowledge with reference to the matter inquired about. [Acts 1907, p. 221.]

Art. 7440. [7811] Testimony; books and papers.—Whenever any suit shall be instituted, or is pending in any court of competent jurisdiction in this State by the Attorney General, or by any district or county attorney acting under his direction against any corporation, individual, association of individuals, joint stock association or co-partnership, under any law of this State, against trusts, monopolies or conspiracies in restraint of trade, or under any laws of this State regulating or controlling corporations, domestic or foreign, the Attorney General, district or county attorney, as the case may be, may, in addition to the means provided by law, examine and procure the testimony or evidence of witnesses and have books, papers and documents produced as evidence in the manner herein provided. [Acts 1907, p. 16.]

Art. 7441. [7812] Evidence, how taken.—Whenever any action is commenced or is pending as contemplated in the preceding article, by the Attorney General, or by any district or county attorney acting under his direction, and said officer representing the State, either upon the trial of the case, or in preparation for the trial thereof, desires to take the testimony of any officer, director, agent or employe of any foreign or do-

mestic corporation or joint stock association proceeded against, or in case of any co-partnership, any member thereof, or in case of any individual or individuals, either of them, and the person or persons whose testimony is desired resides either within or without said State, the said officer shall file in said court where the action is brought, either in term time or in vacation, or with any special commissioner who may be appointed by the court to take testimony, as provided for in this law, a written statement setting forth the name and residence of each person whose testimony he desires to take, and in a general way shall designate any books, papers or documents he desires produced, and the time when and the place where either within or without this State, he desires such person to appear, and testify or to produce books, papers and documents, if any are desired. Thereupon the judge of said court, or the commissioner, before whom said testimony is being or shall be taken, shall immediately issue written notice, directed to the attorney or attorneys of record in said cause, or the agent, officer, or employe of any corporation or joint stock association, or directed to the attorney or attorneys of record of any co-partnership, individual or individuals, or to any member of such co-partnership or to any individual or individuals who are defendant or defendants in said action, notifying said attorney or attorneys of record, or officer, agent or employe, aforesaid, or member or members of any co-partnership, or individual, that the testimony of each person named in said notice is desired, and requiring said attorney or attorneys of record, or such officer, agent or employe aforesaid, or member of such co-partnership, or any individual to whom said notice is delivered, or upon whom the same is served, to notify and have said witness or witnesses, whose testimony or evidence it is desired to take, at the time and place named in said notice, before the court or special commissioner named, then and there to testify, and then and there to have and produce such books, papers and documents as are called for, and for any of the purposes herein provided. The court or the commissioner may continue the taking of such evidence from day to day, or adjourn from day to day at the same place until the same has been concluded. [Id.]

Art. 7442. [7813] Judgment on failure to produce books, papers, etc.—Whenever any officer, director, agent or employe of any foreign or domestic corporation, or joint stock association, authorized to do business in this State, or any member of any co-partnership or any individual, against whom suit has been filed, or is pending, as provided for in this title, or the attorney or attorneys of record of any such corporation, joint stock association, co-partnership, or individual shall be notified in accordance with the provisions of this title that any of the books, papers or documents belonging to such corporation, joint stock association, co-partnership or individual, are wanted before the court, or special commissioner as provided in this title, it shall be the duty of such defendant corporation, joint

stock association, co-partnership, or individual, as the case may be, to produce and present, or cause to be produced and presented, as required in said notice, all such books, papers and documents belonging to any such defendant, or under such defendant's control, as may be specified in said notice, in court or before said special commissioner, at the time and place so specified. In the event of the failure or refusal of any such corporation, joint stock association, co-partnership or individual, to comply with any of the provisions of this article, it shall be the duty of the court, upon motion of the officer representing the State, to strike out all the pleadings, answers, motions, reply or demurrer theretofore or thereafter filed in such case by such defendant corporation, joint stock association, co-partnership or individual and render judgment by default against any such defendant. [Id.]

Art. 7443. [7814] Notice to attorneys on failure to produce.

—Whenever any attorney or attorneys of record, or any agent, officer or employe of any corporation or joint stock association, proceeded against as herein provided, shall be notified that any officer, director, agent or employe of any such corporation or joint stock association is wanted before said court, or any special commissioner, as provided herein, to give his testimony or to produce any such books, papers or documents of said corporation or joint stock association, as the case may be, or if any attorney or attorneys of record of any co-partnership or individual shall be notified that any member or members of said co-partnership or any individual who are defendants in any such action are desired as witnesses, or to produce books, papers or documents before any court, or before any special commissioner appointed to take testimony in said proceeding, it shall be the duty of such attorney or attorneys of record, or any such officer, director, agent or employe to immediately notify any such person of the time and place where he shall attend and give his testimony, or produce any such books, papers or documents, if any are desired. If any person whose testimony is desired, as herein provided, shall fail to appear, or appearing shall refuse to testify, or shall fail to produce whatever books, papers, or documents he or they may be ordered to produce, as before provided, then it shall be the duty of the court, upon motion of the Attorney General, district or county attorney, on proof of such refusal, failure or dereliction, to strike out the answer, motion, reply, demurrer or other pleading theretofore or thereafter filed in such action, by said delinquent defendant, who has himself, or being a corporation or joint stock association, whose officer, agent, director, or employe, as herein provided, has refused or failed to attend and testify, or to produce all books, papers or documents demanded, which were in the custody or subject to the control of such witness or witnesses, or corporation or joint stock association. Said court shall, in the event of any such refusal or failure, proceed

to render judgment by default against any such defendant; provided, that if any such defendant shall file a written sworn denial, in said court, setting forth that such failure or refusal did not arise by reason of any fault or procurement of defendant, the court shall hear evidence upon that issue; and if the defendant shows to the satisfaction of the court that any witness who failed to attend did not do so at the instance or procurement of said defendant, or that the books, papers or documents demanded were not in its possession or control and could not be produced, and that such defendant had complied with all the provisions of this title within such defendant's power to perform, then in that event the answer, motion, reply, demurrer or other pleadings shall not be stricken out or judgment by default taken because of the failure of the witness to attend, who could not be so procured, or because of the failure to produce the books, papers or documents not in the possession or under the control of such defendant; but the court shall have the power to enter such further orders in respect to the matter in controversy as it may deem necessary for the proper administration of justice. In any proceeding had before a special commissioner, as herein provided, the certificate of the special commissioner showing the failure or refusal of any such witness or witnesses to appear and testify, or to produce any books, papers or documents desired, shall be sufficient prima facie evidence of such failure, refusal or dereliction on the part of any such defendant, when same is filed in court. Any witness attending any proceeding herein provided for in compliance with any notice or subpoena issued by authority of this law shall receive as compensation one dollar per day for each day of his attendance and four cents per mile traveled, computed upon the shortest practical route. Any claim for fees and mileage shall be filed with the court, or special commissioner, and sworn to by said witness and shall be taxed up as costs, and collected as other costs in civil cases. [Id.]

Art. 7444. [7815] **Special commission to take testimony.**—The court or presiding judge thereof, in which any proceeding as herein provided is pending, in term time or in vacation, upon application therefor made by the Attorney General, or district or county attorney acting under his direction, shall appoint some well qualified disinterested person as special commissioners to take testimony in any such case, at any point either within or without the State, as designated in such application; or where requested by either party to said cause of action, upon the issues joined in said cause. Such special commissioner shall have full power and authority to issue notices provided for in the third preceding article and to issue subpoenas for witnesses, compelling the attendance of such witnesses, the production of books, papers or documents, to issue attachments, to punish for contempt to the same extent as provided by law for said court, to administer oaths to witnesses, to have all witnesses examined orally, which testimony shall be reduced to writing, and may be

taken down by a competent stenographer and transcribed, and shall be signed and sworn to by said witness. The person appointed as special commissioner in any case shall qualify by taking the Constitutional oath of office, and shall, with all convenient speed, certify and return the testimony taken by him to the court appointing him. Said commissioner shall note all objections to the testimony and shall not exclude any testimony. All questions as to the materiality or admissibility of same shall be reserved for the court trying the case. Such testimony so taken may be read in evidence upon the trial of the suit in which same was taken, subject to any legal objections which might be made to same. The compensation of such commissioner shall be his actual expenses in traveling and such fees as are allowed a notary public in taking depositions, to be taxed up as costs and collected as in civil cases. [Id.]

Art. 7445. [7816] **Notice to witnesses.**—When any notice is issued and served, as provided for in this subdivision, ten full days exclusive of the day of service shall elapse before any witness so requested shall be compelled to appear and testify, or produce any books, papers or documents called for. If the taking of testimony shall not be concluded on the date named in said notice, each witness shall remain in attendance from day to day until same is completed or said witness is finally discharged by the court, or commissioner, as the case may be. Service of said notice and the return thereon may be made by any sheriff or constable of this State, or by any disinterested person competent to make oath of the fact, and shall be made by delivering to each person or attorney to be served a true copy of such notice. Return of such service shall be indorsed on or attached to the original notice; it shall state when the same was served and the manner of service and upon whom served, and shall be signed. If served by a person other than an officer, it shall be sworn to by the party making the service before some officer authorized by law to take affidavits. [Id.]

Art. 7446. [7810-17] **Witnesses exempt from prosecution.**—Any person who shall testify before any county judge or justice of the peace as provided for in this title, or any witness for the State who shall testify or produce any books, papers or documents in any proceeding or examination under the provisions of this title, shall not be subject to indictment or prosecution for any transaction, matter or thing, concerning which he truthfully testifies or produces evidence, documentary or otherwise. [Acts 1907, pp. 16, 221.]

Art. 7447. [7818] **Provisions cumulative.**—The provisions of this subdivision shall be cumulative of all laws of this State, and shall not be construed as repealing any other law relating to the taking of testimony or evidence; but shall be construed as providing an additional means of securing evidence for the enforcement of the laws, as herein provided. [Acts 1907, p. 16.]

TITLE 127.

VETERINARY MEDICINE AND SURGERY.

| | Article | | Article |
|--------------------------------------|---------|------------------------------------|---------|
| Board of Examiners | 7448 | Examinations | 7457 |
| Meetings | 7449 | Revocation of license | 7458 |
| Record of proceedings | 7450 | Disqualifications | 7459 |
| Practicing without registering | 7451 | Who are veterinarians | 7460 |
| Exceptions | 7452 | Certificates and licenses | 7461 |
| Register | 7453 | Definitions | 7462 |
| Reciprocity | 7454 | Permanent license | 7463 |
| Applications for examination | 7455 | License to be recorded | 7464 |
| Compensation | 7456 | To record license on removal | 7465 |

Art. 7448. Board of examiners.—There shall be a board known as the "State Board of Veterinary Medical Examiners," to consist of seven qualified veterinarians who shall have resided and practiced veterinary medicine and surgery in this State under a diploma from a legal reputable college of veterinary medicine for more than five years prior to their appointment. The Governor shall biennially appoint said board within ninety days after his inauguration from a list of eligible practitioners of veterinary medicine furnished by the secretary of the State Veterinary Medical Association. A stockholder or a member of the faculty or board of trustees of any veterinary college shall not be eligible for appointment. The term of office of its members shall be two years. The board may prescribe rules, regulations and by-laws in harmony with the provisions of this title, for its own government and proceedings for the examination of applicants for the practice of veterinary medicine and veterinary surgery. [Acts 2nd C. S. 1919, p. 143.]

Art. 7449. Meetings.—At the first meeting of said Board after each biennial appointment the Board shall elect a president, vice-president and secretary-treasurer. Regular meetings shall be held at least twice each year at such time and places as shall be deemed most convenient for applicants for examination. Special meetings may be held upon a call of four members. Due notice of such meetings shall be given by publication in such papers as may be selected by the Board. [Id.]

Art. 7450. Record of proceedings.—The board shall preserve a record of its proceedings in a book kept for that purpose, showing the name, age and place and duration of residence of each applicant, the time spent in study in medical school, and the year and school from which degrees were granted; or where the applicant qualifies as having been engaged in the practice of veterinary medicine in Texas prior to 1911, the same shall show the age, name and place and duration and residence, and the number of years engaged in the practice of veterinary medicine in Texas. Said record shall show whether applicants were rejected on examination or licensed, and shall be prima facie evidence of all matters contained therein. The secretary of the board shall transmit an official copy of said register to the Secretary of State for permanent record, certified copies from which with hand and seal of the secretary of said board or the

Secretary of State shall be admitted in evidence in all courts. [Id.]

Art. 7451. Practicing without registering.—No person shall practice veterinary medicine or veterinary surgery in any of its branches, including verterinary dentistry, within the limits of this State, unless and until such person shall have complied with the provisions of this title, and it shall further be unlawful for any person to so practice who has not registered in the district clerk's office of the county in which he resided, his authority for so practicing, as herein prescribed, together with his age, post-office address, place of birth and name of school of veterinary medicine from which he graduated. [Id.]

Art. 7452. Exceptions.—Nothing in this title shall prohibit any person, who has heretofore registered as a veterinary surgeon in the county of his residence according to the provisions of Chapter 76 of the Acts of the Regular Session of the Thirty-second Legislature who had previous to the year 1911 practiced veterinary medicine or veterinary surgery as his principal occupation for five years in the State of Texas prior to the year 1911, from practicing in the county of his residence only by securing a license from the State Board of Veterinary Medical Examiners by filing satisfactory evidence of his former compliance with the requirements of said Act of the Thirty-second Legislature, together with an affidavit that he has practiced veterinary medicine or veterinary surgery continuously for five years prior to 1911, in which affidavit he shall state the place where he has so practiced veterinary medicine or veterinary surgery together with his place of residence during said period. Upon the face of such license shall be printed the words "non-graduate". It shall be unlawful for any person to register under the five year practicing clause of this article, but the object of this provision is to permit persons who have heretofore lawfully registered to continue practicing under the five year clause. The fact of such oath shall be endorsed upon the certificate or license as the case may be, but if such person shall remove from such county of residence, he shall comply with all the requirements of this law before he shall be allowed to practice. Nothing in this title shall be so construed as to apply to commission or contract veterinarians in the employ of the United States or the Bureau of Animal Industry of the United States Department of Agriculture in the performance of their duties as such, but shall not engage in private practice, nor to legally qualified veterinarians of other States called in consultation but who do not open offices in this State nor to prohibit the sale by licensed druggists of remedies which they recommend for the cure of diseases of animals. [Id.]

Art. 7453. Register.—Each district clerk shall keep a book of suitable size to be known as the "Veterinary Medical Register" and record therein the name and record of each veterinary practitioner who presents a certificate from the State

Board of Veterinary Examiners. The clerk shall receive the sum of one dollar from each person so registered, which shall be his full compensation for all duties required under this title. When any person registered in said book shall die, remove from the county or have his license revoked, it shall be the duty of said clerk to make note of the facts thereof at the bottom of the page containing the record of such person as closing the record. On the first day of January of each year said clerk shall on request of the board, certify to the office of said board a correct list of the veterinarians then registered in the county, together with such other information as said board may require. A copy from said register pertaining to any person, certified by said clerk under the seal of said court, on a certificate issued by said officer certifying that any person named therein has or has not registered in said office as required by this title shall be admitted as evidence in all trial courts. [Id.]

Art. 7454. **Reciprocity.**—The board may at its discretion arrange for reciprocity in license with the authorities of other States and territories having requirements equal to those established by this law. License may be granted applicants for license under such reciprocity upon payment of twenty dollars.

Art. 7455. **Applications for examination.**—Each applicant to practice veterinary medicine in this State, not otherwise licensed under the provisions of this title, must successfully pass an examination before the board of veterinary medical examiners. Applicants to be eligible for examination must present satisfactory evidence to the board that they are over twenty-one years of age, of good moral character, and graduates of bona fide reputable veterinary medical schools. A bona fide veterinary medical school shall be one whose requirements for a degree and whose equipment is such as is at present required for recognition by the Bureau of Animal Industry of the United States Department of Agriculture, or the American Veterinary Medical Association. Application for examination must be made in writing under affidavit to the secretary of the board, accompanied by the sum of fifteen dollars. Such applicants shall be given due notice of the date and place of examination. In case any applicant because of failure to pass examination be refused a license, such person may be permitted to take a second examination without additional fee. [Id.]

Art. 7456. **Compensation.**—The fund realized from the aforesaid fees shall be applied first to the payment of the necessary expenses of the board; any remaining funds shall be applied by order of the board to compensating members of the board at ten dollars per day. It shall be unlawful for the board or any member thereof in any manner or for any purpose to charge or obligate the State for the payment of any money and the members of said board shall look alone to the revenue derived from

the operation of this title for compensation and for the expenses of conducting said board. [Id.]

Art. 7457. Examinations.—All examinations shall be conducted in writing in such manner as shall be entirely fair and imparital. The applicants to be known by numbers without names or other methods of identification on examination papers by which members of the board may be able to identify such papers until after the applicants have been granted licenses or rejected. Examinations shall be conducted on the scientific branches of veterinary medicine only, and shall include veterinary anatomy, veterinary pathology, chemistry, veterinary obstetrics, veterinary materia medica, veterinary sanitary science, veterinary practice, and veterinary jurisprudence, and veterinary physiology and bacteriology. Upon satisfactory examination under the rules of the board, applicants shall be granted license to practice veterinary medicine. All questions and answers with grades attached shall be preserved for one year and any person rejected shall be entitled to examine his said answers and the grades attached thereto. All applicants examined at the same time shall be given identical questions in each of the above branches. All certificates shall be signed by a majority of said board and attested by its seal. [Id.]

Art. 7458. Revocation of license.—The right to practice veterinary medicine in this State may be revoked by any court of competent jurisdiction upon proof of the violation of the law in any regard thereto or for any cause for which the State Board of Veterinary Medical Examiners is authorized by law to refuse to admit to its examinations as hereinafter provided. The several district and county attorneys of this State shall file and prosecute appropriate proceedings in the name of the State for violations thereof on request of any member of said Board. [Id.]

Art. 7459. Disqualifications.—The State Board of Veterinary Medical Examiners may refuse to admit to its examinations or to issue the certificate provided for by this law for any of the following causes: The presentation to the Board of any license, certificate or diploma which was illegally or fraudulently obtained, or when fraud or deception has been practiced in passing the examination; conviction of crime of the grade of felony, or one which involves moral turpitude; other grossly unprofessional or dishonorable conduct of a character likely to deceive or defraud the public; or for habits of intemperance or drug addiction calculated to endanger the lives of patients. Any applicant who may be refused admittance to examination before said board shall have his right of action to have such issue tried in the district court in the county in which some member of the board resides. [Id.]

Art. 7460. Who are veterinarians.—Any person shall be deemed as practicing veterinary medicine or veterinary surgery or dentistry who professes publically to be a veterinary physi-

cian, surgeon, or dentist, or who appends to his name any initials or title implying qualifications to practice veterinary medicine or who shall treat, operate or prescribe for any physical ailment or deformity of any domestic animal for which he shall receive compensation, either direct or indirect, or any county demonstration or farm demonstration agent while in the employment of any county, State or Federal government on a salary for treating or attempting to treat any animal for any disease, ailment or deformity. Nothing in this law shall apply to persons not so employed gratuitously treating animals. The operation known as "Dehorning," "Castrating," or spaying shall not be construed as the practice of veterinary medicine or surgery nor the vaccination of cattle for blackleg as the practice of veterinary medicine. [Id.]

Art. 7461. Certificates and licenses.—On or before March 1st each year, each practicing veterinary physician in the State shall file with the secretary of the board of veterinary examiners his application for renewal of his license to practice. Said application shall be made on forms to be furnished by the board on which shall appear the name, age, and residence of the applicant, and whether practicing under a license issued by the board after examination or whether under the provisions of Chapter 76, Acts 1911, as to the practice of veterinary medicine for five years prior to 1911. All such applications shall be accompanied by a fee of one dollar. If any person practicing veterinary medicine or veterinary surgery shall fail for a period of sixty days after the expiration of his license to make application to the board for its renewal, his name shall be erased from the register of licensed veterinarians, and before he may again practice veterinary medicine he shall be required to take the examination before the board, unless he has been prevented from applying for renewal for good cause, of which the board shall be the judge of the sufficiency thereof. Each license issued under this title shall expire on the 1st. day of March of each year, and may be renewed by complying with the provisions of this title. [Id.]

Art. 7462. Definitions.—The terms veterinarians, veterinary medicine, veterinary surgery, veterinary physician and veterinary dentist as used in this title shall be construed as synonymous. [Id.]

Art. 7463. Permanent license.—Nothing in this title shall be construed as requiring veterinarians or veterinary surgeons who have successfully passed examination and who have been granted certificate of permanent license by said board, to again submit themselves to examination. Such certificate of permanent license is valid to all intents and purposes, subject to each provision of this title. [Id.]

Art. 7464. License to be recorded.—Any person receiving a certificate of license from the Board of Veterinary Medical Examiners shall forthwith have it recorded in the office of the District Clerk of the county in which he makes his residence,

and shall display it in his regular place of business. The date of recording shall be recorded thereon, and until the license is recorded the holder shall not exercise any of its rights or privileges therein conferred. Such license shall become invalid if it is not recorded within ninety days from its date of issuance. The district clerk shall be paid his fee for recording such certificate by the holder thereof. [Id.]

Art. 7465. To record license on removal.—Any veterinarian or veterinary surgeon who has successfully passed examination and who has been granted license by said board to practice veterinary medicine, veterinary surgery or veterinary dentistry in this State, and has recorded his license as provided for in this title, may go from one county to another county in this State on professional business and may practice veterinary medicine, veterinary surgery or veterinary dentistry in any county in this State to which he may go, without recording or registering said license in any county to which he may go or in which he may practice. Any veterinarian or veterinary surgeon who has successfully passed the said examination and duly recorded his license, and who removes his residence from the county in which his license is recorded, shall again record his license in the county to which he removes his residence, in the same manner as the same was recorded in the county from which he removed his residence. Such veterinarian or veterinary surgeon shall have no authority to practice in any county to which he removes his residence until he has so recorded said license. [Id.]

TITLE 128.**WATER.**

- I. IRRIGATION AND WATER RIGHTS.
 - Ch. 1.—Use of State Water.
 - Sub. 1.—Public Rights.
 - Sub. 2.—Board of Water Engineers.
 - Sub. 3.—Regulation of Use.
 - Ch. 2.—Water Improvement Districts.
 - Ch. 3.—Water Control Districts.
 - Ch. 4.—Fresh Water Districts.
- II. LEVEES.
 - Ch. 5. State Reclamation Engineer.
 - Ch. 6.—Levee Improvement Districts.
- III. DRAINAGE.
 - Ch. 7.—Drainage Districts.
- IV. CONSERVATION AND RECLAMATION.
 - Ch. 8.—Conversion of Districts.
- V. NAVIGATION.
 - Ch. 9.—Navigation Districts.
 - Ch. 10.—Pilots.

I. IRRIGATION AND WATER RIGHTS.**CHAPTER ONE.****USE OF STATE WATER.****1. PUBLIC RIGHTS.**

Art. 7466. [4991] [3115] Public rights.—The conservation and development of all of the natural resources of this State, including the control, storing, preservation and distribution of its storm and flood waters, the waters of its rivers and streams for irrigation, power and all other useful purposes; the reclamation and irrigation of its arid, semi-arid and other lands needing irrigation; the reclamation and drainage of its overflowed lands, and other lands needing drainage; the conservation and development of its forest, water and hydro-electric power; the navigation of its inland and coastal waters, and the preservation and conservation of all such natural resources of the State are each and all hereby declared public rights and duties. [Acts 1895, p. 21; G. L. Vol. 10, p. 751; Acts 1913, p. 358; Acts 1917, p. 211; Acts 1921, p. 233.]

2. BOARD OF WATER ENGINEERS.

| Article | Article | | |
|---------------------------------|---------|---------------------------------------|------|
| Property of the State..... | 7467 | May reject application..... | 7503 |
| How stored and purpose of..... | 7468 | Decision of board..... | 7504 |
| Vested private rights..... | 7469 | Where recorded..... | 7505 |
| Appropriation of water..... | 7470 | Board to reject applications..... | 7506 |
| Subordinate irrigation..... | 7471 | Board to approve applications..... | 7507 |
| Between appropriators..... | 7472 | Conditions of application..... | 7508 |
| Appropriation defined..... | 7473 | Publication of..... | 7509 |
| Forfeiture of rights..... | 7474 | Hearing of application..... | 7510 |
| Water divisions..... | 7475 | Cost of publication..... | 7511 |
| Beneficial use defined..... | 7476 | Attorney General shall represent | |
| Board continued in office..... | 7477 | board..... | 7512 |
| Board appointment of..... | 7478 | Duty of clerk..... | 7513 |
| Qualification..... | 7479 | Authority to inspect..... | 7514 |
| Bond..... | 7480 | Contents of permit..... | 7515 |
| Governor may remove..... | 7481 | Transmitted to county clerk..... | 7516 |
| Salary..... | 7482 | Recording fee..... | 7517 |
| Meet at Austin..... | 7483 | Constructive notice..... | 7518 |
| Majority constitute quorum..... | 7484 | Time required..... | 7519 |
| Board appoint secretary..... | 7485 | Conviction..... | 7520 |
| Board appoint employes..... | 7486 | Liable..... | 7421 |
| Duty of secretary..... | 7487 | Suit..... | 7522 |
| Power of board..... | 7488 | Date..... | 7523 |
| Office furnished..... | 7489 | Measurements and calculations..... | 7524 |
| Traveling expenses..... | 7490 | Board conservant..... | 7525 |
| Board hold sessions where..... | 7491 | Biennial reports of board..... | 7526 |
| Application in writing..... | 7492 | Proper records..... | 7527 |
| Description of..... | 7493 | Quantity of water..... | 7528 |
| Map to be furnished..... | 7494 | Board to condemn..... | 7529 |
| Permit for alteration, etc..... | 7495 | Right of appeal..... | 7530 |
| Priority of date..... | 7496 | Board to enforce rules, etc..... | 7531 |
| Fee..... | 7497 | Board to charge and collect fees..... | 7532 |
| File application for..... | 7498 | Fees and charges deposited..... | 7533 |
| May return fee..... | 7499 | Fee limit..... | 7534 |
| Board requirements..... | 7500 | Excess fees paid how..... | 7535 |
| Fees paid..... | 7501 | State Board to fix time..... | 7536 |
| Drainage..... | 7502 | Time limit..... | 7537 |

Art. 7467. **Property of the State.**—The waters of the ordinary flow and underflow and tides of every flowing river or natural stream, of all lakes, bays or arms of the Gulf of Mexico, and the storm, flood or rain waters of every river or natural stream, canyon, ravine, depression or watershed, within the State of Texas, are hereby declared to be the property of the State, and the right to the use thereof may be acquired by appropriation in the manner and for the uses and purposes hereinafter provided, and may be taken or diverted from its natural channel for any of the purposes expressed in this chapter. When an application is made for appropriation of such water for mining purposes, the owner of the land through which the water flows and which is to be appropriated shall have the prior right to appropriate same, and shall be permitted to exercise such right, although such owner may not have made application prior to such application by another, and such owner shall have only ten days after notice of application to appropriate such water in which to exercise his prior right to appropriate, which he shall do by written application filed with the Board of Water Engineers within such time. [Acts 1921, p. 233, Sec. 2.]

Art. 7468. **How stored and purpose of.**—The waters described in the preceding article may be held or stored by dams, in lakes or reservoirs, or diverted by means of canals, ditches, intakes, pumping plants, or others works, constructed by any person, corporation, association of persons, or irrigation district created under the statutes, for the purpose of irrigation, mining, milling, manufacturing, the development of power, the con-

struction and operation of waterworks for cities, and towns, or for stock raising, the waters of any arm or inlet of the Gulf of Mexico, or of any salt water bay, may be changed from salt to sweet or fresh water, and held or stored by dams, dikes, or other structure, and taken or diverted for any of the purposes expressed in this chapter. [Id., p. 234, Sec. 3.]

Art. 7469. **Vested private rights.**—Nothing in this chapter shall prejudice vested private rights. [Id., p. 234, Sec. 3.]

Art. 7470. **Appropriation of water.**—The appropriation of water must be for irrigation, mining, milling, manufacturing, the development of power, the construction and operation of waterworks for cities and towns, or for stock raising.

Art. 7471. **Subordinate irrigation.**—So far as practicable and within the limits of the public welfare, the Board of Water Engineers, shall subordinate the appropriation of water for power to the appropriation of water for irrigation. [Acts 1917, p. 212, Sec. 4.]

Art. 7472. **Between appropriators.**—As between appropriators, the first in time is the first in right. [Id., Sec. 5.]

Art. 7473. **Appropriators defined.**—For the purpose of this chapter, an appropriator is any person, association of persons, corporation or irrigation district, who has heretofore made beneficial use of any water, in a lawful manner, under the provisions of any Act of the Legislature of the State of Texas, prior to the passage of Chapter 171 of the General Laws of the Thirty-third Legislature of Texas, and who has filed with the State Board of Water Engineers a record of his appropriation, as required by said Act of the Thirty-third Legislature of Texas, or who has heretofore or may hereafter make beneficial use of any water within the limitations of a permit lawfully issued by the Board of Water Engineers, and no appropriation of any water shall be considered as having been perfected, unless such water has been beneficially used for one or more of the purposes named in this chapter, and for the purpose or purposes stated in the original declaration of intention to appropriate such water, or stated in the permit issued by the Board of Water Engineers. [Id. Sec. 6.]

Art. 7474. **Forfeiture of rights.**—Neither the foregoing article, nor any other provision of this chapter, shall be construed as intended to impair or to work or authorize the forfeiture of, or shall impair or work or authorize the forfeiture of, any rights heretofore or hereafter acquired by any declaration of appropriation or by permit when the appropriator has begun, or begins, the work and development contemplated by his declaration of appropriation, within the time provided in the law under which the same was or is made and has prosecuted and continues to prosecute the same with all reasonable diligence toward completion; but if any appropriator under this chapter, or other law of this State, has failed or fails to begin the work and development contemplated by his declaration of appropriation within the time provided in the law under which the same was or is made, or has failed or fails, to prosecute the same with all reasonable diligence toward completion, his right to so much water

as has not been applied, or is not applied to beneficial use, as defined in this chapter, shall be considered as, and shall be, forfeited, and such water shall be subject to new appropriation under this chapter; provided, that no such rights shall be declared forfeited until the person or persons who are the owners of the land and whose rights are claimed to have been forfeited, shall first be given due notice and hearing, as required in Article 7519 of this chapter; and, provided further, that if a permit for the use of such water has been issued, or is issued, under this Act, or under the Act approved April the 9th, 1913, such water shall not be subject to new appropriation until the permit is cancelled by the Board in whole, or in part, in accordance with the provisions of Article 7519 of this chapter. [Id. Sec. 7.]

Art. 7475. Water divisions.—The State shall be, and is hereby, divided into three water divisions, as follows:

All that portion of the State of Texas lying north of the thirtieth parallel, north latitude, and west of the one hundredth meridian, west longitude, shall constitute water division No. 1.

All that portion of the State of Texas lying east of the ninety-seventh meridian, west longitude, and south of the thirtieth parallel north latitude, together with all that portion lying north of the thirtieth parallel north latitude and east of the one hundredth meridian west longitude, shall constitute water division No. 2.

All that portion of the State of Texas not embraced in water division No. 1 or water division No. 2, as heretofore defined, shall constitute water division No. 3. [Id. p. 213, Sec. 8.]

Art. 7476. Beneficial use defined.—For the purpose of this chapter, beneficial use shall be held to mean the use of such a quantity of water, when reasonable intelligence and reasonable diligence are exercised in its application for a lawful purpose, as is economically necessary for that purpose. [Id. Sec. 9.]

Art. 7477. Board continued in office.—The Board of Water Engineers, created and constituted by the Act of the Thirty-third Legislature, Chapter 171, General Laws, approved April 9, 1913, is hereby continued, and the members constituting such board shall continue in office for the respective terms for which they were appointed and until their successors are appointed and qualified, unless sooner removed in the manner provided by law. [Id. Sec. 10.]

Art. 7478. Board appointment of.—Said Board shall be composed of three members, one of whom shall be appointed from each of the respective water divisions described in Article 7475. The members of such board shall be appointed by the Governor, by and with the advise and consent of the Senate, and shall each hold office for a term of six years, and until his successor is appointed and qualified. [Id.]

Art. 7479. Qualification.—No person shall be appointed a member of the Board who has not such technical knowledge and such practical experience and skill as shall fit him for the duties of the office. [Id.]

Art. 7480. Bond.—Each member of such Board shall enter

into bond, to be approved by the Governor, in the penal sum of ten thousand dollars, with not less than two personal sureties, or with one surety or guaranty company authorized to do business in this State, conditioned for the faithful discharge of the duties of his office, and for the delivery to his successor, or other officer appointed by the Governor to receive same, all moneys, books, and other property belonging to the State then in his hands, or under his control, or with which he may be legally chargeable as a member of said board. [Id.]

Art. 7481. **Governor may remove.**—The Governor shall have power to remove, at any time, for cause, any member of the State Board of Water Engineers, after such member shall have been given a full, free and public hearing by the Governor. The Governor shall fill all vacancies by appointment, with the advice and consent of the Senate. [Id.]

Art. 7482. **Salary.**—Each member of such Board shall receive a salary of thirty-six hundred dollars per annum, payable in monthly installments, upon the presentation of salary vouchers, approved by the Board. [Id. p. 214, Sec. 11.]

Art. 7483. **Meet at Austin.**—The members appointed shall meet at Austin and organize and elect one of their number chairman of said Board. [Id. Sec. 12.]

Art. 7484. **Majority constitute quorum.**—A majority of said Board shall constitute a quorum to transact business. [Id.]

Art. 7485. **Board appoint secretary.**—Said Board shall appoint a secretary, who shall be thoroughly conversant with irrigation law, at a salary of not more than two thousand dollars per annum, and who shall execute a bond in the sum of twenty-five hundred dollars, to be approved by the Board, payable to the Board of Water Engineers. [Id.]

Art. 7486. **Board appoint employees.**—The Board may appoint such experts and employees as may be necessary to perform any duty that may be required of them by this chapter, and fix their compensation. [Id.]

Art. 7487. **Duty of secretary.**—The secretary shall keep full and accurate minutes of all transactions and proceedings of said Board, and perform such duties as may be required by the Board. [Id.]

Art. 7488. **Power of Board.**—The Board shall have power to make all needful rules for its government and proceedings; and shall have a seal, the form of which it shall prescribe. [Id.]

Art. 7489. **Office furnished.**—The Board shall be furnished with an office at Austin, with necessary furniture, stationery, supplies, etc., at the expense of the State, to be paid for on the order of the board. [Id.]

Art. 7490. **Traveling expenses.**—The members, secretary, experts and employees of the Board shall be entitled to receive from the State their necessary traveling expenses while traveling on the business of the board, upon an itemized statement, sworn to by the party who incurred the expense and approved by the Board. [Id. Sec. 13.]

Art. 7491. **Board hold sessions, where.**—The Board may hold

sessions at any place in this State, when deemed necessary to facilitate the discharge of its duties. [Id. Sec. 14.]

Art. 7492. Application in writing.—Every person, association of persons, corporation water improvement or irrigation district, who shall, after this Act shall take effect, desire to acquire the right to appropriate, for the purposes stated in this chapter, unappropriated water of the State, shall, before commencing the construction, enlargement or extension of any dam, lake, reservoirs of other storage work, or any ditch, canal, intake, headgate, pumping plant of other distributing work, or performing any work in connection with the storage, taking or diversion of water, make an application in writing to the Board for a permit to make such appropriation, storage or diversion. [Id., part Sec. 15.]

Art. 7493. Description of.—Such application shall be in writing and sworn to; shall set forth the name and post-office address of the applicant; the source of water supply; the nature and purposes of the proposed use; the location and description of the proposed dam, lake, reservoir, headgate, intake, pumping plant, ditch, canal or other work; the time within which it is proposed to begin construction, and the time required for the application of the water to the proposed use; and, if such proposed use is for irrigation, a description of the lands proposed to be irrigated, and, as near as may be, the total acreage thereof. [Id., part Sec. 15.]

Art. 7494. Map to be furnished.—Such application shall be accompanied by a map or plat drawn on tracing linen, on a scale not less than one inch equals two thousand feet, showing substantially the location and extent of the proposed work; the location of the headgate, intake, pumping plant or point of diversion by course and distance from permanent natural objects or land marks; the location of the main ditch or canal and of the laterals or branches thereof; the course of the river, stream or other source of water supply; the position and area of all lakes, reservoirs or basins intended to be used or created, and the water line thereof, the intersection with all other ditches, canals, laterals, lakes or reservoirs the proposed work will touch or intersect, or with which connection will be made; and shall represent in ink of different color from that used to represent the proposed works, the location of all ditches, canals, laterals, reservoirs, lakes, dams, or other work of like character then existing on the ground, with a designation of the name of the owner thereof. Such map or plat shall contain the name of the proposed work or enterprise; the name or names of the applicants, and a certificate of the surveyor, giving the date of his survey, his name and post-office address, and also the date of the application which it accompanies. [Id., part Sec. 15.]

Art. 7495. Permit for alteration, etc.—Nothing in this Act shall be held or construed to require the filing of an application or procuring of any permit for the alteration, enlargement, extension or addition to any canal, ditch or other work that does not contemplate, or will not result in, an increased appropria-

tion, or the use of a larger volume of water, but before making any such alteration, enlargement, extension or addition, the person, association of persons, corporation or irrigation district desiring to make same, shall file with the Board of Water Engineers a detailed statement and plan, for the information of the board, of the work proposed to be done. [Id., part Sec. 15.]

Art. 7496. Priority of date.—Any person or association of persons, corporation, water improvement or irrigation district, who desires to investigate the feasibility of any project having for its object the creation of a reservoir for the impounding of flood waters in quantities greater than five thousand acre-feet, and which, if constructed, will probably result in the use of five thousand acre-feet per annum, or more, and who has an organized engineering force adequate to expeditiously proceed with such investigation, shall, upon the presentation of such facts, duly verified, to the Board of Water Engineers, describing the locality of such proposed reservoir, have priority date from the time of the filing of such presentation, should a permit be granted thereafter, for the purposes described in such presentation; provided, however, that nothing in this article or in this chapter shall affect or restrict the right of any person or persons, owning lands in this State, to construct on his own property any dam or reservoir which would impound or contain less than five hundred acre-feet of water. [Id., p. 215, Sec. 16.]

Art. 7497. Fee.—Upon the filing of such presentation, a fee of two hundred and fifty dollars shall be paid to the Board for the use of the State, as provided for other fees collected under this Act; no part of which shall be returned, except as hereinafter provided. The fee shall be held by the Board for a period of twelve months from the date of its receipt, unless disposed of as hereinafter provided. [Id., Sec. 17.]

Art. 7498. File application for.—Any person or association of persons, corporation, water improvement, or irrigation district, who has complied with the provisions of Articles 7496 and 7497, and who shall, within twelve months from the date of such presentation, file an application for a permit to store and use any of the flood waters of this State, in volumes of five thousand acre-feet, or more, for the objects and purposes, and at the locality set out in the presentation described in Articles 7496 and 7497, shall when paying the fees described in Article 7532, be credited with the two hundred and fifty dollars paid in accordance with the provisions of Article 7497. [Id., p. 216, Sec. 18.]

Art. 7499. May return fee.—If within twelve months after the filing of the presentation of facts described in Article 7496, such relator shall elect not to apply for a permit, and shall file the results of his or its investigation in intelligible form, with the Board, the Board may, at its option, return, all or any part of said two hundred and fifty dollars, if in its judgment such information will be of equivalent value to the State. [Id., Sec. 19.]

Art. 7500. Board requirements.—If the proposed taking or diversion of water for irrigation is of greater volume than nine

cubic feet per second of time, the Board may require the following, in addition:

A continuous longitudinal profile; cross sections of the proposed channel; and the detail plans and specifications of any structural work of whatever character entering into the proposed project, on such scales and with such definition as the board may deem necessary or expedient.

The Board may also require the filing of a copy of the engineer's field notes of any survey of such lake or reservoir, and all plans and specifications, where the project calls for a dam over six feet in height, either for the purpose of diversion or storage; and no work on such project shall proceed until approval of such plans is obtained.

The Board may, in case the applicant is an incorporated company, require the filing of a certified copy of the applicant's articles of incorporation, together with a statement of the names and addresses of its directors and officers; and the amount of its authorized and of its paid up capital stock.

If the applicant be other than an incorporated company, the board may require the filing of a sworn statement, showing the names and addresses of the person or persons interested in same and the extent of such interest and of the financial condition of each such person. [Id., Sec. 20.]

Art. 7501. **Fees paid.**—Every such application shall be accompanied by the fees hereinafter provided, and shall not be filed or considered until such fees are paid. [Id.]

Art. 7502. **Drainage.**—Whenever, in the opinion of the Board, the successful efficient operation of any existing or proposed irrigation system will, or may, be adversely affected by lack of adequate facilities incident to the work proposed to be done by the applicant or applicants for a permit to appropriate public waters, the said applicant or applicants shall submit drainage plans adequate, in the opinion of the board, to guard against any present or future injury which the proposed works may entail. [Id., Sec. 21.]

Art. 7503. **May reject application.**—Upon the filing of such application, accompanied by the data and fees hereinbefore provided, it shall be the duty of the Board to make a preliminary examination thereof and, if it appear that there is no unappropriated water in the source of supply, or that, for other reasons, the proposed appropriation shall not be allowed, the Board may thereupon reject such application; in which case, if the applicant shall elect not to proceed further, the Board may return to such applicant any part of the fees accompanying such application. [Id., p. 217, Sec. 22.]

Art. 7504. **Decision of Board.**—The Board shall determine whether the application, maps, plats, contours, plans, profiles and statements accompanying same are in compliance with the provisions of this chapter, and with the regulations of the Board, and may require the amendment therefore. [Id. Sec. 22.]

Art. 7505. **Where recorded.**—All applications filed with the Board shall be recorded in a well bound book kept for that pur-

pose in the office of said Board, and shall be indexed alphabetically in the name of the applicant, of the stream or source from which such appropriation is sought to be made, and the county in which appropriation is sought to be made. [Id., Sec. 23.]

Art. 7506. Board to reject applications.—It shall be the duty of the Board to reject all applications and refuse to issue the permit asked for if there is no unappropriated water in the source of supply; or if the proposed use conflicts with existing water rights, or is detrimental to the public welfare. [Id., Sec. 24.]

Art. 7507. Board to approve applications.—It shall be the duty of the Board to approve all applications and issue the permit asked for if such application is made in proper form in compliance with the provisions of this chapter and the regulations of said Board; and is accompanied by the fees required in this chapter; and if the proposed appropriation contemplates the application of water to any of the uses and purposes provided for in this chapter, and does not impair existing water rights, or vested riparian rights and is not detrimental to the public welfare. [Id.]

Art. 7508. Conditions of application.—Before the Board shall approve any such application and issue any such permit, notice of such application shall be given substantially in the following manner:

Such notice shall be in writing; shall state the name of the applicant and his residence; the date of the filing of the application in the office of the Board; the purpose and extent of the proposed appropriation of water; the source of supply; the place at which the water is to be stored, or to be taken or diverted from the source of supply; together with such additional information as the board may deem necessary. If the proposed use is for irrigation, such notice shall contain a general description of the location and the area of the land to be irrigated. Such notice shall also state the time and place when and where such application will be heard by the Board. [Id. Sec. 25.]

Art. 7509. Publication of.—Such notice shall be published once in each week for four consecutive weeks prior to the date stated in such notice for the hearing of such application in some newspaper having a general circulation in that section of the State in which the source of water is located. In addition to such publication, a copy of such notice shall be transmitted by the secretary of the Board, by registered mail, addressed to each claimant or appropriator of water from such source of water supply, the record of whose claim or appropriation has been filed in the office of the Board. Such notice shall be mailed not less than twenty days before the date set for the hearing.

Art. 7510. Hearing of application.—At the time and place stated in the notice, the Board shall sit to hear such application. Any person, association of persons, corporation, or irrigation district may appear, in person or by attorney, and enter appearance in writing in said matter and present objection to the issuance of permit. The Board may receive evidence, orally or by affidavit, in support of or in opposition to the issuance of such

permit; and may also hear arguments. It shall have power to adjourn such hearing from time to time and from place to place, and after full hearing to render decision in writing approving or rejecting such application. Such application may be approved or rejected in whole or in part. Nothing herein contained shall prevent the Board from rejecting any application in whole without the issuance of the notice herein required. [Id. p. 218, Sec. 27.]

Art. 7511. Cost of publication.—The cost of publication of the notice herein required and the postage for mailing thereof shall, in each case be paid by the applicant. [Id. Sec. 28.]

Art. 7512. Attorney General shall represent board.—In all litigation to which the Board may be a party, the Attorney General shall represent the Board. [Id. Sec. 29.]

Art. 7513. Duty of clerk.—When any court of record in this State shall render any judgment, order or decree, affecting in any manner the title to any water right, claim, appropriation or irrigation works, or any matter over which the Board of Water Engineers is given supervision under the provisions of this chapter, it shall be the duty of the clerk of such court to forthwith transmit to the office of the Board a certified copy of such judgment, order or decree. [Id. Sec. 30.]

Art. 7514. Authority to inspect.—The Board, or any one employed by the Board for that purpose, shall have at all times authority to inspect any impounding, diversion or distribution works during construction, to determine whether or not they are being constructed in a safe and approved manner, and in accordance with the order of the Board theretofore issued. [Id. Sec. 31.]

Art. 7515. Contents of permit.—Every permit issued by the Board, under the provisions of this chapter, shall be in writing, attested by the seal of said Board and shall contain substantially the following: The name of the applicant to whom issued; the date of the issuance thereof; the date of the filing of the original application therefor in the office of the Board; the use or purpose for which the appropriation of water is to be made; the amount or volume of water authorized to be appropriated; a general description of the source of supply from which the appropriation is proposed to be made; and, if such appropriation is for irrigation, a description and statement of the approximate area of the lands to be irrigated; together with such other data and information as the Board may prescribe. [Id. Sec. 32.]

Art. 7516. Transmitted to county clerk.—Upon the issuance of such permit, same shall be transmitted by the secretary of the Board, by registered mail, to the county clerk of the county in which the appropriation is to be made. [Id.]

Art. 7517. Recording fee.—Upon receipt of a recording fee of one dollar, to be paid by the applicant, such clerk shall file and record the same in a well bound book provided and kept for that purpose only, and to index the same alphabetically under the name of the applicant and of the stream or source of water sup-

ply, and, thereupon, to deliver such permit, upon demand, to the applicant. [Id.]

Art. 7518. Constructive notice.—Such permit, when thus filed in the office of the county clerk, shall be constructive notice of the filing of the application with the Board; of the issuance of the permit; and of all the rights arising thereunder. [Id.]

Art. 7519. Time required.—Within ninety days after the date of issuance of the permit provided for in this chapter, the applicant seeking to appropriate water thereunder shall begin actual construction of the proposed ditch, canal, dam, lake, reservoir, or other work, and shall prosecute the work thereon diligently and continuously to completion; provided, that the Board may, by an order entered of record, extend the time for beginning the actual construction of such work for a period not to exceed twelve months from the date of issuance of such permit; and, further provided, that if any applicant shall fail to comply with the requirements of this article, he, they or it, shall thereby forfeit all rights under such permit. If any applicant to whom a permit is issued, or one owning prior appropriation, shall, after beginning the actual construction work, as provided in this article, fail to thereafter prosecute the same diligently and continuously to completion the Board may, after thirty days notice to the applicant or owner of such appropriation, and giving him an opportunity to be heard, by an order entered of record, revoke and cancel such permit or appropriation in whole or in part. Any party affected by such order shall have the right of appeal to the district court, as in this chapter provided. A certified copy of such order shall be forthwith transmitted by the secretary of the Board, by registered mail, to the clerk of the county in which such permit is recorded and which order shall be recorded by said county clerk. [Id. p. 219, Sec. 33.]

Art. 7520. Conviction.—Any person, association or persons, corporation, water improvement or irrigation district, or any agent, officer, employe or representative of any person, association of persons, corporation or irrigation district, who shall willfully take, divert or appropriate any of the water of this State, or the use of such water, for any purpose, without first complying with all the provisions of this chapter, shall be deemed guilty of a misdemeanor; and, on conviction thereof, shall be fined in a sum not exceeding one hundred dollars, or by imprisonment in the county jail for a term not exceeding six months, or by both such fine and imprisonment; and each day that such taking, diversion or appropriation of water shall continue shall constitute a separate offense, and the possession of such water, except when the right to its use is acquired in accordance with the provisions of law, shall be prima facie proof of the guilt of the person, association of persons, corporation, irrigation district, or the agent, officer, employe or representatives of any person, association of persons, corporation or irrigation district. [Id. Sec. 34.]

Art. 7521. Liable.—In addition to the punishment prescribed in the last preceding article, any person, association of persons,

corporation, water improvement or irrigation district, or any agent, officer, employee or representative of any such persons, association of persons, corporation, water improvement or irrigation district, who shall wilfully take, divert or appropriate water of the State, or the use of such water, without first complying with the provisions of this chapter, shall be liable to a penalty of one hundred dollars per day for each and every day that such taking, diversion, appropriation, or use may be made. [Id. Sec. 35.]

Art. 7522. **Suit.**—The State may recover such penalties by suit brought for that purpose in any court of competent jurisdiction. [Id.]

Art. 7523. **Date.**—When any permit is issued under the provisions of this chapter, the priority of the appropriation of water, or the claimant's right to the use of such water, shall date from the date of the filing of the original application in the office of the Board. [Id. p. 220, Sec. 36.]

Art. 7524. **Measurements and calculations.**—It shall be the duty of the Board to make or cause to be made measurements and calculations of the flow of streams from which water may be appropriated, as provided in this chapter, commencing such work in those streams most used for irrigation or other beneficial uses; to collect data and make surveys; to determine the most suitable location for constructing works to utilize the waters of the State; to ascertain the location and area of the lands best suited for irrigation; to examine and survey reservoir sites; and wherever practicable, to make estimates of the cost of proposed irrigation works, and the improvements of reservoir sites. [Id. Sec. 37.]

Art. 7525. **Board conversant.**—It shall be the duty of the board to make itself conversant with the water courses of the State and of the needs of the State concerning irrigation matters, and the storage and conservation of the waters of the State for other purposes. [Id.]

Art. 7526. **Biennial reports of board.**—The Board shall make biennial reports in writing to the Governor, in which shall be included the data and information collected by the Board, and in which shall be included such suggestions as to the amendment of existing laws and the enactment of new laws as the information and experience of the Board may suggest. [Id.]

Art. 7527. **Proper records.**—The board shall keep in its office full and proper records of its work, observations and calculations, all of which shall be the property of the State. [Id.]

Art. 7528. **Quantity of water.** It shall be the duty of the Board to ascertain the quantity of water, and to determine the proper quantities required for irrigation and other lawful uses in the several sections of the State, in order to secure the highest beneficial use of such water, such work to be first conducted in those sections where, in the judgment of the Board, the greatest necessity exists. [Id. Sec. 38.]

Art. 7529. **Board to condemn.**—Full authority is lodged with the Board, on its own initiative, to condemn existing works, the

existence or operation of which may, in the judgment of the Board, become a public menace or dangerous to life and property; provided that, in all cases of proposed condemnation, the party or parties at interest shall be notified of such contemplated action, and may appear at a time stated and be heard. [Id. Sec. 39.]

Art. 7530. Right of appeal.—In such cases the party or parties whose works may be condemned, shall have the right of appeal from the decision of the Board, as provided herein in all other cases of appeal. [Id.]

Art. 7531. Board to enforce rules, etc.—The Board may adopt, promulgate and enforce such rules, regulations and modes of procedure as it may deem proper for the discharge of the duties incumbent upon it under the provisions of this chapter. [Id. Sec. 40.]

Art. 7532. Board to charge and collect fees.—The Board shall charge and collect, for the benefit of the State, the following fees:

For filing each and every application for any purpose, a fee of seven and one-half dollars; and, in addition thereto;

For filing each and every application for storage water, except surface waters, a fee of five dollars, provided that if the application shall contemplate and propose the storage of water in excess of five acre-feet, and additional fee of twenty-five cents shall be charged for each additional acre-foot in excess of five, up to and including one hundred acre-feet; for each additional one hundred acre-feet, or fraction thereof in excess of one hundred, and additional fee of ten dollars, up to and including one thousand acre-feet; and for each additional thousand acre-feet, above one thousand, and additional fee of twenty-five dollars; provided that no fee, based on storage, shall be charged for any proposed or contemplated storage of less than five acre-feet.

For filing each application contemplating and proposing the taking or diversion of water for the purpose of irrigation, ten cents for each and every acre proposed to be irrigated.

For filing each application proposed and contemplating the use of water for the purpose of developing hydraulic power, a fee of two cents for each foot of head for each cubic foot of water per second it is proposed to use.

For filing each application contemplating and proposing the taking, diversion, or use of flowing water for any other purpose than storage, irrigation of land, or the development of hydraulic power, as hereinbefore provided, five cents for each acre-foot of water consumed per annum.

Provided, that, in estimating the aforesaid additional fees on a proposed appropriation contemplating the use of water or two or more of the aforesaid purposes, the fees charged shall be cumulative, and a charge made for each use, based on the quantity proposed for each separate use.

For the filing of each and every exhibit, map, affidavit, or other paper authorized to be filed in the office of the Board of Water Engineers, a filing fee of twenty-five cents.

For recording each and every paper authorized or required to be recorded in the records of the office of the Board, a fee of one dollar, and, in addition thereto, a fee of fifteen cents per folio of one hundred words, in excess of two hundred.

For making and certifying each and every copy of an instrument or paper authorized to be certified under the seal of the board a fee of one dollar, and in addition thereto, a fee of fifteen cents per folio of one hundred words, including the certificate.

For making and certifying copies of any map or blue print thereof, a fee of one dollar, and, in, addition thereto, a fee of seventy-five cents for each hour or fraction thereof necessarily employed by the draughtsman in making such copy.

For filing each application for an extension of time within which to begin actual construction or to complete work, a fee equal to one-half of the original application fees in such case; provided that, if it be simultaneously sought to extend both the time for the beginning and completion of any work theretofore authorized, but one fee shall be charged; and, in addition thereto, the usual fees for filing and recording such applications. [Id. p. 221, Sec. 41.]

Art. 7533. Fees and charges deposited.—The fees and charges collected in accordance with the provisions of this chapter shall be immediately deposited in the State Treasury to the credit of the general revenue and full and detailed verified monthly and annual reports of all such receipts, as well as of the expenditures of the said Board, shall be filed with the Comptroller of Public Accounts. [Id.]

Art. 7534. Fee limit.—That the fees to be paid for filing in the office of the State Board of Water Engineers of applications for permits for the storage, diversion and use of water shall not exceed the sum of fifteen hundred dollars for any one such application, permit or project. In case of all such applications and permits heretofore filed and granted, on which partial payment of fees have been made, as provided by law, the balance to be paid thereon shall be the difference between the amount paid and the said maximum sum of fifteen hundred dollars. [Acts 1923, p. 281, Sec. 1.]

Art. 7535. Excess fees paid, how.—The fees provided by law to be paid to the State Board of Water Engineers upon applications for permits for the storage, diversion and use of water for any and all statutory purposes when such fees exceed one thousand dollars shall be paid as follows:

One-tenth shall be paid when the application is filed.

One-tenth shall be paid within thirty days after notice is mailed the applicant that the permit is granted. The balance shall be paid before the use of water is commenced under the permit; and a failure to so pay same shall annul such permit. [Acts 3rd C. S., 1920, p. 87, Sec. 2.]

Art. 7536. State board to fix time.—Whenever the State Board of Water Engineers shall grant a permit for the use of water, which use contemplates the construction of a storage reservoir, they shall fix the time actual construction work shall

be commenced thereon, not to exceed two years from the granting of such permit. [Id. Sec. 3.]

Art. 7537. **Time limit.**—Such time limit may be extended by order of said board upon payment of such fees as the Board may fix, not to exceed the sum of one thousand dollars. [Id.]

3. REGULATION OF USE.

| Article | Article | | |
|--|---------|--|------|
| Measurement of flowing water..... | 7538 | Employe of board may enter upon | |
| Standard unit..... | 7539 | lands of any person, when..... | 7581 |
| Quantity of water..... | 7540 | Right of way granted to whom..... | 7582 |
| Acre foot defined..... | 7541 | Additional right of way obtained..... | 7583 |
| Water right defined..... | 7542 | Who shall not have the right or | |
| Use of water limited..... | 7543 | power to acquire..... | 7584 |
| Appropriation forfeited..... | 7544 | Roads and highways..... | 7585 |
| Right to appropriate when..... | 7545 | Who has power to construct ditch..... | 7586 |
| Authority of corporations..... | 7546 | When necessary to irrigate or re- | |
| Who may enter into contract..... | 7547 | claim lands..... | 7587 |
| When lawful to use banks and beds..... | 7548 | Provisions and amendments..... | 7588 |
| Willful interference with the pas- | | Unlawful to divert water..... | 7589 |
| sage of..... | 7549 | Application for permit..... | 7590 |
| Duty of district court..... | 7550 | Penalty to divert waters from natu- | |
| To construct gates..... | 7551 | ral streams, etc..... | 7591 |
| Purpose of corporations..... | 7552 | Acquired title..... | 7592 |
| Authority of corporations..... | 7553 | Failure to fence..... | 7593 |
| Deemed guilty when..... | 7554 | Power to acquire lands by volun- | |
| Possessory right..... | 7555 | tary donation..... | 7594 |
| Failure to agree upon price..... | 7556 | Corporation may elect directors..... | 7595 |
| Division in case of shortage..... | 7557 | Preference lien..... | 7596 |
| Prior vested right..... | 7558 | Enforcement of lien..... | 7597 |
| Permanent water right defined..... | 7559 | Johnson grass or Russian thistle..... | 7598 |
| Board to make preliminary invest- | | Counties exempt..... | 7599 |
| igation..... | 7560 | Artesian well defined..... | 7600 |
| Board to set date..... | 7561 | When artesian well declared a pub- | |
| Board to hear evidence..... | 7562 | lic nuisance..... | 7601 |
| Board to fix rates..... | 7563 | Waste defined..... | 7602 |
| Appeal from decision..... | 7564 | Proper irrigation of trees, etc..... | 7603 |
| Witnesses expenses paid..... | 7565 | Well properly cased..... | 7604 |
| Board to adjourn hearing..... | 7566 | Accurate record kept..... | 7605 |
| May appeal to Appellate Court, | | Excessive or wasteful use of water | |
| when..... | 7567 | wilfully permitted..... | 7606 |
| Proof rests upon plaintiff..... | 7568 | Works declared public nuisance..... | 7607 |
| Board to furnish certified copies, | | Penalty for use of works declared | |
| when..... | 7569 | public nuisance..... | 7608 |
| Rules and regulations made and | | Suit instituted where..... | 7609 |
| published..... | 7570 | Action may be brought before any | |
| Conveyance recorded..... | 7571 | district court..... | 7610 |
| Corporations to store salt water, | | Detailed record..... | 7611 |
| when..... | 7572 | Information required..... | 7612 |
| Rights of corporations..... | 7573 | Penalty for permitting waste..... | 7613 |
| Corporations to serve producers..... | 7574 | Sworn statement..... | 7614 |
| Use of water not entitled to..... | 7575 | Detailed statement furnished..... | 7615 |
| Destruction of and punishment for..... | 7576 | Oil wells exempt..... | 7616 |
| Punishment for pollution..... | 7577 | Abandoned oil wells..... | 7617 |
| Failure to pay for proportionate | | Boundaries..... | 7618 |
| share of work..... | 7578 | Not to recognize any riparian right..... | 7619 |
| Surplus water..... | 7579 | Not to alter any vested right of | |
| Examination and survey..... | 7580 | property..... | 7620 |
| | | Held unconstitutional..... | 7621 |

Art. 7538. **Measurement of flowing water.**—A cubic foot of water per second of time shall be the standard unit for the measurement of flowing water for the purpose of distributing water for beneficial uses. [Acts 1917, p. 222, Sec. 42.]

Art. 7539. **Standard unit.**—The Standard unit for volume of static water shall be the acre-foot. [Id.]

Art. 7540. **Quantity of water.** A cubit foot per second of time is the quantity of water that will pass through an area of one square foot in one second, when flowing at an average velocity of one foot per second. [Id. Sec. 43.]

Art. 7541. **Acre foot defined.**—An acre foot is the quantity of water required to cover one acre one foot deep. [Id.]

Art. 7542. **Water right defined.**—A water right is the right

to use the water of the State when such use has been acquired by the application for water under the statutes of this State and for the purposes stated in this chapter. Such use shall be the basis, the measure and the limit to the right to use water of the State at all times, not to exceeding in any case the limit of volume to which the user is entitled and the volume which is necessarily required and can be beneficially used for irrigation or other authorized uses. [Id. Sec. 44.]

Art. 7543. Use of water limited.—Rights to the use of water acquired under the provisions of this chapter shall be limited and restricted to so much thereof as may be necessarily required when beneficially used for the purposes stated in this chapter, irrespective of the capacity of the ditch or other works, and all the water not so applied shall not be considered as appropriated. [Id. Sec. 45.]

Art. 7544. Appropriation forfeited.—Any appropriation or use of water heretofore made under any statute of this State, or hereafter made under the provisions of this chapter, which shall be wilfully abandoned during any three successive years, shall be forfeited and the water formerly so used or appropriated shall be again subject to appropriation for the purposes stated in this Act. [Id. Sec. 46.]

Art. 7545. Right to appropriate, when.—Any person, association of persons, corporation, water improvement or irrigation district, who may have heretofore constructed, or who may hereafter construct, any dam or dams across any river, or other stream, for the purpose of storing water for any of the purposes set forth in Article 7468 of this chapter, shall have the right to appropriate the ordinary flow, underflow, or the storm flood or rain waters of such stream, in amounts and quantities equal to the holding capacity of such dam or dams, by making application as provided in Articles 7493 and 7494 of this chapter, and such application shall have priority over all other applications; and, provided, that any such person association of persons, corporations or irrigation district thus impounding water in any river, channel, lake or reservoir and appropriating the same shall have the right to collect from any riparian owner who shall divert such impounded water from said reservoir by pumping or otherwise a reasonable sum for the water so diverted, such sum to be determined by the Board of Water Engineers, based upon the benefits accruing to such riparian owner by reason of the construction of such dam, lake, or reservoir and the impounding of such waters therein, provided the owner of such dam, lake or reservoir and the owner of riparian rights using such water cannot agree upon the price to be paid therefor. [Id. Sec. 47.]

Art. 7546. Authority of corporations.—All such corporations, whether chartered under the provisions of Chapter 2, Title 73, Revised Civil Statutes of Texas, 1911, or under the general corporation laws of the State of Texas, shall have full power and authority to make contracts for the sale of permanent water rights, to any person, corporation, association of persons, or

irrigation district, and to have the same secured by a lien on the lands, or otherwise, and to lease, rent or otherwise dispose of the water controlled by such corporation, for such price as may be agreed upon, and in addition to the lien on the crops hereinafter provided for, such lease or rental contract may be secured by lien on land or otherwise; provided, that such water may be sold, leased, rented or otherwise disposed of to any such person, corporation, association of persons or irrigation district, or to the water tenants thereof, who have heretofore appropriated and complied with the provisions of Chapter 2, Title 73, Revised Civil Statutes of Texas, 1911, regardless of whether or not the water is furnished to lands adjacent or contiguous to the canals of such corporation, association of persons or irrigation district so furnishing water; provided further that any person, corporation, association of persons or irrigation district, shall be under no obligation during the period that water is so taken and utilized, to operate its or their pumping plant, headgate, or intake and failure to so operate its pumping plant, headgate, or intake during such period, shall not be deemed an abandonment or waiver, of his, their or its rights in such pumping plant, headgate, intake and source of supply.

Provided that nothing herein contained shall affect or alter the existing relative rights of priority of the various appropriators whose supply is derived from the same source. [Id. p. 223, Sec. 48.]

Art. 7547. Who may enter into contract.—Any person association of persons, corporation, water improvement or irrigation district having in possession and control storm, flood or rain waters conserved or stored, under the provisions of this chapter, may enter into contract to supply same to any person, association of persons, corporation, water improvement or irrigation district, having the right to acquire such use; provided that the price and terms of such contract shall be just and reasonable and without discrimination and subject to the same revision and control as hereinafter provided for other water rates and charges. If any person shall use such stored or conserved water without first entering into contract with the party having stored or conserved the same, such user shall pay for the use thereof such charge or rental as the Board shall find to be just and reasonable, and subject to revision by the court, as herein provided for other water rates and charges. [Id. Sec. 49.]

Art. 7548. When lawful to use banks and beds.—For the purpose of conveying and delivering storm, flood or rain water from the place of storage to the place of use, as provided in the preceding article, it shall be lawful for any person, association of persons, corporations, water improvement or irrigation district, to use the banks and beds of any flowing natural stream within this State, under and in accordance with such rules and regulations as may be prescribed by the Board of Water Engineers, and such board shall prescribe rules and regulations for such purpose. No person, association of persons, corporation, water improvement or irrigation district who has not acquired

the right to the use of such conserved or stored waters, as provided in the last preceding article, shall take, use or divert same. [Id. p. 224, Sec. 50.]

Art. 7549. Wilful interference with the passage of.—Any person, association of persons, corporation, water improvement or irrigation district, or the agent, officer, employee or representative of any such person, association of persons, corporation, water improvement or irrigation district, who shall wilfully interfere with the passage of, or take, divert or appropriate such conserved or stored water during the passage and delivery thereof, as provided in the last two preceding articles, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not exceeding one hundred dollars, or by imprisonment in the county jail for a term not exceeding six months, or by both such fine and imprisonment, and each and every day that such taking, diversion or appropriation may be made shall constitute a separate offense. [Id. Sec. 52.]

Art. 7550. Duty of district court.—It shall be the duty of the district court, or the judge thereof, of any judicial district in or through which the conserved or stored waters described in the last three preceding articles may pass, at the suit of any party having an interest therein upon it being made to appear that any person, association of persons, corporation, water improvement or irrigation district, or any agent, officer, employee, or representative thereof, is interfering with, or threatening or about to interfere with the passage, or is taking, diverting, appropriating, or threatening, or about to take, divert, or appropriate, any conserved or stored waters, in violation of the provisions of the last three preceding articles, to issue such writ or writs of injunction, mandamus, or other process, as may be proper or necessary to prevent such wrongful acts. [Id. Sec. 52.]

Art. 7551. To construct gates.—Persons, associations of persons, corporations or districts, operating under the statutes of Texas relating to irrigation, are hereby authorized (subject to the conditions and regulations which may be required or prescribed by the authorities of the United States Government in respect to navigation), to construct such gates or breakwaters, dams or dikes, with gates, as may be required in any waters wholly in the State of Texas where gulf tides ebb and flow, to prevent the pollution of the fresh water of any stream, river or bayou, through ebb and flow of salt tides from the Gulf of Mexico and to conserve such fresh water in a condition fit for irrigation; provided that such work shall, in every case, be done so as not to obstruct navigation by any vessels operated on such waterway, and provided that, in every case where gates are required, to avoid obstruction of navigation, such persons, association, corporation or district responsible for the construction, shall at all times keep a competent person at such gates to operate same when required for purposes of navigation; provided further that such dam, dike or breakwater hereby authorized shall not be placed at any point in such waters, except where the gulf tides

ebb and flow, and not so as to obstruct the flow of fresh water to any appropriator or riparian owner below, on the same stream. [Acts 4th C. S., 1918, p. 64, Sec. 1.]

Art. 7552. Purpose of corporations.—Corporations may be formed and chartered, under the provisions of this chapter, and of the general corporation laws of the State of Texas, for the purpose of constructing, maintaining and operating canals, ditches, flumes, feeders, laterals, dams, reservoirs, lakes and wells, and of conserving, storing, conducting and transferring water to all persons entitled to the use of the same for irrigation, mining, milling, manufacturing, the development of power, to cities and towns for waterworks, and for stock raising. [Acts 1917, p. 224, Sec. 53.]

Art. 7553. Authority of corporations.—All such corporations shall have full power and authority to make contracts for the sale of permanent water rights, and to have the same secured by liens on the land, or otherwise, and to lease, rent, or otherwise dispose of the water controlled by such corporation, for such time as may be agreed upon and, in addition to the lien on the crops hereinafter provided for, the lease or rental contract may be secured by a lien on the land, or otherwise.

Provided, any contract for the sale of water rights shall be voidable, unless the seller thereof has complied with the provisions of the statute relating to certified filings, or shall have obtained a permit from the Board of Water Engineers for the purposes and uses proposed to be made by the buyer of such water rights it is proposed to deliver. [Id part Sec. 54.]

Art. 7554. Deemed guilty, when.—Any person, association of persons, or corporation who sells or offers for sale any permanent water right, without having complied with the provisions of the statute relating to certified filings, or without having obtained a permit from the Board of Water Engineers for the uses and purposes purporting to be conveyed by such permanent water right, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than one hundred dollars, nor more than one thousand dollars, or be confined in the county jail for any period of time not to exceed one year, or both such fine and imprisonment. [Id. part Sec. 54.]

Art. 7555. Possessory right.—All persons who own or hold a possessory right or title to land adjoining or contiguous to any dam, reservoir, canal, ditch, flume or lateral, constructed and maintained under the provisions of this chapter, and who shall have secured a right to the use of water in said canal, ditch, flume, lateral, reservoir, dam or lake, shall be entitled to be supplied from such canal, ditch, flume, lateral, dam, reservoir or lake with water for irrigation of such land, and for mining, milling, manufacturing, development of power, and stockraising, in accordance with the terms of his or their contract. [Id. Sec. 55.]

Art. 7556. Failure to agree upon price.—If the person, association of persons, or corporation owning or controlling such water, and the person who owns or holds a possessory right or

title to land adjoining or contiguous to any canal, ditch, flume or lateral, lake or reservoir, constructed or maintained under the provisions of this chapter, fail to agree upon a price for a permanent water right, or for the use or rental of the necessary water to irrigate the land of such person, or for mining, milling, manufacturing, the development of power, or stock raising, such person, association of persons, or corporation shall, nevertheless, if he, they or it, have or control any water not contracted to others, furnish the necessary water to such person to irrigate his lands or for mining, milling, manufacturing, the development of power or stock raising, at such prices as shall be reasonable and just, and without discrimination. [Id. Sec. 56.]

Art. 7557. **Division in case of shortage.**—In case of shortage of water from drouth, accident or other cause, all waters to be distributed shall be divided among all customers pro rata, according to the amount he or they may be entitled to, to the end that all shall suffer alike, and preference be given none. [Id. Sec. 57.]

Art. 7558. **Prior vested right.**—Nothing in the preceding article contained shall be held to preclude any such person, association of persons, or corporation owning or controlling such water from supplying the same to any person having a prior vested right thereto under the laws of this State. [Id. Sec. 57.]

Art. 7559. **Permanent water right defined.**—The permanent water right shall be an easement to the land and pass with the title thereto; the owner thereof shall be entitled to the use of the water upon the terms provided in his or their contract with such person, association of persons or corporation, or, in case no contract is entered into, then at just and reasonable prices and without discrimination. Any instrument of writing conveying a permanent water right shall be admitted to record in the same manner as other instruments relating to the conveyance of land. [Id. p. 226, Sec. 58.]

Art. 7560. **Board to make preliminary investigation.**—If any person entitled to receive or use water from any canal, ditch, flume, lateral, dam, reservoir or lake, or from any conserved or stored supply, shall present to the board his petition in writing, showing that the person, association of persons, corporation, water improvement or irrigation district, owning or controlling such water, has a supply of water not contracted to others and available for his use, and fails or refuses to supply such water to him, or that the price or rental demanded therefor is not reasonable and just, or is discriminatory; or that the complainant is entitled to receive or use such water, and is willing and able to pay a just and reasonable price therefor, and shall accompany such petition with a deposit of twenty-five dollars, it shall be the duty of the Board to make a preliminary investigation of such complaint and determine whether there is probable ground therefor. If said Board shall determine that no probable ground exists for such complaint, same shall be dismissed, and the deposit may, at the discretion of the Board, be returned to the complainant or paid into the State Treasury. [Id. Sec. 59.]

Art. 7561. Board to set date.—If the Board shall determine that probable grounds exist for such complaint, it shall enter an order setting said matter for hearing at a time and place to be named therein. The Board may, in its discretion, require the complainant to make an additional deposit, or to enter into bond in an amount fixed by the Board, conditioned for the payment of all costs of such proceeding, and which bond shall be approved by the Board. Thereupon, it shall be the duty of the secretary of the Board to transmit a certified copy of the petition of complainant and of the order setting same for hearing, by registered mail, addressed to the party or parties against whom such complaint is made, and which notice shall be deposited in the mails at least twenty days before the date set for such hearing. [Id. Sec. 60.]

Art. 7562. Board to hear evidence.—At the time and place stated in such order the Board shall sit to hear such complaint. It may hear evidence orally or by affidavit in support of or against such complaint, and may hear arguments, and shall have power to adjourn such hearing from time to time and from place to place, and, upon completion thereof, shall render decision in writing. [Id. Sec. 61.]

Art. 7563. Board to fix rates.—The said Board shall have power and authority, and it shall be its duty to fix reasonable rates for the furnishing of water for the purposes or any purpose mentioned in this chapter. [Acts 4th C. S., 1918, p. 129, Sec. 61-A.]

Art. 7564. Appeal from decision.—Appeal from such decision of the Board may be taken within the time and in the manner as herein provided for other appeals from the decision of such Board. The decision may be suspended by filing of a supersedeas bond, in the same manner as now provided in other civil cases; provided, that the Board shall fix the amount of the bond necessary to stay the execution of any such order. [Acts 1917, p. 226, Sec. 62.]

Art. 7565. Witnesses expenses paid.—In any examination, investigation or proceeding authorized before the Board of Water Engineers, such board shall have power to issue subpoenas for the attendance of witnesses, under such rules as the board may prescribe. Each witness who shall appear before the board by order of the board, at a place outside of the county of his residence, shall receive for his attendance, one dollar per day and three cents per mile traveled by nearest practicable route, in going to and returning from the place of meeting of said board which shall be ordered paid by the Comptroller of Public Accounts upon the presentation of proper vouchers, sworn to by such witness and approved by the chairman of the board; provided, that no witness shall be entitled to any witness fees or mileage who is directly interested in such proceeding. [Id. p. 227, Sec. 63.]

Art. 7566. Board to adjourn hearing.—In any examination or hearing held before the Board of Water Engineers, the board shall have authority to adjourn such hearing from time to time

and from place to place. Each member of such board and the secretary thereof shall be authorized to administer oaths. [Id. Sec. 64.]

Art. 7567. May appeal to appellate court, when.—If any person, firm, association of persons, or corporations engaged in furnishing water, or other persons at interest be dissatisfied with the decision of any rate, charge, order or act of regulation adopted by the board, such dissatisfied company or party may file a petition setting forth the particular cause or causes of objection to such decision, act, rule, rate, charge or order, or to either or all of them, in a district court of Travis County, against said board as defendant. Said action shall have precedence over all other causes on the docket of a different nature, and shall be tried and determined as other civil causes in said court. Any party to said action may appeal to the Appellate Court having jurisdiction of said cause; and said appeal shall be at once returnable to said Appellate Court at any term thereof; said action so appealed shall have precedence in said Appellate Court of all causes of a different character therein pending; provided that if the court be in session at the time such right of action accrues, the suit may be filed during such term and stand ready for trial after ten days notice. [Acts 4th C. S., 1918, p. 129, Sec. 64-A.]

Art. 7568. Proof rests upon plaintiff.—In all trials under the foregoing article the burden of proof shall rest upon the plaintiff, who must show by clear and satisfactory evidence that the rates, regulations, acts orders, or charges complained of are unreasonable and unjust to it or them. [Id. Sec. 64-B.]

Art. 7569. Board to furnish certified copies, when.—Upon application of any person, the board shall furnish certified copies of any order or decision of record of such board, or of any paper, map or other document filed in the office of such board, and such certified copies, under the hand of the secretary and seal of the board, shall be admissible in evidence in any court, in the same manner and with like effect that the original would be entitled to. [Acts 1917, p. 227, Sec. 65.]

Art. 7570. Rules and regulations made and published.—Every person, association of persons, corporation, or irrigation district, conserving or supplying water for any of the purposes authorized by this chapter; shall make and publish reasonable rules and regulations relating to the method and manner of supply, use and distribution of water, and prescribing the time and manner of making application for the use of water and payment therefor. [Id. Sec. 66.]

Art. 7571. Conveyance recorded.—Every conveyance of a ditch, canal, or reservoir, or other irrigation work, or any interest therein, shall hereafter be executed and acknowledged in the same manner as the conveyance of real estate, and recorded in the deed records of the county or counties in which such ditch, canal, or reservoir is situated, and any such conveyance which shall not be made in conformity with the provisions of this chapter, shall be null and void, as against subsequent purchasers

thereof in good faith and for valuable consideration. [Id. Sec. 67.]

Art. 7572. Corporations to store salt water, when.—That in the mode provided in Chapter 2 of Title 25 of the Revised Statutes of Texas of 1911 corporations may be created for the purpose of gathering, storing and impounding water containing salt or other substances produced in the drilling and operation of oil and other wells, and to prevent the flow thereof into streams at times when the latter may be used for irrigation. [Acts 4th C. S., 1918, p. 122, Sec. 1.]

Art. 7573. Rights of corporations.—Such corporations, in addition to the general powers conferred by such title upon private corporations, may acquire, own, and operate ditches, canals, pipe lines, levees, reservoirs, and their appliances appropriate for the gathering, impounding or storage of such water, and for the protection of such reservoirs from inflow or damage by surface waters; with further power to condemn lands and rights necessary therefor under like procedure as is provided in condemnation by railroads; and also to cross with their ditches, canals and pipe lines under any highways, canals, pipe lines, railroads, and tram or logging roads; conditioned that the use thereof be not impaired longer than essential to the making of such crossings; provided that, no right is conferred to pass through any cemetery or under any residence, schoolhouse or other public building nor to cross any street or alley of any incorporated city or town without the consent of the authorities thereof. [Id. Sec. 2.]

Art. 7574. Corporations to serve producers.—In the localities in which they operate and to the extent of the facilities provided, such corporations shall serve all producers of such waters in the gathering, impounding, and storage of such waters in proportion to the needs of such producers, at fair and reasonable charges, and without discrimination between such producers under like conditions. Corporations interested in the proper disposition of such waters may subscribe for, own, and vote stock in the corporations which may be created hereunder. [Id. Sec. 3.]

Art. 7575. Use of water not entitled to.—Any person who shall wilfully open, close, change or interfere with any headgate or water box without lawful authority or who shall wilfully use water or conduct water in and through his ditch or upon his land, to which water he is not entitled, shall be fined not less than ten nor more than one thousand dollars, or be imprisoned in jail not exceeding six months; provided, that the possession or use of water to which the person using or possessing same shall not be lawfully entitled shall be prima facie proof of the guilt of the person so using or in possession of same. [Acts 1917, p. 227, Sec. 68.]

Art. 7576. Destruction of and punishment for.—Any person who shall wilfully cut, dig, break down, destroy, or injure, or open any gate, bank embankment, or side of any ditch, canal, reservoir, flume, tunnel or feeder or pump or machinery, build-

ing, structure, or other work, which is the property of another, or in which another owns an interest, or which is in the lawful possession or use of another or others, and which is used for the purpose of irrigation or milling or mining, or manufacturing, or for the development of power, or for domestic purposes, or for stockraising, with intent maliciously to injure any person, association, corporation, water improvement or irrigation district, or for the gain of any person, association, water improvement or corporation, so cutting, digging, breaking, injuring or opening any such work hereinbefore in this article named or with the intent of taking or stealing or causing to run out or waste out of any such ditch, canal, or reservoir, feeder or flume, any water for his own profit, benefit or advantage, or to the injury of any person, association or corporation lawfully entitled to the use of such water or the use or management of such ditch, canal, tunnel, reservoir, feeder, flume, maching, structure or other irrigation work, shall be fined not less than ten nor more than one thousand dollars, and may be punished by imprisonment in jail not exceeding two years, or by both such fine and imprisonment. [Id. p. 288, Sec. 69.]

Art. 7577. Punishment for pollution.—Any person who shall deposit in any canal, lateral, reservoir or lake, used for any purpose enumerated in this Act, the carcass of any dead animal, tin cans, discarded buckets or pails, garbage, ashes, baling or barbed wire, earth, offal or refuse of any character, or any other article or articles which might pollute the water or obstruct the flow in any such canal or other similar structure, shall be fined not less than ten nor more than one hundred dollars, or be imprisoned in jail for a term not exceeding six months, or be both so fined and imprisoned. [Id. Sec. 70.]

Art. 7578. Failure to pay for proportionate share of work.—In all cases where irrigation ditches are owned or used by two or more persons, or by mutual or co-operative companies or corporations, and one or more of such persons, or shareholders, shall fail or neglect to do or to pay for his proportionate share of the work necessary for the proper maintenance and operation of such ditch, the owners or shareholders, desiring the performance of such work as is reasonably necessary to maintain and operate the ditch, may, after having given ten days' written notice to such joint owner, or owners, or shareholders who have failed to pay for or refused to perform their proportionate share of work necessary for the operation and maintenance of said ditch, proceed themselves to do such work, or cause same to be done, and may recover therefor from such person so failing to perform or pay for his share of such work, in any court having jurisdiction over the amount, the reasonable expense or value of such work or labor so performed. [Id. Sec. 71.]

Art. 7579. Surplus water.—All surplus water taken or diverted from any running stream and not used by the appropriator or disposed of to consumers for the purposes stated in this chapter shall be conducted back to the stream from which taken or diverted, wherever such water may be returned by

gravity flow, whenever reasonably practicable. [Id. p. 229, Sec. 72.]

Art. 7580. Examination and survey.—Every person, association of persons, corporation, water improvement or irrigation district shall have power to cause an examination and survey for its proposed work to be made as may be necessary to the selection of the most advantageous reservoir sites and rights of way for any of the purposes authorized by this chapter, and for such purposes shall have the right to enter upon the lands or waters of any person. [Id. part Sec. 73.]

Art. 7581. Employee of board may enter upon lands of any person, when.—Any member or employee of the board shall have authority to enter upon the lands of any person and any or all waterways, either natural or artificial, for the purpose of making any investigation that would, in the judgment of the board assist in the discharge of its duties. [Id. part Sec. 73.]

Art. 7582. Right of way granted to whom.—Every person, association of persons, corporation, water improvement or irrigation district formed for any of the purposes authorized by this chapter are hereby granted the right of way, not to exceed one hundred feet in width, and the necessary area for any dam and reservoir site over all public free school, university and asylum lands of this State, with the use of the rock, gravel and timber on such reservoir site and right of way for construction purposes, after paying such compensation as the board of engineers may determine, and may acquire such reservoir site and rights of way over private lands by contract. [Id. Sec. 75.]

Art. 7583. Additional right of way obtained.—Any person, association of persons, corporation, irrigation or water improvement district, or any city or town, may also obtain the right of way over private lands and also the lands for pumping plants, intakes, headgates and storage reservoirs, by condemnation, by causing the damages for any private property appropriated by any such person, association of persons, corporation, water improvement or irrigation district or city or town, to be assessed and paid for as provided by the statutes of this State, and as provided in Title 52 of this Act relating to "Eminent Domain," provided, however, that when the power granted by this section is sought to be exercised by any person or association of persons, but not including corporation districts, cities or towns, he or they shall first make application to the Board of Water Engineers for such condemnation and said Board shall make due investigation and if it deems advisable shall give notice to the party owning the land sought to be condemned, and after hearing, may institute such condemnation proceedings in the name of the State of Texas for the use and benefit of said person or persons and all others similarly situated, the costs of said suit and condemnation to be paid by the person or persons at whose instance the same is instituted in proportion to the benefits received by each as fixed by said board and to be paid before use is made of such condemned rights or property; and thereafter all persons seeking to take the benefits of such condemnation pro-

ceedings shall make application therefor to the Board of Water Engineers and if such application is granted shall pay fees and charges as may be fixed by the board. [Id. Sec. 75.]

Art. 7584. Who shall not have the right or power to acquire.—No corporation, person, association of persons, city, town, municipality, or other public corporation, shall have the right or power to acquire by right of eminent domain or condemnation, any riparian right, or rights, water rights or right, dam or dams, or water supply, or any land or lands on, under or adjacent to any stream or streams in the State of Texas, when held, owned or claimed by any corporation, person, or association of persons for the purpose of constructing or erecting any dam, lock, reservoir, power plant, canal, tail-race or channel for the purpose of using the waters of said stream, or any part thereof, for developing, using or furnishing power, on any streams, or stream, the waters of which are actually being used, in whole or in part, for such uses or purposes; provided that this Act shall not apply to cities or towns having a population of 25,000 or over according to the last United States census. All parts of any law or laws in conflict herewith are hereby repealed. [Acts 1923, p. 324, Sec. 1.]

Art. 7585. Roads and highways.—All persons, associations of persons, corporations, and water improvement or irrigation districts shall have the right to run along or across all roads and highways necessary in the construction of their work, and shall at all such crossings construct and maintain necessary bridges, culverts, or siphons, and shall not impair the uses of such road or highways; provided, that if any public road or highway or public bridge shall be upon the ground necessary for the dam site, reservoir, or lake, it shall be the duty of the commissioners' court to change said road and to remove such bridge that the same may not interfere with the construction of the proposed dam, reservoir, or lake; provided, further, that the expense of making such change shall be paid by the person, association of persons, corporation, water improvement or irrigation district desiring to construct such dam, lake or reservoir. [Acts 1917, p. 230, Sec. 76.]

Art. 7586. Who has power to construct ditch.—Such person, association of persons, corporation, or irrigation district shall have power to construct its ditch or canal across, along or upon, any stream of water. [Id. Sec. 77.]

Art. 7587. When necessary to irrigate or reclaim lands.—When, in the examination of any such irrigation or reclamation project, under the provisions of the Act of Congress, known as the Reclamation Act, approved June 17, 1902, it shall be found advisable or necessary to irrigate or reclaim lands within the limits of the State, the Secretary of the Department of the Interior is authorized to make all necessary examinations and surveys for, and to locate and construct irrigation or reclamation works within this State, and to perform any and all acts necessary to carry into effect the provisions, limitations, charges, terms and conditions of said Reclamation Act. [Id. Sec. 78.]

Art. 7588. Provisions and amendments.—The provisions of this chapter shall in all things apply to the construction, maintenance and operation of any irrigation works in this State, constructed under what is known as the Federal Reclamation Act, approved June 17, 1902, and the amendments thereto, in so far as the provisions of this chapter are not inconsistent with said Act of Congress, or the amendments thereto, of the regulations prescribed by the Secretary of the Department of the Interior in conformity to such Reclamation Act and the amendments thereto. [Id. Sec. 79.]

Art. 7589. Unlawful to divert water.—It shall be unlawful for any person, association of persons, corporation, water improvement or irrigation district to take or divert any of the water of the ordinary flow, underflow, or storm flow of any stream, water course, or watershed, in this State into any other natural stream, water course or watershed, to the prejudice of any person or property situated within the watershed from which such water is proposed to be taken or diverted. [Id. Sec. 80.]

Art. 7590. Application for permit.—Before any person, association of persons, corporation, water improvement or irrigation district shall take any water from any natural stream, water course, or water shed in this State into any other watershed, such person, association of persons, corporation, water improvement or irrigation district shall make application to the Board of Water Engineers for a permit so to take or divert such waters, and no such permit shall be issued by the Board until after full hearing before said Board as to the rights to be affected thereby, and such hearing shall be held and notice thereof given at such time and such place, in such mode and manner as the Board may prescribe; and from any decision of the Board an appeal may be taken to the district court of the county in which such diversion is proposed to be made, in the mode and manner prescribed in this chapter for other appeals from the decision of the Board. [Id. Sec. 81.]

Art. 7591. Penalty to divert waters from natural streams, etc.—If any person, association of persons, corporation, water improvement or irrigation district, or the agent, attorney, employee, or representative of any such person, association of persons, corporation or irrigation district, shall take or divert any waters from the natural streams, water courses or watershed into any other watershed, contrary to the provision of the last two preceding articles he, it, or they shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine in a sum not less than one hundred dollars nor more than five hundred dollars or by imprisonment in the county jail, for any term not exceeding six months, and each day that such taking or diversion shall continue shall constitute a separate offense. [Id. p. 231, Sec. 82.]

Art. 7592. Acquired title.—Whenever any appropriator of water from any stream or other source of water supply located in whole or in part within this State, shall have obtained from

the Board of Water Engineers a permit for the use of water, and shall have made use of the water under the terms of such permit; or whenever any such appropriator of water shall have filed an appropriation in accordance with the laws of this State in force at the time of such filing, and shall have filed with the Board of Water Engineers a certified record of such appropriation, as required by Chapter 171 of the Acts of the Regular Session of the Thirty-third Legislature, and shall have made use of the water, under the terms of such filing or permit for a period of three years after this Act shall take effect, he shall be deemed to have acquired a title to such appropriation by limitation, as against any and all other claimants of water from the same stream, or other source of water supply, and as against any and all riparian owners upon said stream or other source of water supply. [Id. Sec. 83.]

Art. 7593. Failure to fence.—Unless the person, association of persons, corporation, water improvement or irrigation district owning or controlling any ditch, canal, reservoir, dam or lake, shall keep the same securely fenced, no cause of action shall accrue in their favor against owners of live stock for any trespass thereon. [Id. Sec. 84.]

Art. 7594. Power to acquire lands by voluntary donation.—Any corporation organized under the provision of the General Laws of this State, or the provisions of this chapter for any of the purposes stated in this chapter, shall have the power to acquire lands by voluntary donation or purchase in payment of stock or bonds or water rights; and to hold, improve, subdivide and dispose of all such lands and other property; and to borrow money for the construction, maintenance and operation of its canals, ditches, flumes feeders, reservoirs, dams, lakes, wells and other property and franchises, to the extent of the value thereof, to secure the payment of any debts contracted for same; provided, no corporation shall issue stock or bonds except for money paid, labor done, or property actually received, and all fictitious increases in stock or indebtedness shall be void; provided further, all lands acquired by such corporation, except such as are used for the construction, maintenance or operation of such canals, ditches, laterals, feeders, reservoirs, dams, lakes, wells, and other necessary works, shall be alienated within fifteen years from the date of acquiring said land or be subject to judicial forfeiture. [Id. Sec. 85.]

Art. 7595. Corporation may elect directors.—Any corporation under the provisions of the General Laws of this State, or the provisions of this chapter, for any of the purposes stated in this chapter, may elect directors or trustees to hold office for a period of three years, and may provide for the election of one-third in number thereof each year. [Id. p. 232, Sec. 86.]

Art. 7596. Preference lien.—Every person, association of persons, corporations, water improvement or irrigation district, who has heretofore constructed, or may hereafter construct any ditch, canal, dam, lake, or reservoir, for the purposes of irrigation and who shall lease, rent, furnish, or supply water to any

person, association of persons, water improvement or corporation, for the purpose of irrigation, shall, irrespective of contract, have a preference lien superior to every other lien upon the crop or crops raised upon the land thus irrigated. [Id. Sec. 87.]

Art. 7597. **Enforcement of lien.**—For the enforcement of the lien provided for in the preceding article, every such person, association of persons, corporation water improvement or irrigation district shall be entitled to all the rights and remedies prescribed by Title 84, Articles 5222 to 5239, inclusive, of this Act for the enforcement of the lien as between landlord and tenant. [Id. Sec. 89.]

Art. 7598. **Johnson grass or Russian thistle.**—It shall be unlawful for any person, association of persons, corporation, water improvement or irrigation district owning, leasing or operating any ditch or canal or reservoir, or cultivating any lands abutting upon any reservoir, ditch, flume, canal, wasteway or lateral to permit Johnson grass or Russian thistle to go to seed upon such reservoir, ditch, flume, canal, waste-way or lateral within ten feet of the high water line of any such reservoir, ditch, flume, canal, waste-way, or lateral, where the same crosses or lies upon land in the ownership or control of any such person, association of persons, corporation, water improvement or irrigation district, and anyone violating the provisions of this article shall be fined not less than twenty-five nor more than five hundred dollars or be imprisoned in jail not less than thirty days nor more than six months, or both so fined and imprisoned. [Id. Sec. 89.]

Art. 7599. **Counties exempt.**—The preceding article shall not apply to Tom Green, Sterling, Irion, Schleicher, McCullough, Brewster, Menard, Maverick, Kinney, Val Verde and San Saba counties. [Id. Sec. 89.]

Art. 7600. **Artesian well defined.**—An artesian well is defined, for the purposes of this chapter to be an artificial well in which, if properly cased, the waters will rise by natural pressure above the first impervious stratum below the surface of the ground. [Id. Sec. 90.]

Art. 7601. **When artesian well declared a public nuisance.**—Any artesian well which is not tightly cased, capped and furnished with such mechanical appliances as will readily and effectively arrest and prevent the flow from such well, either over the surface of the ground about the well, or wasting from the well through the strata through which it passes, is hereby declared a public nuisance and subject to be abated as such, upon the order of the board. [Id. Sec. 91.]

Art. 7602. **Waste defined.**—Waste is defined for the purposes of this Act, in relation to artesian wells to be the causing suffering or permitting the waters of an artesian well to run into any river, creek or other natural water course or drain, superficial or underground channel, bayou, or into any sewer, street, road, highway, or upon the land of any other person than that of the owner of such well, or upon the public lands or to run or percolate through the strata above that in which the water is found,

unless it be used for the purposes and in the manner in which it may be lawfully used on the premises of the owner of such well. [Id. p. 233, Sec. 92.]

Art. 7603. **Proper irrigation of trees, etc.**—Nothing in the preceding article shall be construed to prevent the use of such water, if suitable, for proper irrigation of trees standing along or upon any street road or highway, or for ornamental ponds or fountains, or the propagation of fish, or for the purposes authorized by this chapter. [Id. p. 233, Sec. 92.]

Art. 7604. **Well properly cased.**—Whenever any person desires to drill a well upon his own land for domestic purposes or use for stock raising purposes or use that comes within the definition of artesian well, as defined in this chapter he shall have the right to do so without subjecting himself to the provisions of this chapter, provided that said well shall be properly and securely cased, and whenever water is reached containing mineral or other substances injurious to vegetation or agriculture it shall be the duty of the owner of said well to securely cap same or to control its flow so as not to injure the land of any other person, or to fill it up so as to prevent the water of said well to rise above the first impervious stratum below the surface of the ground. [Id. Sec. 93.]

Art. 7605. **Accurate record kept.**—Any person boring or causing to be bored any artesian well shall keep a complete and accurate record of the depth and thickness and character of the different strata penetrated, and when such well is completed shall transmit by registered mail to the Board of Water Engineers a copy of such record. [Id. Sec. 94.]

Art. 7606. **Excessive or wasteful use of water wilfully permitted.**—Any person, association of persons or the agent of any corporation owning or acquiring any possessory right to lands contiguous to any canal or irrigation system and who acquires the right to the use of water from such canal or irrigation system, by contract as in this chapter provided, who wilfully permits the excessive or wasteful use of water by any of the agents, servants or employees of said parties, or who wilfully permits water to be wasted and not applied to a beneficial purpose, shall be deemed guilty of a misdemeanor and shall be punished as provided in Article 7613 and such use or waste of water shall be declared a public nuisance and abated as such by the Board of Water Engineers; said Board of Water Engineers being empowered to direct the canal company or irrigation system to close the water gates of said persons and to keep them closed until such time as such unlawful use of water shall be corrected and the determination of this question shall be controlled entirely by the Board of Water Engineers or its agents, servants, and employees. [Id. Sec. 94.]

Art. 7607. **Works declared public nuisance.**—Any person, association of persons, corporation water improvement or irrigation district who owns or operates any works which make use of water for any of the purposes named in this chapter, and who permits unreasonable loss of water in the operation of such

works, through the faulty design or negligent operation of such works, shall be deemed guilty of waste, and such works or any part thereof may be declared a public nuisance and abated as such by the Board of Water Engineers. [Id. p. 234, Sec. 96.]

Art. 7608. Penalty for use of works declared public nuisance.—Any person or the agent of any person, or the agent of any association or corporation who shall operate or attempt to operate any works, or shall use any water under contract, with any canal or irrigation system, that has been previously declared to be a public nuisance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not more than one thousand dollars or be confined in the county jail for a period of not to exceed one year or both such fine and imprisonment. [Id. Sec. 97.]

Art. 7609. Suit instituted, where.—In any and all civil suits instituted by or under the direction of the Board of Water Engineers, suit may be prosecuted and instituted in any court of competent jurisdiction in the county or in any of the counties where the land lies. [Id. Sec. 98.]

Art. 7610. Action may be brought before any district court.—Action may be brought before any district court of this State having jurisdiction over the irrigation district in question by any person, association of persons, corporation, water improvement or irrigation district, who may be injured by waste as herein defined for the determination of questions arising under Articles 7607 and 7608. [Id. Sec. 99.]

Art. 7611. Detailed record.—Any person, association of persons, corporation, irrigation or water improvement district who owns and operates any system of works used for the irrigation of land, or for any of the purposes named in the law, shall keep such detailed record of daily operations as may be necessary to determine the quantity of water taken or diverted each calendar year. If the use is for irrigation, there shall also be kept a record of the number of acres irrigated, as near as may be, without making actual surveys for the purpose, and the character of crop or crops grown, and the yield per acre. [Id. part Sec. 100.]

Art. 7612. Information required.—On or before the first day of March of each year, every person, association of persons, corporation, water improvement or irrigation district who, during any part of the preceding calendar year, owned or operated any of the works described in this chapter, shall furnish, under oath, to the Board of Water Engineers, upon blanks to be furnished by the Board, the information required or to be kept for such preceding year, or part thereof, together with such other available information as the Board may require, covering the uses made of water for any of the purposes named in the law. [Id. part Sec. 100.]

Art. 7613. Penalty for permitting waste.—Whoever wilfully causes or knowingly permits waste, as defined in this chapter, shall be fined in any sum not exceeding five hundred dollars, or

shall be imprisoned in jail not more than ninety days, or by both such fine and imprisonment. [Id. Sec. 101.]

Art. 7614. **Sworn statement.**—Any person, association of persons, corporation, or water improvement or irrigation district, owning or operating any artesian well, as defined for the purposes of this chapter, at the time of its taking effect shall, within one year thereafter, transmit to the Board of Water Engineers a sworn statement showing the result of such test, together with a declaration of the use or uses to which the newly developed supply will be devoted, and the contemplated extent of such use. [Id. p. 235, Sec. 102.]

Art. 7615. **Detailed statement furnished.**—On or before the first day of March of each year, every person, association of persons, corporation, water improvement or irrigation district who, during any part of the preceding calendar year, owned or operated any artesian well for any purpose other than that of domestic use, shall furnish, under oath, to the Board of Water Engineers, upon blanks to be furnished by the Board, a detailed statement showing the quantity of water which has been derived from such well, and the character of use to which same has been applied, together with the change in level of water table of said well, and if used in irrigation, the acreage and yield of each crop, together with such additional data as the Board may require. [Id. Sec. 103.]

Art. 7616. **Oil wells exempt.**—Nothing in the preceding articles, relating to artesian wells, shall be construed to apply to any oil well and the status of such oil wells shall be unaffected by this chapter. [Id. Sec. 104.]

Art. 7617. **Abandoned oil wells.**—Abandoned oil wells shall be safeguarded as required in Article 7601. [Id. Sec. 104.]

Art. 7618. **Boundaries.**—The provisions of this chapter shall apply to all streams or others sources of water supply lying upon or forming a part of the boundaries of this State. [Id. p. 243, Sec. 135.]

Art. 7619. **Not to recognize any riparian right.**—Nothing in this chapter contained shall be construed as a recognition of any riparian right in the owner of any lands the title to which shall have passed out of the State of Texas subsequent to the first day of July, A. D. 1895. [Id. Sec. 136.]

Art. 7620. **Not to alter any vested right of property.**—Nothing in this chapter contained shall be held or construed to alter, affect, impair, increase, destroy, validate or invalidate any existing or vested right of property existing at the date when this Act shall go into effect. [Id. Sec. 137.]

Art. 7621. **Held unconstitutional.**—If any article or provision of this chapter shall be held unconstitutional, it shall not be held to invalidate any other provision of this Act. [Id. Sec. 138.]

CHAPTER TWO.

WATER IMPROVEMENT DISTRICTS.

| Article | Article | | |
|--|---------|--|------|
| Water improvement districts established | 7622 | Returns—result | 7693 |
| Petition signed by majority—notice | 7623 | Directors enter record | 7694 |
| Posting and publishing notice | 7624 | Bonds to include interest | 7695 |
| Duties imposed upon clerk and sheriff | 7625 | Limitation of indebtedness | 7696 |
| Creation of district contested | 7626 | Modifications | 7697 |
| Petition feasible—recorded | 7627 | Bond issuance—requirements | 7698 |
| Appeal to district court | 7628 | Bonds to repair damage | 7699 |
| Election held within proposed district, when | 7629 | Denomination of bonds | 7700 |
| Time—where notices posted | 7630 | Preferred lien | 7701 |
| Who may vote—election and ballot | 7631 | Suit not permitted when | 7702 |
| Election precincts | 7632 | Determine validity | 7703 |
| Duty of tax collector | 7633 | Attorney General may waive service | 7704 |
| Court declare result of election | 7634 | Attorney General to tender issue | 7705 |
| Result entered in minutes | 7635 | Judgment rendered | 7706 |
| Bear name of county | 7636 | Certified copy | 7707 |
| Numbers of districts | 7637 | Comptroller to register bonds | 7708 |
| Certified copy recorded | 7638 | Book provided | 7709 |
| Directors shall each make bond | 7639 | Saleable bonds | 7710 |
| Organization of directors | 7640 | Purpose of construction and maintenance fund | 7711 |
| Who eligible for director | 7641 | Directors levy tax | 7712 |
| Qualifications of tax assessor and collector | 7642 | “Interest and Sinking Fund” | 7713 |
| Salary of tax assessor and collector | 7643 | “Maintenance and Operating Fund” | 7714 |
| Additional bond required | 7644 | Engineer make inspection and valuation | 7715 |
| Survey of boundaries | 7645 | “Amortization and Emergency Fund” | 7716 |
| Petition to exclude lands | 7646 | Term of office | 7717 |
| Notice of hearing | 7647 | Directors elected or appointed | 7718 |
| Decision after hearing | 7648 | Directors receive and canvass election returns | 7719 |
| Petition filed | 7649 | Employment time limited | 7720 |
| Application recorded | 7650 | Vacancies filled how | 7721 |
| Consent necessary | 7651 | Directors compensation | 7722 |
| Directors to control district | 7652 | Right of eminent domain | 7723 |
| Contract with United States | 7653 | Defined districts | 7724 |
| Director prohibited—interest | 7654 | District dissolved, when | 7725 |
| Districts sued | 7655 | Advice of State Board of Water Engineers | 7726 |
| Districts empowered | 7656 | To grant petition | 7727 |
| Property conveyed to United States | 7657 | Commissioners' court give notice | 7728 |
| Assessor and collector to make statement | 7658 | Purpose of election | 7729 |
| Contents of assessment | 7659 | Canvassing returns | 7730 |
| Rendition of taxable property | 7660 | Districts governmental agencies | 7731 |
| Board of Equalization | 7661 | Conditions of additional territory | 7732 |
| Oath | 7662 | Petition heard and election thereof | 7733 |
| Board to examine assessment lists | 7663 | Question submitted | 7734 |
| May file complaint | 7664 | Two-thirds majority required | 7735 |
| Certified list furnished | 7665 | Extra election held | 7736 |
| Board to adjourn—serve notice | 7666 | Voters have right to participate | 7737 |
| Board to lower property value | 7667 | Penalty for prohibiting officer to enter land | 7738 |
| Compensation | 7668 | Contracts made by directors | 7739 |
| Permanent record | 7669 | Copy of engineer's report furnished bidder | 7740 |
| Assessors report | 7670 | Copy of contract recorded | 7742 |
| Credit | 7671 | Give bond | 7743 |
| Assessment date | 7672 | Specifications included | 7744 |
| Board convene annually | 7673 | Full and detailed reports given | 7745 |
| Taxes due—payable | 7674 | Bridges and culverts | 7746 |
| Taxes remain lien | 7675 | Bridges and culverts required | 7747 |
| District no right to become party | 7676 | Disbursement of remaining funds | 7748 |
| Delinquent tax record | 7677 | Directors to inspect—draw warrant | 7749 |
| How recorded | 7678 | Semi-annual report | 7750 |
| Publication of delinquent tax record | 7679 | Supply water for annual rental | 7751 |
| Attorney to bring suit | 7680 | Statement furnished | 7752 |
| Parties defendants | 7681 | Expense estimated | 7753 |
| Deed to purchaser | 7682 | Public notice of assessments given | 7754 |
| Attorneys compensation | 7683 | Plans include, what | 7755 |
| Interest on delinquent taxes | 7684 | Assessments collected, how | 7756 |
| Delinquent taxpayer redeem lands how | 7685 | True accounts kept, where | 7757 |
| Duty of engineer | 7686 | Depository selected | 7758 |
| Map | 7687 | Monthly report | 7759 |
| Election | 7688 | Regular office maintained | 7760 |
| Notices posted where | 7689 | Surety company bond | 7761 |
| Contents of notice | 7690 | Directors select auditor—report made | 7762 |
| Polls and ballots | 7691 | | |
| Oath | 7692 | | |

| Article | Article | | | |
|---|---------|--|----------------------------|------|
| Joint ownership contract..... | 7763 | Equitable basis instead of ad valo- | rem..... | 7788 |
| Districts validly created..... | 7764 | When contract with United States..... | 7789 | |
| District necessities authorized..... | 7765 | Sale of water power privileges..... | 7790 | |
| Land become part of district—orig- | | Adopt rate of commissioners' court..... | 7791 | |
| inally included..... | 7766 | Selling surplus water..... | 7792 | |
| Water rights transferred..... | 7767 | Sale and lease of electrical energy..... | 7793 | |
| Lands relieved of assessment, when..... | 7768 | Cooperating with districts of other | states..... | 7794 |
| Conditions of tax levied..... | 7769 | Limiting power to incur debt..... | 7795 | |
| Sinking funds invested..... | 7770 | Previous bond validated..... | 7796 | |
| County clerk's fees..... | 7771 | May sue to protect bonds..... | 7797 | |
| Manager employed..... | 7772 | May sue to protect bonds..... | 7798 | |
| Bonds exchanged..... | 7773 | Board of Water Engineers to inves- | tigate..... | 7799 |
| Application for water improvement | | Conveying interests..... | 7800 | |
| district..... | 7774 | Excluding land from district..... | 7801 | |
| Vote separately canvassed, when..... | 7775 | Districts heretofore organized may | take advantage..... | 7802 |
| Fixing maintenance charges..... | 7776 | May incur indebtedness..... | 7803 | |
| Charging cities and towns..... | 7777 | Limitations removed..... | 7804 | |
| Consolidation of districts..... | 7778 | To change districts heretofore or- | ganized..... | 7805 |
| Benefit plan of taxation..... | 7779 | Governed by regulations of water | improvement districts..... | 7806 |
| Locating offices..... | 7780 | May choose benefit, or ad valorem | basis..... | 7807 |
| Collecting under benefit plan..... | 7781 | | | |
| Commissioners of appraisal..... | 7782 | | | |
| Time and place of meeting..... | 7783 | | | |
| To make report—compensation..... | 7784 | | | |
| Notice of hearing..... | 7785 | | | |
| Issuance of decrees..... | 7786 | | | |
| Benefit basis of taxation..... | 7787 | | | |

Art. 7622. **Water improvement districts established.**—The county commissioners' court of any county in this State at any regular or called session thereof may establish one or more water improvement districts in their respective counties, or parts of such districts therein, in the manner hereinafter provided. Such districts may or may not include within their boundaries villages, towns, cities, and municipal corporations, or any part thereof, but no land shall be at the same time included within the boundaries of more than one water improvement district created under this chapter. Such districts when so established may make improvements or may purchase improvements already existing, or may purchase improvements and make additions thereto, and may issue bonds in payment therefor, as herein provided. Such districts being authorized to provide for the irrigation of the land included therein, and when operating under Section 59 of Article 16 of the Constitution, furnish water for domestic, power and commercial purposes. Such districts may be formed for co-operation with the United States under the Federal Reclamation Laws for the purpose of the construction of irrigation works, including drainage works, necessary to maintain the irrigability of the land for the purchase, extension operation or maintenance of constructed works or for the assumption, as principal or guarantor, of indebtedness to the United States on account of district lands. [Acts 2nd C. S., 1919, p. 65, part Sec. 1.]

Art. 7623. **Petition signed by majority—notice.**—The petition herein provided for to be presented to the county commissioners' court shall be signed by a majority in number of the holders of title to the lands situated within the proposed district and representing a majority in value of the lands therein as indicated by the county tax rolls; provided, however, that such petition shall be sufficient if same is signed by fifty holders of title or evidence of title to the land situated within the proposed district, in the event that the number of such land owners should

be greater than fifty in number, Upon presentation to the commissioners' court either at a regular or special session, of a petition as herein provided praying for the establishment of a water improvement district, setting for the boundaries thereof and designating a name for the district, the commissioners' court shall set the same for hearing at some regular or special session to be held not less than fifteen days nor more than forty days from the presentation of said petition. The clerk of said court shall issue a notice of the said hearing, giving the date and place of hearing, and a copy of the order of the court setting same for hearing. Said notice shall be directed to the sheriff of the county requiring him to serve the notice in the manner provided by law. Said notice shall be sufficient if it contains the matter herein provided, and all persons interested shall take notice of the boundaries of said district as set out in the petition and may inspect same by examining the same in the office of the clerk of said court. [Id. part Sec. 1.]

Art. 7624. Posting and publishing notice.—The sheriff shall execute said notice by posting true copies thereof in three public places within said proposed district and one at the courthouse door of the county, or on the bulletin board used for public notices at the county courthouse. Said notices shall be posted for ten full days prior to the date of said hearing. Said notices shall also be published in a newspaper of general circulation in the county, if a newspaper is published therein, one time and at least five days prior to such hearing. The sheriff shall make due return of a true copy of said notice, showing the time when and the places where such notice was posted and published. The said return to be delivered to the clerk of the commissioners' court, and to be recorded in the minutes of said court. [Id. part Sec. 1.]

Art. 7625. Duties imposed upon clerk and sheriff.—The duties herein imposed upon the clerk and sheriff may be performed by them acting by themselves or their deputies as provided by law for other similar duties. When conditions may make desirable, the petition herein provided for may be signed and presented to the court in several copies. When such petition is so presented in more than one copy the clerk shall file all such copies and shall make a true copy thereof, including a list of all those who have signed the several copies, and certify there-to and file same. Such certified copy shall be considered the petition in all other proceedings provided for by this chapter.

Water improvement districts to be organized as provided herein are defined districts under the authority granted by Section 52 of Article 3 of the Constitution of the State. [Id. part Sec. 1.]

Art. 7626. Creation of district contested.—Upon the day set by said county commissioners' court for the hearing of said petition, any person whose lands are included in and would be affected by the creation of said district may appear before said court and contest the creation of such district, or contend for the creation thereof, and may offer testimony to show that such district is or is not necessary and would or would not be of pub-

lic utility, and that the creation of such district would or would not be feasible or practicable. Said county commissioners shall have exclusive jurisdiction to hear and determine all contests and objections to the creation of such district and all matters pertaining to the same, except as is hereinafter provided, and may adjourn the hearing on any matter connected therewith from day to day and all judgments rendered by said court in relation thereto shall be final, except as herein otherwise provided. [Acts 1917, p. 174, Sec. 2.]

Art. 7627. Petition feasible—recorded.—If, at the hearing of such petition, it shall appear to the satisfaction of the court that the organization of such district and the construction or purchase, or the construction and purchase of the proposed irrigation system, or that co-operation with the United States as in Article 7622 provided, is feasible and practicable, and that it is needed and would be a public benefit and a benefit to the lands included in the district then the court shall so find, and cause its findings to be entered of record; but if the court should find that the irrigation of the lands in such district is not feasible and practicable and that it would not be a public benefit or is not needed or would not be a public utility, then the court may enter such findings of record and dismiss the petition at the cost of the petitioners. [Id. Sec. 3.]

Art. 7628. Appeal to district court.—If at the hearing provided for in Article 7627 of this Act, the court shall enter an order granting or refusing the petition for the organization of said district at the cost of the petitioners, then in that event the petitioners, or any one or more of them, or any one owning land in such district, may appeal from said order to the district court; provided, however, any such appeal shall only be taken in the event notice thereof is filed with said county commissioners' court at the time of said hearing, and that same is perfected by filing with the clerk of said court an appeal bond in a sum of not less than \$2,000.00 or more than \$5,000.00 to be fixed by said county commissioners' court, payable to the county judge for the benefit of adverse parties, at the time notice of appeal is given and said bond shall be filed with the clerk of said court within ten days thereafter. In the event of such appeal said cause shall be tried under the rules prescribed for practice in the district court, and to be de novo, and the clerk of the commissioners' court shall transfer to the clerk of the district court within ten days from the date of filing of an appeal bond such judgment and all records filed with the county commissioners' court, and it shall be unnecessary to file any other additional pleadings in said cause. The final judgment on appeal shall be certified to the commissioners' court for their action within ten days after same has become final. [Act 1921, p. 19, Sec. 4.]

Art. 7629. Election held within proposed district, when.—After hearing of the petition as provided for in Articles 7626 and 7627 of this Act, if the commissioners' court shall find in favor of the petitioners for the establishment of a district accord-

ing to the boundaries as set out in said petition the county commissioners' court shall order an election to be held within said proposed district at which election there shall be submitted the following propositions: "For the Water Improvement District." "Against the Water Improvement District." "For the Issuance of Notes of said District." "Against the Issuance of Notes of Said District.", for the purpose of paying the cost of organizing, surveying, maps and plats, and all other indebtedness prior to the issuance of bond, and the election of five directors as is hereinafter provided. [Acts 2nd C. S., 1923, p. 26, Sec. 5.]

Art. 7630. Time—where notices posted.—After ordering of the election as provided in the preceding article, notices of such election shall be given, stating the time and place or places of holding the election, and showing the boundaries of said proposed district, and such notices shall also show the presiding officer or officers appointed for the holding of said election. Such notices shall be posted in four places in such proposed district, and one shall be posted at the courthouse door of the county in which such proposed district is situated, such posting to be for twenty days previous to the date of the election and shall contain the proposition to be voted upon and names of offices to be filled at such election. [Acts 1917, p. 175, Sec. 6.]

Art. 7631. Who may vote.—The manner of conducting elections herein provided for shall be governed by the general election laws of the State except as herein otherwise provided. At such election none but resident property taxpayers who are qualified voters under the laws of the State shall be entitled to vote. The county commissioners' court shall at the time of ordering said first election, by an order entered of record, create said proposed district, or the part thereof within said county, into one or more election precincts and shall name a polling place in each voting precinct, and shall appoint two judges and two clerks for each polling place, one of the judges to be designate as presiding judge. If any said officer so elected fail to serve, his place shall be filled in the manner provided by the general election laws. The court shall order printed one and one-half times as many ballots for said election as there are estimated to be qualified voters within such district. Said ballots for said election shall have printed thereon substantially the following: "For Water Improvement District," "Against Water Improvement District," "For Issuance of Notes of Said District," "Against Issuance of Notes of Said District," and said ballot shall contain five blank lines upon which to write names of persons voted for, for the office of director with a heading, "For Directors, Five to be Elected." No other matter shall be placed on the ballot except the heading "Official Ballot." [Acts 2nd C. S., 1923, p. 26, Sec. 7.]

Art. 7632. Election precincts.—The election precincts herein provided to be created shall be and continue the election precincts of said district until changed by an order of the board of directors. [Id.]

Art. 7633. Duty of tax collector.—It shall be the duty of

the tax collector of the county before a water improvement district is formed, and of the tax collector of the district after its organization, to make a certified list of the property taxpayers of said district or part thereof in the county, and to furnish same to the officers of the election of each polling place, and before any person is entitled to vote at any election under this Act his name must appear in said certified list of property taxpayers; provided, however, that a qualified voter who is a property taxpayer in said district or proposed district, and whose names does not appear upon said list, shall be entitled to vote if he shall first take the following oath, to be administered by an election judge and which judges of the election are authorized to administer: "I do solemnly swear (or affirm) that I am a qualified voter under the laws of the State of Texas, and that I am a resident property taxpayer of..... (inserting the name of the district) and I did not acquire such property prior to this election for the purpose of voting, but I am a bona fide property taxpayer. [Acts 2nd C. S., 1919, p. 67, Sec. 8.]

Art. 7634. **Court declare result of election.**—The officers of the election shall make returns for each polling place in the same manner as provided by law for general elections, and the county commissioners' court shall canvass said returns in the manner provided by law. If a majority of said votes be cast in favor of the organization of said district, then the court shall declare the result of said election in favor of the establishment of said district and shall enter same in the minutes of said court. If a majority of said votes be cast in favor of the issuance of notes of said district then the court shall declare the result of said election in favor of the issuance of said notes, and it shall be the duty of the board of directors, when qualified, to issue notes of said district, in a sum not to exceed fifteen per cent of the proposed cost of improvements to be made in said district, for the purpose of creating a fund to pay the costs of the organization of the district and the cost of all surveys, investigations, engineering, issuance of bonds, making and filing of maps and reports, all legal expenses connected therewith, and all other costs and expenses authorized or made necessary by the provisions of this chapter; and to sell said notes, or to exchange the same in payment for such costs and expenses, said notes to be secured by the assessment, levy, and collection of taxes as hereinafter provided for the assessment, levy and collection of taxes for the payment of the bonds of said district; provided, however, that all notes issued under the provisions of this article, shall be paid off, satisfied and discharged out of the proceeds of the bonds when issued and sold, if bonds of said district are not voted at the election held for that purpose, then and in that event the notes so issued shall continue in force and effect and shall be paid off, satisfied and discharged by the assessment, levy and collection of taxes to pay note issues. The court shall also canvass the votes for directors and declare the election of the five persons receiving the highest number of votes for said office; provided that should it be found that two or more persons had received the same

number of votes so as to make it a tie for the office between them, then the said court shall elect one of said persons to fill such position. In the event said district is composed of territory lying in two or more counties the said returns shall be canvassed and the result declared as hereinafter provided. [Acts 2nd C. S., 1923, p. 27, Sec. 9.]

Art. 7635. Result entered in minutes.—If the result of said election be in favor of the establishment of the district, the county commissioners' court shall make and enter in the minutes of said court an order setting forth facts substantially as follows: "In the matter of the petition of _____ and others praying for the establishment of a water improvement district, as in said petition described and named _____ be it known that an election was called for that purpose in said district and held on the _____ day of _____, A. D. _____, and a majority of the resident taxpayers voting thereat voted in favor of the creation of said district. Now, therefore, it is declared that said district has been legally established under the name of _____, with the following metes and bonds: (Here copy description of boundaries.)

When a district is created including territory in two or more counties the officer charged with the duty of declaring result of said election shall use substantially the same form. [Acts 2nd C. S., 1919, p. 68, Sec. 10.]

Art. 7636. Bear name of county.—All districts lying wholly in one county shall include in its name the name of the county in which it is located as a part of its name, and shall be numbered consecutively as created and established. A district lying partly in two or more counties may include the names of said counties in its name or may adopt any appropriate name. [Id.]

Art. 7637. Numbers of districts.—The numbers of districts created hereafter shall not conflict with the numbers of irrigation or water improvement districts heretofore created, but shall be consecutively continued, and when a district lying in two or more counties has adopted a number as part of its name such number shall not be the same as that of any other district in either of said counties, and the numbers of districts created in either of said counties shall not conflict therewith. [Id.]

Art. 7638. Certified copies recorded.—After the making and entering by the commissioners' court of the order establishing such districts as herein provided, or an order changing the name of a district, the said court shall cause to be made a certified copy of such order, which shall be filed with the county clerk of the county in which such district is situated, and shall cause same to be duly recorded in the deed records of said county and properly indexed in the same manner provided for the recording and indexing of deeds, and such recordation shall have the same effect, in so far as notice is concerned, as is provided for the record of deeds, and all costs in connection with the making and recording of such copies shall be paid by the districts. [Acts 1917, p. 176, Sec. 11.]

Art. 7639. Directors shall each make bond.—Within ten days

after the making and entry of the order of the commissioners' court declaring the result of the election and the establishment of the district as hereinbefore provided, or as soon thereafter as is practicable, the directors elected at such election shall each make and enter into a good and sufficient bond in the sum of five thousand (\$5,000.00) dollars each, payable to such district conditioned upon the faithful performance of their duties, to be approved by the commissioners' court. Provided, however, that after the organization of such district, all bonds required to be given by any director, officer or employee of such district shall be approved by the directors of such district, and said directors shall take the oath of office prescribed by statute for the commissioners' court, except that the name of the district shall be substituted for the name of the county in said oath of office; and the bond and oath herein provided for shall be filed with the county clerk of the county within which said district is situated and be by him recorded in the official bond record for said county, and after its record, said bond shall be delivered by the county clerk to the depository selected by such district under the provisions of this Act, and shall be by it safely kept and preserved as a part of the records of said district. [Id. p. 177, Sec. 12.]

Art. 7640. Organization of directors.—The directors of such district shall organize by electing one of their number as president and one as secretary. The directors may elect a president pro tem, and a secretary pro tem, to act in the absence or inability of the president or secretary. Any three directors shall constitute a quorum at any meeting, and a concurrence of three shall be sufficient in all matters pertaining to the business of the district except the letting of constructing contracts and drawing of warrants on the depository, which shall require the concurrence of four of such directors; provided, however, warrants to pay the current expenses, salaries, and labor and material accounts, may be drawn by an officer, or employee, designated by standing order of the directors, when such accounts have been contracted and ordered paid by the directors. [Acts 2nd C. S., 1919, p. 68, Sec. 13.]

Art. 7641. Who eligible for director.—No person shall be elected a director of any district created under this Act unless he is a resident of the State of Texas and owns land subject to taxation within said district, and who, at the time of such election, shall be more than twenty-one years of age. [Acts 1917, p. 177, Sec. 14.]

Art. 7642. Qualifications of tax assessor and collector.—The office of tax assessor and collector is one office to be filled by one person. The tax assessor and collector shall be appointed by the directors or if the directors so order may be elected by an election held for that purpose. He shall qualify by making and entering into a good and sufficient bond, signed also by at least two good and sufficient sureties, to be approved by the board of directors, in the sum of five thousand dollars (\$5,000.00) conditioned for the faithful performance of his duties as tax assessor and collector and for the paying over to the depository all funds

or sums of money or other thing of value, coming into his hands as such collector. The directors may require additional bonds or bond in larger amount or additional security at any time that same may be advisable in their judgment. The assessor and collector shall be a resident of the district, or any town within the general boundaries of the district, and shall be a qualified voter in the county of his residence. [Acts 2nd C. S., 1919, p. 69, Sec. 15.]

Art. 7643. Salary of tax assessor and collector.—The compensation to be paid the tax assessor and collector, or deputy tax assessor and collector shall be fixed by the board of directors, but shall not exceed \$3,000.00 per year. One or more deputies may be appointed by the board of directors to assist the tax assessor and collector for such time not to exceed one year as may be ordered by the board. Such deputies shall perform such duties as the board may order and may be discharged at any time by the board. The amount of bond given by such deputies shall be determined at the time of their appointment or as occasion may require. The board of directors may require the tax assessor and collector to perform other duties than those herein fixed and may fix his additional compensation, if any, therefor. [Id.]

Art. 7644. Additional bond required.—In case any district organized hereunder is appointed fiscal agent of the United States, or by the United States is authorized to make collections of money for and in behalf of the United States in connection with any Federal reclamation project, such assessor and collector and each director, shall execute a further additional bond in such sum as the Secretary of the Interior may require, conditioned for the faithful discharge of the duties of his respective office and the faithful discharge by the district of its duties as fiscal or other agent of the United States under such appointment or authorization; such additional bonds to be approved, recorded and filed as herein provided for other official bonds, and any such additional bonds may be sued on by the United States or by any person injured by the failure of such officer or the district, to fully, promptly and completely perform their respective duties. [Id.]

Art. 7645. Survey of boundaries.—It shall be the duty of the directors, immediately after they qualify as such, to cause an actual survey of the boundaries of such district to be made according to the boundaries designated in the petition for the establishment of such district, or to adopt in whole or in part such boundaries where already established, and to have said boundary marked by suitable monuments. [Acts 1917, p. 178, Sec. 16.]

Art. 7646. Petition to exclude lands.—The owner or owners of the fee of any land constituting a portion of any district may file with the board of directors of such district a petition praying that certain lands owned by them be excluded from and taken out of said district. The petition shall describe the lands which the petitioners desire to have excluded by metes and bounds and

such petition must be acknowledged in the same manner and form as is required by law for the conveyance of real estate. Such petition may be filed at any time prior to the issuance of bonds by such district. [Acts 2nd C. S., 1919, p. 69, Sec. 17.]

Art. 7647. Notice of hearing.—Upon the filing of a petition for the exclusion of any lands from said district with the board of directors, they shall immediately set said petition down for hearing for a day certain, not to exceed twenty days, however, from the date of the filing thereof, and shall cause notice of such hearing to be given by the posting of written or printed notices of the time and place of such hearing at three public places within said district. Such notice shall contain a copy of the petition for exclusion, and shall be posted for at least eight days prior to such hearing. [Acts 1917, p. 178, Sec. 18.]

Art. 7648. Decision after hearing.—The board of directors, at any time and place designated in such notice, or at such time and place as such hearing may from time to time be adjourned to, shall proceed to hear the petition and all objections thereto, and shall determine whether or not said lands, or any portion thereof, shall remain as a portion of said district or be excluded therefrom; and if upon such hearing the directors shall determine that the land desired to be withdrawn or any portion thereof is not susceptible to irrigation by gravity from the system to be provided, or for other reasons should be allowed to be withdrawn, then such lands shall be excluded by granting such petition in whole or in part, and such excluded lands and the owners thereof thereby waive all right to be served with water from such irrigation system or by said district. [Acts 2nd C. S., 1919, p. 70, Sec. 19.]

Art. 7649. Petition filed.—The owner or owners of the fee to lands contiguous to any district created under this Act may file with the board of directors of said district a petition in writing, praying that such land be included in such district. The petition shall describe the tract or body of land owned by the petitioners by metes and bounds and upon the filing of such petition with the board of directors, said board of directors shall cause an accurate survey of the said tract of land to be made and the boundaries thereof marked upon the ground, and said tract of land may be admitted as a part of the district; provided it can be irrigated without prejudice to the rights of any of the lands originally contained therein to be first furnished with an adequate supply of water, and when said lands are so admitted they shall immediately become subject to their proportionate share of any taxation or bonded indebtedness that may have been created against said district and subject to such reasonable charge against such lands for the purpose of defraying its part of the expenses of maintenance, operation or other necessary expenses previously made as may be determined by the board of directors. [Acts 1917, p. 179, Sec. 20.]

Art. 7650. Application recorded.—If the lands described in said petition are admitted as a part of the district, the application for such admission shall be signed and acknowledged as pro-

vided for deeds, and shall be recorded in the deed records of the county in which such district is situated, together with the order of the directors endorsed thereon. [Id.]

Art. 7651. **Consent necessary.**—No land shall be added to any irrigation district with which contract with the United States shall have been made without the written consent of the Secretary of the Interior. [Id.]

Art. 7652. **Directors to control district.**—The board of directors herein provided for shall have control over and management of all the affairs of such district, shall make all contracts pertaining thereto, and shall employ all necessary employees for the proper handling and operating of such districts, and especially may employ a general manager, an assessor and collector, attorneys, a bookkeeper, an engineer, water master and such other assistants and such other laborers as may be required, and they may also buy all necessary work animals, motors, pumps, engines, boilers, machinery and supplies as may be required in the erection, operation and repair of the improvements of the districts; a director may be employed as general manager, and at such compensation as may be fixed by the other four directors and when so employed he shall also perform the duties of a director, but he shall not receive the compensation in this Act provided to be paid to directors. [Id., Sec. 21.]

Art. 7653. **Contract with United States.**—The board of directors, on behalf of said district, may enter into any obligation or contract with the United States for the construction, operation and maintenance of the necessary work for the delivery and distribution of water therefrom, or for the drainage of district lands or for the assumption of indebtedness to the United States for district lands, or for the temporary rental of water from the United States for district lands or a part thereof, under the provisions of the Federal Reclamation Act, and all acts amendatory thereof or supplementary thereto, and the rules and regulations established thereunder; or the board may contract with the United States for a water supply under any Act of Congress providing for or permitting such contract, and in case contract has been or hereafter may be made with the United States as herein provided, bonds of the district may be deposited with the United States at ninety (90) per cent of their par value, to the amount to be paid by the district to the United States under any such contract, the interest on said bonds to be provided for by assessment and levy as in the case of other bonds of the district, and regularly paid to the United States to be applied as provided in such contracts, and if bonds of the district are not so deposited it shall be the duty of the board of directors to include as part of any levy or assessment now provided for by law, an amount sufficient to meet each year all payments accruing under the term of any such contract; and the board may accept on behalf of the district appointment of the district as fiscal agent of the United States in connection with any Federal reclamation project, whereupon the district shall be authorized to so act, and to assume the duties and liabilities incident to such action,

and the said board shall have full power to do any and all things required by the Federal statutes now or hereafter enacted in connection therewith and all things required by the rules and regulations now or that may hereafter be established by any department of the Federal Government in regard thereto. [Id.]

Art. 7654. **Directors prohibited—interest.**—No director of any such district, engineer or employees thereof shall be, directly or indirectly, interested either for themselves or as agents for any one else in any contract for the purchase or construction of any work by said district, and if any such person shall, directly or indirectly, become interested in any such contract he shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine in any sum not to exceed one thousand (\$1,000.00) dollars, or by confinement in the county jail not less than six months nor more than one year, or by both such fine and imprisonment. [Id. p. 180, Sec. 22.]

Art. 7655. **Districts sued.**—All districts established under the provisions of this Act may sue and be sued in any and all courts of this State in the name of such district, and all courts of this State shall take judicial knowledge and notice of the establishment of such district and the boundaries thereof, and such districts shall contract and be contracted within the name of such districts. [Acts 2nd C. S., 1919, p. 70, Sec. 23.]

Art. 7656. **Districts empowered.**—Districts created under the provisions of this Act are hereby empowered to own and construct reservoirs, dams, wells, canals, etc., and to acquire the necessary rights of way for and buy or construct all reservoirs, dams, wells, canals, laterals, sites for pumping plants and all other improvements required for the irrigation of the lands in such district by gift, grant, purchase or condemnation, and they may acquire the title to any and all lands necessary or incident to the successful operation thereof, in addition to any of the above, in the manner provided, including the authority by purchase or condemnation, to acquire rights of way for the enlargement, extension or improvement of any existing canals, or ditches for the purpose of raising such canals and ditches jointly with the owners thereof. [Id. p. 227, Sec. 24.]

Art. 7657. **Property conveyed to United States.**—Any property acquired may be conveyed to the United States in so far as the same shall be necessary for the construction, operation and maintenance of works by the United States for the benefit of the district under any contract that may be entered into thereunder. [Id.]

Art. 7658. **Assessor and collector to make assessment.**—Immediately upon the qualification of the assessor and collector, as hereinbefore provided, he shall enter upon the discharge of his duties, and shall at once proceed to make an assessment of all the taxable property, both real, personal and mixed, in his said district; and such assessment shall be made annually thereafter. [Acts 1917, p. 181, Sec. 25.]

Art. 7659. **Contents of assessment.**—Said assessment shall be made upon blanks to be provided by the directors for such

district. Said assessment shall consist of a full statement of all property owned by the party rendering same in said district and subject to taxation therein, and shall state the full value thereof. There shall be attached to each such assessment an affidavit made by the owner or his agent rendering said property for taxation to the effect that said assessment or rendition contains a true and complete statement of all property owned by the party for whom said rendition is made in said district and subject to State and county taxation therein; and in addition to all such assessments or renditions made by the owner or agents of such property, the tax assessor shall make out similar lists of all property not rendered for taxation in such districts that is subject to State and county taxation therein. [Id.]

Art. 7660. Rendition of taxable property.—Each and every person, partnership or corporation owning taxable property in such district shall render same for taxation to the assessor when called upon so to do, and if not called upon by the assessor, the owner shall on or before June 1 of each year nevertheless render for taxation all property owned by him in the district subject to taxation. And all laws and penal statutes of this State providing for securing the rendition of property for State and county taxes, and providing penalties for the failure to render such properties shall apply to all persons, partnerships or corporations owning or holding property in any such district. The tax assessor shall have authority to administer oaths to fully carry out the provisions of this section. [Id.]

Art. 7661. Board of Equalization.—The directors for such district created under the provisions of this Act shall, at their first meeting, or as soon thereafter as practicable, and annually thereafter, appoint three commissioners, each being a qualified voter and resident property owner of said district, who shall be styled "The Board of Equalization," and at the same meeting the same board of directors shall fix the time for the meeting of such Board of Equalization for the first year; and said Board of Equalization shall convene at the time fixed by the directors to receive all assessment lists or books of the assessor for said district for examination, correction, equalization, appraisement and approval, and at all meetings of said Board the secretary of the board of directors shall act as secretary thereof and keep a permanent record of all the proceedings of said Board of Equalization. [Id. Sec. 25.]

Art. 7662. Oath.—Before entering upon the duties as such Board of Equalization, each of the members thereof shall take and subscribe the following oath: "I.....do solemnly swear (or affirm) that I will, to the best of my ability, make a full and complete examination, correction, equalization and appraisement of all property contained within said district, as shown by the assessment lists or books of the assessor of said district, and add thereto all property not included therein of which I have knowledge," and said oath shall be spread upon the minutes to be kept by the secretary of the Board. [Id. p. 182, Sec. 27.]

Art. 7663. Board to examine assessment lists.—The Board of Equalization herein provided for shall cause the assessor to bring before them, at the time fixed for the convening of said Board, all the assessment lists or books of the assessor of said district for their examination, that they may see that each and every person has rendered his property at its full value; and said Board shall have power to send for persons and papers to swear and qualify persons who testify, to ascertain the value of such property, and if they are satisfied it is too high, they shall lower it to its proper value; and if too low they shall raise the value of such property to a proper figure. Said Board shall have power to correct any and all errors that may appear on the assessors lists or books, and shall have further authority to add any and all property to said lists of inventories that may have been omitted therefrom. [Id. Sec. 28.]

Art. 7664. May file complaint.—The Board of Equalization shall equalize, as near as possible the value of all property situated within said district, having reference to the location of said property and the improvements thereon situated. Any person may file with the said Board at any time before the final action of said board, a complaint as to the assessment of his or any other person's property, and said Board shall hear said complaint, and said complainant shall have the right to have witnesses examined to sustain said complaint as to the assessment of said property, or as to a failure to render any property owned by any person, partnership or corporation situated within said district subject to taxation which has not been properly assessed. [Id. Sec. 29.]

Art. 7665. Certified list furnished.—The assessor for such district, at the same time that he delivers to said Board his lists and books, shall also furnish to said Board a certified list of the names of all persons who either refuse or swear to or to sign, the oath or affirmation as required by this law, together with the list of the property of such persons situated within said district who have failed or refused to list their property, as made by him through other information, and said Board shall examine the list and appraise the property so listed by the assessor. [Id. Sec. 30.]

Art. 7666. Board to adjourn—serve notice.—In all cases where the Board of Equalization shall find it their duty to raise the value of any property appearing on the lists or books of the assessor or to add property omitted therefrom, they shall, after having fully examined such lists or books, and corrected all errors appearing therein, adjourn to a day not less than ten nor more than fifteen days from the date of adjournment, such day to be fixed in the order of adjournment, and shall cause the secretary of said Board to give a written notice to the owner of such property, or to the person rendering same, of the time to which said Board may have adjourned, and that such owner or person may at that time appear and show cause why the value of such property should not be raised, which notices may be served by

depositing the same, properly addressed and postage paid, in any post office within the county. [Id. p. 183, Sec. 31.]

Art. 7667. Board to lower property value.—The Board of Equalization shall meet at the time specified in said order of adjournment and shall hear all persons the value of whose property has been raised; and if said Board is satisfied they have raised the value of such property too high, they shall lower the same to its proper value; and said Board of Equalization, after they have finally examined and equalized the value of all the property on the assessors lists or books or that may have been placed thereon by said Board of Equalization, shall approve said lists or books and return them, together with the lists of unrendered property to the assessor that he may make up therefrom his general rolls as required by this Act; and when said general rolls are so made the Board shall immediately reconvene to examine said rolls and approve the same if found correct; and the action of the Board at the meeting last provided for in this article shall be final and shall not be subject to revision by said Board or by any other tribunal thereafter. [Id. Sec. 32.]

Art. 7668. Compensation.—The members of the Board of Equalization and the secretary while acting as secretary of said Board, shall receive such compensation for their services as may be fixed by the board of directors of the district, not to exceed, however, the sum of six dollars per day for the time actually engaged in the discharge of such duties. [Act 2nd C. S., 1919, p. 70, Sec. 33.]

Art. 7669. Permanent record.—After the return to the assessor and collector of the assessment lists and books duly approved by the Board of Equalization, as hereinbefore provided for, the said assessor and collector shall make up the assessment of all taxable property situated in said district upon duplicate rolls and after the approval of said rolls by the Board of Equalization, he shall retain one of same in his office and shall deliver the other copy to the directors of said district, to be kept by them as a permanent record in their office, and all lists and books of said assessor shall be caused to be substantially bound and by him kept as a permanent record of his office, and be delivered, together with all others records of his office, to his successor, upon his election and qualification, or, in case of a vacancy in such office to the directors for said district. [Acts 1917, p. 183, Sec. 34.]

Art. 7670. Assessors report.—The assessor and collector shall collect all taxes due to said district, and shall, at the expiration of each week, pay over to the depository selected by said district all moneys by him collected, and shall report to the directors for such district on the fourth Saturday in every month all moneys so collected by him and paid over to the depository as hereinbefore provided, and shall perform all such other duties, and in such manner and according to such rules and regulations as the board of directors may prescribe and for the convenience of the persons, firms or corporations owning such tax, shall keep

and maintain an office with the board of directors for such district, where all such taxes may be paid. [Id. Sec. 35.]

Art. 7671. **Credit.**—The assessor and collector shall be charged by the directors for such district, upon a permanent finance ledger to be kept for said purpose by said district, with the total assessment as shown by the assessment rolls; and proper credit shall be given to the assessor and collector for all sums of money paid over to the depository, as shown by his monthly reports as hereinbefore provided for, and upon the final annual settlement, the said assessor and collector shall make up a full complete report of all taxes that have not been collected, which said report shall be audited by said board of directors, and proper credits given therefor, and such annual settlements shall be made on the first Monday in September of each year. [Id. p. 184, Sec. 36.]

Art. 7672. **Assessment date.**—The assessment provided for in this Act shall be made upon all property subject to taxation in said district on the first day of January of each year, and such assessment shall be completed and the lists and books ready to deliver on or before the first day of June of each year. [Id. Sec. 37.]

Art. 7673. **Board convene annually.** The Board of Equalization, after the first year, shall convene annually on the first Monday in June of each year to receive all of the assessment lists or books of the assessor of said district for examination, correction, equalization, appraisal and approval, and for the addition thereto of any property found to be unrendered in said district and shall complete and deliver said lists and rolls to the assessor and collector by the third Monday in July of said year, and the said assessment rolls shall be completed by the assessor and approved by the Board of Equalization, and returned to said assessor and collector by the first Monday in October of each year after the first assessment as hereinbefore provided. [Id. Sec. 38.]

Art. 7674. **Taxes due—payable.**—All taxes provided for by this Act shall become due and payable on the first day of November of each year and shall be paid on or before the 31st day of January thereafter. [Id. Sec. 39.]

Art. 7675. **Taxes remain lien.**—All lands and other property which have been returned delinquent, during the existence of such district, shall be subject to the provisions of this Act, and said taxes shall be and remain a lien upon said land, and upon all other property against which same were assessed, although the owner be unknown or though such land be listed in the name of a person not the actual owner, and though the ownership be changed the land may be sold under the judgment of the court for all taxes, interest, penalty, and costs shown to be due by such assessment for any preceding year or years, provided the record owner of such land or lands at the date of filing such suit be made a party to such suit and be properly cited, and such districts shall have authority to file suits for the collection of taxes due upon land and also personal property or property of any char-

acter. No law providing for a period of limitation on debt or actions shall apply to such taxes, accruing after the formation of such district. [Acts 1st C. S., 1921, p. 149, Sec. 40.]

Art. 7676. District no right to become party.—No district created or existing or to be created under the provisions of this chapter shall have the right to become a party to or purchase, or hold under or assign or seek to enforce or receive the fruits or benefits from any contract between any land owner and private canal company or corporation made prior to the formation of such district, but all rights and privileges owned or possessed by such district are those arising or inherent in such district by virtue of this chapter. The statutes of limitation of two years as well as the provisions hereof may be pleaded in bar of all actions for the recovery of water rents or other assessments accruing on land in such district prior to the formation of such district and cannot acquire or enforce any lien against such land fixed by any contract existing prior to the formation of such district and cannot prosecute or cause to be prosecuted for it any suit or cause of action or claim of any character for its use for the recovery of any such water taxes or assessments accruing prior to the formation of such district and cannot foreclose any lien on such lands by reason of such unpaid water assessments and taxes accruing prior to the formation of such district and cannot avail itself of any rights under any private contracts made with reference to said lands prior to the formation of such districts, and cannot be held liable for the breach of any such contract. [Id. Sec. 40a.]

Art. 7677. Delinquent tax record.—It shall be the duty of the directors for such district to cause to be prepared by the tax collector, or at the expense of such district a list of all lands upon which the taxes remain unpaid on the 31st of January of each year, and such list of lands shall be known as a delinquent tax roll, and such delinquent tax roll shall be delivered to the secretary of such district to be by him safely kept as a part of the record of his office. Such delinquent record shall carry a sufficient description to properly identify the land shown to be delinquent therein. Such description may be made by reference to lot or block number. [Acts 1917, p. 184, Sec. 41.]

Art. 7678. How recorded.—Upon receipt of such delinquent tax roll by the directors of said district, the said directors shall cause said record to be recorded in a book which shall be labeled "The Delinquent Tax Record of _____ County, Water Improvement District No. _____", and shall be accompanied by an index showing the name of delinquents in alphabetical order.

Art. 7679. Publication of delinquent tax record.—Upon the completion of said delinquent tax record by any such district, it shall be the duty of the directors thereof to cause the same to be published in some newspaper published in the county in which said district is situated for three consecutive weeks, but if no newspaper is published in the county, such lists may be published in a newspaper outside of the county to be designated by such directors by a contract entered into, and a publisher's fee of not

to exceed twenty-five (\$.25) cents for each tract of land so advertised and said publication, and any other publication, in a newspaper provided for in this Act may be proven by the affidavit of the proprietor of the newspaper in which the publication was made, his foreman or principal clerk, annexed to a copy of the publication specifying the time when and the paper in which the publication was made.

Art. 7680. Attorney to bring suit.—Twenty days after the publication of such notice or as soon thereafter as practicable, the directors for such water improvements or irrigation shall employ an attorney to bring suit in the name of the district in the district court of said county for the purpose of collecting all taxes, interest, penalty, and costs due upon said land. Said petition shall describe all lands upon which taxes and penalties shall remain unpaid and the total amount of taxes and penalties due thereon with interest computed to the time fixed for the sale of said land at the rate of six (6%) per cent per annum, and shall pray for a judgment for said amount, and for the fixing, establishing and foreclosing of the lien existing against such land; that said lands be sold to satisfy said judgment for all taxes, interest, penalty and costs, and for such other relief to which such district may be entitled under the law and facts. All suits to enforce the collection of taxes as provided in this Act shall take precedence and have priority over all other suits pending in the district court.

Art. 7681. Parties defendants.—The proper persons shall be made parties defendants in all such suits and shall be served with process and other proceedings due therein as provided by law for suits of like character in the district court of this State, and in case of foreclosure, order of sale shall issue thereunder as in other cases of foreclosure; but if the defendant or his attorney shall, at any time before the sale, file with the sheriff or other officer in whose hands any such order of sale shall be placed a written request that the property described therein shall be divided and sold in less tracts than the whole, together with a description of such subdivision as the defendant may request, provided same are reasonable, and in such case, shall sell only as many subdivisions as may be necessary to satisfy the judgment, interest, penalties and cost, and after the payment of the taxes, interest, penalties and costs adjudged against it, the remainder of the purchase price, if any, shall be paid by the sheriff or other officer executing said order of sale to the defendant or his attorneys of record. [Id. Sec. 45.]

Art. 7682. Deed to purchaser.—In all cases in which lands may be sold for default in the payment of taxes under the preceding section, it shall be lawful for the sheriff or other officers selling the same or any of his successors in office, to make a deed or deeds to the purchaser, or to any other person to whom the purchaser may direct the deed to be made, and any such deed shall be held in any court of law or equity in this State to vest a good and perfect title in the purchaser thereof subject to be impeached only for actual fraud. [Id. p. 186, Sec. 46.]

Art. 7683. Attorneys compensation.—The attorneys representing such district in all suits against delinquent taxpayers that are provided for in this Act shall receive for such service such compensation to be paid out of delinquent taxes collected, as may be allowed by the directors for such district; provided, however, that in no event shall said fee exceed fifteen (15%) per cent of the amount of taxes so collected. The sheriffs, district clerks and other officers, executing any writ or performing any service in the foreclosure of delinquent taxes on any lands situated in such district shall receive the same fees for such services as is provided by statute as fees for like services performed in connection with the discharge of the duty of their respective offices. [Id. Sec. 47.]

Art. 7684. Interest on delinquent taxes.—If any person shall fail or refuse to pay the taxes imposed upon him or his property by this Act until after the 31st day of January next succeeding the return of the assessment roll for said district, a penalty of ten (10%) per cent on the entire amount of such tax shall accrue which penalty when collected shall be paid over to such district. Such delinquent taxes shall bear interest from August 1st after due at the rate of six per cent per annum. And the collector of taxes shall, by virtue of his tax roll seize and levy upon and sell so much personal property as shall be sufficient to make the amount of such taxes together with the penalty above provided, interest thereon at the rate of six (6%) per cent per annum and all costs accruing thereon. If no personal property be found for seizure and sale as above provided, the collector shall make up and file with the secretary of the district the delinquent tax list hereinbefore provided for, charging against same all taxes, penalties and interest assessed against same and the owner thereof. [Id. Sec. 48.]

Art. 7685. Delinquent taxpayer redeem lands, how.—Any delinquent taxpayer whose lands have been returned delinquent or anyone having an interest therein, may redeem the same at any time before his lands are sold under the provisions of this Act by paying to the collector the taxes due thereon with interest at the rate of six (6%) per cent and all costs and the penalty of ten (10%) per cent as provided in this Act. [Id. Sec. 49.]

Art. 7686. Duty of engineer.—After the establishment of any such district and after the qualification of the board of directors, and after the return of the list of assessments of the taxable property situated in such district, the board of directors for such district may appoint an engineer, whose duty it shall be to make a complete survey of the lands contained in said district, and to make a map and profile of the several canals, laterals, reservoirs, dams, and pumping sites in such district and connected therewith, which shall also show any part of said canals, laterals, reservoirs and dams or pumping sites extending beyond the limits of such district, which said map shall show the name and number of each survey and shall also show the area in number of acres contained in such district. Provided, however, that such engineer may adopt any and all surveys heretofore made by

any person, firm or corporation who have applied for or appropriated any water for irrigation under the general laws of this State; and provided further, that said engineer may adopt all surveys for canals, laterals, reservoirs, dams or pumping sites shown on said maps or plats, or may adopt other maps, plats and surveys of the correctness of which he may be satisfied. [Id. p. 187, Sec. 50.]

Art. 7687. **Map.**—The maps hereinbefore provided for shall show the relation that each canal and lateral bears to each tract of land through which it passes and the shapes into which it divides each tract, and how much and what part of each tract can be irrigated therefrom, and where the canal or lateral cuts off any less than twenty acres of land from any tract, the map shall show the number of acres in the whole tract, showing the shape of such small tract and its relation to the canal or lateral. And such profile map shall also show in detail the number of cubic yards necessary to be moved or excavated in order to make such reservoir, canal or lateral, and shall show in detail the specification for all other works necessary to the construction of all improvements proposed to be made in such district, and give the estimated cost of each and when said map, profile, specifications and estimates shall have been completed by the engineer as herein provided, he shall sign the same in his official capacity and file them with the secretary of said board. Provided, however, that where said district contains any pumping plants, canals, dams, ditches or reservoirs heretofore created, and which is contemplated to be purchased or acquired by said district, then such map or plat and estimates as hereinbefore provided for shall show such improvements and the price or probable price at which the same may be acquired, and where additional improvements of canals, ditches, laterals, reservoirs or pumping plants are to be constructed, such report shall contain the detailed information with reference to such additional improvements as is provided for in this article. Provided, further, that none of the maps and data prescribed by this and the preceding article except such as are required for use in the making of assessments and levies for district purposes shall be required where contract is entered into with the United States under Federal laws. [Id. Sec. 51.]

Art. 7688. **Election.**—After the establishment of any such district and the qualification of the directors thereof, and after the making and filing of such maps, profiles, specifications and estimate as provided for in the preceding article and after the making and return of the assessment roll by the assessor and collector for said district, as provided for in this Act, the board of directors may order an election to be held within such district at the earliest possible legal time at which election there shall be submitted the proposition and none other: "For the issuance of bonds and levy of tax and payment therefor." "Against the issuance of bonds and levy of tax and payment therefor." In the event that contract is proposed to be made with the United States under the Federal reclamation laws, the question which

shall be submitted to the voters at such election shall be: "For contract with the United States and levy of taxes and payment therefor," and "Against contract with the United States and levy of taxes and payment therefor." [Id. p. 188, Sec. 52.]

Art. 7689. Notices posted, where.—Notice of such election stating the maximum amount of bonds to be issued, which amount shall not exceed the engineers estimate, together with the amount of incidental expenses, organization expenses, and the cost of additional work which it may become necessary to add to the engineer's estimate by any change or modification made by the directors of the district in the proposed work; also stating the proposed maximum interest rate thereon, and the proposed maximum maturity date of said bonds; also stating the time and place or places of holding the election shall be given by the secretary of the board of directors, as ordered by the directors, by posting notices thereof in four public places in such district and one at the courthouse door of the county or counties in which said district is situated. Such notice shall be posted for at least twenty days prior to the date of the election. Said notice shall also be published in the manner prescribed in Section 43, Chapter 87, Acts Thirty-fifth Legislature, Regular Session. [Acts 2nd C. S., 1919, p. 70, Sec. 53.]

Art. 7690. Contents of notice.—The said notice shall contain substantially the proposition to be voted on as herein provided; provided, however, the bonds so voted upon may be issued to mature in serial form at any date not to exceed the maximum date stated in the notice and may be issued at any rate of interest not to exceed the rate of interest stated in such notice. Said notice shall also contain a summary of the engineer's estimate of the cost of construction of the proposed improvements, and estimate of cost of purchase of any existing improvements to be purchased, together with additions thereto as herein provided. If, however, contract with the United States is proposed for election, the notice shall state the maximum amount of money payable for construction purposes, exclusive of penalties and interest. [Id.]

Art. 7691. Polls and Ballots.—The manner of conducting all elections herein provided for shall be governed by the election laws of the State of Texas, except as herein otherwise provided. None but resident property taxpayers who are qualified voters of said district shall be entitled to vote at any election on any question submitted to the voters thereof by the director for such district at such election. The directors for such district shall name a polling place for such election in each voting precinct or part of the voting precinct embraced in said district, and shall also select and appoint two judges, one whom shall be the presiding judge, and two clerks, for each voting precinct designated in said order; and shall provide one and one-half times as many ballots for said election as there are qualified resident taxpaying voters within such district, as shown by the tax rolls of said county. Said ballot shall have written or printed thereon these words, and no others: "For the issuance of bonds and levy of

tax in payment therefor," and "Against the issuance of bonds and levy of tax in payment therefor." If it is proposed that contract be entered into with the United States the ballot shall contain the following words, and no others: "For contract with the United States and levy of taxes and payment therefor," and "Against contract with the United States and levy of taxes and payment therefor." [Acts 1917, p. 188, Sec. 54.]

Art. 7692. **Oath.**—Every person who offers to vote in any election held under the provisions of this chapter shall first take the following oath before the presiding judge of the polling place where he offers to vote, and the presiding judge is hereby authorized to administer same: "I do solemnly swear (or affirm) that I am a qualified voter of _____ County, Water Improvement District No. _____, and that I am a resident property taxpayer of said district, and that I have not voted before at this election." [Id., p. 189, Sec. 55.]

Art. 7693. **Returns—result.**—Immediately after the election the presiding judge at each polling place shall make return of the result in the same manner as provided by law in general elections, such return to be made to the secretary of such district, who shall keep same in a safe place, and deliver them together with the returns from the several polling places to the directors of such district, who shall at a regular session or a special session called for that purpose, canvass said returns and declare the results thereof. In a district operating under authority of Section 59 of Article 16 of the Constitution a majority vote is required in favor of the issuance of bonds and in other districts a two-thirds majority is required. If said canvass of said returns shows said bond issue to have been adopted or said election to have been in favor of making contract with the United States, as the case may be, and the levy of tax, then said directors shall declare the result of said election—to be in favor of the issuance of the bonds, or in favor of the making of contract with the United States, and the levy of tax and payment therefor, and shall cause the same to be entered in their minutes. [Acts 2nd C. S., 1919, p. 71, Sec. 56.]

Art. 7694. **Directors enter record.**—After the canvass of the vote and declaring the result as provided for in the preceding section, the directors for said district shall make and enter an order directing the issuance of bonds, or authorizing the execution of contract with the United States for such district, as the case may be, sufficient in amount to pay for such proposed improvements, together with all necessary incidental expense connected therewith, not to exceed the amount specified in the order for the election and the notice of election. [Acts 2nd C. S., 1923, p. 27, Sec. 57.]

Art. 7695. **Bonds to include interest.**—Provided, however, that bonds may be issued when so authorized by a majority of the voters of said district so as to include a sum sufficient to pay the first three years' interest accrued on the bond issue authorized and no taxes shall be levied against the property situated in said district for said period of three years, when this power is

exercised, except in an amount sufficient to pay off, satisfy and discharge the notes provided for in Article 7634 of this Act. [Id.]

Art. 7696. Limitation of indebtedness.—In districts organized under the authority of Article 52 of Section 3 of the Constitution the amount of such bonds, or the amount of contract indebtedness with the United States, shall not exceed in amount one-fourth of the actual assessed value of the real property in such district, as shown by the assessment thereof made for the purpose of determining the value thereof, or at the last annual assessment as provided for in this chapter. This limitation of indebtedness of one-fourth of the assessed value shall not apply to districts, organized under the authority of Section 59 of Article 16 of the Constitution. [Id.]

Art. 7697. Modifications.—Provided, however, that if after an election has been held for the issuance of bonds or for contract with the United States, and the tax authorized and levied, and bonds have been authorized to be issued, or have been issued as provided for in this chapter, or contract with the United States authorized or executed, as the case may be, the directors for said district shall consider it necessary to make any modifications in said district, or in any of the improvements thereof, or shall determine to purchase or construct any further or additional improvements therein and issue additional bonds upon the report of the engineers, or shall determine to make supplemental contract with the United States, or upon its own motion may find it necessary to make said additional improvements, or purchase additional property in order to carry out the purpose for which said district was organized, or to best serve the interest of said district, said findings shall be entered of record, and notice of an election for the issuance of said bonds, or for the authorization of contract with the United States shall be given and such election held within such times, and the returns of such election made as hereinbefore provided for in cases of original election, and the result thereof determined in the same manner. [Id.]

Art. 7698. Bond issuance—requirements.—If the result of such election be declared to be in favor of the issuance of such bonds or the making of such contract with the United States, said directors may order such bonds to be issued, or may negotiate and execute supplemental contract with the United States as in the manner provided in this chapter. And provided, that if a contract is made with the United States as in Article 7653 hereof provided, and bonds are not to be deposited with the United States in connection with said contract, bonds need not be issued, or if required to raise funds in addition to the amount of such contract, said bonds shall be issued only in the amount needed in addition thereto. [Id.]

Art. 7699. Bonds to repair damage.—Provided, further, that whenever such a district shall have constructed or purchased improvements and same shall be damaged so that it may be necessary to raise funds to repair such damage, such district may either issue bonds to secure such funds or may issue its

notes to run not to exceed twenty years, and to bear interest at not to exceed six per cent per annum. Before such notes are issued, the board of directors shall order an election and give notice thereof as required in bond issues, stating the purpose for which they are to be issued, the time they are to run, and the rate of interest they are to bear, and the time and place of said election. The ballots for such election shall have printed thereon, "For Issuance of Notes," and "Against Issuance of Notes." The election shall be held and returns made and canvassed as provided for bond elections. If two-thirds majority of those voting at such election voted in favor of the issuance of such notes, the board of directors may issue same and sell same for the benefit of said district. Such notes shall not be issued in an amount of more than thirty thousand (\$30,000.00) dollars. At the time such notes are issued or sold the board of directors shall levy a tax for the purpose of paying the interest thereon and creating a sinking fund sufficient to pay such interest and to pay said notes within the time of their maturity. Said notes may be issued in serial form to mature in installments as determined by the directors. [Id.]

Art. 7700. Denomination of bonds.—The bonds issued under the provisions of this Act shall be issued in the name of the district, signed by the president and attested by the secretary, with the seal of said district affixed thereto, and such bonds shall be issued in denominations of not less than one hundred (\$100.00) dollars nor more than one thousand (\$1,000.00) dollars each, and such bonds shall bear interest at the rate of not to exceed six (6%) per cent per annum, payable annually or semi-annually. Such bonds shall by their terms provide the time, place or places, manner and conditions of their payment, and the interest thereon, as may be determined and ordered by the directors for such district, and none of such bonds shall be made payable more than forty years after the date thereof. [Acts 1917, p. 190, Sec. 58.]

Art. 7701. Preferred lien. Provided, that the lien for the payments due the United States under any contract between the district and the United States accompany which bonds have not been deposited with the United States, shall be a preferred lien to that of any issue of bonds or any series of any issue subsequent to the date of such contract. [Id.]

Art. 7702. Suit not permitted, when.—No suit shall be permitted to be brought in any court of this State contesting or enjoining the validity of the formation of any district created under the provisions of this chapter, or any bonds issued hereunder, or contesting the validity of contract with the United States or of the authorization thereof by the district except in the name of the State of Texas, by the Attorney General, upon his own motion, or upon the motion of any party affected thereby upon good cause shown, except as herein provided. [Id., Sec. 59.]

Art. 7703. Determine validity.—Any such district in this State desiring to issue bonds in accordance with this chapter shall, before such bonds are offered for sale, bring an action in

the district court in any county of the judicial district in which said district, or any part thereof, may be situated or in the district court of Travis County, to determine the validity of any such bonds, or such district contracting with the United States in accordance with this chapter, shall, if requested by the Secretary of the Interior, bring an action in said court to determine the validity of said contract. Such action shall be in the nature of a proceeding in rem, and jurisdiction of all parties interested may be had by publication of a general notice thereof once each week for at least two consecutive weeks in some paper of general circulation published in the county or counties in which such district is situated, and if no paper is published in the county then same shall be published in a paper in the nearest county thereto where a paper is published. Notice shall also be served upon the Attorney General of the State of Texas of the pendency of said action in the same manner as in civil suits. [Acts 2nd C. S., 1919, p. 72, Sec. 60.]

Art. 7704. Attorney General may waive service.—The Attorney General may waive service in such suits when furnished a full transcript of the proceedings had in the formation of such district and in connection with the issuance of said bonds, or in connection with the authorization of said contract with the United States and a copy of the contract. [Id.]

Art. 7705. Attorney General to tender issue.—It shall be the duty of the Attorney General to make a careful examination of all such proceedings and require such further evidence and make such further investigation as may seem to him advisable. He shall then file an answer tendering the issue as to whether such bonds are legal and binding obligations upon such district, or, as the case may be, as to whether such contract with the United States is legal and binding upon the district. The issue thus made shall be tried and determined by the court and judgment entered upon such finding. Upon the trial of such cause the court may permit any person having an interest in the issues to be determined to intervene and participate in the trial of the issues made. All suits brought under the provisions of this chapter shall have preference over all other actions in order that a speedy determination as to the matters involved may be reached. [Acts 1917, p. 191, Sec. 61.]

Art. 7706. Judgment rendered.—Upon the trial of the issues made under the preceding article, if the judgment of the court shall be adverse to the district, then such judgment may be by said district accepted, and the error pointed out in such proceedings may be corrected in the manner designated or directed by said court, and when so corrected, the judgment of the district court shall be rendered showing that said corrections had been made, and that the bonds issued thereunder, or the said contract with the United States, are binding obligations upon said district. And thereafter the judgment, when so finally made and entered, shall be received as *res adjudicata* in all cases arising in connection of said bonds or any interest due thereon, or in connection with the collection of moneys required by contract with the

United States, and as to all matters pertaining to the organization and validity of said district, or pertaining to the validity of the bonds or of the said contract with the United States. [Id. Sec. 62.]

Art. 7707. Certified copy.—After the making and entry of the judgment of the district court, as hereinbefore provided, the clerk of said court shall make a certified copy of such decree, which shall be a part of the orders and decree connected with such election, and said court decree shall be filed with the Comptroller of Public Accounts, and to be by him recorded in a book kept for that purpose, and said certified copy or a duly certified copy of said record made by the Comptroller shall be received in evidence in all litigation thereafter rising which may affect the validity of such bonds or of such contract with the United States, and shall be conclusive evidence of such validity. [Id. p. 192, Sec. 63.]

Art. 7708. Comptroller to register bonds.—Upon the presentation of said bonds, together with a certified copy of the decree of the district court, as provided for in the preceding article, the Comptroller shall register said bonds, together with a certified copy of the judgment, as herein provided for, in a book to be provided for that purpose, and shall attach to each of said bonds a certificate of the fact that the decree of the district court as required by this chapter has been filed with him in his office; such certificate to be signed by him officially, and the seal of his office attached thereto. [Id. Sec. 64.]

Art. 7709. Book provided.—The county commissioners court in the county in which such district may be situated, in whole or in part, shall provide a well bound book in which a list of said bonds shall be kept by the county clerk, showing their numbers, amount, rate of interest, date of issue, when due, where payable, and said book shall be a public record. [Acts 2nd C. S., 1919, p. 73, Sec. 65.]

Art. 7710. Saleable bonds.—After the issuance of said bonds, and after the registration by the Comptroller of Public Accounts for the State of Texas, as provided by this chapter, the board of directors for such district shall offer for sale, and sell said bonds on the best terms and for the best possible price, but none of said bonds shall be sold for less than ninety per cent of their face value. When said bonds are sold, all money received therefrom shall immediately be paid over by the board of directors to the depository for said district, provided, however, that the board of directors may exchange bonds for property to be acquired by purchase under contract or in the payment of contract price for work to be done for the use and benefit of said district. [Acts 1921, p. 19, Sec. 66.]

Art. 7711. Purpose of construction and maintenance fund.—All expenses, debts and obligations necessarily incurred in the creation and establishment and maintenance of any district organized under the provisions of this chapter shall be paid out of the construction and maintenance fund of such district, which fund shall consist of all moneys received by said district from

the sale of the bonds of such district, or as hereinafter provided, or if contract is proposed to be made with the United States for the construction of the irrigation system, said expenses, debts and obligations may be paid out of the maintenance and operating fund. [Acts 1917, p. 192, Sec. 67.]

Art. 7712. **Directors levy tax.**—Whenever such bonds shall have been voted, the directors for such district shall levy a tax upon all property within such district sufficient in amount to pay the interest on such bonds together with an additional amount to be placed in the sinking fund, sufficient to discharge and redeem said bonds at their maturity, and said directors for such district shall annually levy or cause to be assessed and collected taxes upon all property within said district sufficient in amount to pay for the expenses for assessing and collecting such taxes. Whenever contract shall be made with the United States, taxes shall similarly be levied sufficient in amount to meet all installments, as they become payable, and interest, if any, and the directors shall cause due levy annually to be made until all such contracts and obligations shall have been discharged. Such bonds may be issued in serial form, or payable in installments, as determined by said directors, and such tax levy shall be sufficient if it provides an amount sufficient to pay the interest on such bonds and to meet the proportional amount of the principal of the next maturing series of said bonds, and the expenses of assessing and collecting such taxes for such year. [Id., p. 193, Sec. 68.]

Art. 7713. **“Interest and Sinking Fund.”**—There is hereby created what shall be termed the “Interest and Sinking Fund” for such district, and all taxes collected under the provisions of this chapter for such fund, shall be credited to such fund, and shall never be paid out, except for the purpose of satisfying and discharging the interest on said bonds, or for the payment of such bonds, and to defray the expense of assessing and collecting such tax, and for the payment of principal and interest due or to become due to the United States under any contract between the district and the United States accompanying which bonds of the district have not been deposited with the United States, as in Article 7653 hereof provided, such fund shall be paid out upon order of the directors of such district upon warrants drawn therefor, as hereinbefore provided, and at the time of such payment the depository for such district shall receive and cancel any interest coupon so paid or any bond so paid, and when any such interest coupon or bond has been paid, it shall be delivered to the directors and be cancelled and destroyed. [Acts 2nd C. S., 1919, p. 73, Sec. 69.]

Art. 7714. **“Maintenance and Operating Fund.”**—There shall also be created a fund to be known as “Maintenance and Operating Fund,” and such fund shall consist of all moneys collected by assessment or otherwise for the maintenance and operation of the properties owned or acquired by such district, or for temporary rental due to the United States, and, except the expenses of

assessing and collecting taxes for interest and sinking fund, which shall be paid as provided in the next preceding article, out of said maintenance and operating fund shall set aside the amortization and emergency fund, hereinafter provided for, and shall be paid all expense of operation of every kind, and any balance due on construction, or for extensions or improvements, not otherwise provided for, such debts to be paid upon warrants executed as otherwise provided herein. [Acts 1923, p. 378, Sec. 70.]

Art. 7715. **Engineer make inspection and valuation.**—As soon after the passage of this Act as practicable and before fixing the next annual assessment for maintenance and operation, the board of directors of each such district shall cause to be made by a competent engineer an inspection and valuation of all the physical properties of such district, subject to decay or obsolescence, or to loss, injury or damage by any sudden, accidental or unusual cause whatsoever, and based upon such inspection and valuation said engineer shall determine, as nearly as may be, such a sum, to be annually set aside, as will be sufficient to pay for replacement of each item of such physical property at the end of its economical life, or for the restoration or replacement of any such physical property upon the happening of such loss, injury or damage thereto. [Id.]

Art. 7716. **“Amortization and Emergency Fund.”**—Out of the maintenance and operation fund, as the same shall be collected, such board of directors shall set aside such portion thereof as shall be necessary to make each year the amount of the annual sum determined as above provided, to be known as the “Amortization and Emergency Fund” and no part of such fund shall be expended except to replace such amortized property or to restore or replace such lost, injured, or damaged property. Any part of the Amortization or Emergency Fund not necessarily expended for the purposes above provided, may be invested in bonds or interest bearing securities of the United States. Provided, that any such board of directors may or may not, in the discretion of such Board, establish such Amortization and Emergency Fund, but after such fund has been established for any such district as above provided, the same shall thereafter be kept up and maintained. [Id.]

Art. 7717. **Term of office.**—The terms of office of all officers elected for such district shall be for two years, and until their successors are elected and qualified; provided, however, that all officers elected at the first election held under the provisions of this chapter shall hold office only until the next regular election to be held in said district for the election of such officers. [Acts 1917, p. 194, Sec. 71.]

Art. 7718. **Directors elected or appointed.**—There shall be held on the second Tuesday in January, 1924, and every two years thereafter, a general election, at which time there shall be elected five directors for such district, who shall be the elective officers for such district. Provided, that in all such districts containing not to exceed twelve thousand acres, in which sixty per

cent or more of the lands in such district are owned by persons who do not reside in the district, the directors shall be appointed by the county commissioners' court of the county in which the district is situated. The term of office for such directors shall be two years and they shall be so appointed at the same time fixed for the election of directors in other districts and if for any reason the county commissioners' court is not in session at that time the said court shall convene and appoint said directors as soon thereafter as possible. The owners of the lands in such district may file with the county commissioners' court petitions expressing their choice of persons to be selected as directors, and if the owners of sixty per cent of such land, and if sixty per cent of such landowners, agree upon the persons to be appointed, the persons so agreed upon, if qualified, shall be appointed. Otherwise the said court shall appoint suitable qualified persons as such directors. [Acts 1923, Ch. 58, Sec. 72.]

Art. 7719. Directors receive and canvass election returns.—All elections held in water improvement districts shall be held in accordance with the provisions of the general election laws of this State, except as herein otherwise provided; provided, however, that the board of directors shall appoint all necessary officers to hold such elections, and shall name the polling places in said district, and shall receive and canvass the election returns and do and perform all other duties necessary to the holding of said election and canvassing the returns thereof and declaring the result thereof. [Acts 1917, p. 194, Sec. 73.]

Art. 7720. Employment time limited.—All other persons employed or representing said district shall be employed by the board of directors for such time and under such terms and conditions as said board of directors shall deem best for the interest of said district; provided, however, that no contract shall ever be made with any person or employee for a longer period of time, at any one time, than one year, and the salaries of all such employees, or the compensation to be received by them, shall be fixed by the board of directors at the time of the employment. [Id. Sec. 74.]

Art. 7721. Vacancies filled, how.—All vacancies in the office of director for such district shall be filled by the board of directors by appointment, and the director so appointed shall hold office until the next regular election, and until his successor has been elected and qualified. Provided, however, that where the number of directors shall have been reduced by death or resignation or from other cause to less than three, then such vacancies shall be filled by a special election to be ordered by the president of said board of directors, or by any two members of said board, said election to be ordered and held after the giving of notice for the election of said officers as provided for the holding of general elections; and further provided, that if said president or two of the directors shall fail or refuse to order such election, then said election may be ordered by the district judge of any judicial district in which said district may be situated upon a petition signed

by any five parties interested in the election of said directors, whether said interested parties be taxpayers or bond holders; and when so ordered, notice shall be given of said election, and such election held in the manner provided for the holding of general elections, but under the order of said court, and the directors elected at such election shall hold their office until the next general election, and until their successors shall have been elected and qualified. In the event that less than a quorum exists to approve bonds of such elected directors, then such bonds shall be approved by the county commissioners' court of the county in which such directors reside. [Id., Sec. 75.]

Art. 7722. Directors compensation.—The directors provided for by this chapter shall receive as compensation for their services the sum of five dollars per day for each and every day necessarily taken in the discharge of their duties as such directors, and said directors shall file with the secretary for such district a statement verified by their affidavit of the number of days actually taken by them in the service of said district, said statement to be filed on the last Saturday in each month, or as nearly thereafter as practicable, and before a warrant shall issue for the payment of such services. [Id., p. 195, Sec. 76.]

Art. 7723. Right of eminent domain. The right of eminent domain is hereby conferred upon all districts established under the provisions of this chapter for the purpose of condemning and acquiring the right of way over and through all lands, private and public, except as hereinafter indicated, necessary for making reservoirs, canals, laterals, and for pumping sites, drainage ditches, levees and all other improvements necessary and proper for such districts, and the authority hereby conferred shall authorize and empower such districts to condemn all lands, private and public, for the purposes herein indicated beyond the boundary of such districts and in any county within the State of Texas; the right of eminent domain shall not extend to land used for cemetery purposes, nor to property owned by any person, association of persons, corporation or water improvement district, and used for the purpose of supplying water under the laws of this State and necessary for the making of reservoirs, canals, laterals, pumping sites, levee and drainage ditches, or other appurtenant work by such owner. All such condemnation proceedings shall be under the direction of the directors and in the name of the irrigation or water improvement district, and the assessing of damages and all procedure with reference to condemnation, appeal and payment shall be in conformity with the statutes of the State and as provided in Title 52 of this Act relating to "Eminent Domain," and all such compensation and damages adjudicated in such condemnation proceedings shall be paid out of the construction and maintenance fund of said district. [Id., Sec. 77.]

Art. 7724. Defined districts.—In all cases where districts have been heretofore established or wherein proceedings are now pending to establish same, and a hearing has heretofore been had

upon a petition to establish such districts, and action thereon has been taken by the commissioners' court, or where a public hearing is now pending upon such petition, and the notices thereof and therefor have been given as provided for by Chapter 172, of the Acts of the Thirty-third Legislature, such notices are hereby deemed and declared to be and to have been due and regular notices of such publication under the full meaning, intents and purposes of this chapter, and all such districts so established are hereby declared to be duly and regularly established and are hereby declared to be defined districts, or territory within the meaning of the Constitution, and all acts or things done by said districts under the provisions of said Chapter 172, of the Thirty-third Legislature are hereby validated and declared to be the regular and binding act of such district. [Id., Sec. 78.]

Art. 7725. District dissolved, when.—In the event that any district established under the provisions of Chapter 172 of the Acts of the Thirty-third Legislature shall not within two years after the taking effect of this Act, or that any district which may hereafter be established under the provisions of this chapter shall not within two years after the conclusion of the organization of such district begin to acquire the necessary canals, ditches, flumes, laterals, reservoirs, sites, dam sites, pumping plants or other things necessary to the successful operation of such a district, or shall not diligently pursue the purposes for which said district was created, then and in that event, such district may be dissolved without the necessity of taking any action in connection therewith, and any party having interest herein, or to whom any debt may be due and owing by said district, may collect such debt in the same manner provided by law for the collection of any debt due by any person, association of persons or corporation, and such debt shall be a lien upon the property of such district when established by any court of competent jurisdiction, and the judgment of said court shall provide for the payment of such debt and judgment in the same manner as judgments for debt against cities or towns that have been dissolved may be enforced; and provided further, that any district heretofore organized, or hereafter organized, under the provisions of this chapter, may voluntarily dissolve by the same vote and in the same manner herein provided for the organization of districts, such election to be held in the manner herein provided for the holding of elections in such districts, but provided further, that no dissolution shall be had until all debts and obligations have been fully paid and discharged. Any such district may also voluntarily abolish its corporate existence in the same manner as provided by law for the dissolution of drainage districts, as set forth in Chapter 28 of the Acts of the Thirty-third Legislature, First Called Session, and each and all of the provisions of said Act shall apply to and control the abolition of said districts and the legal consequence thereof. [Id., p. 195, Sec. 79.]

Art. 7726. Advice of State Board of Water Engineers.—When any district proposed to be established embraces lands located in

two or more counties the owners of title, or evidence of title of a majority of the acreage of the proposed district, or fifty property tax paying voters of the territory proposed to be embraced within a district may petition the State Board of Water Engineers for a hearing to determine the advisability of the creation of such district, and for an order of election creating such district, and for the election of five directors of the proposed district. Upon the filing of such petition the Board of Water Engineers shall set the same down for a hearing at a date not less than fifteen nor more than thirty days from the date of the filing of such petition, and shall cause notice to be given to the commissioners' courts of each county in which lands are located proposed to be embraced in the district, and stating the date and place of the hearing, and upon receipt of such notice by the commissioners' courts from the State Board of Water Engineers it shall be the duty of the clerk of the said commissioners' courts to post a notice at the courthouse door of the date and place of hearing. At such hearing on said petition to the Board of Water Engineers any person whose land would be affected by the organization of such district may appear before the Board of Water Engineers and protest against or contend for the creation of the proposed district, and may offer competent testimony to show that the said district would or would not serve a beneficial purpose, and that the organization of such district would or would not be practicable or capable of accomplishing the purposes intended by its organization. [Acts 1921, p. 20, Sec. 80.]

Art. 7727. To grant petition.—If upon hearing of such petition it shall appear to the Board of Water Engineers that the proposed plan of water conservation, irrigation and use presented in the petition praying for the organization of the district, is practicable and would present a public utility, then the said Board of Water Engineers shall so find and enter such finding in the records of the Board, and shall transmit a certified copy of such finding to the commissioners' court in each county in which lands proposed to be embraced within said district are situated, and naming a date on which an election shall be held in the territory to be comprised within the district to determine whether or not the proposed district shall be created in accordance with the provisions of this chapter, and for the election of a board of five directors of such district. But should the Board of Water Engineers upon such hearing determine that said proposed district is not practicable, and will not serve a beneficial purpose, and that it would not be possible to accomplish through its organization the purposes proposed, then it shall so find and enter its findings of record, and the petition shall be thereupon dismissed. Provided, that the boundary lines of the proposed district may be so changed in the course of such hearing as to meet objections urged to the practicability and feasibility of the district, in accordance with the findings of the Board of Water Engineers, if such changes will result in bringing the proposed district within

the provisions of the statute, and will make such district serve a beneficial purpose. [Id.]

Art. 7728. Commissioners' court give notice.—Upon the receipt of a certified copy of the findings of the Board of Water Engineers authorizing an election to determine whether or not the proposed district shall be formed, the commissioners' court of each county and part of county which is embraced within the proposed district shall give notice of an election to be held on the date named in the finding and order of the Board of Water Engineers, which notice shall be posted as provided in this chapter for other elections for not less than fifteen, nor more than thirty days before the date fixed for the election. [Id.]

Art. 7729. Purpose of election.—At the said election there shall be submitted for the decision of the voters the question whether or not the proposed district shall be created, and for the election of five directors for the district. Persons desiring to vote for the creation of such district and for the election of five directors for such district shall have written or printed on their ballots the words, "For the District," and those desiring to vote against the creation of the district shall have written or printed on their ballots the words, "Against the District." At such election the names of the directors may be written or printed upon said ballot, or a separate ballot may be used for such purpose. [Id.]

Art. 7730. Canvassing returns.—In certifying the result of its findings upon the petition for an election to create a district, and for the election of the board of directors, the Board of Water Engineers shall designate the county judge in one of the counties in the proposed district as a canvassing board to receive and canvass and declare the result of the election for the creation of the proposed district. When the election for the creation of the district has been held the officers named by the commissioners' court of the different counties to hold the elections in the proposed district shall make returns of the election to the commissioners' court of their respective counties and return all ballot boxes to the clerk of the commissioners' court of the county, and it shall be the duty of the commissioners' court of each county in the proposed district upon receiving returns of the election to canvass the same and certify the result of the election in the county to the county judge of that county named by the Board of Water Engineers as the canvassing board in the election for the creation of the district, and for the election of the board of directors. Upon receipt of the returns of the election in the different counties of the district the county judge designated to canvass the vote shall canvass such vote and certify the result to each county in the proposed district. If a majority of the votes cast in the district are in favor of the creation of the district, this finding shall be entered of record in the permanent records of the commissioners' court in each county embraced in whole or in part in the proposed district, and the county judge of the county canvassing the vote of the district shall certify the result

to the five persons receiving the highest number of votes for directors, and issue to them a certificate of election, and the said directors shall after having been notified proceed with the organization of the district as provided in this chapter. [Id., p. 21, Sec. 81.]

Art. 7731. Districts governmental agencies.—The board of directors, as soon as they shall have qualified, shall proceed to the selection of all administrative officers and necessary employees for the direction of the affairs of the district in the manner provided in this chapter for districts lying wholly in one county, except as may be specifically provided in these Articles 7726 to 7731, inclusive. The board of directors elected for such district shall qualify and meet as hereinabove provided, and shall have charge of the affairs of the district in the same manner as herein provided for districts lying wholly within one county. All such districts shall be governmental agencies, and body politic and corporate, and be governed by and exercise all the rights, privileges and powers provided by law as pertaining to districts lying within one county, and as embodied in the provisions of this chapter. [Id., p. 22, Sec. 82.]

Art. 7732. Conditions of additional territory.—Whenever any water improvement district has been formed under this chapter, or under the provisions of Chapter 172 of the Acts of 1913, lying wholly within one county, and it is to the advantage of such district and of land owners lying in the adjoining county or counties to have such adjoining lands added to or included in such established district then the same may be so included in or added to the territory already included in such established district in the following manner: The owners of the fee shall make application to the directors of the established district to which they desire to be annexed, which application shall be in writing and shall describe the lands covered by the application by metes and bounds and same shall be acknowledged in the same manner and form as now required for the acknowledgment of deeds, and if said land is a homestead or the separate property of a married woman it shall be acknowledged by both husband and wife. [Acts 1917, p. 198, Sec. 83.]

Art. 7733. Petition heard and election thereof.—The directors of the district shall set said petition or application down for hearing on some certain date and shall give notice of such hearing in the same manner as provided in Articles 7623 and 7624 of this chapter, and shall consider same in the same manner as provided for the consideration of petitions by the county commissioners' court as set out and provided in Articles 7626 and 7627 of this chapter, and in the event that they shall find and determine that it is for the advantage of such established district and for advantage of the lands sought to be added thereto, to so include said lands in said district, then they shall so find and enter said findings of record in the minutes of said directors and they shall thereupon order an election to be held in said established district to determine whether or not said additional territory

shall be permitted to be added thereto, which election shall be held after thirty days notice, which notice shall be given by posting copies of such notice in five public places in said district for at least twenty days next preceding the day of election, and if there be a newspaper published in said district, by publishing such notice for at least once a week for three weeks next preceding the day of said election. [Id.]

Art. 7734. **Question submitted.**—The said notice shall be given by the directors which said directors shall furnish all necessary supplies for said election and shall appoint two judges and two clerks for all polling places in said district to conduct said election and make return thereof, which officers shall take the oath of office prescribed by the general election laws of the State, and they shall make returns of said election to the directors of the district, but in all other things said election shall be held in conformity with the general election laws of the State. At such election there shall be submitted the question, and none other, "Shall the proposed territory be added to the district?" and there shall follow said sentence the word "Yes" and just below it the word "No." [Id.]

Art. 7735. **Two-thirds majority required.** If two-thirds majority of the resident property taxpayers of said district vote "yes," then the said territory may be added and become a part of said district in the same manner as if originally incorporated therein and subject to all laws governing said district; provided, that the directors of said district may require the owners of said lands to pay into the interest and sinking fund of said district their proper pro rata part of charges theretofore made against the lands in said district to pay interest and sinking fund upon bonds of said district. [Id.]

Art. 7736. **Extra election held.**—If the application or petition for the addition of lands to the districts as herein provided for shall cover a number of different tracts of land, or if there be included in the territory so described in said application or petition property taxpayers other than those signing and acknowledging such application, or if there be included in such territory as many as ten property taxpaying voters, then at the same time the election above provided for is held in said established district, there shall also be held and conducted under the same rules and regulations as above provided for elections within such established territory, an election in such territory that is proposed to be added, except that the notice of election shall include a full description by metes and bounds of the territory included within such proposed addition. The ballot for such election shall have printed thereon, "For Addition to Irrigation District," and "Against Addition to Irrigation District," but shall not contain any other matter whatever. In the event that two-thirds majority of the resident property taxpaying voters voting thereon at said election vote in favor of the addition of such territory, then same may be added to such irrigation district by a proper order of the directors entered upon the minutes of such established dis-

trict, said order to be made within twenty days after the holding of such election, and said territory so added shall thereafter be and become an integral part of said district subject to all laws governing said district as completely and as fully as if same had been included in the district in its original formation; provided, however, that no water shall be furnished for the irrigation of land included within said district until the owners and holders thereof shall have fully paid the charges fixed against each such land by the directors as a condition to their admission into the district as provided for in this Act. [Id.]

Art. 7737. Voters have right to participate.—Such additions to such district shall not in any manner affect the officers, employes and affairs of such district, but the voters of such added territory shall have a right to participate in all matters of the district considered or voted upon thereafter, and in case contract has been made with the United States as aforesaid, the Secretary of the Interior may assent to such change. [Id.]

Art. 7738. Penalty for prohibiting officers to enter land.—The directors of any district and the engineer and employees thereof are hereby authorized to go upon any lands lying within said district, for the purpose of examining same, locating reservoirs, canals, dams, pumping plants, and all other improvements, to make maps and profiles thereof; and are hereby authorized to go upon the lands beyond the boundaries of such districts in any county for the purposes stated, and for any other purposes necessarily connected therewith, whether herein enumerated or not. And any person who shall wilfully prevent or prohibit any such officers or employees from entering any lands for such purposes shall be guilty of a misdemeanor, and upon conviction shall be fined in any sum not exceeding one hundred dollars for each day he shall so prevent or hinder such officer or employee from entering upon any lands. [Id. p. 199, Sec. 84.]

Art. 7739. Contracts made by directors.—Contracts for making and constructing reservoirs, dams, canals, laterals, pumping plants, check gates, sluice gates, and all improvements whatsoever of said district shall be made by the directors, to the lowest responsible bidder, after giving notice by advertising same in one or more newspapers of general circulation in the State of Texas, and in one newspaper published in the county, if there be one in the county, and one newspaper in such district, if there be one in the irrigation district, which notice shall be published once a week for four consecutive weeks; and also by posting notices for at least twenty days in five public places in the district, and one at the courthouse door of the county or counties in which such district is situated; provided that the provisions of this article shall not apply in case of any contract between the district and the United States. [Id. p. 200, Sec. 85.]

Art. 7740. Copy of engineer's report furnished bidder.—Any person, corporation or firm, desiring to bid on the construction of any work advertised as provided for herein, shall upon application to the directors be furnished with a copy of the engineer's

report, and profile, showing the work to be done, provided the directors may charge therefor the actual cost of having such report and profile made and furnished. All bids or offers to do any such work shall be in writing, and sealed and delivered to the president or secretary of the board of directors, together with a certified check for at least two per cent of the total amount bid, which said amount shall be forfeited to the district in the event the bidder refused to enter into a proper contract for his bid as accepted. Any or all bids may be rejected in the judgment of the directors. All bids shall be opened at the same time. [Id. Sec. 86.]

Art. 7741. Copy of contract recorded.—All contracts made by the districts shall be in conformity with and subject to the provision of this chapter, and the provisions of this chapter shall be a part of all contracts in so far as applicable to either the contractor or the district, and the provisions of this chapter shall govern whenever the contract is in conflict herewith. The contract shall be reduced to writing and signed by the contractors and directors, and a copy of same so executed shall be filed with the county clerk of the county or counties in which said district is situated, which said copy so filed with said county clerk shall be recorded in a book kept for that purpose, and be subject to public inspection. [Id. Sec. 87.]

Art. 7742. Give bond.—The person, firm or corporation to whom such contract is let shall give bond payable to the district in such amount as the directors may determine, not to exceed the contract price, conditioned that he, they or it will faithfully perform the obligations, agreements and covenants of such contract, and that in default thereof they will pay to said district all damages sustained by reason thereof. Such bond shall be approved by the directors, and shall be deposited with the depository of the district, a true copy thereof being retained in the office of such directors. [Id. Sec. 88.]

Art. 7743. Specifications included.—All such contracts shall contain a full statement of the specifications for all work included in the contract, and all such work shall be done in accordance with the specifications under the supervisions of the directors and the district engineer. [Id. Sec. 89.]

Art. 7744. Full and detailed reports given.—As the work progresses the engineer of such district will make full reports to the directors, showing in detail whether the contract is being complied with or not in the construction, and when the work is completed the engineer shall make a detailed report of same to the directors, showing whether or not the contract has been fully complied with according to its terms, and if not in what particular it has not been so complied with. The directors, however, will not be bound by such report, but may in addition thereto fully investigate such work and determine whether or not such contract has been complied with. [Id.]

Art. 7745. Bridges and culverts.—The district is hereby authorized and empowered to make all necessary bridges and cul-

verts across or under any railroad track and roadway of such railway to enable them to construct and maintain any canal, lateral, or ditch necessary to be constructed as a part of the improvements of such district. Such bridges or culverts shall be paid for by the district; provided, however, that notice shall first be given by such district directors by delivering a written notice to any legal agent, division superintendent or roadmaster of such railway, and the railway company shall be allowed thirty days to build such bridges or culverts at their own expense, if they should desire to do so, and according to their own plans; provided such canal, culvert or ditch shall be constructed of sufficient size not to interfere with the free and unobstructed flow of water passing through the canal or ditch, and shall be placed at such points as are designated by the district engineer, or directors. [Id.]

Art. 7746. Bridges and culverts required.—Such districts are hereby authorized and required to build all necessary bridges and culverts across and over all canals, laterals and ditches made and constructed by such district, whenever the same crosses a county or public road, and shall pay for the same out of the funds of such district. [Id. p. 2091, Sec. 90.]

Art. 7747. Disbursement of remaining funds.—After the full and final completion of all the improvements of such district as heréin provided for, and after the payment of all the expense incurred under the provisions of this chapter, the directors are authorized to use the remaining funds of the district for the best interest of such district in the preservation, upkeep and repair of the works of such district. [Id. Sec. 91.]

Art. 7748. Directors to inspect—draw warrant.—The directors shall have the right, and it is hereby made their duty, at all times during the progress of the work being done under any contract, to inspect the same; and upon the completion of any contract in accordance with its terms, they shall draw a warrant on the depository of the district for the amount of the contract price in favor of the contractor or his assignee; and if the directors shall deem it advisable in order to obtain more favorable contracts, they may advertise a contract to be paid for in partial payments as the work progresses, and such partial payments shall not exceed in the aggregate eighty-five (85) per cent of the amount of work done, the said amount of work completed to be shown by certified report of the engineer of the district. [Id. Sec. 92.]

Art. 7749. Semi-annual report.—The directors shall make a semi-annual report on the first days of July and January of each year, showing in detail the kind, character, and amount of work done in the district, the cost of same, the amount of each warrant drawn, and to whom paid, and for what purpose paid, and other data necessary to show the condition of improvements made under the provisions of this chapter, and each report shall be verified by them, a copy of which shall be filed in the office of

the county clerk of the county or counties in which such district is situated, and shall be open to public inspection. [Id. Sec. 93.]

Art. 7750. **Supply water for annual rental.**—When a district acquires an established irrigation system which has supplied water to lot owners in a city, town or village, and such city, town or village is not included in such district, such district shall continue to supply water to such lot owners for a reasonable annual rental. [Id. p. 202, Sec. 94.]

Art. 7751. **Statement furnished.**—Every person desiring to receive water during the course of the year, or at any time during the year, shall furnish to the secretary of the board of directors a statement in writing of the acreage intended by him to be put under irrigation, and for which water is to be used, and as near as may be, a statement of the several crops to be planted with the acreage of each, and shall at the same time pay such proportion of the water charge or assessment therefor as may be prescribed by the board of directors. If such statement should not be furnished or such payment should not be made before the date for fixing the assessments, there shall be no obligation upon the district to furnish such water to such person for that year. [Acts 1923, p. 379, Sec. 95.]

Art. 7752. **Expense estimated.**—The board of directors, on or as soon as practicable after a date in each year to be fixed by a standing order of the board, shall carefully estimate the expense to be incurred during the course of the next succeeding twelve months for the maintenance and operation of the irrigation system. A proportionate part of the amount so estimated, not less than one-third, nor more than two-thirds, to be determined from year to year, by the board of directors, shall be paid by assessment against all irrigable lands within the district, pro rata per acre; that is to say, against all lands to which the district is in condition to furnish water by its then system of canals and laterals, or through extensions thereto of then existing laterals, but without reference as to whether such land is to be actually irrigated or not; and the remainder of the amount so estimated shall be paid by the persons taking water or applying for water as aforesaid. This remaining amount shall be equitably prorated, as nearly as may be, among the applicants for water, and in prorating same, the board of directors may take into consideration the acreage to be planted by each applicant for water, the crop to be grown by him, and the amount of water per acre to be used by him; provided, however, that each water user shall pay the same price per acre for use of water upon the same class of crops. All assessments shall be paid in installments and at times to be fixed by the order of the board of directors, but if the crop for which such water was furnished shall be harvested prior to time fixed for the payment of any installment, the entire unpaid assessment shall at once become due and shall be paid within ten days after the harvesting of such crop and before the removal of same from the county or counties in which grown. The board of directors shall have power and authority from time

to time to adopt, alter and rescind rules, regulations, standing orders and temporary orders, not in conflict with this chapter, governing the methods, ways, terms and conditions of water service, applications for water, assessments for maintenance and operation and the payment and the enforcement of payment of such assessments, and the furnishing of water to persons who have not applied for same before the date of assessment, and to persons who desire to take water for irrigation in excess of their original applications, or for use on other lands than those covered by such applications. The board of directors may, at their discretion, require every person desiring water during the course of the year to enter into a contract with the district, which contract shall indicate the acreage to be watered, the crops to be planted, and the amount to become due, and the terms of payment; and it may be further required that the water taker shall execute a negotiable note or notes for such amounts, or for parts thereof. The making of such contracts shall not constitute a waiver of the lien given by this chapter upon the crops of the water taker for the service furnished to him. If the water taker shall water more land than is called for in his contract he shall pay for the additional service rendered as and at the time hereinbefore indicated. To secure money for operating and maintenance expense of the district, the board of directors shall have authority to borrow money with interest not exceeding ten per cent per annum, and may hypothecate any of its notes or contracts with water takers or accounts against them. The district shall have a first lien, superior to all other liens, upon all crops of whatever kind grown upon each tract of land in the district, to secure the payment of the assessments herein provided for, and all such assessments shall bear interest from the time due and payable, at the rate of ten per cent per annum. And if suit should be filed therefor, or the same should be collected by any legal proceeding, an additional amount of ten per cent on unpaid principal and interest shall be added to the same as collection or attorneys fees, which collection fees, as well as principal and interest of such assessments, shall stand secured by the lien aforesaid. Suits for delinquent water assessments may be brought either in the county in which the irrigation district is situated or in the county in which the defendant resides. All land owners shall be personally liable for all assessments herein provided for, and if they shall fail or refuse to pay same when due the water supply shall be cut off and no water shall be furnished to the land until all back dues are fully paid. This provision with respect to cutting off water shall bind all parties, persons and corporations owning or thereafter acquiring any interest in said lands. The directors of all districts shall within ten days after any assessment is due, post at a public place in said district a list of all delinquents and shall thereafter keep posted a correct list of all such delinquents; provided, however, that if the parties owing such assessments shall have executed notes and contracts as hereinbefore provided, they shall not be placed upon such delinquent list until after the maturity of such notes and contracts.

In the event that contract shall be made with the United States, the remedies in this section hereinbefore provided in favor of the district shall apply with regard to the operation and maintenance and rental charges which may become due the United States. Provided, however, that the Federal Reclamation Laws, and in particular, The Reclamation Extension Act approved August 13, 1914, and any Acts amendatory thereof, shall be applicable. Moreover, all water, the right to the use of which is acquired by the district under contract with the United States, shall be distributed and apportioned by the district in accordance with the Acts of Congress, and rules and regulations of the Secretary of the Interior, and the provisions of such contract in relation thereto, and it is so enacted. [Id.]

Art. 7753. Public notice of assessments given.—In the event the assessments made as provided for in the preceding article should be more than sufficient to meet the necessary obligations of the district, the balance shall be carried over to the next season; and in the event the assessments made are not sufficient to meet the necessary expenses of such district the balance unpaid shall be assessed, as pro rata, in accordance with the assessments previously made for the then current year, and shall be paid under the same conditions and penalties within thirty days from the time such assessment is made. Public notice of all such assessments shall be given by posting printed notices thereof in at least three public places in the district, and printed notices shall be mailed to each land owner; provided, however, each land owner shall furnish to the board of directors his correct post-office address. Such notice shall be given by posting and mailing such notice five days before the assessment is due, and in the event of special assessments such notice shall be given within ten days after such assessments are levied. [Acts 1917, p. 204, Sec. 96.]

Art. 7754. Plans include, what.—Included in the plans of any such district may be the necessary drainage ditches, or other facilities for drainage, and necessary levees for the protection of land under the system; and every such district may purchase the system or any part of any system belonging to a drainage district. The purchase, however, shall provide for the payment of the debts of the drainage district, or the assumption of such debts, and the amount of such debts paid or assumed is to be considered in determining the bond issuing capacity of the district. [Id. Sec. 97.]

Art. 7755. Assessments collected, how.—All assessments for operation and maintenance expenses made under the provisions of this chapter shall be collected under the direction of the directors, by the assessor and collector of taxes, or other person designated by them, which said officer shall give bond in such sum as they may direct conditioned upon the faithful performance of his duties and accounting for all money collected. He shall keep a true account of all money collected, and deposit the same as collected in the district depository, and shall file with the secretary of the directors a true statement of all money collected

once each week. The collectors shall use duplicate receipt books, and shall give a true receipt for each collection made, retaining in such book a true copy thereof, which shall be preserved as a record of the district. [Id. Sec. 98.]

Art. 7756. True accounts kept where.—The directors of such district shall keep a true account of all their meetings and proceedings, and shall preserve all contracts, records and notices, duplicate vouchers, duplicate receipts, and all accounts and records of whatsoever kind, in a fireproof vault or safe, and the same shall be the property of the district and shall be delivered to their successors in office. [Id. Sec. 99.]

Art. 7757. Depository selected.—The directors for such district shall select a depository for such district under the same provisions as are now or may hereafter be provided for the selection of the depository for the counties in this State. The duties of such depositories shall be the same as are now or may hereafter be prescribed by law for county depositories. However, in the selection of depositories the directors of such district shall act in the same capacity and perform the same duties as is incumbent upon the county judge and members of the county commissioners' court in the selection of the county depository; provided, however, that in the event the highest and best bidder for the handling of such funds as the depository of such district should be a bank in which members of such board should be a stockholder or director, that then in that event such bank may be selected as such depository by the other directors being a majority of said board, and the bond given by such depository may be approved by them, but in such event before said order so selecting said such depository or approving such bonds shall be effective, the same shall be filed with and approved by the county judge of the county in which such district is situated, and such approval by such county judge shall make such action final, but in the event the county judge of said county shall, for any reason, fail to approve said selection or to approve said bond, then said bank shall not be selected, but new bids shall be called for, and some other bank be selected. [Acts 1921, p. 22, Sec. 100.]

Art. 7758. Monthly report.—The district depository shall make a report of all moneys received, and all of moneys paid out, at the end of each month, and file such reports with such vouchers among the records of said district in its own vault, and shall furnish a true copy thereof to the directors, and shall, when called upon, allow same to be inspected by any taxpayer or resident of such district. Such records shall be preserved as the property of such district and shall be delivered to the successor of such depository. [Id. Sec. 101.]

Art. 7759. Regular office maintained.—The directors of each district shall have and maintain a regular office suitable for conducting the affairs of such district, within such district, or within a town situated within the general boundary lines of such district, and not removed therefrom. And such directors shall hold regular meetings at said office on the first Monday in February, May, August and November of each year, at ten o'clock a. m.,

and shall hold such other regular special meetings as they may see fit. And any such resident taxpayer or interested party may attend any such meeting of such directors, but shall not participate in any such meetings without the consent of the directors and shall have no authority to vote upon any matter considered by such directors, but may present such matters as they desire to such directors in an orderly manner. [Id. Sec. 102.]

Art. 7760. Surety company bond.—All officers and employees of any district who may be required to give bond or security, may furnish bonds of surety companies subject to the approval of the directors; provided, however, whenever such surety company bond is furnished by any officer or employee, the surety company furnishing same shall file for record in the office of the county clerk of the county where such district is situated a duly executed power of attorney, showing the authority of the person signing such bond for said company, to so sign same, and said power of attorney shall be duly executed by the officers of said company, and have attached the company seal; and such power of attorney shall remain on file in said office. All such official bonds shall be preserved by it as the property of said district. [Id. Sec. 103.]

Art. 7761. Directors select auditor—report made.—All meetings of the directors shall be held at the regular office of the district. All vouchers issued for the payment of any funds of the district shall be signed by at least four directors, except as provided in Article 7640, and shall refer to the book and page of the minutes allowing such account. All vouchers shall be issued from a regular duplicate book containing a duplicate which shall be preserved. The directors shall have kept a complete book of accounts for such district, and shall on September first of each year select a competent auditor who shall examine the accounts, books and reports of the depository, the assessor and collector and the directors, and make a full report thereon, a copy of which shall be filed with the depository and a copy with the directors and one with the county clerk of the county or counties in which such district is situated. Such report shall be filed by November 1st of each year. [Id. Sec. 104.]

Art. 7762. Unearned portion of taxes.—Where a district organized under prior Acts has issued bonds and levied taxes to provide the interest and sinking fund thereon and said bonds or a portion thereof have not been sold at such time, the directors of such district may return all unearned portion of said taxes, if collected, and may cancel all unearned portion of said taxes not collected and all penalty, interest and costs thereon. At the time of the sale of such bonds, however, a sufficient tax shall be levied to provide all interest and charges thereon. [Id. p. 206, Sec. 105.]

Art. 7763. Joint ownership contract.—Two or more districts may jointly own and construct irrigation works and reservoirs under the terms and conditions to be set out in a written contract. Any such contract shall not be binding until same shall have been ratified by a majority vote of each such district. An

election shall be held in each such district upon the same day to determine whether such contract shall be adopted. Such contract shall be printed or in writing, and a true copy shall be filed in the office of each district fifteen days prior to such election and be subject to public inspection, and one true copy of same shall be furnished each voter calling at such office for same at any time within fifteen days prior to such election. When improvements are constructed by two or more districts, bids may be jointly called for and may be opened and considered at the designated office of either of such districts, and such districts shall approve the letting of the contract, and the contractor's bond, and may meet for that purpose at a place outside of their district, or at any office established for such joint project and at which office all business of such joint project may be transacted, all bids, bonds, contracts, etc., of said joint project may be in the names of said joint project districts, such districts being empowered and authorized to do all acts by joint action that one district may do. The action of each district being determined by its board of directors, a general manager may be employed for such joint enterprise whose duties may be set forth in the joint ownership contract.

The terms and conditions of such joint ownership contract shall not conflict with the provisions of the law providing for the organization and conduct of districts, but may include provisions for joint construction and operation of same. Such contracts may be amended in the same manner. [Id., Sec. 106.]

Art. 7764. Districts validly created.—The Act of the Twenty-ninth Legislature, being Chapter 50 of the Acts of 1905, and the Act of the Thirty-third Legislature, being Chapter 172 of the Acts of 1913, and Chapter 138 of the Acts of 1915, are hereby repealed. All districts heretofore organized under the terms and in accordance with the provisions of said Acts, are hereby expressly declared to be validly created, organized, described and defined with boundaries as prescribed by the order of the commissioners' court organizing the same, or as the same have since been changed by the board of directors thereof in the manner provided by said Acts. Such districts, however, shall hereafter be governed by the provisions of this chapter; provided, however, that the duly constituted and qualified officers of such districts shall continue to perform the duties of such offices until the next general election held under the provisions of this chapter.

All bonds issued by such district, which have been declared valid by a judgment of the district court, shall be and be held to be valid and binding obligations of such district and not subject to attack, except for actual fraud. Any such district may change its name to the name herein provided for such districts by filing a declaration to that effect with the commissioners' court of the county or counties in which it is situated, and which said declaration shall be in the form of a deed of conveyance and duly acknowledged by the president and secretary of the district, and shall embody and set forth a copy of the minutes of said board of directors, and show the resolution adopted for the

change of such name, and when such instrument shall have been so recorded, the name of such district shall hereby be changed.

All districts in the process of organization under existing laws repealed by this Act, are hereby declared to be valid districts and entitled to proceed in accordance with the provisions of said Act so repealed until the date upon which this Act shall take effect after which, said districts shall be governed by the provisions of this chapter, and said districts shall change their name to conform to the provisions of this chapter by filing a declaration as above provided, in the office of the county clerk of the county or counties in which they are situated; and if they have not proceeded to the point of election of directors, they shall change such name by making application to the county commissioners' court having jurisdiction thereof, which said court shall change said name upon all orders thereafter issued relating to said district. [Id., Sec. 107.]

Art. 7765. District necessities authorized.—All districts organized under the provisions of this chapter shall have full authority, acting by and through its board of directors, to construct all works and improvements necessary for the irrigation of lands in said districts, and to supply, deliver and sell water for domestic, power, and commercial purposes when operating under the authority of Section 59 of Article 16 of the Constitution; and to fully carry out the purposes of its organization and the conservation and use of water for the several purposes authorized by the Constitution and the laws of this State, and to acquire the right to the use of water in the manner provided by law, and the directors of such districts, subject only to the provisions hereof, shall have full authority to manage such districts and the business of such districts for the purpose of carrying out the intention and purposes of the organization. [Acts 2nd C. S., 1919, p. 74, Sec. 108.]

Art. 7766. Land become part of district—originally included.—Where a district is organized embracing land irrigated by an established irrigation system and lands entitled to be served by an established irrigation system are not included in such district, in the manner provided by law, and when so admitted to or included in such district the said land shall become part of said district as if originally included therein and shall be entitled to water service upon an equal basis with the lands originally included in said district. [Acts 1917, p. 207, Sec. 109.]

Art. 7767. Water rights transferred.—Where there is included in a district lands having a water right from a source of supply acquired by such district but which lands it is difficult or impracticable to irrigate, the said district may allow such water rights to be transferred to other lands adjacent to said district and may admit such lands to said district upon an equal basis as to water service with the lands originally included in such district. [Id. Sec. 110.]

Art. 7768. Lands relieved of assessment, when.—Whenever any district organized or hereafter organized has failed or neglected to furnish water sufficient to irrigate any land within such district within two years from its organization, then such lands

shall be relieved of any and all assessments and charges except taxes until such district shall construct the necessary canals and furnish the necessary water to enable the owner of said land to irrigate all of said land on demand therefor. [Id. p. 208, Sec. 111.]

Art. 7769. Conditions of tax levied.—The tax as levied in connection with the original issuance of bonds shall remain in force from year to year as the levy for that purpose, until a new levy shall be made. The board of directors may, from time to time, increase or diminish such tax so as to adjust the same to the taxable values of the property subject to taxation by the district and the amount to be collected, and in such manner as to raise an amount sufficient to pay the annual interest and sinking fund on said bonds then outstanding. [Id. Sec. 112.]

Art. 7770. Sinking funds invested.—The board of directors are authorized and empowered, whenever they may deem it advisable, to invest any sinking funds of the district, acquired for the redemption and payment of any of its outstanding bonds, in bonds of the United States, of the State of Texas, of any county of the State of Texas, any irrigation or water improvement bonds or of any incorporated city or town, or of any independent school district, or of any other school district in the State of Texas authorized to issue bonds; provided that no bonds shall be so purchased that according to their terms mature at a date subsequent to the time of maturity of the bonds for the payment of which such sinking fund was created. [Id. Sec. 113.]

Art. 7771. County clerk's fees.—The county clerk shall receive for his services in registering said bonds the sum of ten cents for each bond so registered; for entering a payment of any bond, the sum of ten cents; for recording of instruments of the district required to be recorded, and for which no fees are hereinbefore fixed, he shall receive the same fees as provided by law for recording deeds. [Id. Sec. 114.]

Art. 7772. Manager employed.—The board of directors may employ a manager, who shall have general charge and management of the water distribution system of the district, subject to the general rules and regulations made by the board of directors, and who shall have power to appoint and discharge all other employees except the president and the secretary of the board and the assessor and collector, to purchase and contract for all supplies necessary for the water distribution system, after the board has authorized such purchases, to collect all assessments for operation and maintenance, and to execute on behalf of the district all water contracts and other contracts that are not required by the law to be executed by the board or by the president and secretary for the board, and who shall have such other powers and perform such other duties as may be provided by the board of directors. Unless such manager is appointed, all persons employed by or representing the district shall be employed by the board of directors. No contract shall ever be made with any manager or other person or employee, whether employed by the board of directors or by the manager, for a longer period of time

than one year, and the salaries of all employees, or the compensation to be received by them, shall be fixed at the time of their employment. [Id. Sec. 115.]

Art. 7773. **Bonds exchanged.**—Where bonds have been issued, or may be hereafter issued, by a district organized under and in accordance with the provisions of this chapter, or where bonds have been issued by any district organized under the Act of the Twenty-ninth Legislature, being Chapter 50 of the Acts of 1905, or the Act of the Thirty-third Legislature, being Chapter 172 of the Acts of 1913, in accordance with the provisions of said Acts, respectively, new bonds bearing the same or a lower rate of interest may be issued in lieu thereof. Such new bonds may be exchanged for old bonds, provided the old bonds are taken in exchange at their face value or at a discount, or they may be sold and the net proceeds applied to the purchase of the old bonds redeemed at par or at a discount. The Comptroller of Public Accounts shall not register said new bonds until the old bonds in lieu of which they are issued are presented to him for cancellation or until a valid contract has been entered into and a copy thereof filed with the Comptroller for the purchase of a corresponding amount of such old bonds. After registration of the new bonds, the Comptroller shall keep the same in his possession until the old bonds are surrendered to him and cancelled by him, whereupon he shall deliver the new bonds to the proper party or parties; provided, that the old bonds may be so presented for payment, in installments, and a like amount of the new bonds registered and delivered as herein provided.

If the new bonds are in the same amounts and have the same dates of maturity as the old bonds intended to be replaced thereby, they may be authorized by resolution of the board of directors and issued without submitting the question of their issuance to the vote of the property taxpayers, who are qualified voters in the district, and they shall be registered by the Comptroller in the manner hereinbefore provided, and upon the filing with him a copy of the resolution of the board of directors providing for the cancellation of said old bonds and the issuance of the new bonds in place thereof; and when said old bonds shall have been cancelled and the new bonds registered by the Comptroller, such new bonds shall be the valid and binding obligations of the district, without further proceedings in regard thereto; and the same are hereby declared to have, and are hereby given, the same force, effect and validity as the original issue of bonds that they have replaced.

Any such district is authorized to issue new or refunding bonds in lieu of bonds heretofore or hereafter issued as aforesaid, in such amount, of such denominations, bearing such rates of interest and periods of maturity as may be provided by resolution of the board of directors thereof, within the limits prescribed in this chapter in the case of an original issuance of bonds, whenever the board of directors may deem such action advisable, but if such new or refunding bonds are in greater amount, bear a greater rate of interest or have longer periods of maturity, or in any other respect create a greater burden on the district than the

old bonds then outstanding, the issuance of such new or refunding bonds shall be submitted to the vote of the resident property taxpayers who are qualified voters of the district, and all provisions of this chapter governing the election and the issuance, approval, validation, registration, and sale of bonds in the case of an original issue of bonds shall apply to and govern such new or refunding bonds. All such bonds shall be registered and delivered only in the manner provided in this section. [Id. p. 209, Sec. 116.]

Art. 7774. Application for water improvement district.—Should any parties in any unorganized county wish to organize a water improvement district, under the provisions of this chapter, such parties shall have the right to do so by applying to the commissioners' court of the county to which said unorganized county is attached for judicial purposes, and such commissioners' court is hereby authorized to perform for said unorganized county all things which in this chapter is required of commissioners' court of organized counties. [Id. p. 210, Sec. 117.]

Art. 7775. Vote separately canvassed, when.—Whenever a district proposed to be organized as herein provided contains within its boundaries as proposed and described in the petition for organization, a town, city or municipal corporation, or part thereof, when the county commissioners' court calling the election to determine said question as herein provided shall constitute said territory within said town, city or municipal corporation, a separate election precinct, with one or more polling places, and the vote received for and against the proposition within said town, city or municipal corporation shall be separately canvassed by the court to determine whether or not a majority of those voting at said election within said town, city or municipal corporation voted for or against said proposition. If a majority of those voting at said election within such town, city or municipal corporation vote against the formation of such district the same shall not be formed including such town, city or municipal corporation, but if the majority of the votes therein is in favor of the formation of such district then such votes shall be canvassed with the votes of the balance of said entire district to determine the result of said election. [Acts 2nd C. S., 1919, p. 75, Sec. 118a.]

Art. 7776. Fixing maintenance charges.—The maintenance charges may be fixed as provided in Article 7752 of this chapter, or same may be determined upon the basis of the quantity of water used, and if based upon the use of water a fixed charge may be made on all lands or water connections entitled to receive and use water, and an additional charge may be made, or a graduated scale adopted, for the use of water in excess of that covered by the minimum charge. The district may install proper measuring devices. [Id. Sec. 119.]

Art. 7777. Charging cities and towns.—Where a district includes a city or town, or contracts with a city or town to supply it water, the charge for the use and delivery of such water, and the time and manner of payment therefor shall be determined by

the board of directors and be specified in a standing order of said board. [Id. Sec. 120.]

Art. 7778. Consolidation of districts.—Any two or more irrigation districts, or water improvement districts, governed by the provisions of this chapter and amendments thereof, may be consolidated into one district in the following manner: The terms and conditions upon which such consolidation is to be affected shall be agreed upon by the board of directors of each district, and then the question shall be submitted to a vote in each district after giving notice thereof for at least twenty days in the manner provided by law for other elections. The election shall be held in such districts on the same day. The consolidation to be effected only in the event same is adopted by each and all such districts. When two or more districts are consolidated their obligations shall not be impaired but shall be protected and paid by taxes levied upon the property in the district creating said debt or by assessments in the same manner and extent as if said consolidation had not been effected. After consolidation such taxes shall be assessed and collected by the officers of the consolidated district and in the event they should fail or refuse to so assess and collect same, for such purpose, in due order and time, then same may be assessed and collected, and paid on such obligations, by a receiver appointed by and acting under the orders of a district court, in a proper suit which may be brought by a creditor or by five or more taxpayers of such district. When two or more districts are consolidated into one district, same shall be governed as and be one district, except that the debts of each district, created prior to such consolidation, shall be paid as herein provided; provided, however, such consolidated district may contribute to such payments upon the terms stated in the consolidated agreement. When two or more districts are consolidated the officers of said respective districts shall continue to act jointly as the officers of said district, and to wind up, the affairs of their respective districts as effected by said consolidation, for a period of ninety days after the date of the election, and they may continue to so act until the next general election if so provided by the consolidation agreement, or the consolidation agreement may provide who shall constitute the first board of directors to serve until the next general election if the officers then serving agree to resign. Said new officers shall within the period of ninety days after the election qualify as such officers of the consolidated district and assume such office at the expiration of said period. All bonds of such officers will be approved by the then existing boards of directors. [Id. Sec. 121.]

Art. 7779. Benefit plan of taxation.—In the event that any irrigation or water improvement district, other than those operating under contract with the United States, have been or shall be constituted a conservation and reclamation district so as to come within the terms of Section 59 of Article 16 of the Constitution of the State of Texas, and shall adopt or have adopted the assessment of benefit plan of taxation instead of the ad valorem plan of taxation then and in that event the fixing and assessing of property values on which taxes shall be levied and collected shall be

made in the manner provided by Articles 7782 to 7787 inclusive, provided any such district may at the same election at which the adoption of said plan of taxation is voted upon, or at any other time before the issuance of bonds, vote upon the proposition of whether said benefits shall be fixed as an equal sum upon each acre of land that is irrigated or to be irrigated by gravity flow from the canal system of the district. In which event the amount of benefit per acre shall be voted upon as applied to all lands in the district that can be irrigated by gravity flow from the irrigation system to be constructed or purchased and also the benefit to lands in the district that can not be so irrigated.

When such questions are desired to be so submitted and an election held to determine same the board of directors of the district shall submit same and order such election in the same manner as provided by law for other elections in such districts. The ballots for such elections shall have printed thereon the following propositions: "For uniform assessment of benefits of \$_____ per acre upon all irrigable lands in the district, and the assessment of \$_____ per acre upon all non-irrigable lands in the district." "Against uniform assessment of benefits." Said blank spaces in said propositions shall be filled in with amounts as determined by said board of directors to be voted upon. Said amount of charge per acre to be found by dividing the number of acres of such lands into the amount of indebtedness to be incurred by the district in providing for the irrigation of same.

In the event the owners of lands classed as non-irrigable object to the amount of charges fixed against them by said order of the board of directors calling such election or as a result of said election they may have their said non-irrigable lands taken out of said district by filing application therefor as provided by law within ten days after such election is held.

If a majority of those voting on such proposition at such election vote in favor thereof same shall be adopted.

In the event the plan of uniform acreage valuation for taxation is adopted as herein provided the said valuation shall be applied to all such lands and it shall not be necessary for the assessor, or the board of equalization to annually fix the value thereof or equalize such values, except as herein provided, nor for the board of directors of the district to appoint a commission to ascertain or fix the value of the improvement to particular lands as in other cases provided. The board of equalization will examine the renditions and tax rolls to ascertain that all property subject to the tax is placed on such tax rolls under its proper classification and add any property thereto that may be left off such tax rolls or that may not have been rendered for taxation, and examine, correct, and certify to said tax rolls. Any property owner may protest the classification of his land as not being proper and the board of equalization shall fully consider any such protest, hear evidence, and enter their findings thereon in their minutes, in the same manner provided for protests in the case of the fixing of valuations upon property as provided by law.

The rate of taxation, the collection of taxes, assessment of property, rendering of property for taxation shall be made as

now provided by law with reference to ad valorem taxes, except that any such lands shall be rendered or taxed and in rendering same the value thereof shall not be stated and it shall not be necessary that the party rendering same shall make affidavit to the value thereof nor that the value thereof be stated by the tax assessor, but same shall be rendered as subject to irrigation or not subject to irrigation.

In the event lands classed as non-irrigable are thereafter irrigated by said district the owner thereof prior to receiving water for irrigation shall pay to said district an amount equal to the entire amount that would have been charged to same if same had been originally classed as irrigable. [Acts 1921, p. 17; Acts 1923, p. 279, Sec. 122.]

Art. 7780. Locating offices.—Whenever a district is formed in such manner that the towns within or adjoining the territory included in the district are left out of said district, then in that event the directors for said district may establish the office in said district as provided by law, or may establish the office of said district within any town adjoining, or close to said district within the same county or counties, which may be best suited as a location for the transaction of the business of said district, provided, however, such office shall not be removed from the proximity of said district, but shall be so located as to be accessible to the residents of said district. [Id. p. 23, Sec. 123.]

Art. 7781. Collecting under benefit plan.—In the event that any irrigation or water improvement district, other than those operating under contract with the United States, have been or shall be constituted a conservation and reclamation district, and shall adopt the assessment for benefit plan of taxation instead of the ad valorem system of taxation, as authorized by the provisions of Chapter 12 of the General Laws of the Second Called Session of the Thirty-sixth Legislature, or under the provisions of this Act, then in that event the levy, assessment, equalization of property values, and collection of taxes shall be made in the manner provided by Sections 125 to 130 inclusive of this Act. [Id. Sec. 124.]

Art. 7782. Commissioners of appraisement.—As soon as practicable, after the approval of the report of the engineer, and the adoption of the plan of improvements to be constructed, the board of directors shall appoint three disinterested commissioners, who shall be known as commissioners of appraisement, but who shall be freeholders, but not owners of land within the district for which they are to act. [Id. Sec. 125.]

Art. 7783. Time and place of meeting. The secretary of the board of directors immediately following the appointment of the commissioners of appraisement shall in writing notify each of his appointment, and in the notice designate a time and place for the first meeting of such commissioners. It shall be the duty of the commissioners to meet at the time and place specified or as soon thereafter as possible when they shall each take and subscribe an oath that they will faithfully and impartially discharge their duty as such commissioner, and make true report of the work

done by them, and at such meeting the commissioners shall organize by electing one of their number chairman and one vice-chairman, and the secretary of the board of directors, or in his absence such person as the board of directors may appoint, shall be secretary of said commissioners during their continuance in office and shall furnish to them such information and such assistance as may be within his power and necessary to the performance of their duties. [Id. Sec. 126.]

Art. 7784. To make report—compensation.—Within thirty days after qualifying and organizing as above directed, the commissioners of appraisal shall begin their duties, and they may at any time call upon the attorney of the district for legal advice and information relative to such duties, and may, if necessary, require the presence of the district engineer, or one of his assistants, as such times and for so long as may be necessary to the proper performance of their duties. Such commissioners shall proceed to view the lands within such district as will be affected by the plan of reclamation for such district as carried out, and all public roads, railroads, rights of way and other property or improvements located within such district, and shall assess the amounts of benefits and all damages, if any, that will accrue to any tract of land or other property within such district or to any public highway, railroad and other rights of way, roadways or other property from carrying out and putting into effect the improvements to be constructed by such district. The board shall prepare a report of their finding which shall show the owner of each piece of property examined, and on or concerning which any assessment is made, together with such description of said property as may identify the same, with the amount of damages and all benefits assessed for and on account of, or against the same, which said report shall be signed by at least a majority of the said commissioners and filed with the secretary of the board of directors of the district, and which report shall also show the number of days each commissioner has been employed and the actual expenses incurred by each during his service as commissioner, and each shall be paid by the district not to exceed \$10.00 per day for his services, and all necessary expenses in addition thereto upon the approval of his account for such per diem and expenses by the board of directors. Said commissioners shall in their said report fix a time and place when and where they will hear objections thereto, and such date shall be not less than twenty days from the filing of such report. [Id. Sec. 127.]

Art. 7785. Notice of hearing.—When the report of the commissioners shall have been filed with the secretary of the board of directors, he shall forthwith give notice by publication in a newspaper published in each county wherein any portion of the district is located, for at least once a week for two consecutive weeks prior to the date fixed for such hearing, of the time and place of such hearing, and he shall also mail a written notice to each person whose property will be in any wise affected by the carrying out of the plan of reclamation and improvement if his post office is known, stating the time and place of such meeting,

which notice shall state in substance that the report of the commissioners to assess benefits and damages accruing to the land and other property by reason of the plan of reclamation and improvement for the district in question has been filed in his office, and that all persons interested may examine the same and make objections thereto in whole or in part, and that the commissioners will meet on the day and at the place named for the purpose of hearing and acting on objections to such report, and the secretary upon the day of the hearing shall file in his office the original notice with his affidavit thereto, showing the manner of publication and the names of all persons to whom notices have been mailed, and that post offices of those to be effected to whom notices were not mailed were unknown to him, and could not be ascertained by reasonable diligence, and copies of such notice and affidavit shall be filed, one with the commissioners of appraisal and one with the clerk of the county commissioners' court. [Id. p. 24, Sec. 128.]

Art. 7786. Issuance of decrees.—At or before the hearing, upon the report of the commissioners of appraisal, any owner of land or other property affected by such report, or the plan of reclamation and improvements may file exceptions to any or all parts of such report, and said commissioners at the time and place specified in the notice shall proceed to hear and base opinion on such objections, and where such objections are sustained, in whole or in part, may make such changes and modifications from time to time as may be necessary to confirm the report of their findings. When the commissioners shall have finally acted they shall make decrees confirming such report in so far as it is confirmed, and approving and confirming the same as modified or changed in so far as it may be modified or changed. The commissioners shall have power to adjudge and apportion costs incurred upon the hearing in such manner as may be deemed equitable. The findings of the commissioners as to benefits and damages to lands, railroads and other property within the district shall be final and conclusive. The final decree and judgment of the commissioners shall be entered of record in the minutes of the board of directors and certified copies thereof shall be filed with the county clerk of each county in which any portion of the lands within such district are located, as a permanent record of such county, and such filings shall be notice to all persons of the contents and purpose of such decree. [Id. Sec. 129.]

Art. 7787. Benefit basis of taxation.—After the action of the commissioners of appraisal as aforesaid, their final findings, judgment and decree, until lawfully changed or modified, shall form the basis of taxation within and for the district for which they shall have acted, for all purposes for which taxes may be levied by, for or on behalf of such district and all taxes shall be apportioned and levied on each tract of land, railroad and other real property in the district, in proportion to the net benefits to the property named in such final judgment or decree as shown thereby. In all matters before the commissioners of appraisal, parties interested may not only appear in person or by attorney, but they shall be entitled to process for witnesses to be

issued by the chairman of the commissioners of appraisement on demand, and such commissioners shall have the same power as a court of record to enforce the attendance of witnesses. [Id. p. 25, Sec. 130.]

Art. 7788. **Equitable basis instead of ad valorem.**—Any water improvement district organized under authority of Section 59 of Article 16 of the Constitution, and Chapter 25, General Laws, Fourth Called Session, Thirty-fifth Legislature, as well as any water improvement district which may have been created prior to the adoption of such constitutional amendment, and which shall have availed itself or may hereafter avail itself of the benefits of Section 59 of Article 16 of the Constitution, may at the time of its creation, or at any time thereafter before such district shall have issued bonds, submit to the qualified electors of such district the question whether the taxes to be levied therein, or any part thereof, shall be levied, assessed and collected upon an "equitable" basis in proportion to benefits to be conferred by the organization, operation and maintenance of such district and the work and improvements to be created thereby, or whether such taxation or any portion thereof shall be levied upon an ad valorem basis. Such question shall be submitted to the qualified voters of such district at any time and in any manner that the governing body of such water improvement district may select, and the ballots to be used shall have printed thereon in substance the following: "For the levy of taxes upon a benefit basis instead of an ad valorem basis," and "Against the levy of taxes on a benefit basis instead of on an ad valorem basis." And such election shall be governed by the provisions of Chapter 87 of the General Laws of the Thirty-fifth Legislature, Regular Session, and amendments thereof so far as applicable. If a majority of the votes cast at such election shall be in favor of the levy and collection of the taxes, or any part thereof, upon an equitable basis in proportion to benefits instead of upon an ad valorem basis, then taxes shall be so levied and collected. [Id. Sec. 131.]

Art. 7789. **When contract with United States.**—In the event an irrigation or water improvement district shall have heretofore been operated or shall hereafter be operated under contract with the United States and such district shall have adopted or may adopt the plan of the levy and collection of taxes on a benefit basis instead of an ad valorem basis, then the directors of such district shall at some convenient time thereafter, and from time to time as may be necessary, sit as a board to apportion and assess the benefits conferred upon any and all property situated within such water improvement district and shall cause a record to be made, showing the amount and value of the benefits computed to accrue to all of the property situated within such district and subject to taxation, and the amount of taxes upon such basis to be levied against and collected from such property; provided, that no taxes so assessed or adjudged against such property shall be in excess of the benefit accruing and to accrue to such property from the organization, operation and maintenance of such district and the improvements to be acquired or constructed thereby. After such record shall have been made up,

the board shall cause notice to be mailed to each property owner whose name appears upon such record, showing the amount of taxes to be levied against such property, and fixing a date and place at which such owner may appear and contest the correctness and equitableness of such tax. And after such hearing such board of directors or other governing body shall determine the inequitableness of the tax and sustain, reduce, or increase the same, as in their judgment shall be just and equitable; and the decision of this board shall be final. All of the provisions of Chapter 87, General Laws, Thirty-fifth Legislature, Regular Session, and amendments thereto, not inconsistent herewith, shall apply to the levy, assessment and collection of the taxes herein provided for. [Id. p. 26, 132.]

Art. 7790. Sale of water power privileges.—Any irrigation or water improvement district may contract for the sale of water power privileges whenever it may be possible for power to be generated by the use of the water flowing from its reservoir, or in its canal system, provided, however, any such contract for the sale of water power privileges shall be subject to the obligation of the district to protect the lands embraced therein in an adequate supply of water for irrigation for which the district was organized, or for supplying water for municipal purposes in those districts supply ing water for municipal purposes. [Id. Sec. 133.]

Art. 7791. Adopt rate of commissioners' court.—Irrigation and water improvement districts operating under the provisions of laws of this State, and assessing taxes on the ad valorem basis, may, if they find it to their advantage, adopt the assessment and equalization of values of the property authorized therein for taxation as made and equalized by the county officers and the county commissioners' court and base the levy and collection of taxes on such assessment and equalization, and they shall also have authority to secure from the county tax assessor a list of tax renditions as made to him covering the property within said district, and adopt same for the use and benefit of said district by causing the tax assessor and collector of the district to compile same as the tax roll of the district instead of making independent assessment thereof. In the event that the district tax assessor and collector and district directors should for any reason fail or refuse to properly assess, equalize tax values, and prepare a tax roll for said district, as provided by law, then in that event the taxes levied at the time of issuance of bonds or other valid obligations of said district shall be collected by the county tax collector by entering on his rolls the said tax as against all property situated within such district for the year or years which the said district officers may have so failed to perform their said duties. If the tax levy is not sufficient because of decreased valuations same shall be increased by order of the commissioners' court.

The fund so collected by such county tax collector shall be deposited in the county depository as a special fund to be devoted to the payment of interest and sinking fund on such bonds or other obligatitons, and such fund shall be paid thereon upon

order of the county commissioners' court. In the event any such county tax collector should fail or refuse to perform such duties then the holders of such securities, bonds or obligations, or any one or more of them, may compel him to do so by mandamus proceeding in the court of proper jurisdiction. The county tax collector shall be allowed, in addition to all other compensation now provided by law, reasonable fees for the performance of such duty, to be fixed by the county commissioners' court, not to exceed, however, the rate of compensation fixed by law for the performance of like duties in the collection of county funds. Whenever such district officers shall fail to perform and discharge their duty, in the assessment and valuation of the property and collection of taxes, as hereinabove provided, then any bond holder or other person interested in said district and the payment of their obligations may request the county commissioners' court to enter an order authorizing the county tax collector to perform the duties herein provided, and the county commissioners' court shall investigate said matter, and if they find said conditions to exist shall enter an order directing the county tax collector to proceed as herein provided, and no county tax collector shall undertake the collection of such taxes until so ordered by the county commissioners' court. The provisions of this section are not intended to allow anyone to interfere with the duties of the district officers so long as they are in the active discharge of their duties, but such powers shall be exercised in the event such district officers shall not perform their duties or in the event of a vacancy in said offices.

In the event of any dispute arising as to whether or not said officers are so performing their duties, said matter may be determined by an action against said officers in the district court in the nature of a mandamus suit or in injunction proceedings restraining such officers from interfering with the collection of such taxes and the payment of said obligations by said county tax collector, and said county commissioners' court. Any such action of the district court may be appealed to the Court of Civil Appeals and a judgment of the Court of Civil Appeals shall be final. In the event any such district embraces territory in two or more counties, the duties herein provided for the county tax collector and county commissioners' court shall be performed by such officers as to all such property lying within the county. [Id. Sec. 134.]

Art. 7792. Selling surplus water.—Any irrigation or water improvement district may sell any surplus water they may have or have conserved to lands in the same vicinity for the purpose of irrigation, domestic, or commercial uses. [Id. p. 28, Sec. 135.]

Art. 7793. Sale and lease of electrical energy.—Any water improvement district or conservation and reclamation district operating under contract with the United States, may provide for the purchase, acquisition, construction, operation, lease or control of plants for the generation, distribution, sale and lease of electrical energy, including the sale to municipalities, corporations, firms or individuals of electrical power, generated within or without said district, or the sale or lease of power privileges

incident to or forming a part of the reservoirs, canals or other works owned, constructed or operated by or for such district, and for the purpose of obtaining funds with which to construct or acquire the power plants, transmission lines and other works necessary or useful for the development, transmission, distribution, sale or lease of such power, may borrow money in the name of such district, and issue bonds therefor, which bonds shall be secured by a lien upon the water power or energy and power privileges incident to such irrigation and drainage project, and also by a lien upon the power plant, transmission lines, and all of the physical properties necessary for, or used in the creation, transmission, distribution and market of such power or energy, but such bonds shall not be a lien upon the lands or other property owned by individual irrigators or water users under such project. Such bonds may be issued in the manner and subject to all of the regulations, terms, conditions and provisions of other bonds authorized to be issued under the terms of Chapter 87 of the General Laws of the Regular Session of the Thirty-fifth Legislature, and of the acts amendatory thereof and supplementary thereto, except as in this section otherwise provided. The board of directors of any such district shall estimate and determine the amount of money necessary to be raised, or the amount of indebtedness necessary to be assumed for such purpose or purposes, and may include in such amount a sum sufficient to pay the first four years' interest on such indebtedness. [Acts 1921, p. 183, Sec. 1.]

Art. 7794. Co-operating with districts of other states.—Whenever any water improvement or conservation and reclamation district in this State, operating under contract with the United States, shall obtain water from the same source from which water is obtained by any such district or similar district or districts, organized for irrigation or drainage purposes, under the laws of any other State, the water improvement district or conservation and reclamation district organized under the laws of this State shall be, and it is hereby authorized to jointly own, acquire, construct and operate irrigation works, reservoirs and drainage works, in co-operation with such district or districts obtaining water from the same source of supply, which may be located within another State, under the terms and conditions to be set out in a written contract, and the provisions of the preceding section, relating to the development, transmission, distribution, sale and lease of electrical power and energy, in the manner in said section provided shall be applicable to any such district in this section referred to. Any such contract shall not be binding until the same shall have been ratified by a majority vote of the legally qualified voters of such district, situated within this State. Such contract shall be printed or in writing, and a true copy thereof shall be filed in the office of such district in Texas fifteen (15) days prior to such election, and shall be subject to public inspection.

Whenever works or improvements are to be constructed or acquired, bids may be jointly called for and may be opened and considered at the designated office of either of such districts, and

the officers of such district in Texas may execute such contract, and may hold meetings to consider the execution thereof, and the approval of the contractor's bond, and all matters pertaining to or incident to such contract, at any office established for such joint project, and at which office all business of such joint project may be transacted.

The action of each district being determined by its board of directors, a general manager may be employed for such joint enterprise, whose duties may be set forth in the joint ownership contract. The terms and conditions of such joint ownership or construction contracts shall not conflict with the provisions of the law providing for the organization and conduct of districts, except as herein provided, but may include provisions for joint construction and operation, and such contracts may be amended from time to time in the same manner. The provisions of this and the next preceding article shall apply only to districts operating under contract with the United States. [Id. Sec. 2.]

Art. 7795. Limiting power to incur debt.—The board of directors of any water improvement district which has been or shall be constituted a conservation and reclamation district under the provisions of Section 59, of Article 16, of the Constitution, may, for the benefit of the purchasers or holders of bonds to be issued, limit the power of the district to incur debt and issue bonds in the manner and to the extent hereinafter mentioned. Said board may adopt a resolution declaring that during a period not exceeding ten years, the district shall not issue bonds in excess of twenty-five per cent of the assessed value of the taxable real property of the district according to the last assessment for district purposes, and shall give notices of the adoption of such resolution by publication once a week for two successive weeks in a newspaper published in the district, stating that such resolution shall take effect unless a petition signed by ten per cent of the qualified property tax paying electors of the district shall be presented against the proposed limitation within thirty days after the date of the first publication of such notice. If such petition or remonstrance be filed within said period, said limitation shall not take effect unless it be approved at a general or special election held in the district in the same manner as other general or special elections are held. The ballot on the question at such election shall be in substantially the following form: "For limiting during the term of _____ years, the maximum debt of the district to twenty-five per cent of the assessed valuation of the real property," and "Against limiting during the term of _____ years, the maximum debt of the district to twenty-five per cent of the assessed valuation of the real property." If such limitation shall be approved or if during said period no petition or remonstrance shall be filed, the district shall not issue bonds under any statute or constitutional provision during said term in excess of the amount so limited, except to complete works for constructing which bonds may be issued within said limitation, and shall only issue bonds exceeding said limitation for completing such works after the State Board of Water Engineers shall have approved the plans and specifications of the

original and uncompleted works, together with the estimates of the cost thereof. If such plans and specifications and estimate be approved by said State Board of Water Engineers, notice of intention to issue said bonds to complete said works shall be given by publication once a week for three weeks, stating the amount of the proposed issue of bonds and the time when a hearing will be had, which shall not be less than thirty days from the date of the first publication. Any property taxpayer, bondholder or other creditor or person interested may appear and shall be heard. If the determination be in favor of the issuance of additional bonds to the amount stated in the notice, the question of issuing such bonds shall be submitted to the property taxpaying voters at an election held in the form and manner prescribed by law. [Acts 1st C. S., 1921, Sec. 139.]

Art. 7796. Previous bond validated.—All proceedings heretofore had and taken to organize a water improvement district under the Act to which this is an amendment, or to determine the manner in which taxes or assessments shall be levied and collected, or to bring any district organized hereunder under the provisions of Section 59 of Article 16 of the Constitution of Texas, or to authorize the issuance of bonds of any district organized under the Act to which this is an amendment, whether such district shall or shall not have come under said Section 59 of Article 16 of the Constitution, shall be and are hereby in all respects ratified, validated, approved and confirmed, and such bonds may be issued and sold in the form and manner and at the price and under the conditions prescribed by law. [Id. Sec. 139.]

Art. 7797. May sue to protect bonds.—All water improvement districts and irrigation districts heretofore or hereafter organized under the laws of the State being dependent upon their water rights and water supply to perform their public duties and to protect their bonds and other indebtedness created under the provisions of the law and to maintain their taxable values and assessable values, shall have full authority to maintain any action or suit for such purposes. [Id. p. 150, Sec. 140.]

Art. 7798. May sue to protect bonds.—The board of directors are hereby empowered to institute and maintain any suit or suits to protect the water supply of said district and to prevent any unlawful or unwarranted interference with or diversion of such water supply. All water improvement districts and irrigation districts shall have full power and right to protect their water supply and all other rights and property and by proper suit to prevent any taking or interference with such water supply, of whatever nature or however acquired, necessary to the uses of such district or for the irrigation of the lands situated therein. [Id. Sec. 141.]

Art. 7799. Board of Water Engineers to investigate.—The State Board of Water Engineers shall be and is constituted a commission to investigate and report upon the organization and feasibility of all water improvement districts which shall issue bonds under the provisions of the law of this State. All such districts desiring to issue bonds for any purposes shall submit in writing to said board an application for investigation, together

with a copy of the engineer's report, and a copy of all data, profiles, maps, plans and specifications prepared in connection therewith. Said Board of Water Engineers shall examine same and shall visit the project and carefully inspect the same and may call for and shall be supplied with additional data and information requisite to a reasonable and careful investigation of the project and proposed improvements. They shall file in their office in writing their suggestions for changes and improvements, and furnish a copy thereof to the board of directors of the district. If said board shall finally approve or refuse to approve such project or the issuance of bonds for any improvement, they shall make a full written report thereon, file same in their office, and furnish a copy of same to the board of directors of said district. [Id. Sec. 142.]

Art. 7800. Conveying interests.—Any water improvement district organized under the laws of the State of Texas, which shall have filed an application for a permit to construct a reservoir and to appropriate the waters of a stream or watershed for irrigation or other purposes and for which a permit shall have been granted by the State Board of Water Engineers and a permit issued therefor, said district may convey to another water improvement district an interest in said reservoir and water rights evidenced by its application and permit granted by the State Board of Water Engineers. Said conveyance shall convey all such rights covered by its terms; provided, however, same shall be filed for record and be recorded in the office of the county clerk of the county or counties in which said property is situated and shall then be filed for record in the office of the State Board of Water Engineers. Said transfer when so filed shall be and operate as a conveyance of all rights granted to the district to which said permit was issued in so far as it covers same, not to exceed, however, the rights granted by the permit issued therefor by the State Board of Water Engineers. From and after the date said transfer is filed in the office of the State Board of Water Engineers all rights conveyed thereby shall be vested in the district to which same is transferred as fully and to the same extent as if a permit had been issued for same by said State Board of Water Engineers. [Acts 1923, p. 282, Sec. 1.]

Art. 7801. Excluding land from district.—All water improvement districts which have been organized and in which it may be thereafter determined that some of the lands included within the boundaries of such district can not be irrigated by gravity flow from the irrigation system as constructed may eliminate and take said land out of said district at any time prior to the issuance of bonds or other fixed obligations by said district in the following manner. The board of directors of such district shall make an order specifying such lands and the owners thereof and declaring same to be so situated that they will not be irrigated by gravity flow from the canals constructed or to be constructed, and enter such order on the minutes of said board. Within ten days after said order is so made and entered notice thereof shall be given by publishing a true copy of same in a newspaper of general circulation in the county in which said lands are situated

once a week for two weeks. If no protest is filed to such action with said board of directors within fifteen days after the final publication of said notice, said order shall become final as to all lands included in said order the owners of which have not filed a protest. In the event any owner of said lands or any part thereof shall file a protest with said board of directors contesting said action and asking that said lands be not taken out of said district then as to same order shall be annulled and said lands or parts thereof described in said protest shall remain in said district. In the event any lands are so excluded from a district that it may thereafter be desired to have again included in said district same may be so included upon application of the owner thereof in the manner provided by law for adding lands to an established district. [Acts 1923, Ch. 135, p. 278, Sec. 1.]

Art. 7802. Districts heretofore organized may take advantage.—Any water improvement district, drainage district, or levee improvement district, heretofore organized or hereafter organized or hereafter to be organized, under the laws of this State, as defined districts, under Section 52 of Article 3 of the Constitution, may avail itself of the benefits of Section 59 of Article 16 of the Constitution, and thereby become a conservation and reclamation district, without change of name. [Acts 1923, p. 282, Sec. 2.]

Art. 7803. May incur indebtedness.—Any conservation or reclamation district hereafter organized under this Act, and any water improvement district, drainage district or levee improvement district which may be constituted a conservation and reclamation district under this Act, may incur indebtedness and levy taxes to fully carry out each and all of the purposes of its organization, and for the payment of its obligations and the maintenance and operation of said district. [Id. Sec 3.]

Art. 7804. Limitations removed.—All limitations of indebtedness authorized to be incurred and taxes to be levied, imposed by Section 52 of Article 3 of the Constitution, and any and all laws under which any such district has been or may be organized, are removed as to all districts which may become conservation and reclamation districts under the terms of this Act. [Id. Sec. 5.]

Art. 7805. To change districts heretofore organized.—Any water improvement district, or irrigation district heretofore or hereafter organized under the laws of this State, may become and be made a conservation and reclamation district, as herein provided, in the following manner: When a petition signed by twenty per cent of the owners of land in such district, praying therefor, is presented to the directors, they shall order an election to be held to determine such issue, such election to be conducted as provided for general elections in such districts. The ballots shall have printed thereon the following: "For Conservation and Reclamation." The directors shall canvass the returns and declare the result of such election, and have recorded in the deed records of the county or counties in which such district is situated a full copy of the order declaring the result of such election; and when such order is in favor of so making such district a conservation and reclamation district, it shall become such dis-

trict without change of name or impairment of its obligations, upon the result of such election being declared and recorded as herein provided. [Id. Sec. 5.]

Art. 7806. Governed by regulations of water improvement districts.—Any conservation and reclamation district organized for the purpose for which water improvement districts and irrigation districts have heretofore been organized, or any water improvement district or irrigation district becoming a conservation and reclamation district under the terms hereof, shall be governed and controlled by the provisions of law applying to water improvement districts, except as herein otherwise provided. [Acts 2nd C. S., 1919, p. 37, Sec. 6.]

Art. 7807. May choose benefit or ad valorem basis.—Any water improvement district organized under authority of Section 59 of Article 16 of the Constitution, and Chapter 25, General Laws, Fourth Called Session, Thirty-fifth Legislature, as well as any water improvement district which may have been created prior to the adoption of such constitutional amendment, and which shall have availed itself, or may hereafter avail itself, of the benefits of Section 59 of Article 16 of the Constitution, may, at the time of its creation, or at any time thereafter before such district shall have issued bonds, submit to the qualified electors of such district the question whether the taxes to be levied therein, or any part thereof, shall be levied, assessed and collected upon an "equitable" basis in proportion to benefits to be conferred by the organization, operation and maintenance of such district and the work and improvements to be created thereby, or whether such taxation of any portion thereof shall be levied upon an ad valorem basis. Such question shall be submitted to the qualified voters of such district at any time and in any manner that the governing body of such water improvement district may elect, and the ballots to be used shall have printed thereon in substance the following: "For the levy of taxes upon a benefit basis instead of an ad valorem basis," and, "Against the levy of taxes on a benefit basis instead of on an ad valorem basis." And such election shall be governed by the provisions of Chapter 87 of the General Laws of the Thirty-fifth Legislature, Regular Session, so far as applicable. If a majority of the votes cast at such election shall be in favor of the levy and collection of the taxes, or any part thereof, upon an equitable basis in proportion to benefits, instead of upon an ad valorem basis, then the directors of such district shall at some convenient time thereafter, and from time to time as may be necessary, sit as a board to apportion and assess the benefits conferred upon any and all property situated within such water improvement district, and shall cause a record to be made, showing the amount and value of the benefits computed to accrue to all of the property situated within such district and subject to taxation, and the amount of taxes upon such basis to be levied against and collected from such basis to be levied against and collected from such property; provided, that no taxes so assessed or adjudged against such property shall be in excess of the benefit accruing and to accrue to such property from the organization, operation and maintenance of such

district and the improvements to be acquired or constructed thereby. After such record shall have been made up, the board shall cause notice to be mailed to each property owner whose name appears upon such record, showing the amount of taxes to be levied against such property, and fixing a date and place at which such owner may appear and contest the correctness and equitableness of such tax. And after such hearing such board of directors of other governing body shall determine the equitableness of the tax and sustain, reduce, or increase the same, as in their judgment shall be just and equitable; and the decision of such board shall be final. All of the provisions of Chapter 87, General Laws, Thirty-fifth Legislature, Regular Session, and amendments thereto, not inconsistent herewith shall apply to the levy, assessments and collection of the taxes herein provided for. [Id. Sec. 5a.]

CHAPTER THREE.

WATER CONTROL AND PRESERVATION DISTRICTS.

1. ESTABLISHMENT.

| | Article | | Article |
|-----------------------------------|---------|--------------------------------------|---------|
| May establish | 7808 | Election: conduct of | 7823 |
| Purposes | 7809 | List of voters | 7824 |
| Powers | 7810 | Voter's oath | 7825 |
| Petition | 7811 | Taxpayer's oath | 7826 |
| Contingent deposit | 7812 | Results of election | 7827 |
| Notice of hearing | 7813 | Declaration of result | 7828 |
| Hearing | 7814 | Board of directors | 7829 |
| Hearing: authority of court | 7815 | Combined district | 7830 |
| Findings | 7816 | Combined district: declaration | 7831 |
| May renew petition | 7817 | Combined district: hearing | 7832 |
| Appeal | 7818 | Combined district: directors | 7833 |
| Appeal: proceedings | 7819 | Combined district: election | 7834 |
| Election order | 7820 | Director's bond and oath | 7835 |
| Notice of election | 7821 | County officers: compensation | 7836 |
| Ballot | 7822 | | |

Art. 7808. May establish.—One or more water control and preservation districts may be established in the several counties, or a part of any county, or in two or more adjacent counties, or in parts of two or more adjacent counties, or in one county and part of an adjacent county or counties, in the manner provided in this chapter. Said districts may or may not include within their boundaries villages, towns and municipal corporations, or any part thereof, but no land shall be at the same time included within more than one such district. All such districts are defined districts within the meaning of Section 52, Article 3 of the State Constitution. [Acts 4th C. S. 1918, p. 74.]

Art. 7809. Purposes.—Said districts, when established, shall be for the purpose of the control and preservation of the purity of the waters of any rivers, creeks, bayous, lakes, canals, streams or other waters of any kind and character situated or flowing, in whole or in part, through the said district, or any part thereof, by the prevention of the inflow of salt water or other deleterious substances, or by the changing of said waters from salt to fresh water, and the impounding of fresh water for such purposes. [Id.]

Art. 7810. Powers.—Such districts, when established, shall have full power to erect, construct, maintain, repair and re-

construct dams, bulkheads, jetties, locks, gates, or any other character of improvement or construction necessary to the accomplishment of any such purpose, and to make such construction without the boundaries of the district, where same may be deemed necessary to the preservation, or the improvement of the purity and irrigable quality of such waters; and may issue bonds in payment therefor. [Id.]

Art. 7811. **Petition.**—Upon the presentation to the commissioners court of a petition signed by twenty-five of the resident property taxpayers of any proposed district praying for the establishment thereof within the county, and setting forth the boundaries, and accompanied by a map thereof, the general nature of the improvements proposed, and an estimate of the probable cost thereof, and praying for the issuance of bonds and levy of a tax in payment thereof, and designating a name for such district which shall include the name of the county; and accompanied by the affidavit of the petitioners stating that they are resident property taxpayers of such county; the court shall set the same down for a hearing at a regular or called session, not less than thirty nor more than sixty days thereafter. [Id.]

Art. 7812. **Contingent deposit.**—The petition shall be accompanied by five hundred dollars in cash which shall be deposited with the clerk of the commissioners court of the county in which the largest portion of the proposed district is situated. If the result of the original election is in favor of the establishment of the district, the clerk shall return said deposit to the petitioners, their agent or attorney; otherwise the clerk shall pay the same out upon the vouchers signed by the county judge of such county, for all expenses and costs pertaining to the proposed district up to and including said election, and shall return the balance to the petitioners, their agent or attorney. [Id.]

Art. 7813. **Notice of hearing.**—The court shall, when setting a date for the hearing, order the clerk of said court to give notice of the date and place of said hearing by posting, or causing to be posted, not less than twenty days prior to the hearing, a copy of said petition and the order of the court thereon, one at the courthouse door and four others within the limits of the proposed district. Said clerk shall receive one dollar for each such notice and five cents per mile for each mile necessarily traveled in posting such notices. [Id.]

Art. 7814. **Hearing.**—Any person who may be affected thereby may appear before said court and contest the creation of said district, or contend for its creation, and may offer testimony in favor of or against the boundaries of said district to show that the proposed improvements would or would not be of any public utility, and would or would not be feasible or practicable, and the probable cost of such improvements, or as to any other matter pertaining to the proposed district. [Id.]

Art. 7815. **Hearing: authority of court.**—Unless otherwise

provided, the commissioners court shall have exclusive jurisdiction to hear and determine all contests and objections to the creation and establishment of any district, and shall have exclusive jurisdiction in all subsequent proceedings of any organized district, and may adjourn hearing on any matter connected therewith from day to day; and all judgments, decrees or orders rendered or entered by said court in relation thereto shall be final. [Id.]

Art. 7816. **Findings.**—If at said hearing it appears to the court that the organization of such district and the proposed improvement is feasible and practicable, and that it would be a public benefit or public utility, then it shall so find, and shall also find the amount of money necessary for said improvement and for all expenses incident thereto and the expenses necessarily incurred in connection with the creation and establishment of the district, and shall specify the amount of bonds to issue, the length of time the bonds shall run, and the rate of interest said bonds shall bear. If the court finds that such organization and improvement is not feasible or practicable, or that it would not be a public benefit or utility, then it shall dismiss the petition at the cost of the petitioners. In either case, the court shall enter its findings in the records of the court. [Id.]

Art. 7817. **May renew petition.**—The order dismissing said petition or any appeal therefrom shall not prevent the presentation at any subsequent time of a similar petition with changed boundaries, but the presentation of a similar petition with identical boundaries shall not be permitted until the expiration of six months after such dismissal. [Id.]

Art. 7818. **Appeal.**—Any petitioner or taxpayer in such district may appeal from the findings of said court to the district court of said county. Such appeal shall be perfected within five days after the rendition of the order appealed from, in the following manner: notice of appeal shall be given and entered of record on the minutes of said court, at the time of the entry of said order by announcement of same before said court, or by giving written notice within two days after the entry of such order by a simple statement that the undersigned gives notice of appeal from the order entered on the date stated, and by filing such written notice with the county clerk; and by filing an appeal bond with two or more good and sufficient sureties for one hundred dollars, payable to the county judge and approved by the county clerk, and conditioned upon the due prosecution of the appeal and payment of all costs incident thereto. Unless appeal is so perfected, such order shall be final and conclusive. [Id.]

Art. 7819. **Appeal: proceedings.**—Within five days from the filing of the appeal bond, the county clerk shall transfer to the district clerk all records filed with the commissioners court pertaining to the establishment of said district, and it shall not be necessary to file additional pleadings in said court. The court

shall set the matter down for hearing de novo, giving it precedence over all other cases, and the matters shall be tried and determined by the court. The judgment of the district court shall be final and conclusive, and shall be certified to the commissioners court for its further action. [Id.]

Art. 7820. Election order.—If the petition is granted, the commissioners court shall order an election to be held in such district at the earliest legal time, to determine whether or not such district shall be created and whether or not a tax shall be levied sufficient to pay the interest and provide a sinking fund to redeem said bonds at maturity. Said order shall specify the amount of bonds to be issued, the length of time said bonds shall run, and the rate of interest they shall bear, as determined by the court. [Id.]

Art. 7821. Notice of election.—Notice of such election stating the time and place of holding the same shall be given by the county clerk by posting or causing to be posted notices thereof in four public places in such district and one at the courthouse door, for thirty days prior to the election. Said notice shall also contain the proposition to be voted on and the purpose for which said bonds are to be issued and the amount of such bonds, and shall contain a copy of the election order. [Id.]

Art. 7822. Ballot.—The commissioners court shall provide twice as many ballots as there are qualified resident property tax paying voters within such district. Said ballots shall have printed thereon the words and none others: "For the Water Control and Preservation District, and issuance of bonds and levy of tax in payment thereof;" "Against the Water Control and Preservation District, and issuance of bonds and levy of tax in payment thereof." [Id.]

Art. 7823. Election: conduct of.—None but resident property taxpayers who are qualified voters of said proposed district shall be entitled to vote at such election. The commissioners court shall create and define, by an order of the court, the voting precincts in the proposed district, and shall name convenient polling places therein, and shall appoint the judges and other necessary election officers. [Id.]

Art. 7824. List of voters.—The tax collector of the county wherein such district is situated, prior to the election, shall make a certified list of the property taxpayers of said district and furnish to the presiding judge of each precinct a list of such voters in such precinct. No person whose name does not appear in said list shall vote at any election under this chapter, except as provided in the two succeeding articles. [Id.]

Art. 7825. Voter's oath.—Any person who acquired property in said district after the first day of January of the preceding year may vote in said election upon taking the following oath before the presiding judge of the polling place where he offers to vote, and such judge is authorized to administer same: "I do solemnly swear that I am a qualified voter of _____"

County and that I am a resident property taxpayer of the proposed district, that I was not subject to pay property tax in said district for the preceding year and have not voted before at this election." [Id.]

Art. 7826. Taxpayer's oath.—Any person whose name was erroneously omitted from said list of voters may vote at said election upon taking the oath as prescribed in the preceding article except that in lieu of the clause "that I was not subject to pay property tax in said district for the preceding year," there shall be substituted "that I was subject to and did pay property tax in said district for the preceding year. [Id.]

Art. 7827. Results of election.—Said court shall canvass the vote, and if two-thirds of such votes are in favor of the proposition submitted, then the court shall declare the result of said election to be in favor of said district, and shall enter same in their minutes as provided in the succeeding article. [Id.]

Art. 7828. Declaration of result.—Said order of the court shall be as follows: "Commissioners court of _____ County, Texas, _____ day of _____ A. D. _____ in the matter of petition of _____ and _____ others, praying for the establishment of a Water Control and Preservation District, and issuance of bonds and levy of taxes in said petition fully described and designated by the name of _____ Water Control and Preservation District _____. Be it known that at an election called for that purpose in said district, held on the _____ day of _____ A. D. _____, a two-thirds majority of the resident property taxpayers voting thereon voted in favor of the creation of said District, and the issuance of bonds and levy of a tax. Now, therefore, it is considered and ordered by the court that said District be and the same is hereby established by the name of _____ Water Control and Preservation District _____, and that the bonds of said District in an amount not exceeding _____ dollars be issued by the Directors of said District, and that said Board of Directors levy a tax of _____ cents on the hundred dollars of valuation, or so much thereof as may be necessary, upon all property within said district, whether real, personal, mixed or otherwise, sufficient in amount to pay the interest on such bonds and provide a sinking fund sufficient to redeem them at maturity, and that if said tax shall at any time become insufficient for such purpose, same shall be increased by said Directors until same is sufficient. The metes and bounds of said District being as follows, to-wit: (giving the metes and bounds.)" [Id.]

Art. 7829. Board of directors.—At the same meeting when said order is made, or at a called meeting within five days thereafter, the court shall appoint a board of directors consisting of three members, all of whom shall be freehold property taxpayers and legal voters of the county embraced in whole or in part within the district, and more than twenty-one years of age. Each shall receive three dollars per day for each day nec-

essarily taken in the discharge of their duties as such; and shall hold office for two years, unless sooner removed by a majority vote of said court. Upon the expiration of their terms of office, the court shall appoint their successors by majority vote. Should any vacancy occur in said board, the same shall be filled in like manner by said court. [Id.]

Art. 7830. Combined district.—Where a proposed district lies partly within two or more counties, the petition for the establishment of said district shall be presented to the commissioners court of each county. Each such court shall give all necessary notice as provided for a single district in one county, but stating that same is a part of such entire district, and shall order an election, appoint all necessary officers, furnish all supplies, canvass the returns and declare the result of such election, all as provided for a single district. The presiding officer of each court shall then certify and report the result of said election to the county judge of the county in which the largest portion of such district is situated. [Id.]

Art. 7831. Combined district: declaration.—Said county judge shall canvass said vote and declare the result thereof, and if two-thirds of such votes favor the creation of said district, he shall declare the result and make the same order as provided herein for a single district. Copies of such order shall be filed with the county clerk of each county and shall be held to be a proclamation of the result of said election. [Id.]

Art. 7832. Combined district: hearing.—The commissioners court of each county shall hear and determine the matters relating to the establishment of said district in their county, in the same manner as provided for a single district, and appeals may be taken therefrom to the district court of any county in which any part of said district is situated, in the manner provided herein for a single district. [Id.]

Art. 7833. Combined district: directors.—A board of five directors shall be elected at the same election held for the establishment of such district, and the ballot therefor may have printed thereon the names of such candidates, or the voter may write upon his ballot the names of the persons voted for as directors; and the five persons receiving the highest number of votes so cast shall be the directors of said district, and shall hold office until the next regular election. In case of vacancy in said board, or if the number of directors is reduced by any cause to less than three, said vacancies shall be filled in the same manner as provided by law in such cases for directors of water improvement districts under Chapter 2 of this title. [Id.]

Art. 7834. Combined district: election.—On the second Tuesday of January after the establishment of such district, and biennially thereafter, an election for such directors shall be held in each such county in accordance with the election laws of this State and the provisions of this chapter for elections for establishing a district. Said directors shall hold office for two years.

The directors shall give notice of the election, appoint election officers, receive and canvass the election returns and perform all other duties necessary for holding said elections. [Id.]

Art. 7835. **Director's bond and oath.**—Within ten days after their appointment or election, or as soon as practicable thereafter, the directors shall each make a good and sufficient bond for five thousand dollars payable to their district, conditioned upon the faithful performance of their duties, to be approved by the commissioners court of the county in which the director resides, and such bond and a copy of the order approving same shall be filed with the county clerk of the county in which the largest part of the district is situated. Such clerk shall record and index the same in the deed records in the manner provided for recording and indexing deeds. Each director shall take the official oath before the county clerk of the county in which the director resides. All bonds and oaths shall be delivered by said clerks to the district depository and be by it safely kept and preserved for the district. [Id.]

Art. 7836. **County officers: compensation.**—Unless otherwise provided, the duties and powers herein conferred upon the county judges and members of the commissioners court, and other officers are made a part of the regular duties of said officials, which they shall render and perform without additional compensation, and the county clerk shall receive the same compensation for his services hereunder as provided for similar services under Chapter 2 hereof. [Id.]

2. BOARD OF DIRECTORS.

| | Article | | Article |
|-----------------------------|---------|---------------------------|---------|
| Organization of board | 7837 | Official bonds | 7842 |
| Meetings | 7838 | District records | 7843 |
| Powers | 7839 | Disbursements | 7844 |
| Powers: limitation | 7840 | District depository | 7845 |
| Further powers | 7841 | Audit and report | 7846 |

Art. 7837. **Organization of board.**—As soon as possible after their qualification, the directors shall organize by electing one of their number president and one as district secretary. When the board consists of three members, any two directors shall be a quorum; and when it consists of five members, any three directors shall be a quorum. [Id.]

Art. 7838. **Meetings.**—During the progress of the construction of any improvement under contract, the directors shall maintain a regular office within such district, and may in their discretion when deemed necessary, maintain a regular office in the district during any other time. The directors shall hold an annual meeting on the first day of December at ten o'clock A. M. and may provide for meetings at stated intervals by resolution duly passed, and the president or any two directors may call special meetings at any time that may be deemed proper or necessary. [Id.]

Art. 7839. **Powers.**—The directors shall have control over the management of all district affairs, shall make all contracts

pertaining thereto, and shall employ all necessary employes for the proper conduct and operation of such district, including engineers, bookkeepers and such other assistants and such laborers as may be required, at such compensation as they may determine, and may require bonds of any employes in any amount they may determine. They may employ attorneys to represent such district in the preparation of any contract or the conduct of any proceedings in or out of court, and to be the legal adviser of the directors, on such terms and for such fees as may be agreed upon by them. [Id.]

Art. 7840. **Powers: limitation.**—Where the district lies wholly in one county, the directors shall not, after the completion of the improvements, employ any attorneys as legal advisers of the district or an engineer for such district, or any other employes, except with the concurrence and consent of the commissioners court of such county; and the compensation paid by any such attorney, engineer, or employe so employed shall be fixed by the directors subject to the approval of the commissioners court. [Id.]

Art. 7841. **Further powers.**—The directors may employ a general manager to have general charge of the work, paying such compensation as may be agreed upon by the directors. A director may be appointed as general manager at such compensation as may be fixed by the other directors, and when so employed he shall also perform the duties of a director, but shall not receive the compensation to be paid to the directors. The directors may also buy all necessary work animals, machinery and supplies and material of all description as may be required in the construction, operation or repairing of the improvements of the district, and may do and perform all things necessary and proper in carrying out the purposes of said district. [Id.]

Art. 7842. **Official bonds.**—All district officers and employes who may be required to give bond or security may furnish bonds of surety companies, subject to the approval of the directors. All such bonds shall be preserved by the directors as the property of said district. After the organization of a district, all bonds required of any district officer or employe shall be approved by the directors. [Id.]

Art. 7843. **District records.**—The directors, through the secretary, shall keep a true account of all matters and proceedings of the board, and shall preserve all contracts, records and notices, duplicate vouchers, duplicate receipts, and all accounts and records of whatsoever kind, and the same shall be the property of the district and shall be delivered to their successors in office. [Id.]

Art. 7844. **Disbursements.**—All payments of any district funds shall be by voucher upon the district depository, and all such vouchers shall be signed by the president or any two di-

rectors. All vouchers shall be issued from a regular duplicate book containing a duplicate, which shall be preserved. [Id.]

Art. 7845. **District depository.**—The directors shall select a depository for such district in the same manner as now provided by law for the selection of county depositories, and such depository shall be regulated by the same laws as those governing county depositories. In such selection, the directors shall perform the same duties as are incumbent upon the county judge and members of the commissioners court in the selection of county depositories. Such depository shall make and file reports and preserve the district records as required of depositories under Chapter 2 hereof. [Id.]

Art. 7846. **Audit and report.**—The directors shall annually require an audit to be made of the district records and accounts, at the time and in the manner provided for audits of Water Improvement Districts under Chapter 2 of this title, and on the first of January of each year they shall make and file a report of the condition of the district affairs and other data required of directors of Water Improvement Districts. [Id.]

3. POWERS OF DISTRICT.

| | Article | | Article |
|--------------------------------|---------|-------------------------------|---------|
| Status of district | 7847 | Construction contracts | 7853 |
| Suits affecting district | 7848 | Supervision of work | 7854 |
| Property rights | 7849 | Contract: payment | 7855 |
| Eminent domain | 7850 | Maintenance of district | 7856 |
| District engineer | 7851 | Joint project | 7857 |
| Federal co-operation | 7852 | Joint action | 7858 |

Art. 7847. **Status of district.**—Any district may by and through its directors sue and be sued in the name of such district, and all courts of this State shall take judicial notice of the establishment of such districts; and said districts shall contract and be contracted with in the name of such districts. They shall have a circular seal containing a five pointed star in the center surrounded by the name of the district. [Id.]

Art. 7848. **Suits affecting district.**—No suit shall be brought in any court of this State contesting the validity or enjoining the formation of any district, or any bonds issued hereunder, or in anywise affecting the establishment of the district, or issuance of bonds by such district, except in the name of this State by the Attorney General, upon his own motion or upon the motion of any party affected thereby, upon good cause shown. [Id.]

Art. 7849. **Property rights.**—The directors are hereby empowered to acquire the necessary right of way and property of any kind or character whatsoever for all necessary improvements contemplated by this chapter, by gift, grant, purchase or condemnation proceedings, within or without the boundaries of the district; and any property acquired may be conveyed to the United States in so far as the same shall be necessary for the construction, operation and maintenance of works by the United States under any contract that may be entered into between the district and the United States. [Id.]

Art. 7850. **Eminent domain.**—The right of eminent domain is hereby conferred upon all districts for the purpose of condemning and acquiring the right of way over and through all lands, private and public, except property used for cemetery purposes, necessary for making and maintaining dams, bulkheads, jetties, locks, gates and all other improvements necessary and proper for such construction. Such right shall extend to any county in this State. All such condemnation proceedings shall be under the direction of the directors and in the name of the district; and all compensation and damages adjudicated in such proceedings shall be paid out of the "Construction and Maintenance Fund." [Id.]

Art. 7851. **District engineer.**—The directors shall have authority to employ a competent engineer whose term of office shall be at the will of the directors. He shall make all necessary surveys, examinations, investigations, maps, plans, and drawings with reference to the proposed improvements. He shall make an estimate of the cost of such improvements, shall supervise the work thereon, and perform all such duties as may be required of him by the directors. If any proposed improvement or construction work necessary to the accomplishment of the purposes authorized in this chapter requires the permission or consent of the Federal Government or any department or officer thereof, the directors shall have authority to obtain such consent, and in lieu of or in addition to the employment of the district engineer, they shall have power to adopt any survey of any waters theretofore made by the United States, and to arrange for surveys, examination and investigation of the proposed improvements, and supervision of such work by the United States or the proper department or officer thereof. [Id.]

Art. 7852. **Federal co-operation.**—The directors shall have full power to co-operate and act with the United States or any officer or department thereof, in any matter pertaining or relating to the construction and maintenance of any improvement, whether by survey, work or expenditure of money made or to be made, either by the directors or by Federal authority, or both. Such directors shall have authority to agree and consent to the United States entering upon and taking the management and control of said work of construction, repair or reconstruction and maintenance, in so far as it may be necessary or permissible under the laws of the United States and the regulations and orders of any department thereof. [Id.]

Art. 7853. **Construction contracts.**—If the district improvements are not carried out by the United States, the contracts for such improvements shall be let by the directors to the lowest and best responsible bidder. If more than one improvement is to be made, the contract may be let separately for each, or one contract for all such improvements. These rules shall govern the letting of such contracts: 1. Bids shall be called for by advertising the same in one or more newspapers of general circulation in Texas, once a week for four consecutive weeks, and by posting notices for at least thirty days at the courthouse door

of the counties in the district and four other notices in each county. 2. Any person, firm or corporation desiring to bid on the constructin of any work so advertised, upon application to the district secretary, shall be supplied with the surveys and plans for said work. All bids shall be in writing and sealed and delivered to the president or district secretary, together with a certified check for two per cent of the total amount bid. Such deposit shall be forfeited to the district in case the bidder refuses to enter into a proper contract and make the necessary bond, if his bid is accepted, or returned to the bidder if his bid is rejected. Any bid may be rejected at the discretion of the directors. 3. Each contractor shall give bond payable to the district in such amount as may be determined by the directors, not to exceed the contract price, and not less than fifty per cent thereof, conditioned that he will faithfully perform the obligations, agreements and covenants of such contract, and that in default thereof, he will pay to said district all damages sustained by reason thereof; and such other conditions as may be required by law of contractors for public work. Said bond shall be approved by the directors. 4. All contracts shall be in writing and signed by the contractors and president of the directors and attested by the district secretary. A copy of same shall be filed with the clerk of the county in which the largest portion of such district is situated. [Id.]

Art. 7854. **Supervision of work.**—All work contracted for, unless done under Federal supervision, shall be done under the supervision of the district engineer. When the work is completed according to the contract, he shall make a detailed report of same to the directors, showing whether the contract has been fully complied with according to its terms, and if not, in what particular it has not been so complied with. The directors shall not be bound by such report, but may in addition thereto fully investigate such work and determine whether or not such contract has been complied with; and while such work is in progress, they shall inspect the same. [Id.]

Art. 7855. **Contract: payment.**—Upon completion of any contract, the directors shall draw a voucher on the district depository for the amount of the contract price in favor of the contractor or his assignee. Said voucher shall be paid out of the Construction and Maintenance Fund. If the directors deem it advisable, they may contract for the work to be paid for in partial payments as the work progresses, but such partial payments shall not exceed in the aggregate eighty per cent of the total amount to be paid under the contract, and the amount of work completed shall be shown by a certificate of the engineer. [Id.]

Art. 7856. **Maintenance of district.**—After the full and final completion of all improvements of the district, and after payment of all expenses incurred under this chapter, the directors are authorized to use the funds remaining in the Construction and Maintenance Fund for the best interest of such district in

the preservation, upkeep, repair and reconstruction of the works of such district. [Id.]

Art. 7857. Joint project.—Two or more districts may by contract join in the construction of any improvement and enter upon any work authorized hereunder, as a joint project, when in the judgment of the directors of each district, such improvement, work or construction will be advantageous to the respective districts. Such contract shall stipulate the pro rata amount to be paid by each district for such project to provide for its maintenance, repair and reconstruction, and shall be executed by the directors. Such project may be undertaken regardless of the location of the proposed work. Such contract may be enforced and specific performance compelled by any court of competent jurisdiction. [Id.]

Art. 7858. Joint action.—When improvements are constructed by two or more districts, bids may be jointly called for and opened and considered at the designated office of either district, and the directors of such districts shall approve the letting of the contract and contractor's bond, and may meet and transact all business for that or any other purpose concerning such project at a place outside the district, or at any office established for such joint project. All bids, bonds, contracts, etc., of said project shall be in the name of said districts, which are empowered to do all acts by joint action that one district may do, the action of each district being determined by its directors. A general manager, who may be a director of either district, may be employed for such project, whose duties may be set forth in the joint ownership contract. [Id.]

4. BONDS.

| | | | |
|----------------------------|--------------|-----------------------------------|--------------|
| Issuance of bonds | Article 7859 | Resolution | Article 7865 |
| Bonds: requisites | 7860 | Additional bonds: requisites..... | 7866 |
| Bonds: limit of issue..... | 7861 | Additional bonds: ballot | 7867 |
| Bonds: record | 7862 | Bonds: sale | 7868 |
| Change in plans | 7863 | Construction and Maintenance | |
| Additional bonds | 7864 | Fund | 7869 |

Art. 7859. Issuance of bonds.—Immediately after their organization, the directors shall enter an order directing the issuance of bonds for such district within the limits authorized by the election held therefor, sufficient to cover the cost of the proposed improvements, all of the expenses incident thereto, and the expenses necessarily incurred in connection with the creation and establishment of the district; and they shall levy a tax upon all property subject to taxation in the district, sufficient to pay the interest on such bonds, with an amount to be placed in the sinking fund sufficient to redeem said bonds at maturity, and such levy shall remain as a levy for such purpose until a new levy is made. [Id.]

Art. 7860. Bonds: requisites.—All bonds issued under this chapter shall be governed by the provisions of Chapter 2 of this title governing the issuance, denomination, rate of interest, ma-

turity dates, manner of payment, proceedings to test validity, and registration by the Comptroller, of bonds of water improvement districts. [Id.]

Art. 7861. Bonds: limit of issue.—Said bonds shall not exceed in amount one-fourth of the assessed valuation of the real property of such district as made by the last annual assessment thereof for State and county taxation. [Id.]

Art. 7862. Bonds: record.—The directors shall provide a well bound book in which a record shall be kept by the clerk of the county in which the largest portion of said district is situated, of all bonds issued with their numbers, amounts, rate of interest, date of issue, when due, where payable, the annual rate of tax levy made each year to provide for interest and sinking fund, and of each payment made thereon. The district secretary shall furnish said clerk a certified copy of all orders made in connection with the issuance and levy and assessment of taxes for the payment of interest and creating a sinking fund. Said record shall be at all times open to the inspection of all parties interested in said district, either as taxpayers or bond holders. [Id.]

Art. 7863. Change in plans.—If after an election has been held for the issuance of bonds, the directors shall consider it necessary to make any modification or change in any proposed improvements, they shall, with the concurrence of all the directors, be authorized to make such change. [Id.]

Art. 7864. Additional bonds.—If the directors shall determine to make additional improvements, works or construction in order to carry out the purposes for which said district was organized, or to reconstruct any improvements theretofore made, and the amount derived from the bonds issued or authorized is not sufficient, a resolution to that effect shall be duly entered upon the minutes of the board, and a certified copy thereof presented to each commissioners court in the district. [Id.]

Art. 7865. Resolution.—Said resolution shall set forth the proposed work, the amount of bonds to be issued to pay for same, their rate of interest and maturity dates, and shall embody therein a request to the commissioners court or courts to order an election in such counties to vote on such propositions and whether or not a tax shall be levied to provide for the interest and sinking fund for such bonds at a day specified in the resolution. [Id.]

Art. 7866. Additional bonds: requisites.—The commissioners court must, on receipt of such resolution, order an election on the day specified therein. Notice of such election shall be given, returns made, result declared, orders entered, tax levied, certified, assessed and collected, and all other matters applicable shall be performed in the same manner as herein provided in case of elections for original bonds. All provisions as to the issuance, approval, validation, registration, recordation and sale

of original bonds shall be applicable to such additional bonds. [Id.]

Art. 7867. Additional bonds: ballot.—The ballot for such election shall have printed thereon the words and none other: “For the issuance of additional Water Control and Preservation Bonds and levy of tax in payment thereof;” “Against the issuance of additional Water Control and Preservation Bonds and levy of tax in payment thereof.” [Id.]

Art. 7868. Bonds: sale.—After registration of said bonds by the Comptroller, the directors shall sell the same on the best terms and for the best price possible, not less than their face value and the accrued interest thereon; or they may exchange bonds in payment of the contract price for work to be done for the use and benefit of said district. All moneys received from the sale of bonds shall be forthwith paid to the district depository. [Id.]

Art. 7869. Construction and maintenance fund.—There is hereby created a “Construction and Maintenance Fund” of such district, which shall consist of all moneys received from the sale of bonds and all other amounts received by said district from whatsoever source, except the tax collections applied to the interest and sinking fund on bonds. All expenses of any kind prior to and after the filing of the original petition necessarily incurred in connection with the creation, establishment and maintenance of any district, and improvements, repairs, cost of maintenance, salaries of all officers and employes, and all expenditures for any purposes of the district shall be paid out of such fund. [Id.]

5. TAXES.

| | Article | | Article |
|----------------------------|---------|--------------------------------|---------|
| Tax levy | 7870 | Delinquent taxes | 7876 |
| Assessment of taxes | 7871 | Maintenance tax | 7877 |
| County tax assessor | 7872 | Tax money: disposition | 7878 |
| County tax collector | 7873 | Interest and Sinking Fund..... | 7879 |
| Collector: bond | 7874 | May invest sinking fund..... | 7880 |
| Taxes: payment | 7875 | | |

Art. 7870. Tax levy.—The directors shall annually levy and cause to be assessed taxes upon all property within said district sufficient to pay the expenses of assessing and collecting same, and a tax sufficient for the expenses incident to the maintenance of the district. The directors may from time to time increase or diminish any tax so as to adjust the same to the taxable value of the property subject to taxation, and shall certify the levy of all such taxes to the commissioners court of each county in the district. [Id.]

Art. 7871. Assessment of taxes.—When the levy of taxes is so certified, each such court shall order the county tax assessor to assess all property in the county subject to such tax, and list the same for taxation in the books or rolls furnished him by said court for such purpose and charged to the district. Said assessor shall return said books when he returns the other

books or rolls of the State and county taxes for correction and approval, and if said courts shall find said books or rolls correct, they shall approve same. In all matters pertaining to such assessment, the tax assessor and board of equalization of the county shall be authorized to act and shall be governed by the laws of Texas for assessing and equalizing property for State and county taxes. [Id.]

Art. 7872. County tax assessor.—Each county tax assessor shall receive for said service such compensation, not to exceed the amount allowed by law for like services, as the directors of the district shall determine proper. Should any tax assessor fail or refuse to comply with such orders of the commissioners court, he shall be suspended from the further discharge of his duties by the court, and be removed from office as provided by law for the removal of county officers. Upon failure to so order such assessor, the commissioners court shall be subject to mandamus by any court of competent jurisdiction on a petition in the name of the district, and the order of court upon such hearing may require the assessor to perform the duty without the intervention of an order of the commissioners court. [Id.]

Art. 7873. County tax collector.—The county tax collector in each county wherein any part of the district may be situated shall be charged by the commissioners court of such county with the assessment rolls of the district, or that part of the district situated within the county, and he shall collect said taxes within his said county. In so doing, he shall be authorized to act and shall be governed by the laws of this State for the collection of State and county taxes, and suits may be brought for the collection of said taxes and the enforcement of the tax liens created by this chapter. His compensation shall be determined in the same manner as for the county assessor. [Id.]

Art. 7874. Collector: bond.—The commissioners court shall require the tax collector of their respective counties to give an additional bond or security in such sum as they may deem proper and safe to secure the collection of said taxes, payable to the district and conditioned as provided by law for tax collector's bonds. Should any tax collector fail or refuse to give such bond or security when requested by said court, within the time prescribed by law for such purposes, or fail or refuse to collect the taxes so levied, he shall be suspended from office by the commissioners court and immediately thereafter be removed from office in the mode prescribed by law. [Id.]

Art. 7875. Taxes: payment.—All taxes authorized to be levied by this chapter shall be a lien upon the property upon which said taxes are assessed, and said taxes shall mature and be paid at the time provided by the laws of this State for the payment of State and county taxes, and all penalties provided by law for the non-payment of said taxes shall apply to all taxes authorized to be levied by this chapter. [Id.]

Art. 7876. Delinquent taxes.—Said collector shall make a certified list of all delinquent property upon which said tax has not been paid, and return same to the commissioners court, which shall proceed to have the same collected by the sale of such property; and all the provisions of law with reference to delinquent State and county taxes, the collection thereof by suit or otherwise and the redemption of same from such sale, shall apply. Such suits shall be in the name of said district and brought and prosecuted by the same officers as provided for State and county taxes, who shall receive the same fees for such services as provided for like proceedings for State and county taxes. The directors may purchase such delinquent property for the benefit of the district. [Id.]

Art. 7877. Maintenance tax.—The directors shall have authority as occasion may require, in their discretion, to levy a tax on all property within such district in an amount sufficient to pay for the proper maintenance, operation and repair of any dams, bulkheads, jetties, locks, gates or any other improvement constructed by said district, and all the provisions of the preceding articles for the levy and collection of taxes shall apply. [Id.]

Art. 7878. Tax money: disposition.—The tax collector shall pay all moneys collected by him for said district to the district depository monthly, and as often as directed so to do by the directors, as now prescribed by law for the payment by tax collectors to county and city treasurers. [Id.]

Art. 7879. Interest and sinking fund.—There is hereby created an "Interest and Sinking Fund" for such district, and all taxes collected under this chapter for the payment of bonds and interest thereon shall be credited to such fund and shall never be paid out except for the purpose of satisfying and discharging the interest on said bonds, or for the payment, cancellation and surrender of said bonds. At the time of such payment, the depository shall receive and cancel any interest coupon so paid or any bond so satisfied or discharged, and when such coupon or bond shall be turned over to the directors, the account of such depository shall be credited with the amount thereof, and such coupon or bond shall be cancelled and destroyed. [Id.]

Art. 7880. May invest sinking fund.—The directors are empowered, whenever they deem it advisable, to invest any sinking fund of the district in bonds of the United States, of this State, of any county of Texas, any irrigation or water improvement or navigation bonds, or bonds of any school district in Texas authorized to issue bonds. No bonds shall be so purchased whose terms provide for their maturity at a date subsequent to the time of the maturity of the bonds for the payment of which such sinking fund was created. [Id.]

CHAPTER FOUR.

FRESH WATER SUPPLY DISTRICTS.

1. ESTABLISHMENT.

| | Article | | Article |
|---------------------------|---------|----------------------------------|---------|
| Purposes | 7881 | Voter's oath | 7891 |
| Petition | 7882 | Results of election | 7892 |
| Deposit | 7883 | Declaration of result | 7893 |
| Notice of hearing | 7884 | Registration of order | 7894 |
| Posting of notice | 7885 | District tax assessor | 7895 |
| Hearing | 7886 | Supervisor's bond and oath | 7896 |
| Findings | 7887 | General election | 7897 |
| Notice of election | 7888 | Fees | 7898 |
| Conduct of election | 7889 | Organization expenses | 7899 |
| Ballot | 7890 | | |

Art. 7881. Purposes.—There may be created within this State conservation districts to be known as Fresh Water Supply Districts for the purpose of conserving, transporting and distributing fresh water from lakes, pools, reservoirs, wells, springs, creeks, and rivers for domestic and commercial purposes, as contemplated by Section 59, Article 16 of the State Constitution. Said districts shall have and may exercise all the rights, privileges and powers given by this chapter and in accordance with its directions, limitations and provisions. Such districts may or may not include cities and towns. [Acts 2nd C. S. 1919, p. 107.]

Art. 7882. Petition.—When it is proposed to create a district, a petition shall be presented to the commissioners court of the county embracing the lands in the proposed district, or to the county judge of the county if said court is not in session. Said petition shall be signed by fifty or a majority of the qualified voters of such district who own land therein, and shall set forth the boundaries thereof, the general nature of the work proposed to be done, the necessity therefor, and the feasibility thereof, and designating a name therefor which shall include the name of the county in which it is situated. [Id.]

Art. 7883. Deposit.—The petition shall be accompanied by a deposit of one hundred dollars, which shall be paid to the county clerk who shall pay same out upon vouchers approved by the county judge, for all expenses incident to the hearing and the election for the creation of the district, returning any excess to the petitioners or their attorney. [Id.]

Art. 7884. Notice of hearing.—The commissioners court or county judge shall forthwith fix a time and place at which the petition shall be heard before said court, not less than fifteen nor more than thirty days thereafter, and shall direct the county clerk, as ex-officio clerk of said court, to issue notice of such time and place of hearing. Such notice shall inform all persons concerned of their right to appear and contest the genuineness of such petition and the signatures thereto, and whether said petitioners are qualified voters of such proposed district and owners of land therein. Said clerk may deliver such notice to any

adult who is willing to execute the same by posting as herein directed. [Id.]

Art. 7885. Posting of notice.—Upon receipt of the notice, such person or persons receiving same shall post a copy thereof at the door of the courthouse of said county, and a copy at four different places within such proposed district. Such posting shall be for not less than ten days prior to the date fixed for the hearing. The persons so posting shall make affidavit before some officer authorized by law to administer oaths, of their action in respect to such posting, and such affidavit shall be conclusive of the facts sworn to. [Id.]

Art. 7886. Hearing.—The court shall examine the petition to ascertain the sufficiency thereof, and any person interested may appear before the court in person or by attorney and offer testimony touching the sufficiency of such petition. Such court shall have jurisdiction to determine all issues raised touching the sufficiency of such petition. Such hearing may be adjourned from day to day as the facts may require. The court shall have power to make all incidental orders necessary in respect to the matters before it. [Id.]

Art. 7887. Findings.—If upon the hearing of such petition it be found that the same is signed by the requisite number of qualified voters of such proposed district who own land therein, and that such petition conforms to the provisions of the second article of this chapter, then the court shall so find in favor of the petitioners for the establishment of a district according to the boundaries as set forth in said petition; and shall order an election to be held in such district not less than twenty nor more than thirty days from the date of such order, to submit to the voters of such proposed district the question of the establishment of said district, and the election of five supervisors and an assessor and collector. [Id.]

Art. 7888. Notice of election.—Notice of such election shall be given stating the time and places of holding the election, and showing the boundaries of said district, the proposition to be voted upon, the officers to be voted for, and the presiding officers appointed for holding said election. Such notice shall be posted at the courthouse door for twenty days prior to the day of the election. [Id.]

Art. 7889. Conduct of election.—At all elections hereunder, none but resident property tax payers who are qualified voters of such proposed district shall be entitled to vote. The commissioners court shall name polling places for such election. Each district is hereby constituted an election precinct for the purposes of the election above specified, and all other elections which may be ordered or held under this chapter. Said court shall appoint two judges, one of whom shall be presiding judge, and two clerks at each polling place. [Id.]

Art. 7890. Ballot.—The commissioners court shall provide the

necessary ballots for such election, which shall have printed thereon the following: "For the Fresh Water Supply District," "Against the Fresh Water Supply District," and the names of the persons recommended for supervisors and officers in the petition. Said ballot shall also have five blank places after the names of those printed, on which each voter may write the names of other persons, supervisors, and assessor and collector, and there shall be no other matter placed on said ballot. [Id.]

Art. 7891. **Voter's oath.**—Every person who offers to vote in any election held under the provisions of this chapter shall take the following oath before the presiding judge of the polling place where he offers to vote, and such judge is authorized to administer same: "I do solemnly swear that I am a qualified voter of _____ County and that I am a resident property taxpayer of the proposed Fresh Water Supply District voted on at this election, and have not voted before in this election." [Id.]

Art. 7892. **Results of election.**—Immediately after the election, the presiding judges shall make returns of the result in the same manner as provided for in general elections for State and county officers. Said commissioners court shall forthwith, at a regular or called session, canvass such vote, and if it is found that a majority of such votes favor the creation of such district, then said court shall so declare and enter the result on their minutes; and shall issue certificates of election to the persons receiving the highest number of votes, respectively, for supervisors and assessor and collector. If two or more persons receive the same number of votes for the position of fifth supervisor, said court shall select one of said persons to fill said position. [Id.]

Art. 7893. **Declaration of result.**—If said court shall declare said election to be in favor of the establishment of the district, then it shall cause to be made and entered in the minutes of said court an order setting forth substantially as follows: "In the matter of the petition of _____ and _____ others praying for the establishment of a Fresh Water Supply District as in said petition described and designated as _____ County Fresh Water Supply District No. ____; be it known that an election was called for that purpose in said district and held on the ____ day of ____ A. D. 19____ and a majority of the resident taxpayers voting thereat voted in favor of the creation of said District. Now, therefore, it is ordered by the Court that a Fresh Water Supply District be and the same is hereby established under the name of _____ County Fresh Water Supply District No. ____ with the following metes and bounds." Such field notes shall be copied in the record. The first district created hereunder in any county shall assume the Number "One," the second district shall assume the number "Two," and so on consecutively. [Id.]

Art. 7894. **Registration of order.**—After entering said order,

the court shall cause to be made a certified copy thereof which shall be filed with the county clerk and duly recorded in the deed records of said county. Such recordation shall have the same effect in so far as notice is concerned, as is provided for the record of deeds. All costs in connection with the making and recording of such copy shall be paid by the district. [Id.]

Art. 7895. District tax assessor.—The office of assessor and collector for the district shall be filled by the same person. He shall qualify as such by making good and sufficient bond for five thousand dollars, payable to the district and approved by the commissioners court, conditioned upon the faithful performance of his duties and upon paying over to the district depository of all money coming into his hands as such collector. He shall be required to give additional security if, in the judgment of the supervisors, the same may become necessary. He shall be a resident of the district and a qualified voter in the district. He shall receive not to exceed twenty-four hundred dollars per annum, as may be provided by the supervisors. The first assessor shall hold office until the next general election for officers. The person elected to such office at the next general election shall hold office for two years. All vacancies in such office shall be filled by the supervisors for the unexpired term. [Id.]

Art. 7896. Supervisor's bond and oath.—Within ten days or as soon after the making and entry of said order as practicable, each supervisor shall give a good bond for five thousand dollars payable to the district and conditioned upon the faithful performance of his duties, to be approved by the commissioners court. Each supervisor shall take the oath of office prescribed by the statute for commissioners court, except that the name of the district shall be substituted for the county. Said bond and oath shall be filed with the clerk of the county wherein the order was entered creating said district, and by him recorded in the official bond records of said county. Said bond shall then be delivered by the county clerk to the district depository, and shall be by it safely kept as part of the records of said district. [Id.]

Art. 7897. General election.—A general election for the election of five supervisors and one assessor and collector for such district shall be held therein biennially on the first Tuesday in January. [Id.]

Art. 7898. Fees.—For all services performed by any officer or individual under this law, the compensation for which is not expressly provided for, such officer or individual shall receive the same compensation as he would for like service if rendered as an officer for the county. Clerks recording orders hereunder shall receive the same compensation as a county clerk for recording deeds, and persons posting notices hereunder shall receive the same compensation as a sheriff for officially rendering such service. [Id.]

Art. 7899. Organization expenses.—The supervisors are au-

thorized to pay all necessary costs and expenses necessarily incurred in the creation and organization of any district, and to reimburse any person, corporation or association for money advanced for such purposes. Such payment shall be made from money obtained from the sale of bonds. [Id.]

2. BOARD OF SUPERVISORS.

| | | | |
|-----------------------------|--------------|---------------------------|--------------|
| Qualifications | Article 7900 | Audit | Article 7908 |
| Term of office | 7901 | Powers of board | 7909 |
| Salary | 7902 | Powers: use of water..... | 7910 |
| Organization of board | 7903 | Powers: employes | 7911 |
| Meetings | 7904 | District engineer | 7912 |
| District records | 7905 | Official bonds | 7913 |
| Vouchers | 7906 | Powers: equipment | 7914 |
| District depository | 7907 | | |

Art. 7900. Qualifications.—No person shall be elected as supervisor for any district unless he is a resident thereof and owns land subject to taxation therein, and unless at the time of such election he shall be more than twenty-one years of age. [Id.]

Art. 7901. Term of office.—The supervisors shall hold office for the same period as that provided for the district assessor. In case of vacancy in the board, their successors shall be chosen as provided by law for the filling of vacancies in the board of directors of water improvement districts. [Id.]

Art. 7902. Salary.—The supervisors shall each receive not exceeding ten dollars for each day necessarily taken in the discharge of their duties as such, and they shall make a statement of such services similar to that required by law of directors of water improvement districts. [Id.]

Art. 7903. Organization of board.—The supervisors shall organize by electing one of their number as president. Any three supervisors shall constitute a quorum, and a concurrence of three shall be sufficient in all matters pertaining to the business of the district. They shall have power to appoint a secretary who shall receive such compensation as the Board of Supervisors may fix, not to exceed one hundred and fifty dollars per month. [Id.]

Art. 7904. Meetings.—The supervisors shall maintain a regular office in the district suitable for conducting the affairs of such district; and shall hold regular meetings thereat at ten o'clock in the morning on the first Mondays in February, May, August and November of each year. They shall hold such regular and special meetings at such office as they may see fit, and any taxpayer or resident or interested party may attend such meeting, but shall not participate in same without the consent of the supervisors, and may present in an orderly manner to said supervisors such matters as they desire. [Id.]

Art. 7905. District records.—The supervisors shall keep a true account of all their meetings and proceedings, and shall preserve all contracts, records of notices, duplicate vouchers, duplicate receipts, and all accounts and records of whatever kind, in a fireproof vault or safe, and same shall be the property

of the district, and shall be delivered to their successors in office.
[Id.]

Art. 7906. **Vouchers.**—All vouchers issued for the payment of any funds of the district shall be signed by at least three supervisors and shall refer to the book and page of the minutes allowing such act. All vouchers shall be issued from a regular duplicate book, retaining a duplicate which shall be preserved.
[Id.]

Art. 7907. **District depository.**—The supervisors shall select a depository for such district as provided by law for the selection of county depositories; and the duties of such depositories shall be the same as provided by law for county depositories. In such selection, the supervisors shall act in the same capacity and perform the same duties as are incumbent upon the county judge and members of the commissioners court in the selection of county depositories. The depository shall perform the services of district treasurer, and shall execute a bond as such as may be required by the supervisors. Such depository shall make and file reports and preserve the district records as required of depositories under Chapter 2 hereof. [Id.]

Art. 7908. **Audit.**—The supervisors shall have kept a complete book of accounts for such district, and shall on June first of each year select a competent auditor who shall examine the accounts, books and reports of the depository, the assessor and collector and supervisors, and make full report thereon, a copy of which shall be filed with the depository, and a copy with the supervisors, and one with the county clerk. Such reports shall be filed by September first of each year, and shall show in detail for what purposes the money from each fund has been expended.
[Id.]

Art. 7909. **Powers of board.**—The supervisors shall have control over and management of all the affairs of such district, shall make all contracts pertaining thereto, and shall have control of the construction of all improvements and works within and without the boundaries of such district, and the transportation and distribution of the water of such district. [Id.]

Art. 7910. **Powers: use of water.**—The board shall prescribe the manner and terms upon which water shall be furnished, and shall be authorized to fix the rate to be charged users of waters from such district, and shall promulgate rules and regulations governing the distribution and use of water; and shall apply the revenue from the sale of such water to operating expenses and the upkeep of the system of improvements installed in said district, and any surplus that may be left after paying such expenses shall be from year to year applied to the paying of interest on the bonds or other indebtedness that may be incurred by the district, and if there be more than enough to pay operating and upkeep expenses and the interest on the indebtedness of the district, then such surplus shall be passed to the sinking fund.
[Id.]

Art. 7911. **Powers: employes.**—The board shall employ all necessary employes for the proper handling and operation of such district, and especially may employ a general manager, attorneys, a bookkeeper and an engineer and such assistants and laborers as may be required. [Id.]

Art. 7912. **District engineer.**—After the establishment of any district, and after the qualification of the supervisors, the board may appoint an engineer who shall make maps and profiles of the several canals, reservoirs, aqueducts, conduits, pipe lines, pumping plants and all other works in such district and connected therewith and shall also show any part of said works extending beyond the limits of such district; and shall do such other and further work connected with such district as may be directed by the supervisors. He shall receive not exceeding thirty-six hundred dollars per year, as may be fixed by the board. Such engineer may adopt other maps, plats and surveys of the correctness of which he may be satisfied. [Id.]

Art. 7913. **Official bonds.**—All bonds required to be given by the officers and employes of such district shall be governed by the provisions of Chapter 2 of this title governing the approval and furnishing of bonds by surety companies for officers and employes of water improvement districts. [Id.]

Art. 7914. **Powers: equipment.**—The board may buy all necessary implements, machinery, work animals, equipment and supplies, as may be required for the construction, operation and maintenance of the system of works and improvement of such district. [Id.]

3. POWERS OF DISTRICT.

| Article | Article |
|---------------------------------|---------|
| Status of district | 7915 |
| District seal | 7916 |
| Powers of district | 7917 |
| Powers: construction | 7918 |
| Construction contracts | 7919 |
| Contractor's bond | 7920 |
| Contract: performance | 7921 |
| Powers: indebtedness | 7922 |
| May enter lands | 7923 |
| Eminent domain | 7924 |
| Payment of damages | 7925 |
| Right of way: acquisition | 7926 |
| Right of way: roads | 7927 |
| Use of road ways | 7928 |
| Railroad ways | 7928 |
| Joint projects | 7930 |

Art. 7915. **Status of district.**—All districts shall be governmental agencies and bodies politic and corporate; and such districts are hereby declared to be defined districts within the meaning of Section 59, Article 16 of the State Constitution, and may, through their supervisors, sue and be sued in any and all courts of this State in the name of such districts, and all courts of this State shall take judicial notice of the establishment of such districts, and said districts shall contract and be contracted with in the name of such districts. [Id.]

Art. 7916. **District seal.**—Each district shall have a common seal which shall be circular in form with the name of the district surrounding a five pointed star. [Id.]

Art. 7917. **Powers of district.**—All such districts shall have such powers of government, and with authority to exercise such rights, privileges and functions concerning the purposes for which they are created, as may be conferred by this chapter,

or any other law in this State, to the benefit of which they may become entitled. All such districts shall have full authority and right to acquire water rights and privileges in any way that any individual or corporation may acquire same, and to hold the same either by gift, purchase, devise, appropriation or otherwise. No enumeration of specific powers herein shall be held a limitation upon the general powers conferred by this chapter, unless distinctly so expressed. [Id.]

Art. 7918. Powers: construction.—All districts shall have full power and authority to build, construct, complete, carry out, maintain, and in case of necessity add to and re-build, all works and improvements within and without such districts necessary to accomplish any plan of conservation, transportation and distribution of fresh water adopted for or on behalf of such districts, and may make all necessary and proper contracts, and employ all persons and means necessary to that end; and such districts are authorized, if the governing bodies thereof shall deem it necessary, to take over in whole or in part by purchase or otherwise, any water plants or systems within such districts. [Id.]

Art. 7919. Construction contracts.—Contracts for the making and construction of all improvements contemplated in this chapter, and all necessary work in connection therewith, when the cost price exceeds ten thousand dollars shall be let to the lowest responsible bidder, furnishing satisfactory evidence of possessing equipment and facilities essential to the proper performance of such contract; after giving notice by advertising the same in one or more newspapers of general circulation in this State, once a week for ten days, and by posting a notice for at least ten days at the courthouse door. Such contract shall be in writing and signed by the contractors and supervisors, and a copy so executed filed with the depository subject to inspection of all interested parties. [Id.]

Art. 7920. Contractor's bond.—The person, firm, corporation or association to which such contract is let shall give bond to the district in such amount as the supervisors may determine, not to exceed the contract price, conditioned upon the faithful performance of the obligations, agreements and covenants of such contract, and for the payment to the district of all damages sustained in default thereof. Such bond shall be approved by the supervisors and shall be deposited with the depository, a true copy thereof being retained in the office of the district secretary. [Id.]

Art. 7921. Contract: performance.—All contracts shall be fulfilled in accordance with the specifications and under the supervision of the supervisors and district engineer. Such engineer shall inspect such work and make reports thereon, and such contract shall be paid as provided by law for similar contracts executed by water control and preservation districts. [Id.]

Art. 7922. Powers: indebtedness.—In the accomplishment of the purposes enumerated in the fourth preceding article, such districts may or may not issue bonds, and may or may not incur indebtedness. No bonds by or on behalf of such districts shall be issued nor shall any indebtedness against the same be incurred, unless the proposition to issue such bonds or to incur such indebtedness, shall be first submitted to the qualified property taxpaying voters of such districts, and the proposition adopted by a majority vote at an election held to determine such question. [Id.]

Art. 7923. May enter lands.—The supervisors, engineers and employes of any district are hereby authorized to go upon any lands lying within or without said district for the purpose of examining the same with reference to the location of canals, conduits, pipe lines, pumping plants and all other kinds of improvements to be constructed for such district, and for any other lawful purpose connected with their plan of conservation, transportation and distribution of water. [Id.]

Art. 7924. Eminent domain.—The right of eminent domain is hereby expressly conferred on all districts to enable them to acquire the fee simple title, easement, or right of way over and through any and all lands, water, or lands under water, private or public (except lands and property used for parks, cemeteries, manufacturing industries and established and developed water powers existing at the time of the creation of such district), within and without such districts, necessary for making, constructing and maintaining all canals, conduits, aqueducts, pipe lines, pumping plants and other improvements necessary for the conservation, transportation and distribution of fresh water for the purposes herein named. Such proceedings shall be instituted under the direction of the supervisors and in the name of the district. [Id.]

Art. 7925. Payment of damages.—All such compensation and damages adjudicated in such condemnation proceedings and all damage which may be done to the property of any person or corporation in the construction and maintenance of canals, conduits, pipe lines, pumping plants and other improvements under the provisions of this chapter, shall be paid out of any funds or properties of said district, except taxes necessarily applied to the sinking fund and interest on the district bonds. [Id.]

Art. 7926. Right of way: acquisition.—The supervisors are hereby empowered to acquire the necessary right of way for canals, conduits, pipe lines, pumping plants and other necessary improvements contemplated by this chapter, by gift, grant, purchase or condemnation proceedings; and such necessary improvements may be constructed and maintained within and without such proposed district upon lands acquired as herein authorized. [Id.]

Art. 7927. Right of way: roads.—All districts are hereby given the right of way across all public or county roads, but

they shall restore such roads where crossed to their previous condition for use, as near as may be. [Id.]

Art. 7928. Use of road ways.—Said districts are authorized and empowered to make all necessary levees, bridges, and other improvements across or under any railroad embankments, tracks, or rights of way, or public or private roads or the rights of way thereof, or rivers or other public improvements of other districts, or other such improvements and the rights of way thereof, for the purpose of securing the fresh water supply necessary for said districts. [Id.]

Art. 7929. Railroad ways.—When such improvements are to be constructed across or under any railroad properties, notice shall first be given by said district to the proper railroad authorities or other persons relative to the additions or changes to result from the improvements contemplated; and said authorities or persons shall be given thirty days in which to agree to said work to be done in the manner proposed by said district, or to refuse to agree thereto; and in case of refusal, they shall at their own expense construct the said improvements in their own manner, provided such design or manner of construction shall be satisfactory to said district. [Id.]

Art. 7930. Joint projects.—All districts shall have authority to act jointly with each other, with political subdivisions of the State, with other States, with cities and towns, and with the Federal Government, in the performance of any of the things permitted by this chapter, upon such terms as may be agreed upon by the supervisors. [Id.]

4. BONDS.

| | Article | | Article |
|---------------------------|---------|-----------------------------|---------|
| Election for bonds | 7931 | Bonds: approval | 7937 |
| Notice of election | 7932 | Registration of bonds | 7938 |
| Conduct of election | 7933 | Sale of bonds | 7939 |
| Elections: expenses | 7934 | Bonds: payment | 7940 |
| Results of election | 7935 | Bonds: record book | 7941 |
| Issuance of bonds | 7936 | | |

Art. 7931. Election for bonds.—After the establishment of any district, and the qualification of the supervisors thereof, the board may order an election to be held within such district at a time not less than twenty nor more than thirty days from the date of said order, at which there shall be submitted the proposition and none other: “For the issuance of bonds and levy of taxes in payment thereof;” “Against the issuance of bonds and levy of taxes in payment thereof.” [Id.]

Art. 7932. Notice of election.—Notice of such election, stating the amount of bonds as determined by the board to be necessary to be issued, shall be given by the board by posting a copy thereof in four public places in the district, one at the courthouse door, for twenty days prior to the election. Such notice shall contain the proposition to be voted upon, with an estimate of the probable cost of construction of the proposed improvement, and incidental expenses connected therewith, and an estimate of the cost of the purchase of the improvements al-

ready existing, if the same is contemplated, or the purchase of said necessary improvements, and the construction of additions thereto. [Id.]

Art. 7933. Conduct of election.—The board shall name polling places in the district and shall appoint two judges, one of whom shall be presiding judge, and two clerks for each voting place designated by them. The supervisors shall provide the necessary ballots for said election, which shall have written or printed thereon the proposition to be submitted as provided in the second preceding article. [Id.]

Art. 7934. Elections: expenses.—All expenses incident to calling and holding all elections except the first authorized by this chapter, shall be paid out of any district funds, except interest and sinking fund for bonds. [Id.]

Art. 7935. Results of election.—Immediately after the election, the presiding judges shall make return of the result in the same manner as provided for in general elections for State and county officers. Such return shall be made to the supervisors who shall at a regular or special session canvass said vote, and if a majority of said votes favor the issuance of bonds and levy of taxes, then the supervisors shall so declare and enter the result in their minutes. [Id.]

Art. 7936. Issuance of bonds.—After declaring the result of said election, the supervisors shall make and enter an order in their minutes directing the issuance of bonds for such district sufficient in amount to pay for such proposed improvements with all necessary actual and incidental expenses connected therewith, not to exceed the amount specified in said order and notice of election. The provisions of Chapter 2 of this title providing for the issuance, denominations, rate of interest, manner and conditions of payment and maturity dates of water improvement district bonds shall apply. [Id.]

Art. 7937. Bonds: approval.—Before such bonds are offered for sale, there shall be forwarded to the Attorney General a certified copy of all proceedings had in the organization of the district, and with reference to the issuance of such bonds in connection with the bonds themselves, and such other information respecting same as he may require. The Attorney General shall carefully examine said bonds in connection with the record and Constitution and laws of this State governing the issuance of such bonds; and if such examination shows that such bonds are issued in conformity thereto, and that they are valid and binding obligations upon said district, he shall so officially certify. [Id.]

Art. 7938. Registration of bonds.—When such bonds are so approved, they shall be registered by the Comptroller in a book kept for that purpose and the certificate of the Attorney General as to their validity shall be preserved of record; whereupon, such bonds shall be held prima facie valid in every action, suit or proceeding in which their validity may be brought into ques-

tion. In every suit to enforce collection of such bonds and interest thereon, the only available defense against the validity of such bonds shall be forgery or fraud. [Id.]

Art. 7939. Sale of bonds.—After such bonds have been so registered, the supervisors shall sell same on the best terms and for the best price possible, not less than their face value and accrued interest; and shall promptly pay over to the district depository the proceeds of such sale to be placed to the credit of such district. [Id.]

Art. 7940. Bonds: payment.—At the time of the payment of interest or for redemption of district bonds, the depository shall receive and cancel any interest coupons so paid or any bonds so discharged, and when such interest coupon or bond shall be turned over to the supervisors, the account of such depository shall be credited with the amount thereof, and such bond or coupon shall be cancelled and destroyed. [Id.]

Art. 7941. Bonds: record book.—When bonds have been so issued, the supervisors shall procure and deliver to the county treasurer a well bound book in which a list shall be kept of all such bonds with their manner of payment, amount, rate of interest, date of issuance, when due, where payable, amount received for same, and the tax levy to pay interest on and redeem such bonds; and such books shall at all times be open to the inspection of the parties interested, either as taxpayers or bond holders. Upon the payment of any bond, said treasurer shall make an entry thereof in said book; and he shall receive for such services the same fees allowed by law to the county clerk for recording deeds. [Id.]

5. TAXES.

| | Article | | Article |
|-----------------------------|---------|---------------------------------|---------|
| Duties of assessor | 7942 | Appraisal dates | 7951 |
| Collection of taxes | 7943 | Tax levy | 7952 |
| Assessor's accounts | 7944 | Interest and Sinking Fund | 7953 |
| Tax assessments | 7945 | May invest sinking fund | 7954 |
| Assessment dates | 7946 | Maintenance tax: election | 7955 |
| Shall render property | 7947 | Maintenance tax levy | 7956 |
| Board of Equalization | 7948 | Maintenance fund | 7957 |
| Oath of members | 7949 | Collection dates | 7958 |
| Duties of board | 7950 | Delinquent taxes | 7959 |

Art. 7942. Duties of assessor.—The district assessor shall return the assessment rolls and keep bound records thereof, fuse to sign the oath for tax assessments, shall make up and return the assessment rolls and keep bound records thereof, collect all taxes and deposit the same weekly and make monthly reports of such collections, maintain an office, and be subject to the rules and regulations of the supervisors, in the same manner as provided by law for district tax assessors of water improvement districts. [Id.]

Art. 7943. Collection of taxes.—All taxes provided for herein shall be collected under the direction of the district collector. He shall keep a true account of all moneys collected, and deposit same as collected in the district depository, and shall file with the district secretary a true statement of all money col-

lected once a week. He shall use a duplicate receipt book and shall give a true receipt for each collection made, retaining in such book a true copy thereof which shall be preserved as a record of the district. [Id.]

Art. 7944. Assessor's accounts.—The assessor shall be charged by the supervisors upon a permanent finance ledger kept for the purpose by the district, with the total assessment as shown by the assessment rolls; and proper credit shall be given to him for all sums paid over to the depository as shown by his monthly reports; and upon final annual settlement, he shall make a complete report of all taxes that have not been collected, which report shall be audited by the supervisors and proper credits given therefor. Such annual settlements shall be made on the first Monday in May. [Id.]

Art. 7945. Tax assessments.—Immediately after the voting of such bonds, the district tax assessor shall at once proceed to make an assessment of all the taxable property, both real, personal and mixed in his district; and such assessment shall be made annually thereafter. Said assessment shall be made upon blanks to be provided by the district supervisors; and shall consist of a full statement under oath by the party rendering same of all property owned by him in said district and subject to State and county taxation, and shall state the full value thereof. Said assessor shall make out similar lists of all property not rendered for taxation in such district that is subject to State and county taxation. He shall have authority to administer oaths to fully carry out the provisions of this article. [Id.]

Art. 7946. Assessment dates.—The assessment of taxes for such district shall be made on the first day of January of each year, and shall be completed and the lists and books ready to deliver on or before the first day of June. [Id.]

Art. 7947. Shall render property.—Each person, partnership or corporation owning taxable property in such district shall render same for taxation to the district assessor when called upon to do so, and if not so called upon, shall on or before June first of each year render for taxation all property owned by him in the district subject to taxation. [Id.]

Art. 7948. Board of Equalization.—At their first regular meeting, or as soon thereafter as practicable, and annually thereafter, the supervisors shall appoint three commissioners, each being a qualified voter and resident property owner of the district, who shall be styled the "Board of Equalization," and at the same meeting shall fix the time for the meeting of such Board for the first year. At such time said Board shall convene to receive all assessments, lists or books of the district assessor for examination, correction, equalization, appraisalment and approval. At all meetings of such board a secretary shall keep a permanent record of all proceedings thereof. Each such commissioner and the secretary shall receive not exceeding five dollars per day for such services for the time actually engaged in the discharge of their duties. [Id.]

Art. 7949. Oath of members.—Before entering upon the duties as such board, each member shall take and subscribe to the following oath: “I, _____, do solemnly swear that I will to the best of my ability make a full and complete examination, correction, equalization and appraisalment of all property contained within said district, as shown by the assessment list or books of the assessor for said district.” Said oath shall be spread upon the minutes of said board. [Id.]

Art. 7950. Duties of board.—The Board of Equalization shall have the same powers and exercise the same duties with respect to such district, as is provided by law for equalization boards of water improvement districts. [Id.]

Art. 7951. Appraisal dates.—The Board of Equalization after the first year shall convene annually on the first Monday in June to receive all assessment lists or books of the assessor, and shall complete their examination and equalization of said lists by the second Monday in June, and deliver said rolls to the assessor by the second Monday in July, and said rolls shall be completed by the assessor and approved by the board and returned to said assessor by the first Monday in September. [Id.]

Art. 7952. Tax levy.—When bonds have been issued, the supervisors shall levy and cause to be assessed and collected taxes upon all property, real, personal and mixed, in such district, based upon the full value of each piece of property, sufficient to pay the interest on such bonds and to create a sinking fund sufficient to redeem and discharge such bonds at maturity; and such taxes shall thereafter be levied annually so long as such bonds are outstanding, sufficient to accomplish such purposes. [Id.]

Art. 7953. Interest and Sinking Fund.—There is hereby created an “Interest and Sinking Fund” for such district, and all taxes collected under this law for the payment of interest or redemption of district bonds shall be credited to such fund, and shall only be paid out to satisfy and discharge the interest on district bonds or for the cancellation and surrender of such bonds, and to defray the expenses of assessing and collecting such taxes. [Id.]

Art. 7954. May invest sinking fund.—Sinking funds shall from time to time be invested in such county, municipal, district or other bonds as other sinking funds may by law be invested in, or in bonds of the series to which such funds apply if offered for redemption before maturity upon terms deemed advantageous to the district by the supervisors. [Id.]

Art. 7955. Maintenance tax: election.—If at any time it should be deemed necessary for the supervisors to vote a maintenance tax, they shall call an election in such district to submit the question “For a maintenance tax;” “Against a maintenance tax;” and shall state the amount thereof. Such sum may be specific, or may be a maximum not to be exceeded. Such election

shall be held and the votes canvassed in the same manner as provided for the issuance of bonds. [Id.]

Art. 7956. Maintenance tax levy.—When such tax is voted, the supervisors shall thereafter levy and cause the same to be assessed and collected as other taxes, to an amount not exceeding the specific sum voted. The proceeds of such taxes shall be used for the maintenance, upkeep, repairs and additions to the improvements, or other lawful expense incurred by and on behalf of such district and for no other purposes. The right to levy such taxes shall remain in force until abrogated in whole or in part by another such election. Elections upon the question of repeal or reduction of such taxes shall not be held oftener than every five years. The supervisors may or may not levy such taxes if they are not necessary. [Id.]

Art. 7957. Maintenance fund.—There is hereby created a "Maintenance and Operating Fund," which shall consist of all money collected by assessment or otherwise for the maintenance and operation of the properties purchased or constructed or otherwise acquired by such district. All salaries of officers and employes, other than the assessor and collector and all expenses of operation of every kind shall be paid out of such fund. [Id.]

Art. 7958. Collection dates.—All taxes shall become due and payable on the first day of October of each year and shall be paid on or before the thirty-first day of January thereafter. [Id.]

Art. 7959. Delinquent taxes.—All of the provisions of Chapter 2 of this title relating to the lien, penalties, interest and costs, preparation and publication of the delinquent tax roll, suit for collection and foreclosure proceedings, attorney's fees and fees of officers in such proceedings for the collection of delinquent taxes, and redemption of lands before sale, shall apply to the collection of such taxes in districts operating hereunder. [Id.]

II. LEVEES

CHAPTER FIVE.

STATE RECLAMATION ENGINEER.

| | Article | | Article |
|---------------------------------------|---------|--------------------------------|---------|
| Appointment | 7960 | Details of work | 7966 |
| Powers | 7961 | Co-operative agreements | 7967 |
| Reclamation of overflowed lands | 7962 | Co-operative conferences | 7968 |
| Surveys authorized | 7963 | Shall advise districts | 7969 |
| Surveys: natural conditions | 7964 | District data | 7970 |
| Surveys: results | 7965 | Record of expenditures | 7971 |

Art. 7960. Appointment.—The Governor shall biennially appoint a State Reclamation Engineer, with the advice and consent of the Senate. Said engineer shall be a thoroughly experienced and skilled topographer and hydrographer, draftsman and reclamation engineer of not less than five years actual experience in organizing and supervising goedetic and topographic surveying and mapping of large areas, and in the general direction of field and office engineering corps. He shall

be thoroughly experienced in making and passing upon reclamation plans and estimates, and in the preparation and writing of technical reports and publications, and in the reproduction of maps. Said engineer shall have his office in the State Capitol. [Acts 1913, p. 292.]

Art. 7961. Powers.—Said engineer shall have general supervision of all work authorized by this law, and he shall perform, conduct or supervise the same. He shall have power to employ such assistants, to make or authorize to be made such purchases, to incur or authorize to be incurred such other expenses, and to formulate and enforce such reasonable and proper rules and regulations governing his official work, and the work of his assistants, both in the office and in the field, as may be necessary to perform with correct dispatch and economy the work herein authorized to be done. [Id.]

Art. 7962. Reclamation of overflowed lands.—The chief purpose of this law shall be to plan and mark out upon the ground all the improvements necessary to reclaim or cause to become suitable for agricultural uses, the overflowed and swamp lands, and overflowed areas in the coastal plain, and other lands in this State, which, by reason of the temporary or permanent excessive accumulation of water thereon, or contiguous thereto, are not suitable for such uses. [Id.]

Art. 7963. Surveys authorized.—To accomplish such purpose, it is hereby authorized and ordered that the necessary investigations, estimates, surveys, maps, reports and publications shall be made, and any other necessary work incident thereto shall be done, which may be required in the process of planning or marking out upon the ground the most practical, permanent, economical and equitable improvements or systems of improvements such as levees, dikes, dams, canals, drains, water-ways, reservoirs or any or all of them, and other improvements incidental thereto. [Id.]

Art. 7964. Surveys: natural conditions.—As far as possible, said improvements shall be designed with primary consideration to the topographic and hydrographic conditions, and in such manner that each division thereof shall be a complete united project, forming a co-ordinate part of an ultimately finished series of projects, so constituted that the successful operation of the improvements in each united project shall co-operate to the successful operation of the improvements in the other united projects existing within the same hydraulic influence. [Id.]

Art. 7965. Surveys: results.—The said improvements shall be discussed in reports, shown on maps, drawings or diagrams, or otherwise recorded or published. All such final results which are of value to this State shall be filed for public reference in the office of said engineer. [Id.]

Art. 7966. Details of work.—The engineer shall have power

to determine at what points within the territory herein designated the said work shall be done; and he shall determine the manner and the season that the results of said work shall be made public. [Id.]

Art. 7967. Co-operative agreements.—The engineer shall have power, if in his judgment it will accomplish the objects herein provided for, to make and approve agreements or contracts for co-operation with any branch of the Federal, State, county or city governments for the doing of all or any part of the work herein authorized; and said engineer shall have power to cancel any said agreement or contract upon ten days written notice to such branch concerned. The engineer shall accomplish such objects independently of such co-operation, if he deems said co-operation not to be to the best interests of the State. [Id.]

Art. 7968. Co-operative conferences.—The engineer is empowered to confer with any branch of the Federal, State, county or city governments with a view to obtaining authority, assistance or advice in connection with his official work, whenever necessary or desirable, and he shall solicit the co-operation of such governments when the same may be to the best interests of the State. [Id.]

Art. 7969. Shall advise districts.—The engineer shall confer in a technical capacity with districts in this State that have requested his technical advice with a view to the adequate execution of proposed levee and drainage improvements contemplated in such districts. He shall receive no extra compensation for such advice. [Id.]

Art. 7970. District data.—Immediately prior to the approval of its bonds by the Attorney General, each drainage or levee district shall file with the engineer on forms furnished by him, a complete record showing each step in the organization of such district, and showing the boundaries, area, amount of bonds to be issued, together with plans, maps and profiles of improvements, and the district engineer's estimates and report thereon. [Id.]

Art. 7971. Record of expenditures.—The engineer shall keep an accurate record of all money spent by the State in the execution of the work authorized by this law. [Id.]

CHAPTER SIX.

LEVEE IMPROVEMENT DISTRICTS.

1. Establishment.

| Article | Article | | |
|--|---------|--|------|
| Levee improvement districts..... | 7972 | Posting notice of election..... | 8003 |
| Petition to reclamation engineer..... | 7973 | Who may vote..... | 8004 |
| Petition for proposal to create levee..... | 7974 | Making returns..... | 8005 |
| Upon receipt of notice..... | 7975 | Petition for and notice of election..... | 8006 |
| Deposit..... | 7976 | Issuance of bonds..... | 8007 |
| Duty of engineer..... | 7977 | Record of bonds..... | 8008 |
| Court to hear petition..... | 7978 | Attorney General to examine..... | 8009 |
| Judgment and findings..... | 7979 | Recorded by Comptroller..... | 8010 |
| Levee improvement districts en- | | Sale of bonds..... | 8011 |
| titled to benefits..... | 7980 | Levying taxes..... | 8012 |
| Eminent domain..... | 7981 | For what uses may be applied..... | 8013 |
| District supervisors..... | 7982 | Secretary ex-officio tax assessor..... | 8014 |
| Authorized to go on lands..... | 7983 | Tax collectors under bond..... | 8015 |
| Empowered to make levees..... | 7984 | Recovering delinquent taxes..... | 8016 |
| Right of way..... | 7985 | Same method to be pursued..... | 8017 |
| Authority to act..... | 7986 | Refunding bonds..... | 8018 |
| Supervisors appointed..... | 7987 | Treasurer under bond; compensa- | |
| Bond..... | 7988 | tion..... | 8019 |
| Name engineer..... | 7989 | Treasurer to report to commission- | |
| District engineer have control..... | 7990 | ers' court..... | 8020 |
| Commissioners of appraisalment..... | 7991 | Supervisors select depository..... | 8021 |
| Duties of commissioners..... | 7992 | Compensation of officers..... | 8022 |
| Duty of secretary..... | 7993 | Awarding contracts..... | 8023 |
| Notice of publication..... | 7994 | Work to be supervised..... | 8024 |
| Filing exception and damage claims..... | 7995 | Paying for work done..... | 8025 |
| Basis of taxation..... | 7996 | To have seal..... | 8026 |
| Limitation on commissioners..... | 7997 | Plans to be approved by reclama- | |
| Rate of taxation..... | 7998 | tion engineer..... | 8027 |
| Non-bond issuing districts..... | 7999 | Same; along streams, banks, etc..... | 8028 |
| Petition for bond election..... | 8000 | Dissolution of district..... | 8029 |
| Manner of election..... | 8001 | Providing additional funds..... | 8030 |
| Expense of election..... | 8002 | | |

Art. 7972. **Levy improvement districts.**—There may be created within this State conservation and reclamation districts to be known as Levee Improvement Districts, for the purpose of constructing and maintaining levees and other improvements on, along and contiguous to rivers, creeks, and streams, for the purpose of reclaiming lands from overflow from such streams, for the purpose of the control and distribution of the waters of rivers and streams by straightening and otherwise improving the same, and for the proper drainage and other improvement of such lands, all as contemplated by Section 59, Article 16, of the Constitution of this State, for the conservation and development of the natural resources of this State, which said districts shall have and may exercise all the rights, powers and privileges given by this Act and in accordance with its limitations and provisions.

Art. 7973. **Petition to reclamation engineer.**—Whenever any engineer shall make application in writing to the State Reclamation Engineer for authority to obtain information by proper surveys in respect to the feasibility of reclaiming any lands which may be later incorporated in a levee improvement district, it shall be the duty of the State Reclamation Engineer, if satisfied that the applicant is competent and acting in good faith, to issue to such applicant express written authority to make such survey in order to obtain the desired information; and such engineer, acting under such written authority from the State Reclamation Engineer, is hereby authorized and empowered to go upon any lands proposed to be incorporated in any levee improvement dis-

tract for the purpose of examining same with reference to the location of boundary lines, and for such other information which may be used in the formation of a levee improvement district.

Art. 7974. Petition for proposal to create levy.—When it is proposed to create a levee district wholly within one county, there shall be presented to the commissioners' court of the county in which the lands to be included in such district are located, or to the county judge of the county if the commissioners' court is not in session, a petition signed by the owners of a majority of the acreage of such proposed district, setting forth the proposed boundaries thereof, the general nature of the work proposed to be done, the necessity therefor and the feasibility thereof, stating whether the taxes proposed to be levied therein shall be on the ad valorem plan or based on assessed benefits, and designating a name therefor, which shall include the name of the county in which it is situated; and when it is proposed to create such a district to be composed of lands in two or more counties, then a petition of the nature above indicated, signed by the owners of a majority of the acreage of such proposed district, designating the county of jurisdiction in respect to all matters concerning the said district, which county may be any county in which any part of district is located, shall be presented to the commissioners' court of such county, or, if the court is not in session, to the county judge thereof; and upon presentation of either such petition, it shall be the duty of the court to which it is presented, or the county judge of such county if the court be not in session, to fix a time and place at which such petition shall be heard before the commissioners' court of the county wherein it is filed, which date shall not be less than fifteen nor more than thirty days from the date of the order, and to order and direct the county clerk of such county, as ex officio clerk of the commissioners' court thereof, to issue a notice of such time and place of hearing, which notice shall inform all persons concerned of the time and place of hearing, and of their right to appear at such hearing and contend for or contest the formation of such district, as their interests may dictate, and to deliver notice to any adult person who is willing to execute the same by posting, as herein-after directed. The order shall further direct the clerk forthwith to issue a notice of the filing of such petition and of its general purpose, stating the time and place of hearing, which shall be mailed forthwith to the State Reclamation Engineer at his office in Austin, Texas.

Art. 7975. Upon receipt of notice.—Upon receipt of the notice above provided for by any adult person willing to receive and execute the same, it shall be the duty of such person, or persons, if more than one shall act, if the district is wholly within a county, to post a copy of such notice at the door of the courthouse of said county, and copies at four different places within such proposed districts; if such district is located in more than one county such notice shall be posted at the door of the courthouse of each county in which any portion of

the proposed district is situated, and four copies at four separate places within the boundaries of those portions of such district situated in each county. Such posting shall be for not less than ten days prior to the date fixed for the hearing, and the person, or persons so posting, shall make affidavit before some officer authorized by law to administer oaths of his, or their action in respect to such postings, and such affidavit when so made shall be conclusive of the facts sworn to.

Art. 7976. Deposit. A petition for the formation of such a district, if the district is wholly within one county, shall be accompanied by a deposit of fifty dollars, and if the district is proposed to be located in more than one county it shall be accompanied by a deposit of seventy-five dollars, which deposit shall be paid to the clerk of the court of jurisdiction, who shall therefrom, upon vouchers approved by the county judge, pay all expenses incident to the hearing herein provided for, returning any excess to the petitioners or their attorney.

Art. 7977. Duty of engineer.—The State Reclamation Engineer, upon receipt of the notice to him herein provided for, shall forthwith, by himself or deputy, examine said proposed district, and do, or cause to be done, such work in respect thereto as may be necessary to enable him to determine the necessity, feasibility and probable costs of reclaiming the land of such district from overflow, and the proper drainage thereof, together with the costs of organizing such district, and maintenance thereof, for a period of two years, and he shall, by himself or deputy, attend the hearing and file his written report in respect to the matters concerning which he has investigated and give to the court such further additional information as may be then required.

Art. 7978. Court to hear petition.—At the time and place set for the hearing of the petition, or such subsequent date as may then be fixed, the court shall proceed to hear such petition and all issues in respect to the creation of such proposed district, and any person interested may appear before the court in person or by attorney and contend for or contest the creation of such district, and offer testimony pertinent to any issue presented. Such court shall have exclusive jurisdiction to determine all issues in respect to the creation, or not, of such district, and of all subsequent proceedings in respect to said district if the same should be created. Such hearing may be adjourned from day to day and from time to time, as the facts may require. The court shall have power to make all incidental orders deemed proper in respect to the matters before it.

Art. 7979. Judgment and findings.—If upon the hearing of such petition, it be found that the same is signed by the owners of a majority of the acreage of the proposed district, and that due notice has been given, and that the proposed improvements are desirable, feasible, and practicable, and would be a public utility and a public benefit, and would be conducive to public health, then such court shall so find and render judgment reciting such findings and creating and establishing such district, which judgment and findings shall be embodied in an order

which shall be entered of record in the minutes of said court, which order shall define the boundaries of such district, which need not include all of the lands described in the petition, if, upon the hearing a modification or change is found necessary or desirable. A levee improvement district created as herein specified shall be a governmental agency and a body politic and corporate, with such powers of government and with the authority to exercise such rights, privileges and functions concerning the purposes for which it is created as may be conferred by this chapter, or any other law of this State to the benefits of which it may become entitled. If at the hearing of such petition, as herein provided for, the commissioners' court shall enter an order dismissing the petition for the creation of said district, then, and in the event the petitioners, or any one of them or any taxpayer in such district, may appeal from said order to the district court of said county which appeal shall be perfected in the following manner, to-wit: notice of appeal shall be given at the time of the entry of said order by announcement of same before said court, which notice of appeal shall be entered on the minutes of said court, or by giving written notice within two days after the entry of such order; said notice to be a simple statement in writing to the effect that the undersigned gives notice of appeal from the order entered on the date stated, which notice shall be filed with the clerk of the county court, and the appellant shall, within five days from the date of the entry of said order, file an appeal bond with two or more good and sufficient sureties payable to the county judge of the county, to be approved by the county clerk; conditioned upon the due prosecution of the appeal and payment of all costs incident thereto, and unless the appeal be thus perfected within five days after the rendition of the order, such order shall be final and conclusive, and there shall be no extension of time granted for the filing of the appeal bond; the county clerk, shall within five days after the filing of said appeal bond, transfer to the clerk of such district court all records filed with the county commissioners' court, pertaining to the establishment of said district, together with a transcript of the orders of the commissioners' court, and it shall be unnecessary to file any other or additional pleadings in said court. The court shall set the matter down for hearing, giving it precedence over all other cases, and the matters shall be tried and determined by the court, the hearing to be de novo. The judgment of the district court shall be final and conclusive, and the same shall be certified to the commissioners' court for its further action.

Art. 7980. Levy improvement districts entitled to benefits.—Levee improvement districts created under this Act or entitled to the benefits of its provisions, subject to the supervision and direction of the State Reclamation Engineer, or other superior authority created by law, and subject to the limitations in this Act contained, shall have full power and authority to build, construct, complete, carry out, maintain, protect, and in

case of necessity, add to and rebuild all works and improvements within their district necessary or proper to fully accomplish any plan of reclamation lawfully adopted for or on behalf of such district, and may make all necessary and proper contracts, and employ all persons and means necessary or proper to that end; and in the accomplishment of such purposes they may or may not issue bonds, and may or may not incur indebtedness; provided, that no bonds by or on behalf of such district shall be issued nor shall any indebtedness against the same be incurred unless the proposition to issue such bonds or to incur such indebtedness shall be first submitted to the qualified property taxpaying voters of such district, and the proposition adopted by a majority vote of the taxpaying voters of the district voting at an election held to determine such question; and no enumeration of specific powers in this Act shall be held to be a limitation upon the general powers hereby conferred except as may be distinctly expressed.

Art. 7981. Eminent domain.—The right of eminent domain is hereby expressly conferred upon all districts to enable them to acquire the fee simple title, easement or right of way to, over, and through any and all lands, water, or lands under water, private or public (except land and property used for cemetery purposes), within bordering upon, adjacent or opposite to such districts, necessary for making, constructing and maintaining all levees and other improvements for the improvement of a river or rivers, creek or creeks, or streams within or bordering upon such districts to prevent overflows thereof.

Adequate compensation shall be made to the owners of any property so taken, damaged or destroyed for such purposes. The levee district shall have the power to acquire any such property for any such purposes, which for any reason has not been condemned by the board of appraisers in the manner hereinafter provided, and may by condemnation proceedings acquire any property not acquired by the appraisers which condemnation proceedings shall be brought in the name of the levee district.

Art. 7982. District supervisors.—The district supervisors of any district are hereby empowered to acquire the necessary right of way for all levees and other necessary improvements contemplated by this Act, by gift, or condemnation proceedings; and they may by the same methods acquire any levee or other improvements already constructed.

Art. 7983. Authorized to go on lands.—The supervisors of any district and the engineer and employes thereof are hereby authorized to go upon any lands lying within or adjacent to said district for the purpose of examining same with reference to the location of levees, drainage ditches and all other kinds of improvements to be constructed for or within such district, and for any other lawful purpose connected with their plan of reclamation, whether herein enumerated or not.

Art. 7984. Empowered to make levees.—The said levee improvement districts are hereby authorized and empowered to

make all the necessary levees, bridges and other improvements across or under any railroad embankments, tracks, or rights of way, or public or private roads or the rights of way thereof, or levees or other public improvements of other districts, or other such improvements and the rights of way thereof, or to join such improvement thereto, for the purpose of enabling the said levee improvements necessary for the said district; provided, however, that notice shall first be given by said levee improvement district to the proper railroad authorities or other authorities or persons, relative to the additions or changes to result from the improvements contemplated by the said levee improvement district; and the said railroad authorities, or persons, shall be given thirty days in which to agree to the said work, or to refuse to agree thereto, or in which they, if they so desire, may at their own expense construct the said improvements in their own manner; provided, such design or manner of construction shall be satisfactory to the said levee improvement district and approved by the State Reclamation Engineer or his deputy.

Art. 7985. Right of way.—Levee improvement districts are hereby given the right of way across all public or county roads, but they shall restore such roads where crossed to their previous condition for use, as near as may be.

Art. 7986. Authority to act.—Levee improvement districts shall have authority to act jointly with each other, with cities and towns and other political subdivisions of the State, with other states, and with the Government of the United States in the performance of any of the things permitted by this Act; such joint acts to be done upon such terms as may be agreed upon by their supervisors, subject to the approval of the State Reclamation Engineer.

Art. 7987. Supervisors appointed.—When a levee improvement district has been created under this Act, the court creating the same shall forthwith appoint by a majority vote three supervisors for such district, who shall be known as "district supervisors," and whose duties shall be as hereinafter provided. Said supervisors shall each receive for his services not more than five dollars per day for the time actually engaged in work for said district, and all expenses while so engaged, to be paid upon rendition of sworn accounts, approved by the county judge of the county having jurisdiction; and they shall hold their offices for two years, and until their successors are appointed and qualified; unless sooner removed by a majority vote of the court of jurisdiction; and any vacancy in office shall be filled by a majority vote of the court having jurisdiction which court shall continue from time to time to appoint supervisors in order that the board may always be full.

Art. 7988. Bond.—Before entering upon their duties the district supervisors shall each take and subscribe before some officer authorized to administer oaths, an oath to faithfully and impartially discharge his duties as supervisor and render true accounts of his services and expenses, and each shall enter into bond with good and sufficient security, payable to the levee

improvement district, in the sum of one thousand dollars, unless the court of jurisdiction shall fix a larger amount, which it may do when in its judgment the interests of the district may so require, which bond shall be conditioned for the faithful performance of the duties of such supervisor and that he will render true accounts of his services and expenses, which bond shall be approved by the county judge of the county the commissioners' court of which has jurisdiction, and shall be filed with the clerk of the court having jurisdiction and by him entered of record in his office, and the original bond shall be retained on file.

Art. 7989. **Name engineer.**—District supervisors, after their qualification, shall organize by electing one of their number chairman and one vice chairman, and shall elect a secretary, who need not be a member of the board; and an engineer and such other employes or assistants as may from time to time be found necessary to the successful carrying on and completion of the work and business of the district; they shall certify their organization and the name of their engineer, who shall be known as "district engineer," to the commissioners' court of the county having jurisdiction.

Art. 7990. **District engineer have control.**—The district engineer, subject to the authority of the State Reclamation Engineer, shall have control of the engineering work of the district, and shall, with such assistants as may be necessary in the judgment of the board of supervisors, as soon as practicable after his appointment, make a survey of the lands within the boundaries of the district and of all lands adjacent thereto that will be improved or reclaimed, in whole or in part by any system of levees and drainage that may be adopted; and shall make report in writing to the board of supervisors of his work in this regard, with maps and profiles of his surveys, which report shall contain a full and complete plan for draining, constructing levees and reclaiming the lands of the district from overflow or damage by waters from the streams in or adjacent to such district, and whose waters may in anywise affect the same, which plan may include, and where necessary shall include costs of straightening streams from which injury to the lands of said districts may result; and shall also in such report indicate the physical characteristics of the lands within the district, the location of any public roads, railroads, or the rights of way or roadways and other property or improvements located on said lands; a duplicate of which report shall be filed with the State Reclamation Engineer, for his approval. Such report before adoption may be modified by the State Reclamation Engineer, or by the board of supervisors, with his approval, and when approved by the State Reclamation Engineer and adopted by the board of supervisors, the same shall be known as, and shall be designated as "The Plan of Reclamation"; provided that no plan of reclamation, after such approval, shall be modified or changed in any manner, the cost of which shall exceed one thousand dollars (\$1,000.00), except

upon petition to the State Reclamation Engineer, signed by the owners of a majority of the acreage of lands in such district, and approved by the State Reclamation Engineer. When the plan of reclamation has been adopted as herein provided a copy of same shall be filed with the county clerk in each county where any lands lie, that will be affected in anywise by the plan of reclamation, and such filing shall be notice of its contents to all persons owning or having any interest in any lands in the county in which same is filed; and any amendments to said plan of reclamation shall be filed in like manner.

Art. 7991. Commissioners of appraisement.—When the petition for the creation of a levee improvement district stipulates that taxes are to be levied upon a benefit basis, then as soon after the approval and adoption of the plan of reclamation as practicable, the commissioners' court of the county of jurisdiction shall appoint three disinterested commissioners, who shall be known as "commissioners of appraisement," and who shall be freeholders but not owners of land within the district for which they are to act, and neither shall be related within the fourth degree of affinity or consanguinity to any of the members of the commissioners' court or the board of supervisors or any land owners in the district; and such commissioners of appraisement shall proceed as follows:

Art. 7992. Duties of commissioners.—The secretary of the board of supervisors, immediately following the appointment of the commissioners above mentioned shall in writing notify each of his appointment, and in the notice designate a time and place for the first meeting of such commissioners. In the event any such commissioner shall resign, his place shall be filled in the same manner as vacancies on the board of supervisors. It shall be the duty of the commissioners to meet at the time and place specified, or as soon thereafter as may be found practicable at some time and place to be agreed upon by them, when they shall each take and subscribe an oath that they will faithfully and impartially discharge their duties as such commissioners, and make true report of the work done by them, and at such meeting the commissioners shall organize by electing one of their number chairman and one vice chairman, and the secretary of the board of supervisors, or, in his absence, such person as the board of supervisors may appoint, shall be secretary of said board of commissioners during their continuance in office, and shall furnish to them such information and such assistance as may be within his power and necessary to the performance of their duties.

Art. 7993. Duty of secretary.—Within thirty days after qualifying and organizing as above directed, the commissioners shall begin their duties, and they may at any time call upon the attorney of the district for legal advice and information relative to such duties, and may, if necessary require the presence of the district engineer, or one of his assistants, at such time and for so long as may be necessary to the proper performance of their duties. Said commissioners shall proceed to view the lands

within such district, and all other lands which will be affected by the plan of reclamation for such district if carried out, and all public roads, railroads, rights of ways and other property or improvements located upon such lands, and all such lands within or without the district as may be acquired under the provision of this Act for any purpose connected with or incident to the fully carrying out of the plan of reclamation; they shall assess the amounts of benefits and all damages, if any, that will accrue to any tract of land within such district or which may be affected by the plan of reclamation, or to any public highway, railroad, and other rights of way, roadways or other property, from carrying out and putting into effect the plan of reclamation for such district; and they shall assess the value of all lands within or without the district to be acquired for right of way or other purposes; and the failure of said commissioners of appraisement to return damages to any tract of land within or without the district shall be deemed a finding that no damage will be done to that tract. The board shall prepare a report of their findings, which shall show the owner of each piece of property examined and on or concerning which any assessment is made, together with such description of said property as may identify the same, as well as the value of all property to be taken or acquired for rights of way or any other purposes connected with the carrying out of the plan of reclamation as finally approved by the State Reclamation Engineer; which report shall be signed by at least a majority of the commissioners and filed with the secretary of the board of supervisors of the district, which report shall show the number of days each commissioner has been employed and the actual expenses incurred by each during his service as commissioner; and each shall be paid by the district five dollars per day for his services, and all necessary expenses in addition thereto, upon the approval of his accounts for such per diem and expenses by the board of supervisors.

Said commissioners shall in their report fix a time and place, when and where they will hear objections thereto, and such date shall be not less than twenty days from the filing of such report.

Art. 7994. Notice of publication.—When the report of the commissioners shall have been filed with the secretary of the board of supervisors he shall forthwith give notice by publication in a newspaper published in each county wherein any portion of the district is located, and wherein any lands lie that will be in any way affected by the carrying out of the proposed plan of reclamation, for at least once a week for two consecutive weeks prior to the date fixed for such hearing, of the time and place of such hearing, which notice shall be in substantially the following form:

To the owners and all other persons having any interest in any lands lying in _____ County, take notice, that a copy of the plan of reclamation of the _____ levee improvement district has heretofore been filed with the county clerk of this county and that commissioners have been appointed to assess

benefits and damages accruing to the land or other property within or without the said levee district which will be benefited, taken, or otherwise affected or damaged by the carrying out of said plan of reclamation. The report of said commissioners has been filed in my office at _____ and all persons interested may examine the same and make objection thereto in whole or in part and all persons claiming damage to their lands within or without the district to which no damages have been assessed in said report are required to file claim for such damage in my office on or before the _____ day of _____, 19____, and all persons failing to make such objection or claim for damages will be deemed to have waived the same. Further take notice that the said commissioners of appraisement will meet on said day of _____ for the purpose of hearing and acting on objections to their report and claims for damages.

Secretary, Board of Supervisors.

Levee District.

The secretary of the board of supervisors shall also mail a written notice to each person whose property is listed in the report of the commissioners, if his post office address is known, stating the time and place of such meeting, which notice shall state in substance that the report of the commissioners to assess benefits and damages accruing to the land and other property by reason of the plan of reclamation for the district in question has been filed in his office, and that all persons interested may examine the same and make objections thereto in whole or in part, and that the commissioners will meet on the day and at the place named for the purpose of hearing and acting on objections to such report; and the secretary upon the day of the hearing shall file in his office the original notice, with his affidavit thereto, showing the manner of publication and the names of all persons to whom notices have been mailed, and that the post office of those to be affected to whom notices were not mailed were unknown to him and could not be ascertained by reasonable diligence; and copies of such notice and affidavit shall be filed, one with the commissioners of appraisement and one with the clerk of the commissioners' court having jurisdiction.

Art. 7995. Filing exceptions and damage claims.—At or before the hearing upon the report of the commissioners of appraisement, any owner of land or other property affected by such report, or the plan of reclamation, may file exception to any or all parts of such report, and any person to whose land no damages has been assessed and who believes that his land will be damaged by the carrying out of the plan of reclamation, may also file with the secretary of the board of supervisors a claim for such damages; and the said commissioners, at the time and place named in such notice, shall proceed to hear and pass upon all such objections and claims for damages, and may make such changes and modifications from time to time as

may be necessary to conform the report to their findings; and may grant, in whole or in part, or may over rule, such claim for damages. Such hearing may be adjourned from day to day. When commissioners shall have finally acted they shall make a decree concerning such report insofar as it is confirmed, and approving and confirming the same as modified or changed insofar as it may be modified or changed, and shall condemn such land within or without the district as shall be needed for right of way or other purposes, and shall adjudge all damages, if any. The commissioners shall have power to adjudge and apportion costs incurred upon the hearing in such manner as may be deemed equitable. The findings of the commissioners as to benefits shall be final and conclusive and shall be entered of record in the minutes of the board of supervisors and certified copies thereof shall be filed with the county clerk of each county in which any portion of the lands within such district are located, as a permanent record of such county, and such filing shall be notice to all persons of the contents of such decree. Any person, or the board of supervisors of such levee district, may appeal from the decree of the appraisers assessing or refusing to assess damages or fixing the value of right of way; the only questions to be considered on such appeal shall be whether just compensation has been allowed for property taken or whether property damages have been allowed for property injured or whether any damages are recoverable at all. Such appeal shall be taken to the district court of the county of jurisdiction in the manner, under the conditions, and within the time provided by Article 7980, for appeals from judgments of the commissioners' court refusing to create the levee district, and the district court shall have jurisdiction thereof, regardless of the amount. The secretary of the board of supervisors in case any appeal or appeals are filed, within five days after filing of the appeal, shall send to the district clerk the plan of reclamation or certified copy thereof, together with a transcript of that part of the commissioners' report affecting the lands concerned in the appeal or appeals, and a transcript of the claim or claims for damages, as the case may be, and the action of the commissioners of appraisal thereon, and such appeals may be consolidated in the district court. The trial in the district court shall be de novo and proceedings shall be in accordance with the laws of this State in suits for damages, and the claimant shall be considered as plaintiff and the district as defendant, excepting that no further pleadings shall be required. Appeals may be taken from the judgment of the district court as in other civil cases. No appeal shall delay the prosecution of the work, but upon payment by the district supervisors to the district clerk the amount of damages awarded by the commissioners of appraisal, and upon the district making bond to pay to the owner of any further amount that may be awarded him upon such appeal, title to such property so condemned shall thereupon vest in the district and it shall be entitled to immediate possession thereof. No person owning or having any interest in any land in any county in

which copy of the plan of reclamation has been filed and notice published of the hearing before the commissioners of appraisal, who has failed to file claim for damages as above provided, or who has failed to file objection to the damages assessed by the commissioners against his land, or who having filed such claim or objection, has failed to appeal from an adverse ruling upon such claim or objection, shall thereafter be heard to claim any damages from the levee district or its supervisors, officers or agents by reason of the carrying out of the plan of reclamation.

Art. 7996. **Basis of taxation.**—After the action of the commissioners of appraisal, as aforesaid, their final findings, judgment and decree assessing benefits, until lawfully changed or modified, shall form the basis of taxation within and for the levee improvement district for which they shall have acted, for all purposes for which taxes may be levied by, for or on behalf of such district, and all taxes shall be apportioned and levied on each tract of land, railroad and other real property in the district in proportion to the benefits to the property named in such final judgment or decree, as shown thereby. In all matters before the commissioners of appraisal, parties interested may not only appear in person or by attorney, or both in person and by attorney, but they shall be entitled to process for witnesses, to be issued by the chairman of the commissioners of appraisal on demand, and such commissioners shall have the same power as a court of record to enforce the attendance of witnesses.

Art. 7997. **Limitation on commissioners.**—In a district in which taxes are levied on the ad valorem basis, commissioners of appraisal shall be appointed and shall proceed in like manner as provided by Article 7991 to 7995, inclusive, of this Act, excepting that they shall not assess any benefits.

And, thereupon, all proceedings shall be had, notices given and hearings held in like manner; and all provisions of this statute relating to assessment of damages in districts levying taxes on a benefit basis shall apply to the assessment thereof in districts taxing on the ad valorem basis.

Art. 7998. **Rate of taxation.**—In all levee improvement districts providing for the levy of taxes upon an ad valorem basis, the taxable property shall be assessed at the same value as assessed for State and county purposes. In the assessment of taxes in such districts, and in all matters pertaining thereto or connected therewith, the county tax assessor shall have the same powers and shall be governed by the same rules, regulations and proceedings as are provided by the laws of this State for the assessment and collection of county and State taxes. And the county commissioners' court shall constitute the board of equalization for such levee improvement district or districts, and all laws governing boards of equalization for county and State taxing purposes shall govern such board or boards for such levee improvement districts. It shall be the duty of the county tax assessor of the county to assess all property within such levee improvement district and list the same for taxation in the books or rolls furnished him by the commissioners' court for that

purpose, and return said books and rolls at the same time when he returns the other books and rolls of the State and county taxes for correction and approval. If the commissioners' court shall find said books or rolls correct, they shall approve the same and order the county clerk to issue a warrant against the county treasurer in favor of said tax assessor to be paid from the funds of said levee improvement district. The tax assessor shall receive for his said services such compensation as the commissioners' court shall deem proper to compensate him for the amount of work done; provided, that the said tax assessor shall in no event be allowed more than he is now allowed by law for like services. Should the tax assessor fail or refuse to comply with the orders of the commissioners' court requiring him to assess and list for taxation all property in such improvement district as herein provided, he shall be suspended from the further discharge of his duty by the commissioners' court of his county, and he shall be removed from office in the mode prescribed by law for the removal of county officers.

And levee improvement districts providing for the levy of taxes upon an ad valorem basis, and embracing lands located in more than one county, shall have all the rights, powers and privileges of such levee improvement districts that include lands in one county. The tax assessor of each county having lands included within such levee improvement district shall assess the taxes levied by the commissioners' court of his county against the territory included in such levee improvement district for each and every year that such tax is levied. It shall be the duty of the tax assessor to make up a separate tax roll covering the levee improvement taxes on territory in his county included in such levee improvement district, and deliver such separate tax roll together with the general tax rolls of his county. The said separate tax roll shall guide the tax collector in collecting the levee improvement taxes for such district. It shall be the duty of the tax collector to collect such levee improvement tax for such levee district in his county for every year that such tax has been levied in such district and keep a separate account covering the territory of his county included in such levee improvement district for the purpose of determining how much tax has been collected and how much tax shall be paid by his county to such levee improvement district.

Art. 7999. Non-bond issuing districts.—Levee improvement districts created under this Act, desiring to effect and carry out their plans of reclamation without the issuance of bonds, shall, subject to the limitations hereinabove stated, be authorized and empowered through their boards of supervisors to make such arrangements by contributions from land owners, or otherwise, as may be necessary to provide the funds requisite to the completion of their improvements; and may, by vote of the resident property taxpayers of such districts, create such indebtedness, to be evidenced otherwise than by bonds, as may be deemed requisite. Provided such indebtedness shall never exceed the cost of construction of improvements to be made according to the

adopted plan of reclamation approved by the State Reclamation Engineer, and the cost of maintenance of such improvements for two years as estimated by him, plus ten per cent additional to meet emergencies, modifications and changes lawfully made, and plus all damages awarded against the district.

Art. 8000. Petition for bond election.—Where any levee improvement district desires to issue bonds to raise funds for its works of improvements, there shall be presented to the commissioners' court having jurisdiction, or to the judge thereof, in vacation, a petition signed by the owners of a majority of the acreage of lands included within such district, praying for the issuance of bonds to an amount stated, which amount shall not exceed the costs of construction of improvements to be made according to the adopted plan of reclamation approved by the State Reclamation Engineer, and the cost of maintenance of such improvement for two years as estimated by him, plus ten per cent additional to meet emergencies, modifications and charges lawfully made, plus all damages awarded against the district. The petition shall state the rate of interest to be borne by such bonds, and pray that an election be ordered within and for such district to determine whether or not bonds shall be issued by and on behalf of said district for the purposes above indicated, and to the amount stated, and whether taxes shall be levied within and for said district in payment thereof; provided, that said bonds shall bear a rate of interest not exceeding six per cent per annum.

Art. 8001. Manner of election.—Upon presentation of said petition such commissioners' court, if in session, or the judge thereof, if the court be not in session, shall make and cause to be entered of record upon the minutes of said court an order directing that an election be held within and for such levee improvement district at a date to be fixed in the order, to be not less than fifteen nor more than thirty days after the date of such order, for the purpose of determining the questions mentioned in such petition. At such election those desiring to vote in favor of the issuance of bonds and levy of taxes in payment thereof, shall have written or printed on their ballots; "For the issuance of bonds and levy of taxes in payment thereof," and those desiring to vote against the proposition submitted shall have printed or written on their ballots; "Against the issuance of bonds and levy of taxes in payment thereof." Each and every levee improvement district is hereby constituted an election precinct for the purpose of the election above specified and all other elections which may be ordered or held under any provisions of this Act. When elections are ordered the judge or court ordering the same shall fix the polling place or places for the holding of such election, and name a judge and two clerks at each polling place, and more judges or clerks if deemed necessary; and there shall be at least one polling place in each county in which any portion of the district is located.

Art. 8002. Expense of election.—When a petition for a bond election is presented it shall be accompanied by a deposit of two

hundred dollars, from which shall be paid all expenses of such election, and such other expenses as may be properly incurred up to the sale and issuance of bonds, and any excess shall be returned to the petitioners or their attorney; and when bonds are issued the amount of such expense shall be refunded to the petitioners or their attorneys from the proceeds of the bonds.

Art. 8003. Posting notice of election.—When an order for an election has been made, the clerk of the commissioners' court of the county having jurisdiction shall forthwith issue and place in the hands of the sheriff of the county, if the district is wholly within one county a notice stating in substance the contents of such election order, and the time and place or places of such election, and it shall be the duty of such sheriff, by himself or deputy, forthwith to post a copy of such notice at the door of the courthouse of his county, and four other copies at four different places within the boundaries of such district, which posting shall be done not less than ten days prior to the date fixed for said election; if such district is located in more counties than one, then such notice may be delivered to any adult person, who shall post copies of the same, one at the door of the courthouse of each county in which any portion of such district is situated, and four copies at four separate places within the boundaries of those portions of the district situated in each county, which posting shall be for not less than ten days prior to the date of said election; such sheriff or person posting shall make due return to the clerk of the court having jurisdiction of his action, in the premises; the return of the individual other than the sheriff to be under oath before some person authorized by law to administer oaths, and the return of the sheriff and such oath shall be conclusive evidence of the facts stated.

Art. 8004. Who may vote.—All elections held under any provisions of this Act shall be governed as near as may be by the general election laws of this State, except as modified hereby, and shall be held and conducted by the judges and clerks appointed by the court of jurisdiction, or in their absence or refusal to act, by others chosen by the voters, and the supervisors of the district shall furnish all necessary ballots and other election supplies requisite to such elections. None but qualified property taxpaying voters of such district shall vote at any election to authorize the issuance of bonds by or on behalf of the district or for the creation of any indebtedness against any district, or for or against any maintenance tax.

Art. 8005. Making returns.—Immediately after any election under this Act the officers holding the same shall make return of the result thereof to the commissioners' court having jurisdiction, and return the ballot boxes to the clerk of said court, who shall safely keep the same and deliver them, together with the returns of the election, to the commissioners' court of jurisdiction at its next regular or special session, and said court shall at such session canvass the vote and returns, and if it be found that the proposition submitted has been adopted by a majority of the qualified property taxpaying voters of such district voting at said

election, then the court shall declare the result, and, if the election be for the issuance of bonds, shall declare that it resulted in favor of the issuance of bonds and the levy of taxes in payment thereof; and, if the result be against the issuance of bonds, then it shall declare that the result was against the issuance of bonds and the levy of taxes in payment thereof; and, if the question be for a maintenance tax, or other tax, then it shall declare the result to be for or against such tax, as the case may be; or, if the question be any other proposition which may be properly submitted at an election, the order shall declare the result to be for or against the proposition submitted, as the case may be, and an order, or orders declaring such result shall be entered upon the minutes of such court.

Art. 8006. Petition for and notice of election.—If, at the time for a bond election, or at any other time, the supervisors of any district created under this Act, or entitled to its benefits, shall desire to be submitted to the voters of the district the question of a maintenance tax, or other proposition proper to be submitted to them, they shall petition the commissioners' court of jurisdiction for an election upon the question so desired to be submitted, and it shall be the duty of the court to order an election, and that notice be given substantially as in case of a bond election, and notice shall be given substantially as in case of such elections, and all other proceedings shall be in respect to the question so submitted substantially in accordance with the provisions hereof in respect to a bond election.

Art. 8007. Issuance of bonds.—If a bond election in any district created under this Act, or entitled to its benefits, shall have resulted in favor of the issuance of bonds and levy of taxes in payment thereof, after such result has been duly declared, the commissioners' court of jurisdiction shall make an order directing the issuance of bonds of such district, to be known as "Levee Improvement Bonds," to the amount voted, unless a less amount was requested by the district supervisors, which bonds shall state upon their face the purposes for which they are issued. Said bonds shall be issued in the name of the levee improvement district by and on behalf of which they are voted, shall be signed by the county judge of the county whose commissioners' court has jurisdiction, and shall be attested by the county clerk of said county, and the seal of the commissioners' court of such county shall be affixed to each; they shall be issued in such denominations, and payable at such time or times, not exceeding thirty years from their date, as may be deemed most expedient by the issuing authority, and shall bear interest not to exceed six per cent per annum.

Art. 8008. Record of bonds.—When bonds shall have been issued by and on behalf of any levee improvement district, the supervisors of such district shall procure and deliver to the treasurer of the county whose commissioners' court has jurisdiction, a well bound book in which a record shall be kept of all such bonds, with their number, amount, rate of interest, date of issuance, when due, where payable, amount received for same,

and the tax levy to pay interest on and to provide sinking funds for their payment, which book shall at all times be open to the inspection of the parties interested, either as taxpayers or bondholders; and upon the payment of any bond an entry thereof shall be made on such book. The county treasurer shall receive for his services in recording all these matters the same fees as may be allowed by law to the county clerk for recording deeds.

Art. 8009. Attorney General to examine.—Before any bonds issued by or on behalf of any levee improvement district are offered for sale, there shall be forwarded to the Attorney General a certified copy of all proceedings had in the organization of the district, and with reference to the issuance of such bonds in connection with the bonds, themselves, and such other information with respect thereto as may be required by the Attorney General, shall be furnished; and it shall be the duty of the Attorney General to carefully examine said bonds, in connection with the record and the Constitution and laws of this State governing the issuance of such bonds, and, if, as a result of his examination, the Attorney General shall find that such bonds are issued in conformity with the Constitution and laws of this State and that they are valid and binding obligations upon the district by or on behalf of which they are issued, he shall so officially certify, and, until he shall so officially certify, and until registered by the Comptroller, as hereinafter required, said bonds shall be without validity.

Art. 8010. Recorded by Comptroller.—When the bonds of any levee improvement district have been examined and approved by the Attorney General and his certificate thereto has been issued, they shall be registered by the State Comptroller in a book kept for that purpose, and the certificate of the Attorney General as to the validity of such bonds shall be preserved of record. Such bonds after receiving the certificate of the Attorney General, and after having been registered in the Comptroller's office, as herein provided, shall be held, in every action, suit or proceeding in which their validity may be brought into question, prima facie valid; and in every action brought to enforce collection of such bonds and interest thereon, the only available defense against the validity of such bonds shall be forgery or fraud.

Art. 8011. Sale of bonds.—When bonds shall have been issued, approved and registered as provided in this Act, the court of jurisdiction may appoint the county judge of the county of jurisdiction, or other suitable person, to sell said bonds on the best terms and for the best price possible and approved by the district supervisors, and no sale shall be complete until approved by such supervisors. The judge or person selling such bonds shall be allowed, as full compensation for all services performed in respect thereto, one-fourth of one per cent of the amount received, and, except such commission, shall promptly pay over to the proper treasurer or depository the proceeds of said bonds, to be placed to the credit of such levee improvement district; but, before proceeding to make any sale, such judge, or any per-

son appointed, shall execute a good and sufficient bond, payable to the levee improvement district, and approved by the commissioners' court having jurisdiction, for an amount not less than the par value of the bonds to be sold, conditioned for the faithful discharge of his duty under his appointment.

Art. 8012. Levying taxes.—When bonds have been issued by any levee improvement district, providing for the levy of taxes upon a benefit basis, the commissioners' court of the county, if the district is wholly within one county, or if the district is located in more than one county, then the commissioners' court of each county in which any portion of such district is located, shall levy and cause to be assessed and collected taxes upon all taxable property within such district, based upon and proportioned, as to each piece of property, to the net benefits which it shall have been found will accrue to such property from the completion of the plan of reclamation or other duly authorized work, which taxes shall be sufficient in amount to pay the interest on such bonds, as it shall fall due, and to raise an additional sum which will create a sinking fund sufficient to discharge and redeem such bonds at maturity; such levy may be made for or at the time of issuance of said bonds for each year throughout the life of the bond issue which shall be the rate of levy for each of such years until modified. Sinking funds shall from time to time be invested in such county, municipal, district or other bonds as other sinking funds may by law be invested in, or in the bonds of the series to which such funds apply, if offered for redemption before maturity upon terms deemed advantageous to the district by its supervisors or the court of jurisdiction.

When bonds shall have been issued by any levee improvement district, providing for the levy of taxes upon ad valorem basis, the commissioners' court of the county, if the district is wholly within one county, or, if the district is located in more than one county, then the commissioners' court of each county in which any portion of such district is located, shall levy and cause to be assessed and collected taxes upon all taxable property within such district, based upon the value of each piece of property as made for State and county purposes, which taxes shall be sufficient in amount to pay the interest on such bonds as it shall fall due, and to raise an additional fund which shall create a sinking fund sufficient to redeem and discharge such bonds at maturity; such levy may be made for or at the time of issuance of said bonds for each year throughout the life of the bond issue which shall be the rate of levy for each of such years until modified. Sinking funds shall from time to time be invested in such county, municipal, district or other bonds as other sinking funds may by law be invested in, or in the bonds of the series to which such funds apply, if offered for redemption before maturity upon terms deemed advantageous to the district by its supervisors or the court of jurisdiction.

Art. 8013. For what uses may be applied.—When a maintenance tax shall have been voted in any district entitled to the

benefits of this Act, the commissioners' court of the county, if the district is wholly within one county, or, if the district is located in more than one county, then the commissioners' court of each county in which any portion of such district is located, shall thereafter levy and cause to be assessed and collected taxes upon all taxable property within such district, based upon the net benefits thereto contemplated to be accomplished through the plan of reclamation, if such district has provided for the levy of taxes upon a benefit basis; or such court shall thereafter levy and cause to be assessed and collected taxes upon all taxable property, within such district, based upon the value of each piece of property as made for State and county purposes, if the district has provided for the levy of taxes upon ad valorem basis; provided, however, that the tax rate shall not exceed the specific rate voted, and the vote in such cases may be for a specific rate, or not to exceed a specific rate. The proceeds of such taxes shall be used for the maintenance, upkeep, repairs and additions to the levees and other improvements in the district, and for no other purposes, except as may be herein otherwise provided. The right to levy such taxes shall remain in force until abrogated, in whole or in part, by another election; but elections upon the question of the repeal or reduction of maintenance taxes shall not be held oftener than every five years; and any levee improvement district heretofore organized may avail itself of the provisions and benefits of this section.

Art. 8014. **Secretary ex officio tax assessor.**—The secretary of the board of supervisors of levee improvement districts providing for the levy of taxes upon a benefit basis shall be ex officio tax assessor for such districts, and it shall be his duty when any tax is levied, at the expense of the district, to prepare a tax roll in form substantially as the assessment roll made by county tax assessors, except that instead of ad valorem valuation it shall state net benefits assessed against property, and he shall compute against each piece of property the amount of taxes assessed against it, and enter on such roll the amount of such taxes. A certified copy of such roll, insofar as it appertains to each county in which any portion of the district is located, shall be filed with the tax collector of such county.

Art. 8015. **Tax collectors under bond.**—Tax collectors of the several counties shall be charged with the assessment rolls of levee improvement districts, and are required to make collections of all taxes levied and assessed against property within such district, and promptly pay over the same to the treasurer of the district; and the bonds of such collectors shall stand as security for the proper performance of their duties as tax collectors of such levee improvement district, or if in the judgment of the supervisors of such district it be necessary, additional bonds payable to such districts, may be required, and any collector failing to act hereunder or failing to give the additional bond required, shall be deemed guilty of malfeasance in office and shall be suspended from office by the commissioners' court of his county, and may be removed from office in the mode prescribed

by law; and in case of suspension the boards of supervisors may appoint special collectors for their respective districts and require such security of them as may be deemed proper, and the persons so chosen shall have and exercise within and for the district all the rights and powers which tax collectors have or may have by law in their respective counties.

Art. 8016. Recovering delinquent taxes.—Tax collectors of levee improvement districts shall perform all duties and exercise all powers in respect to delinquent taxes due levee improvement districts as may be provided by law for the collection of delinquent State and county taxes, and the collection of such delinquent levee improvement district taxes and sales of property therefor shall be governed by the laws applying to the collection of delinquent State and county taxes and foreclosure decree therefor shall include writ of possession. The supervisors are also given the power and authority to collect such delinquent taxes, and to institute and prosecute suits in the name of the district for their collection; and such districts are also authorized to do and perform all other things that may be necessary for the collection of such taxes. Taxes levied under this law shall be a first and prior lien upon all property against which they are assessed, and shall be payable and shall mature and become delinquent as provided by law for State and county taxes.

Art. 8017. Same; method to be pursued.—The board of supervisors may also proceed to collect delinquent levee taxes in the following manner:

Suit shall be brought in the name of the district for the collection of the taxes and the foreclosure of the lien thereof in the following manner:

(a) Such suits shall be brought in the district court of the county in which the land or the major part thereof is situated, and such courts shall give judgment against each tract of land for the amount of such taxes, together with penalties, interest, attorneys fees and costs; such judgment shall provide for the sale of each tract of land by the sheriff or any constable of the county in which it is situated in the same manner as other judicial sales of land; and it shall be immaterial that the ownership of said land be incorrectly alleged in said proceedings.

(b) Such action shall be in the nature of a proceeding in rem, and jurisdiction of land owners and other parties interested may be had by publication of a general notice thereof, once each week for at least four consecutive weeks in some paper of general circulation published in the county or counties in which such district is situated, and if no paper is published in the county, then the same shall be published in a paper in the nearest county thereto where a paper is published, and also by written notice mailed to the last known address of the land owner, and which notice shall be substantially in the following form:

_____ County Levee Improvement District
No. _____ vs. delinquent lands in _____ County and
said district. In the district court of _____ County,
Texas, _____ Judicial District _____ Term, 19____.

Notice is hereby given to all parties having or claiming any interest of any kind in any of the following described lands that on the _____ day of _____, 19____, suit was filed in the district of _____ County, Texas, at _____, Texas, to enforce the collection of certain levee district taxes on said lands.

The name of each supposed owner has been set opposite his, her or its land, together with the amount due from each tract, to-wit:

(Give list of supposed owners, with a description list of said delinquent land, and the amount due thereon respectively).

All persons or corporations having or claiming any interest whatsoever in said lands, are hereby notified to appear at the next regular term of said district court of _____ County, Texas, to be held at the court house thereof in _____, on the _____ Monday in _____, 19____, the same being the day _____ day of _____, 19____, then and there to answer a petition filed in said court in the above numbered and entitled cause, or final judgment will be entered directing the sale of said lands for the purpose of collecting said taxes, together with payment of interest penalties, attorneys fees and other costs allowed by law.

Given under my hand and the seal of said court in the City of _____, Texas, this _____ day of _____, A. D. 19____.

Clerk of the District Court
of _____ County, Texas.

Insued this _____ day of _____ A. D., 19____.

Clerk of the District Court
of _____ County, Texas.

(c) Such publication of notice of the pendency of such suit and the written notice addressed to the last known address of the land owner, shall be taken as and for service of process against any owner, vender, mortgage, heir or other person claiming any interest in the lands whatsoever, and the judgment in such case shall be binding upon each tract of land and the owner of every interest therein. Provided, it shall not be necessary to publish any delinquent list or give any other delinquent notice before proceeding under this Act.

(d) When the notice, petition and answer have been filed with the clerk, he shall docket the same in other causes, and the said suit have precedence over all other cases.

(e) In such suits it shall be sufficient to allege generally and briefly the organization of the district and the non-payment of the taxes, setting forth a reasonable description of the lands proceeded against and the amount chargeable to each tract, with prayer for foreclosure; provided that no irregularity in the assessment of the land, or mistake in the name of the owner or in the number of acres therein, shall be a defense to such action;

provided, further, that no mistake as to the amount of the taxes, interest and penalty as alleged in the pleadings or in the notice of the pendency of the suit shall be a defense, but the correct amount of taxes, interest and penalty due may be proved and the judgment rendered thereon.

(f) Such suits shall be conducted in the name of the levee improvement district and in accordance with the practice and proceedings of the district courts in this State, except as herein otherwise provided. Continuances shall be granted only for good cause shown, which may be granted as to part of the lands, and in such case the court shall proceed as to all tracts as to which no continuance is granted.

(g) When notice has been properly given as aforesaid, and where no answer has been filed, or if filed and the cause has been decided for the plaintiff, the court shall enter judgment granting the relief as prayed for in the petition, and shall foreclose the lien on such taxes and order the sale of the land therefor in the same manner as other judicial sales of real estate, and foreclosure decree therefor shall include writ of possession, and if all the land and other real property be not sold on the date advertised, such sales shall continue from day to day until completed, and the sheriff or constable shall by proper deed convey to the purchaser the land so sold, and the title of said land shall thereupon become vested in such purchaser against all others whatsoever; provided, that the former owner shall within two years of the date of the purchaser's deed have the right to redeem the land upon payment of double the amount of money paid for the land.

(h) The board of supervisors shall have the power to employ attorneys for the purpose of collecting such delinquent taxes, paying such attorneys for their services such fees or commissions as to the supervisors may seem proper.

(i) Whenever the board of supervisors of any levee improvement district shall fail to commence suits within sixty days after taxes have become delinquent, the holder or holders of any bonds issued by such levee improvement district shall have the right to employ counsel to bring such suit in the name of the levee improvement district upon the relation of such holder or bond holders; and such suits may be proceeded with in the same manner as hereinabove prescribed, and shall in all respects be governed by the provisions of this section.

(j) The method of procedure provided in this section shall be cumulative, and shall not repeal or supercede any other procedure provided herein for the collection of such taxes.

Art. 8018. **Refunding bonds.**—Any levee improvement district which has heretofore been organized under the laws of the State and has issued bonds, and any levee improvement district hereafter organized, and which may issue bonds, may by consent of the holders thereof refund any bonds issued, by issuing new coupon bonds for that purpose. Such refunding bonds shall not bear a greater rate of interest than the bonds in lieu of which they are issued. Interest shall be evidenced by coupons

attached to such bonds, and may be payable annually or semi-annually, within the discretion of the commissioners' court of the county of jurisdiction; and such refunding bonds shall be payable serially, or otherwise, not exceeding forty years from the date thereof, and shall be issued in denomination one hundred dollars or some multiple thereof; and a sufficient tax levy to meet the payment of the principal and interest of said refunding bonds shall be made before the delivery thereof, provided the refunding of any bonds shall not affect any taxes already due.

The refunding bonds hereby authorized shall be executed in the same manner provided for the execution of levee improvement district bonds. Any sum to the credit of any sinking fund account on hand shall first be deducted in ascertaining the amount of refunding bonds to be issued, and such money shall in every case be applied to the payment of the outstanding bonds. No refunding bonds shall be issued and delivered until approved by the Attorney General and registered by the State Comptroller; provided, however, that the Comptroller shall not register such refunding bonds until the old bonds in lieu of which such refunding bonds are issued are presented to him for cancellation; and after the registration of the new bonds, the Comptroller shall cancel the old bonds and interest coupons, and deliver such new bonds to the proper party or parties; provided, further, that the old bonds may be so presented for cancellation, in installments, and a like amount of the new bonds registered and delivered as is herein provided.

Art. 8019. Treasurer under bond; compensation.—The county treasurer of the county, the commissioners' court of which has jurisdiction, shall be treasurer of all levee improvement districts of which such court has jurisdiction, and as such shall execute a good and sufficient bond, payable to the levee improvement district, in a sum equal to one and one-fourth of the taxes contemplated to be paid over in any one year, or such other or further amount as the board of supervisors of the district may require, which bond shall be conditioned for the faithful performance of the duties of the principal as treasurer of the levee improvement district, and shall be approved by the board of supervisors of such district. Such bond may be made by any guaranty or surety company approved by the board of district supervisors, and premiums therefor may be paid out of the maintenance fund of the district. The treasurer, as compensation for his services, shall be allowed not exceeding one-fourth of one per cent upon sums received by him by and on behalf of such levee improvement district.

Art. 8020. Treasurer to report to commissioners' court.—It shall be the duty of the county treasurer whose commissioners' court has jurisdiction, as treasurer of the levee improvement district, to open an account with each such district and to keep an accurate account of all moneys received by him belonging to such district, and all moneys paid out by him. He shall pay out no money except upon a voucher signed by two of

the district supervisors and countersigned by the county judge, and he shall carefully preserve all orders for the payment of money; and as often as required by the said district supervisors or the commissioners' court he shall render a correct account to them on all matters pertaining to the financial condition of such district.

Art. 8021. Supervisors select depository.—The board of supervisors shall select a depository or depositories for funds of the district and the county treasurer shall deposit such funds of the districts in such depository or depositories as the supervisors may direct; provided, before any such depository shall receive any funds of the district they shall give bond to the district with a corporate surety company as surety, which is authorized to do business in the State of Texas, in an amount equal to the funds so deposited, conditioned upon the safe keeping of said funds and paying of the same.

Art. 8022. Compensation of officers.—For all services performed by any officer or individual under this Act, the compensation for which is not herein expressly provided for, such officer or individual shall receive the same compensation as he would for like services if rendered as an officer of a county. Clerks recording orders hereunder shall receive the same compensation as would a county clerk for recording deeds, and persons posting notices hereunder shall receive the same compensation as would a sheriff for posting notices required by law to be posted by him officially.

Art. 8023. Awarding contracts.—All the improvements contemplated by the plan of reclamation, as approved by the State Reclamation Engineer, shall be constructed. Contracts for making and constructing levees and other improvements and all the necessary work in connection with any levee improvement district, shall be let by the district supervisors to the lowest and best bidder, after giving notice by advertising same in one or more newspapers of general circulation in the State of Texas once a week for three consecutive weeks; which contracts shall be made in writing and signed by the contractor, in duplicate; provided, that such work may be let without advertisement upon contracts approved jointly by the district supervisors and the owners of a majority of the acreage of land in such district; provided, further that such contract shall include all works of improvement contemplated and authorized by the approved plan of reclamation, it being the intent hereof to require the contractor to complete the construction of such works of improvement for the amount of money, or bonds available for the purpose; provided, that such work may be let in sections but no contract for a part of the work shall be valid unless and until all sections of the work shall have been let under the above conditions so that the total cost of the work shall be within the amount of funds or bonds provided for the purposes; provided further, that it shall be the duty of the district supervisors immediately to notify the county treasurer that the contract has been executed and it shall thereupon be the duty of the county treasurer to set aside an

amount of money in the construction and maintenance fund of said district to be known as "Special Fund Under Contract, dated _____ (inserting date of contract)," and which special fund, so set aside, shall be for the full amount of the contract price, and it shall be unlawful for the county treasurer to pay any warrants against such special fund, except upon accounts sworn to by the contractor and duly audited and approved by the district supervisors; and the use or payment of such special fund, or any part thereof, for any other purpose shall be a diversion thereof, and punishable as provided by Article 104, of the Penal Code of this State, Revision of 1911; and, provided further, that the district supervisors may deliver to the contractor upon the written consent of the county judge, the bonds of such district in full payment of the works of improvement constructed in conformity with the contract, and such bonds may be delivered in installments upon estimates of the engineer as the work progresses. In the event there are not sufficient funds available for the purpose of completing the works of improvement contemplated and authorized by the approval plan of reclamation, then no contract shall be awarded for any part of such work until sufficient funds have been provided for; and if such contract is made it shall be void, and shall not be enforceable in any court in this State, and the performance of same or any payment of any money thereunder may be enjoined by any taxpayer in such district; provided, however, that this requirement shall not apply to urgent necessity or present calamity where it becomes necessary to act at once to repair any levee so as to preserve the property in the district; and, provided further, that subsequent to the approval and registration of bonds by the proper State officials as herein provided, contracts may be let conditioned upon the sale of such bonds in an amount equal to the contract price. "The contractor shall be required to give a corporate surety bond for the full amount of the contract price, which shall guarantee the completion of the contract as above provided, which bond shall be subject to the approval of the county judge."

Art. 8024. **Work to be supervised.**—All work included in the contract shall be done in accordance with the specifications under the supervision of the supervisors and the district engineer. As the work progresses the engineer of such district shall make report to the supervisors, showing in detail whether the contract is being complied with, and when the work is completed he shall make a detailed report of same to the supervisors, showing whether or not the contract has been fully complied with according to its terms, and if not in what particular it has not been so complied with. It shall be the duty of the State Reclamation Engineer either in person or by deputy to inspect the construction of a levee and other works of improvement once every sixty days after such construction work has commenced; and if he finds that such levee or other duly authorized work has been constructed in strict accordance with the approved plan of reclamation he shall so officially certify and his certificate shall give a

full description of the work that has been done up to the date of such inspection; and in the event he finds that such work has not been constructed in strict accordance with the approved plan of reclamation, he shall so officially certify, and in such certificate designate wherein the contractor has failed to comply with the approved plan of reclamation. It shall thereupon be the duty of the district supervisors to forthwith demand that the contractor shall comply with the requirements of the approved plan of reclamation, at his own cost and expense, and no further accounts, claims or vouchers submitted by such contractor shall be approved or paid until he has complied with the requirements of the State Reclamation Engineer in constructing such work in accordance with the approved plan of reclamation.

Art. 8025. Paying for work done.—The supervisors shall, during the progress of the work under contract, inspect the same; and upon the completion of any work in accordance with the contract, they shall draw a warrant on the treasurer of the district for the unpaid amount of the contract price in favor of the contractor. Payments pending the work shall not exceed in the aggregate eighty-five per cent of the contract price of the work done, the said amount of work completed to be shown by estimates of the engineer of the district.

Art. 8026. To have seal.—Levee improvement districts created under this Act, or entitled to its benefits, shall each have a common seal which shall be circular in form, with the name of the district within the center, with a star of five points in the center; and such districts may sue and be sued in the courts of this State in and by their corporate names, and all courts of this State shall take judicial notice of their existence.

Art. 8027. Plans to be approved by Reclamation Engineer.—It shall be unlawful for any levee improvement district, whether it proposes to construct its levees or other improvements with or without the issuance of bonds, to construct, to undertake to construct, or maintain any levee or other improvement, without first obtaining the approval by the State Reclamation Engineer, as provided in this Act, of the plans for such levees or other improvements; and in the event any such levee improvement district undertakes to construct, or constructs or maintains any levee or other improvement without first obtaining the approval of the State Reclamation Engineer of the plans for the same, as provided in this Act, it shall be the duty of the Attorney General, on the request of the State Reclamation Engineer, to file suit in one of the district courts of Travis County, Texas, in which the venue of such suits is hereby fixed, to enjoin the construction or maintenance of such levee or other improvement.

Art. 8028. Same; along streams, lakes, etc.—From and after the taking effect of this Act it shall be unlawful for any person, corporation or levee improvement district, without first obtaining the approval of plans for the same by the State Reclamation Engineer, to construct, attempt to construct, cause

to be constructed, maintain or cause to be maintained, any levee or other such improvement on, along or near any stream of this State which is subject to floods, freshets or overflows, so as to control, regulate or otherwise change, the flood waters of such stream; and any person, corporation or district violating this section of this Act shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not exceeding one hundred dollars. And in the event any such structure is about to be constructed, is constructed, or maintained by any person or corporation without approval of the plans by the State Reclamation Engineer, it shall be the duty of the Attorney General, on the request of the State Reclamation Engineer, to file suit in one of the district courts of Travis County, in which the venue of such suits is hereby fixed, to enjoin the construction or maintenance of such structure. Provided, that the provisions of this section shall not apply to dams, canals or other improvements made or to be made by irrigation, water improvements or irrigation improvements made by individuals or corporations.

Art. 8029. Dissolution of district.—If any levee improvement district heretofore created or that hereafter may be created shall find, at any time prior to the sale of its bonds or final lending of its credit in other form, that the proposed undertaking for any reason is impracticable or apparently cannot be successfully carried out, the commissioners' court is hereby authorized to abolish such district upon petition signed by the owners of a majority of the acreage in the district, praying for the dissolution of such district, setting forth the reasons therefor, and accompanied by a deposit of fifty dollars. Such petition shall be set for hearing, notice of such hearing shall be given, the hearing thereon shall be held, and the expense thereof paid out of said deposit all in conformity with the procedure prescribed in this Act in connection with the petition for the establishment of the district; and the commissioners' court shall have the same powers with respect to the abolition of such districts that it has with respect to their creation. If upon the hearing it shall appear to the court that such district should be abolished, the court shall so find and shall render judgment reciting such findings, and by its orders entered of record declare and decree such district abolished, and appoint the chairman of the supervisors or some other suitable person as trustee to close up its affairs without delay; the term and compensation of such trustees to be at the pleasure of the said court. If the court should not so find, it shall dismiss the petition at the cost of the petitioners, and enter such findings of record. Where any taxes have been levied and collected in the name of the district in anticipation of an issue of bonds, such taxes, so far as unexpended, shall in the event of dissolution of the district as herein provided, and on order of the commissioners' court duly entered, be returned to the taxpayers ratably, after deducting the compensation of the assessor, collector and treasurer in connection therewith, and any other claim properly chargeable against such taxes; proper re-

ceipt for all sums so refunded to be taken and filed by the treasurer.

Art. 8030. Providing additional funds.—If it should develop that the works and improvements set out in any plan of reclamation adopted by or on behalf of a levee improvement district are found insufficient to reclaim in whole or in part any or all of the lands and other property within the district, or if extensive repairs or additions to such works are deemed necessary, or if additional funds are needed to complete improvements, then in respect thereto, the board of supervisors of the district, may proceed in all respects to provide additional funds for such additional works, in accordance with the provisions of this Act, in respect to the original plan of reclamation, and may, under like limitations, create additional indebtedness or issue additional bonds, but always subject to every limitation in respect to such original proceedings, as well as the approval of the new or amended plan of reclamation by the State Reclamation Engineer.

2. ALTERNATE METHOD.

| | Article | | Article |
|--|---------|--|---------|
| Readjusting assessments..... | 8031 | Districts not organized hereunder..... | 8037 |
| Same; hearing petition..... | 8032 | Repealing all laws in conflict..... | 8038 |
| Assess and collect on re-assessment..... | 8033 | All districts organized heretofore are under provisions of this Act..... | 8039 |
| Protesting decision of reclamation engineer..... | 8034 | Does not repeal laws of 1925 statutes..... | 8040 |
| Injuring levee..... | 8035 | Continuation of former Acts..... | 8041 |
| Interfering with work..... | 8036 | | |

Art. 8031. Readjusting assessments.—At any time after one year from the date of any final judgment and decree of the commissioners of appraisement in districts levying taxes on the benefit basis, the owners of a majority of the acreage of the lands within the district may file a petition with the commissioners' court alleging that the previous assesment of benefits in such judgment and decree are insufficient or inequitable, and praying for an increase or readjustment of the assessment of benefits for the purpose of making an adequate or more equitable basis for the levy of taxes; and if the plan of reclamation is changed or modified, or if extensive repairs or additions thereto are desired to be made, the board of supervisors shall file a petition with such court setting out therein such changes, modifications, repairs or additions; upon the filing of any such petition the court shall set a day for the hearing of each petition, and issue notice informing all persons concerned of the time and place of hearing, and their rights to appear and contend for or contest an increase or readjustment of assessments of benefits, such notice to be posted at the places, for the length of time, and in all respects the same as the notice of hearing for establishing the districts.

Art. 8032. Same; hearing petition.—At the time and place set for the hearing the commissioners' court shall proceed to hear such petition and proof for or against the same, and if it finds that the aggregate amount of assessed benefits as shown by such previous final judgment and decree is insufficient to

carry out the original plan of reclamation, or any change in or modification of, or repairs, or additions to the same, or that there has been a material change in the relative value of the benefits conferred on the property in the district, or that for other reasons such assessment of benefits is inadequate or inequitable, it shall order that there be made a reassessment of benefits for the purpose of providing a sufficient, more adequate or equitable basis of taxation for all purposes within such district; and thereupon it shall proceed to appoint commissioners of appraisement in the manner and with the powers, rights, privileges and duties both to the commissioners and persons interested, as provided in the first instance.

Art. 8033. **Assess and collect on reassessment.**—Such commissioners shall finally make their findings and enter their judgment and decree in the matter, which, thereafter, until again changed or modified, shall be the basis of the assessment of taxes within and for the district. Provided, that there shall be no reassessment of benefits that will in any way render insecure any outstanding bonds or other indebtedness of any district, nor shall the sum of benefits as reassessed ever be less in amount than the sum total of all outstanding bonds and other indebtedness of such district. The commissioners' court of each county in which such district is located shall levy and cause to be assessed and collected taxes based upon such reassessment, at rate sufficient to provide funds requisite to pay interest upon all outstanding bonds and other indebtedness of such district and to pay off such bonds or other indebtedness at maturity, and also to pay the interest on and provide necessary sinking funds to pay all bonds or other indebtedness that may be issued. The provisions of this section shall also apply to districts levying taxes upon the ad valorem plan, only if the plan of reclamation is changed or modified, or if extensive repairs or additions thereto are made, and such commissioners, if appointed, shall assess only the damages which will accrue to the property within or without the district because of the carrying out of the changes in the plan.

Art. 8034. **Protesting decision of Reclamation Engineer.**—If the supervisors of any levee improvement district, or any person or corporation whose interest are affected thereby, be dissatisfied with the action of the State Reclamation Engineer in finally approving or disapproving any plan of reclamation for such district, the district or person or corporation dissatisfied may within fifteen days after such final action, file suit in the district court of the county whose commissioners' court has jurisdiction of the district in question, against the State Reclamation Engineer, and to which suit the district shall be made a party defendant, if the suit be on behalf of any other complaining person or corporation. The petition shall set forth the cause or causes of objection and show wherein the interests of the petitioners are injuriously affected by the action of the State Reclamation Engineer complained of. Process shall issue

as in other cases and the case shall have preference of trial in the court wherein it is filed, and upon final hearing the court shall render its judgment and decree approving or disapproving of the plan of reclamation, in whole or in part, as it may find to be equitable and just; and such judgment shall stand for the action of the State Reclamation Engineer in such matters. There may be an appeal, as in ordinary cases, from the judgment of the trial court, which appeal shall have preference of hearing in the Court of Civil Appeals, the judgment of which in the matter shall be final, and shall stand for the action of the State Reclamation Engineer in respect to the matters at issue in such suit.

Art. 8035. Injuring levees.—Any person or persons who shall wrongfully or purposely cut, injure, destroy, or in any manner impair the usefulness of any levee or other reclamation improvement, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for a period not exceeding one year; or by both such fine and imprisonment.

Art. 8036. Interfering with work.—Any person or persons who shall wilfully destroy or deface any corner, line, mark, bench mark or other object fixed or established in connection with the work herein authorized, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for a period of not less than thirty days, or by both such fine and imprisonment.

Art. 8037. Districts not organized.—Districts organized under any laws of this State having for their objects the reclamation of lands through a system of levees and drainage, and not governed by the provisions of laws of this State, may become entitled to and may hereafter exercise all the rights, powers and privileges conferred by this Act upon districts created under it, and to all of the enlarged powers which may be conferred under Section 59, Article 16, of the Constitution of this State by proceedings as follows:

1. Whenever the owner of a majority of the acreage of any such district shall present to the commissioners' court of the county in which such district is located their petition praying that a hearing be ordered to determine whether such district may avail itself of the provisions of this Act, it shall be the duty of the court to fix a time and place for such hearing, and cause notice thereof to be given, substantially in all respects as notice of the hearing upon the matters of the formation of a district under this Act.

2. At the time and place of such hearing the court shall proceed to hear and determine the issue presented by the petition, and evidence for and against the same, and if it finds that the interests of the district in question would be promoted by grant-

ing the prayer of the petition, it shall so decree and enter its judgment of record, declaring it to be to the interest of such district that it avail itself of all rights, powers and privileges conferred by this Act upon districts created under it, and that the district on behalf of which the petition is filed shall thereafter be entitled to and may exercise all rights, powers and privileges conferred by this Act upon districts created by it, and thereafter such district shall have and may exercise all such rights, powers and privileges as if created under this Act, and thereafter it shall proceed in all things as it would if created hereunder, but such decree shall not in any respect injuriously affect any financial liability of such district.

Art. 8039. Organized under former laws not invalidated.—Any proceedings begun under the provisions of any Act hereby repealed may be proceeded with and completed under the provisions of this Act; and nothing in this Act shall be construed to apply to the issuance of any bonds where provisions for their issuance have been made in whole or in part before the passage of this Act. And no suit or action now pending in any court in this State by or against any levee improvement district organized under the provisions of laws hereby repealed shall be affected by the provisions hereof.

Art. 8040. All districts organized heretofore are under provision of this Act.—This Act is intended to take place of all such Statutes repealed hereby. All levee improvement districts that have been organized heretofore, or that have availed themselves of the provisions of such law, shall be governed by the provisions of this Act, and the plan of taxation therein provided for shall not be affected or changed by this Act. Any such districts which have not completed any improvements begun under the provisions of any former law shall be governed in the issuance of bonds and the completion of such improvements by the provisions of the Act or Acts under which they were created; and provided, further, that the repeal of Chapter 146, Acts of the Regular Session of the Thirty-fourth Legislature, shall not affect any districts heretofore created under the provisions of that Act, nor districts created under any former laws having for their objects the reclamation and protection of lands through a system of levees and drainage, and which have not heretofore become conservation and reclamation districts, but all rights, powers and privileges granted such districts by the Acts under which they were organized, and amendments thereto, are hereby directly preserved to such districts.

Art. 8041. Does not repeal laws of 1925 Statutes.—This Act shall not be construed to repeal any of the provisions of Chapter 7, Title 128, embracing Articles 8097 to 8193, entitled "Drainage Districts," in the Revised Civil Statutes, 1925 Revision, nor any of the irrigation laws of this State, nor any law upon the subject of drainage districts, water improvement districts or irriga-

gation districts passed at the Regular Session of the Thirty-ninth Legislature.

Art. 8042. **Continuation of former Acts.**—This Act shall be construed to be a continuation of, and re-enactment of the Acts hereby repealed, excepting such provisions hereof as are now or are in conflict with said Acts. This Act is remedial in character and shall be liberally construed to give full effect to all of its purposes.

[NOTE.—Articles from 8043 to 8096, inclusive, not provided for in the Act of 1925, and are therefor omitted from this Revised Statute in order to maintain subsequent number.]

III. DRAINAGE.

CHAPTER SEVEN.

DRAINAGE DISTRICTS.

1 ESTABLISHMENT.

| | Article | | Article |
|--|-------------|---|---------|
| May establish | 8097 | Maintenance: estimate | 8137 |
| Petition | 8098 | Maintenance: taxes | 8138 |
| Deposit | 8099 | Maintenance: unsold bonds | 8139 |
| Notice of hearing | 8100 | Taxes: assessment | 8140 |
| Hearing | 8101 | Taxes: collection | 8141 |
| Hearing: powers of court | 8102 | Tax rolls | 8142 |
| Hearing: findings | 8103 | Duty of collector | 8143 |
| Engineer | 8104 | Delinquent taxes | 8144 |
| Engineer's bond | 8105 | Separate tax officers | 8145 |
| Preliminary plans | 8106 | Duty of treasurer | 8146 |
| Plans: outlets | 8107 | Bond of treasurer | 8147 |
| Map | 8108 | Salary of treasurer | 8148 |
| Hearing on report | 8109 | District depository | 8149 |
| Report: findings | 8110 | District funds | 8150 |
| Election | 8111 | Eminent domain | 8151 |
| Notice of election | 8112 | Right of way | 8152 |
| Requisites of election | 8113 | Private drains | 8153 |
| Oath of voter | 8114 | Control of system | 8154 |
| Election returns | 8115 | Construction contracts | 8155 |
| Declaration of result | 8116 | Bids | 8156 |
| District classification | 8117 | Contractor's bond | 8157 |
| Appointment of commissioners | 8118 | Requisites of contract | 8158 |
| Election of commissioners | 8119 | Duty of engineer | 8159 |
| Commissioners: salary | 8120 | Railway culverts | 8160 |
| Commissioners' oath | 8121 | Road culverts | 8161 |
| Commissioners' bond | 8122 | Additional improvements | 8162 |
| Organization of commissioners | 8123 | Additions: election | 8163 |
| District engineer | 8124 | Additions: contracts | 8164 |
| Duty of engineer | 8125 | Inspection of work | 8165 |
| Maps and estimates | 8126 | Contracts: payment | 8166 |
| Issuance of bonds | 8127 | Application for connecting drains | 8167 |
| Change in plans without bonds | 8128 | Connections: engineer's report | 8168 |
| Change in plans with bonds | 8129 | Connections: requisites | 8169 |
| Bonds: record book | 8130 | Connections: enlargement | 8170 |
| Bonds: requisites | 8131 | Enlargements: supervision | 8171 |
| Bonds: approval | 8132 | Report of commissioners | 8172 |
| Bonds: registration | 8133 | Drainage attorney | 8173 |
| Bonds: sale | 8134 | Status of districts | 8174 |
| Bond of county judge | 8135 | Suits affecting district | 8175 |
| Tax levy for bonds | 8136 | May become conservation district | 8176 |

Art. 8097. [2567] **May establish.**—The commissioners courts may establish one or more drainage districts in their respective counties in the manner provided in this chapter. Such districts may or may not include villages, towns and municipal corporations, or any portion thereof, but no land shall at the same time

be included in more than one drainage district created hereunder. Such districts, when so established, may make drainage improvements therein and issue bonds in payment thereof as provided in this chapter. The commissioners court shall hereafter be designated as the "Court." [Acts 1907, p. 78; Acts 1911, p. 245.]

Art. 8098. [2568] Petition.—A petition shall first be presented to the Court signed by twenty-five of the freehold resident taxpayers in the proposed district, or if there are less than seventy-five such citizens then by one-third thereof, whose lands may be affected thereby, praying for the establishment of a drainage district, and setting forth the necessity, public utility and feasibility and proposed boundaries thereof, and designating a name for such district, which shall include the name of the county. [Id.]

Art. 8099. [2602] Deposit.—Said petition shall be accompanied by two hundred dollars in cash, which shall be deposited with the clerk of said Court, and by him held until after the result of the election for the creation of the district and issuance of bonds is officially made known. If said election is in favor of the establishment of said district, then the clerk shall return said deposit to the petitioners, their agent or attorney. If said election is against the establishment of such district, then the clerk shall pay out of said deposit upon vouchers approved and signed by the county judge, all costs and expenses pertaining to said proposed district up to and including said election, and the balance shall be returned to the petitioners, their agent or attorney. [Id.; Acts 1915, p. 61.]

Art. 8100. [2568] Notice of hearing.—At the same session when said petition is presented, the Court shall set said petition down for hearing at some regular or special session called for the purpose, not less than thirty nor more than sixty days from the presentation of said petition, and shall order the clerk to give notice of the date and place of said hearing by posting a copy of said petition and the order of the court thereon for twenty days prior to the election in five public places in said county, one at the court house door, and four within the limits of the district. Said clerk shall be paid one dollar for each such notice and five cents per mile for each mile necessarily traveled in posting such notices. [Acts 1907, p. 78; Acts 1909, p. 24; Acts 1911, p. 245.]

Art. 8101. [2569] Hearing.—On the day set for the hearing, any person whose land would be affected by the creation of said district may appear before said Court and contest the creation of such district or contend for its creation, and may offer testimony to show that the district is or is not necessary, and would or would not be of public utility, either sanitary, agricultural or otherwise, and that the creation of such district would or would not be feasible or practicable. [Id.]

Art. 8102. [2569] **Hearing: powers of court.**—Except as herein provided, said Court shall have exclusive jurisdiction to hear and determine all contests and objections to the creation of such district, and all matters pertaining to the same, and shall have exclusive jurisdiction in all subsequent proceedings of the district when organized, and may adjourn hearing on any matter connected therewith from day to day, and all judgments rendered by said Court in relation thereto shall be final. [Id.]

Art. 8103. [2570] **Hearing: findings.**—If at the hearing it appears to the Court that the drainage of such district is feasible and practicable, and that it is needed, that the drainage would be conducive to the public health or would be a public benefit or a public utility, then the Court shall so find. But if said Court finds any of said issues in the negative, it shall dismiss the petition at the cost of the petitioners. The findings shall be entered of record. [Id.]

Art. 8104. [2571] **Engineer.**—If said findings favor the establishment of the district, the Court shall appoint a competent civil engineer who shall be entitled to such assistants as may be necessary. Said engineer and his assistants shall be paid for doing the work required of them hereunder, such compensation and allowances for transportation, supplies, etc., as may be agreed on between the engineer and the Court. [Id.; Acts 3rd C. S. 1920, p. 59.]

Art. 8105. [2572] **Engineer's bond.**—Said engineer shall give bond for five hundred dollars payable to the county judge for the use and benefit of the district, with two or more sureties to be approved by the Court, conditioned on the faithful discharge of his official duties hereunder. [Acts 1907, p. 78; Acts 1911, p. 247.]

Art. 8106. [2573] **Preliminary plans.**—The engineer shall, within such time as may be prescribed by the Court, go upon the land proposed to be drained and protected by levees, and make a careful survey thereof, and from such survey make preliminary plans, locating approximately the necessary canals, drains, ditches, laterals and levees, and shall designate the streams and bayous necessary to be cleaned, deepened and straightened, and estimate the costs thereof in detail as to each improvement contemplated, and shall also estimate the probable cost of maintaining same per year, and shall at once make a detailed report of his work to the Court. [Id.; Acts 1st C. S. 1913, p. 89.]

Art. 8107. [2574] **Plans: outlets.**—The engineer is authorized and empowered to go upon lands and premises located outside of such district, and into another and different county, if necessary, for all purposes of the survey, and to ascertain and procure proper and necessary outlets for the proposed canals, drains, and ditches necessary to the drainage of the district. He

shall obtain all possible information regarding the lands within the proposed district, and the outlets therefrom from the office of the State Reclamation Engineer and from other sources, and co-operate with said Engineer in the discharge of his duties. [Id.]

Art. 8108. [2575] **Map.**—The engineer's report shall be accompanied by a map showing the beginning point, as well as the outlets, of all canals, drains, ditches and laterals, and shall show the length, width, depth and slopes of the banks of the cut or excavation, and the estimated number of cubic yards of earth to be removed from each, and shall show the location and size of all levees and the estimated number of cubic yards of earth necessary to construct the same. A copy of the official Land Office map of the county, with the boundaries of the district, and the beginning points and outlets of all canals, drains, ditches and laterals, and other data required by this article shown thereon shall be deemed a sufficient compliance herewith. [Acts 1907, p. 78; Acts 1911, p. 247.]

Art. 8109. [2576] **Hearing on report.**—When such report of the engineer is filed with the clerk, the Court shall at its next regular or special session set such report down for hearing at a subsequent regular or special session, not less than twenty nor more than thirty days from such sitting. The clerk shall post notice thereof as before provided. At such hearing, any freehold resident or non-resident taxpayer of the district whose lands may be affected by said improvements, may appear and object to any and all of said canals, drains, ditches and levees, for the reason that they are not located at the proper places, or that they are not sufficient in number or capacity to properly drain said territory. [Id.]

Art. 8110. [2577] **Report: findings.**—If there are no objections to said report, or if the Court finds that any objections thereto are not well taken, the report shall be approved and the fact of its approval entered in the minutes. The Court may change the location of any improvements as shown in the report, or may add to or reduce the number of same, and may order the engineer to locate any additional canals, drains, ditches or levees which may be constructed for the purpose of conducting waters from the lands of said district, or to prevent the overflow of waters from streams or otherwise onto the lands of said district proposed to be drained, or otherwise in aid of said purpose. The Court may, if it deem necessary, refer the entire report back to the engineer for a compliance with the orders of the Court and require a further report. If any changes or alterations are so made in said report, notice shall be given and hearing had as in the first instance. [Acts 1909, p. 24; Acts 1911, p. 248.]

Art. 8111. [2578] **Election.**—After the approval of the engineer's report, as presented or as modified, the Court shall or-

der an election to be held within such district at the earliest possible legal time, at which election there shall be submitted the following propositions, and none other: "For the drainage district and the issuance of bonds and levy of tax in payment therefor;" "Against the drainage district and the issuance of bonds and levy of tax in payment therefor." [Acts 1907, p. 81; Id.]

Art. 8112. [2579] **Notice of election.**—Notice of such election shall recite: the establishment of the district, the amount of bonds, which shall not exceed the engineer's estimate and the cost of any additional work which may become necessary by any change or modification in his report, the time and places of holding the election, the proposition to be voted on, and the purposes for which said bonds are to be issued. Such notice shall be posted by the clerk as before provided. [Id.]

Art. 8113. [2580] **Requisites of election.**—A two-thirds vote shall be necessary to carry the proposition to be submitted at such election. Only resident property taxpayers who are qualified voters of the district may vote at any election held under this chapter. All such elections shall be conducted in the manner provided by the general election laws, unless otherwise provided. The Court shall name a polling place at each voting precinct or part thereof in the district, each of which shall be in the district, and shall appoint the judges and other necessary election officers. It shall provide twice as many ballots as there are qualified voters in the district, as shown by the county tax rolls; and said ballots shall have printed thereon the proposition to be submitted as stated in the second preceding article. [Id.]

Art. 8114. [2581] **Oath of voter.**—Every person who offers to vote in any election held hereunder shall first take the following oath before the presiding judge of the polling place wherein he offers to vote, and said judge is authorized to administer same: "I do solemnly swear that I am a qualified voter of _____ County, and that I am a resident property taxpayer of the proposed district voted on at this election, and that I have not voted before at this election." [Id.]

Art. 8115. [2582] **Election returns.**—Immediately after the election each presiding judge shall make return of the result in the same manner as provided for in general elections for State and county officers, and return the ballot boxes to the county clerk, who shall keep same in a safe place and deliver them together with all returns to the Court at its next regular or special session called to canvass the vote. If the Court finds that said proposition has carried, it shall so declare the result and enter the same in the minutes as provided in the succeeding article. [Id.]

Art. 8116. [2582] **Declaration of result.**—Said order shall be substantially as follows: "In the matter of the petition of _____ and _____ others praying for the establishment of a drainage district in said petition described and designated as _____ County Drainage District No. _____, be it known that

at an election called for that purpose in said district, held on the _____ day of _____, A. D. 19____, a two-thirds majority of the resident property taxpayers voting thereat, voted in favor of the creation of said district, and the issuance of bonds and the levy of tax. Now, therefore, it is considered and ordered by the Court that said drainage district be, and the same is hereby established by the name of _____ County Drainage District No. _____, within the following metes and bounds," (which field notes shall be copied into the record). [Id.]

Art. 8117. [2582] **District classification.**—All districts shall bear the name of the county in which they may be located, as a part of their names, and shall be numbered consecutively as created and established by order of the Court. [Id.]

Art. 8118. [2585] **Appointment of commissioners.**—When a district is so established, and unless said commissioners are elected as provided in the succeeding article, the Court shall appoint three drainage commissioners who shall be residents of the county or an adjoining county, who shall be freehold taxpayers of the district and legal voters of the county of their residence. Such commissioners shall hold office for two years and until their successors have qualified, unless sooner removed by a majority vote of the Court for malfeasance in office. Upon the expiration of their term of office, or in case of resignation, the Court shall appoint their successors by a majority vote. [Id. Acts 4th C. S. 1918, p. 127.]

Art. 8119. [2585] **Election of commissioners.**—After a district is so established, upon the petition of a majority of the real property taxpayers of the district, praying for the election of three drainage commissioners, the Court shall immediately order an election for said purpose at the earliest legal time, to be held as other elections hereunder, and shall declare the three persons receiving the highest number of votes to be elected. If the third highest vote be tied, the Court shall elect the third commissioner from those tying for the place. Such commissioners so elected, when duly qualified hereunder, shall be the legal and rightful drainage commissioners for such district within the full meaning and purpose of this law. Such commissioners shall hold office until the next regular election for State and county officers, and shall then and thereafter be elected every two years at such general election. [Id.]

Art. 8120. [2585] **Commissioners: salary.**—The commissioners shall receive for their services not more than two dollars and fifty cents per day for the time actually engaged in the work of the district, which shall be fixed by order of the Court. Such commissioners shall first submit a detailed report to the Court showing the time actually consumed in the work for said district and of the work done, and such report shall be audited and approved by the Court. [Id.]

Art. 8121. [2586] **Commissioners' oath.**—Before entering upon his duties, each commissioner shall take and subscribe be-

fore the county judge an oath to faithfully discharge the duties of his office without favor or partiality, and to render a true account of his doings to the Court whenever requested to do so. Such oath shall be filed by the clerk of the Court and preserved as a part of the district records. [Acts 1907, p. 82; Acts 1911, p. 251.]

Art. 8122. [2587] **Commissioners' bond.**—Before entering upon his duties, each commissioner shall give a good and sufficient bond for one thousand dollars, payable to the county judge, for the use and benefit of the district, conditioned upon the faithful performance of his duties. [Id.]

Art. 8123. [2588] **Organization of commissioners.**—The commissioners shall organize by electing one of their number chairman and one secretary. Two commissioners shall constitute a quorum, which shall be sufficient in all matters pertaining to the business of said district, except the letting of contracts and the drawing of warrants on the treasury, which shall require the concurrence of all the commissioners. [Id.]

Art. 8124. [2592] **District engineer.**—The commissioners shall appoint a competent civil engineer, who shall be entitled to such assistants as may be necessary. For doing the work required of him hereunder, said engineer and his assistants shall receive such pay and allowances for transportation, supplies, etc., as may be agreed on between him and the commissioners with the approval of the Court. [Id. Acts 3rd C. S. 1920, p. 59.]

Art. 8125. [2592] **Duty of engineer.**—Said engineer shall make a map of such district showing the boundary lines thereof, with the original surveys therein, and if such lines cross an original survey the map shall show how many acres of such original survey are included in the district. He shall also make maps and profiles of the several canals, drains, ditches and levees in the district and outlets thereof extending beyond the limits of the district. A copy of the Land Office map of the county, as it applies to such district, showing the name and number of each survey, and the area or number of acres contained in the district, shall be a sufficient compliance herewith in so far as making a map of the district is required; and any recognized map of any city or town in the district shall be sufficient as to such city or town. [Id.]

Art. 8126. [2593] **Maps and estimates.**—The map and profiles of each drain, ditch and levee required by this law shall show the relation that each canal, drain, ditch or levee bears to each tract of land through which it passes, and the shape into which it divides each tract, and where the canal, drain, ditch, or levee cuts off any tract containing less than twenty acres of land the map shall show the number of acres so divided therefrom, and the number of acres in the whole tract, showing the shape of such small tract and its relation to the canal, ditch, drain or levee. Such profile may also show the

number of cubic yards necessary to be excavated in order to make each canal, drain or ditch, and to build any levee located in such district, and give the estimated cost of each. When said map, profile and estimates have been completed by the engineer, he shall sign the same in his official capacity and file them with the clerk of the court. [Acts 1907, p. 83; Acts 1911, p. 252.]

Art. 8127. [2595] **Issuance of bonds.**—When such maps, profiles and estimates are so filed, the Court shall make an order directing the issuance of drainage bonds for such district, sufficient in amount to pay for such proposed improvements, together with all necessary actual and incidental expenses connected therewith. Such bonds shall not exceed in amount one-fourth of the assessed valuation of the real property in such district, as shown by the last annual assessment thereof made for said district, nor exceeding the amounts specified in said order and notice of election. [Id. Acts 1st C. S., 1913, p. 90.]

Art. 8128. [2595] **Change in plans without bonds.**—After the issuance of bonds is authorized, the commissioners may make changes in said district or in any improvements therein which will be of advantage to the district, but which will not increase the cost of such proposed work beyond the amount of bonds authorized. Such changes may be made by the commissioners by entering on their minutes a notation of such changes, with the district maps and profiles showing such changes. Notice of such change shall be given by publication of such notation with the book and page number of the minutes, for two successive weeks in some newspaper of general circulation, published in the English language, within the county in which such district is situated. [Id.]

Art. 8129. [2595] **Change in plans with bonds.**—When it appears to the commissioners that changes or additions may be made in the preliminary survey of the engineer, which shall be of advantage to the district but which shall make necessary the issuance of more bonds of the district, they shall so certify to the Court, accompanying such certificate by maps and profiles prepared by the district engineer, showing such changes and the estimated cost thereof. At its first regular session after the filing of such data, the Court shall give notice of an election to determine whether or not such changes and improvements shall be made, and shall order such election to be held within such time and the returns made as provided for an original election. If two-thirds of the property taxpaying voters of the district vote in favor of such proposition, the court shall enter the same of record and order such bonds to be issued as in the first instance. [Id.]

Art. 8130. [2599] **Bonds: record book.**—Before issuing any bonds hereunder, the Court shall provide a well bound book, in which a record shall be kept by the county clerk of all bonds

issued, with their numbers, amount, rate of interest and date of issue, when due, where payable and amount received for the same, and the annual rate of assessment made each year to pay the interest on said bonds and provide a sinking fund for their payment, and upon the payment of any bond an entry thereof shall be made in said book. Said book shall at all times be open to inspection of all parties interested in said district either as taxpayers or bond holders. The county clerk shall receive for his services in recording all bonds and other instruments of the district, the same fees as provided by law for other like records. [Id.]

Art. 8131. [2596] **Bonds: requisites.**—All bonds issued hereunder shall be issued in the name of the district, signed by the county judge and attested by the county clerk, with the seal of the Court affixed thereto. Such bonds shall be issued in denominations of not less than one hundred nor more than one thousand dollars each, and shall bear interest at not exceeding six per cent per annum, payable annually or semi-annually. Such bonds shall by their terms provide the time, places, manner and conditions of their payment, and the rate of interest thereon, as may be determined and ordered by the court. No bonds shall be made payable more than forty years after the date thereof. [Acts 1907, p. 84; Acts 1911, p. 253; Acts 1915, p. 60.]

Art. 8132. [2597] **Bonds: approval.**—Before any bonds are offered for sale, the district shall forward to the Attorney General a copy of the bonds to be issued, a certified copy of the order of the Court levying the tax to pay interest and provide a sinking fund, and a statement of the total bonded indebtedness of such district as such, including the series of bonds proposed, and the assessed value of property for the purpose of taxation as shown by the last official assessment of the county, with such other information as the Attorney General may require. Such officer shall carefully examine said bonds, and if he shall find that they are issued in conformity with the Constitution and laws, and that they are valid and binding obligations upon such district, he shall so officially certify. [Acts 1907, p. 84; Acts 1911, p. 253.]

Art. 8133. [2598] **Bonds: registration.**—When said bonds have been so approved, they shall be registered by the Comptroller in a book to be kept for that purpose, and the certificate of their approval shall be preserved of record for use in the event of litigation. Thereafter, said bonds shall be held prima facie valid and binding obligations in every action, suit or proceeding in which their validity is brought in question. In every suit to enforce the collection of said bonds, the certificate of the Attorney General, or a duly certified copy thereof, shall be admitted and received in evidence as prima facie proof of the validity of such bonds, together with the coupons attached

thereto. The only defense that can be offered against the validity of such bonds shall be forgery or fraud. [Id.]

Art. 8134. [2600] **Bonds: sale.**—When the bonds have been registered, the county judge shall, under the direction of the Court, advertise and sell said bonds on the best terms and for the best price possible, not less than their par value and accrued interest. All money received from such sale shall be turned over as received by the county judge to the county treasurer, and shall be by him placed to the credit of the district in the construction and maintenance fund thereof. The county judge shall be allowed one-half of one per cent of the amount received on the sale of any bonds sold by him in full payment of his services in that behalf. [Id. Acts 1915, p. 61; Acts 1921, p. 164.]

Art. 8135. [2601] **Bond of county judge.**—After the drainage bonds have been registered, the county judge shall at once execute a good and sufficient bond, payable to the commissioners and approved by them, for an amount not less than the amount of the bonds issued, conditioned upon the faithful discharge of his duties. If said bond is executed by a satisfactory surety company, the district may pay a reasonable amount as premium on said bond, which shall be paid out of the construction and maintenance fund upon presentation of the bill therefor to the commissioners. If there is any controversy as to the reasonableness of the amount claimed as such premium, such controversy may be determined by any court of competent jurisdiction. Said premium may be deducted by the commissioners from the commissions allowed the county judge on the sale of bonds by him. [Id.]

Art. 8136. [2603] **Tax levy for bonds.**—When bonds have been voted, the Court shall annually levy and cause to be assessed and collected taxes upon all property within the district, whether real, personal or otherwise, and sufficient in amount to pay the interest on such bonds as it falls due, and to redeem such bonds at maturity. Such taxes when so collected shall be placed in the interest and sinking fund. [Acts 1907, p. 85; Acts 1911, p. 255; Acts 1915, p. 61.]

Art. 8137. [2603] **Maintenance: estimate.**—The commissioners shall annually, on or before the first day of July, prepare and file with the Court a full detailed report of the condition of the improvements theretofore made in the district, with an estimate of the probable cost of maintenance and needed repairs during the ensuing year, together with an inventory of all funds, effects, property and accounts belonging to such district, and a list of all lawful demands, debts and obligations against the district. Such report shall be verified by the commissioners and carefully investigated and considered by the Court before any levy of taxes is made under the succeeding article. [Id.]

Art. 8138. [2603] **Maintenance: taxes.**—At the same time that taxes are levied to meet the bonded indebtedness, the Court

shall cause to be assessed and collected taxes upon all property in the district, whether real, personal or otherwise, sufficient to maintain, keep in repair, and to preserve the improvements in the district, and to pay all legal, just and lawful debts, demands and obligations against such district. Such levy shall never, in any one year, exceed one-half of one per cent of the total assessed valuation of such district for such year. Such taxes when so collected shall be placed in the construction and maintenance fund. [Id.]

Art. 8139. [2603] **Maintenance: unsold bonds.** — If any bonds remain which are not required for the completion of the improvements made or to be made, then with the consent of the Court duly made of public record, such bonds or a part thereof may be sold and the proceeds from the sale thereof shall be placed in the maintenance and construction fund and used for the purposes stated in the preceding article. [Id.]

Art. 8140. **Taxes: assessment.**—In the assessment and collection of the taxes authorized hereunder, and in all matters pertaining thereto or connected therewith, the county tax assessor and collector shall have the same powers and shall be governed by the same rules, regulations and proceedings as provided for the assessment and collection of State and county taxes, unless otherwise herein provided. The Court shall constitute a board of equalization for such district, and all laws governing boards of equalization for State and county taxing purposes shall govern such district board. [Acts 1915, p. 63.]

Art. 8141. **Taxes: collection.**—The taxes authorized hereunder shall be a lien upon all property assessed therefor. The Court shall, and it is empowered to, fix the time and determine the date when such taxes shall become due and payable, otherwise they shall become due and payable at the same time as State and county taxes. Upon the failure to pay such taxes when due, the penalty provided by law for failure to pay State and county taxes at maturity shall in every respect apply to taxes hereunder. [Id.]

Art. 8142. [2604] **Tax rolls.**—The Court shall provide all necessary additional books for the use of the assessor and collector and the county clerk of such district, and charge the cost of same to the district. When ordered by the Court, the assessor shall assess all property within the district and list the same for taxation in the books or rolls furnished him by said Court for said purpose, and return said books or rolls when he returns the State and county rolls for correction and approval. If said Court finds them correct, it shall approve the same and direct the county clerk to issue a warrant against the county treasurer in favor of the assessor to be paid from the district funds. The assessor shall receive for said services such pay as the Court deems proper. If the assessor fails or refuses to comply with such order, he shall be suspended from the further discharge of his duties by the Court, and removed from office in

the mode prescribed by law for the removal of county officers. [Acts 1907, p. 85; Acts 1911, p. 256.]

Art. 8143. [2605] **Duty of collector.**—The county tax collector shall be charged by the Court with the assessment rolls of the district, and shall be allowed such compensation for the collection of said taxes as is allowed for the collection of other taxes. The Court shall require said officer to give an additional bond or security in such sum as they deem proper and safe to secure the collection of said taxes. If such officer fails or refuses to give such additional security when requested by the Court, within the time provided by law for such purposes, he shall be suspended from office by the Court and immediately thereafter be removed from office in the mode prescribed by law. [Id.]

Art. 8144. [2606] **Delinquent taxes.**—The collector shall make a certified list of all delinquent property upon which the drainage tax has not been paid, and return same to the Court, which shall proceed to have the same collected by the sale of such property in the same manner provided by law for the sale of property for the collection of State and county taxes. The commissioners may purchase any property so sold, for the benefit of the district. [Id.]

Art. 8145. **Separate tax officers.**—After the establishment of a district, and upon the petition of twenty-five resident freeholders thereof, the Court may order an election to determine whether or not such district shall have a separate tax assessor, separate tax collector, and separate board of equalization for the assessment and collection of district taxes. Notice of such election shall be given as in the original election, and if said proposition carries by a two-thirds vote, the Court shall appoint a suitable person as assessor and other such person as collector, and they shall give bond and exercise the same powers and perform the same duties as provided herein for the county assessor and collector; and the commissioners shall exercise all of the powers herein conferred upon said Court with relation to the equalization of taxes. The general laws relating to the assessment, collection and equalization of taxes, in so far as applicable, shall apply to the assessment, collection and equalization of district taxes. [Acts 1st C. S. 1913, p. 91.]

Art. 8146. [2607] **Duty of treasurer.**—The county treasurer shall open an account with the district and keep an accurate account of all money received by him belonging to such district, and of all amounts paid out by him. He shall pay out no money except upon a voucher signed by the commissioners and countersigned by the county judge. He shall carefully preserve on file all orders for the payment of money, and as often as required by the commissioners or the Court, he shall render a correct account to them of all matters pertaining to the financial condition of the district. [Acts 1907, p. 85; Acts 1911, p. 256.]

Art. 8147. [2608] **Bond of treasurer.**—The county treasurer shall be the treasurer of such district, and shall execute a good and sufficient bond, payable to and approved by the commissioners in a sum equal to the amount of bonds issued, conditioned for the faithful performance of his duty as treasurer. If a district depository is selected, then he shall give bond for the faithful discharge of the duties of his office in accordance with the provisions of law relating to such county treasurers in counties where county depositories have been provided for county funds. [Id. Acts 1st C. S. 1913, p. 91.]

Art. 8148. [2608] **Salary of treasurer.**—The treasurer shall be allowed as pay for his services as such, one-fourth of one per cent upon all money received by him for the account of such district, and one-eighth of one per cent upon all money by him paid out upon the order of the district. He shall not be entitled to any commissions on any district money received by him from his predecessor in office. [Id.]

Art. 8149. [2608] **District depository.**—The commissioners, in their discretion, may provide for a district depository for the funds of such district, by complying in all respects with the laws governing the designation of county depositories. Such depository shall give a good and sufficient bond, approved by the commissioners, as provided by law for depositories of county funds. All powers vested in the Court as to the designation of county depositories are hereby vested in the commissioners as to the funds of the district. [Id.]

Art. 8150. [2602] **District funds.**—After the establishment of a district, all legal and just expenses, debts and obligations other than bonds and interest thereon arising and created after the filing of the original petition and necessarily incurred in the creation, establishing, operation and maintenance of such district, shall be paid out of the "Construction and Maintenance Fund" of such district which shall consist of all money, effects, property and proceeds received by such district from all sources, except that portion of the tax collections which shall be necessary to pay the interest on the bonded indebtedness as it falls due and the payment of the bonds at maturity. Said tax collections shall be placed in and paid out of the "Interest and Sinking Fund" of such district for such purposes, and such fund may be invested for the benefit of the district in such bonds and securities as the Attorney General may approve. Such funds shall be held for the respective purposes for which they were created, and if money is improperly paid out of either, the Court may cause the county treasurer to make the necessary transfer of such amount in the district accounts, to restore the fund so improperly used. [Acts 1907, p. 85; Acts 1911, p. 255; Acts 1915, p. 61.]

Art. 8151. [2590] **Eminent domain.**—All districts shall have the right of eminent domain to condemn and acquire the right of way over and through all public and private lands,

except property used for cemetery purposes, necessary for making the canals, drains, levees and improvements in the district, and for making the necessary outlets thereto in any county in this State. No right of way shall be condemned through any part of an incorporated city or town without the consent of the lawful authorities thereof. Such proceedings shall be in the name of the district and under the direction of the commissioners. No appeal from the finding and assessment of damage by the commissioners appointed for that purpose shall suspend the work of the drainage commissioners in prosecuting the work of drainage in all of its details. All expenses arising from such proceedings shall be paid out of the construction and maintenance fund. [Acts 1907, p. 87; Acts 1911, p. 257.]

Art. 8152. [2591] **Right of way.**—The commissioners are empowered to acquire the necessary right of way for all canals, drains, ditches and levees and other necessary improvements contemplated by this law, by gift, grant, purchase or condemnation proceedings, and if acquired by purchase shall be subject to approval by the Court. [Id.]

Art. 8153. [2619] **Private drains.** — All canals, drains, ditches and levees made and water courses cleaned or constructed by any district shall be the public property of such district, and every person owning land within said district shall have the right to drain into one or more of such public drains, and at his own expense to make drains according to the natural slope of the land through such other lands as intervene between his land and the nearest public drain or water-course, or along a public highway. Such owner shall first notify the commissioners of his desire to make such drain through another's property or along a public highway, and such commissioners shall go upon the premises and act as a jury of view and determine the place where such drain may be made. [Id.]

Art. 8154. [2623] **Control of system.**—The drainage commissioners shall keep the canals, drains, ditches and levees and other improvements made hereunder in repair, and shall have general authority to supervise and control the construction and maintenance of same. [Id.]

Art. 8155. [2610] **Construction contracts.**—Contracts for construction and other necessary work in the district shall be let by the commissioners to the lowest bidder after advertising the same in one or more newspapers of general circulation in this State, once a week for four consecutive weeks, and by posting notices thereof for at least twenty-five days, in five public places in the county, one at the courthouse door, and at least two within the district. Contracts may be let separately or all together. All improvements included in the report of the drainage engineer and adopted by the Court shall be constructed. [Id.]

Art. 8156. [2611] **Bids.**—Any person, firm or corporation desiring to bid on the construction of any work advertised for

hereunder shall, upon application to the commissioners, be furnished with a copy of the engineer's report showing the location, profiles and estimates of such work. All bids shall be in writing and sealed and delivered to the chairman of the commissioners, with a certified check for at least five per cent of the total amount bid, which shall be forfeited to the district in case the bidder refuses to enter into a proper contract if his bid is accepted. Any bid may be rejected if deemed too high. [Id.]

Art. 8157. [2613] **Contractor's bond.**—The contractor shall give bond in the amount of the contract price, payable to the commissioners, conditioned that he will faithfully perform the obligations, agreements, and covenants of the contract, and that in default thereof he will pay to said district all damages sustained by reason thereof. Said bond shall be approved by the commissioners and the county judge. [Id.]

Art. 8158. [2612] **Requisites of contract.**—All contracts shall be in writing and signed by the contractors and commissioners and approved by the county judge, and a copy of same filed with the county clerk. [Id.]

Art. 8159. [2614] **Duty of engineer.**—The drainage engineer shall furnish the contractor with a sectionized profile of the work contracted for, showing the depth, width and slope of all canals, drains, ditches and levees, and the number of cubic yards to be removed and other work to be done by the contractor, and such work shall be done by the contractor under the supervision of the drainage engineer, who shall indicate to said contractor the points at which the laterals shall intersect the main canal. No earth shall be deposited by the contractor so as to interfere with the construction of such laterals or other contemplated work in the district, or the building of bridges or other work on the public roads. When the work is completed according to contract, the engineer shall make a detailed report of the same to the commissioners showing whether the contract has been fully complied with according to its terms, and if not, in what particular it has not been complied with. [Id.]

Art. 8160. [2617] **Railway culverts.**—The commissioners are authorized at the expense of the district, to make all necessary bridges and culverts across or under any track or right of way of any railway to enable them to construct and maintain any canal, drain, or ditch necessary to be constructed by such district. Notice shall first be given by such commissioners to the railway authorities authorized to build or construct bridges and culverts, and the railroad shall be allowed thirty days to build such bridges or culverts at their own expense, if it should so desire, according to its own plans. Such bridge or culvert shall be constructed so as not to interfere with the free and unobstructed flow of the water passing through the canal or drain, and shall be placed at such points as are designated by the drainage engineer. [Id.]

Art. 8161. [2618] **Road culverts.**—The commissioners are

authorized and required to build all necessary bridges and culverts across and over all canals, drains, ditches, laterals and levees constructed hereunder whenever the same cross a county or public road, and shall pay for same out of the drainage fund. [Id.]

Art. 8162. Additional improvements.—If there remains a surplus of money or bonds to the credit of the district, after the final completion of all improvements contracted for, including bridges and culverts, and after the payment of all expenses incurred hereunder, the commissioners may cause the district engineer to make a detailed report of any additional or supplemental drains, ditches or levees or other character of surface drainage improvements, including tile drainage, that may be needed in such district. Such report shall be made and acted upon in the manner prescribed for the initial report of the engineer before the issuance of bonds. The estimated cost of such additional improvements shall in no case exceed the amount of surplus money or bonds to the credit of the district. [Id.]

Art. 8163. Additions: election.—After the approval of the engineer's report or as modified by the Court, the Court shall order an election to be held within the district at the earliest possible legal time. The only proposition presented at such election shall be "For the additional improvements and payment therefor out of the moneys on hand;" and "Against the additional improvements and payment therefor out of the moneys on hand." A majority vote shall be necessary to carry such proposition. Notice of such election briefly reciting the character and scope of such proposed improvements, stating the estimated cost of same, and stating the time and places of holding such election shall be given, election officers appointed, returns made and canvassed, and the result declared, in like manner as provided for the original election. [Id.]

Art. 8164. Additions: contracts.—The provisions of this law relative to the letting of contracts and the construction of improvements thereunder and the authority of the drainage commissioners and the Court in connection therewith, shall apply to the construction of such additional improvements and payment therefor in so far as applicable. [Id.]

Art. 8165. [2615] Inspection of work.—The commissioners are empowered and they shall at all times during the progress of the work done under any contract, inspect the same. [Id.]

Art. 8166. [2615-16] Contracts: payment.—If the commissioners deem it advisable in order to obtain more favorable contracts, they may advertise and contract for work to be paid for in partial payments as the work progresses, but such partial payments shall not exceed in the aggregate seventy-five per cent of the total amount to be paid under the contract. The amount of work completed under any contract shall be shown by a certified report of the engineer, and no payment shall be made for work not completed. On the completion of any con-

tract not let on the partial payment plan, the commissioners shall draw a warrant on the treasurer for the amount of the contract price in favor of the contractor or his assignee. [Id.]

Art. 8167. [2620] Application for connecting drains.—No individual, company, corporation or adjoining district shall have the right to artificially drain adjacent lands, located outside of an established district, into the canals, drains or ditches of such established district, without first making written application to and obtaining the permission of the district commissioners to make such connections. Such application shall show the width, depth and length of such connecting drains or ditches. [Id.]

Art. 8168. [2620] Connections: engineer's report.—When such application has been filed with the commissioners, the district engineer shall make an estimate of the quantity of water which such connecting drains or ditches would probably empty into such established canals or drains, and whether such canals or drains have sufficient capacity to carry such excess of water without risk or damage thereto or the adjacent territory. The engineer shall report the result of his examination and estimate to the commissioners. [Id.]

Art. 8169. [2620] Connections: requisites.—If the commissioners deem it advisable, they may authorize such connection, on condition that such applicant shall first pay into the county treasury for the benefit of the construction and maintenance fund a sum which bears the same ratio to the cost of the original canal or drain from the point of connection to its outlet, that the water to be emptied therein by the connecting drains bears to the water then tributary to and being carried by the original canal or drain as estimated by the district engineer, unless the commissioners otherwise agree with the applicants. [Id.]

Art. 8170. [2621] Connections: enlargement.—When it appears from the engineer's report that the canals, drains or outlets of such established district are not of sufficient capacity to carry the excess of water that would be discharged therein by reason of such connection, or that such additional discharge of water would endanger the initial canals and drains or the lands and property adjacent thereto, then the county court in which the initial district is situated shall nevertheless authorize such applicant to make such connection and secure the desired outlet only on condition that it shall first at its own expense and cost make the necessary enlargement of the canals and drains of the initial district, and such increased capacity shall be amply sufficient to carry any increase of water that may be caused by such connections without danger to said canals and drains or to lands adjacent thereto. [Id.]

Art. 8171. [2622] Enlargements: supervision.—Such enlargements shall be done under the supervision and direction of the district engineer, whose salary shall by order of the county

court be paid by the applicant. When such work is completed to the satisfaction of the engineer, he shall report to said court under his official certificate showing the kind of work done, the extent thereof, and that the new capacity is sufficient to carry any excess from such connection. Said report shall also show the number of days he was actually employed in supervising said work, and the amount due for such services. On approval of such report, the county court shall make an order authorizing the connections desired with such canals and drains, on payment of the amount shown to be due the engineer by said report. [Id.]

Art. 8172. [2624] Report of commissioners.—The commissioners shall make semi-annual reports of their acts as such, including a financial statement showing with accuracy of date, amount and detail, the receipts and disbursements of all funds subject to their orders as such commissioners, and shall file same with the county clerk on or before the first days of January and July. Such report shall show in detail the kind, character and amount of work done by the district, the cost of same and the amounts paid out in orders and for what purposes, and to whom paid, and other data necessary to show the condition of the improvements made hereunder. Such commissioners shall have a true copy of such report published in some newspaper in the county, once each week for two successive weeks immediately following the first day of January and July of each year. [Id. Acts 1st C. S. 1913, p. 92.]

Art. 8173. [2589] Drainage attorney.—The commissioners are authorized to employ counsel to represent such district in the preparation of any contract or the conducting of any proceedings in or out of court, and to be the legal adviser of such commissioners, upon such terms and for such fees as may be agreed upon by them and approved by the county judge, and such commissioners shall draw warrants in payment for such legal services. [Acts 1907, p. 91; Acts 1911, p. 263.]

Art. 8174. Status of districts.—All districts may, by and through their commissioners, sue and be sued in all courts of this State, in the name of such districts, and all courts of this State shall take judicial notice of the establishment of all such districts. [Id.]

Art. 8175. Suits affecting district.—No suit shall be permitted to be brought in any court of this State enjoining the formation or contesting the validity of any district or its bonds, except in the name of this State by the Attorney General upon his own motion, or upon the motion of any party affected thereby upon good cause shown. [Acts 1911, p. 253.]

Art. 8176. May become conservation district.—Any district established hereunder may become a conservation and reclamation district under Chapter 8 of this title by making the deposit and presenting the petition to the Court, after notice and hearing had as provided herein for establishing a district, by order

of said court entered of record declaring such district to be a conservation and reclamation district. [Acts 4th C. S. 1918, p. 40.]

2. DISSOLUTION.

| | Article | | Article |
|---------------------------|---------|--------------------------------|---------|
| Power to dissolve | 8177 | Presentation of claims | 8186 |
| Petition | 8178 | Approval of claims | 8187 |
| Deposit | 8179 | Rejection of claims | 8188 |
| Election | 8180 | Claimant may appeal | 8189 |
| Result of election | 8181 | Contesting claim | 8190 |
| Settlement of debts | 8182 | Trustee's expenses | 8191 |
| Retirement of bonds | 8183 | Fees of officers | 8192 |
| Custody of property | 8184 | Final report of trustees | 8193 |
| Powers of trustee | 8185 | | |

Art. 8177. Power to dissolve.—Any drainage district may voluntarily abolish its corporate existence in the manner hereinafter provided. If the proposition to abolish such district fails to carry at the election held therefor, no other election for the same purpose shall be held within two years after the result of such election has been declared. [Acts 1st C. S. 1913, p. 41; Acts 1915, p. 127.]

Art. 8178. Petition.—Upon the presentation to the Court at a regular session thereof, of a petition praying for the abolition of such drainage district, the Court shall order an election to be held within such district at the earliest possible legal time to determine whether or not such district shall be abolished. Such petition shall be signed by fifty of the freehold resident citizen taxpayers of the district, or if there are less than one hundred such citizens, then by one-third thereof. [Acts 1st C. S. 1913, p. 41.]

Art. 8179. Deposit.—Such petition shall be accompanied by two hundred dollars in cash which shall be deposited with the county clerk, and by him held until after the result of the election for the abolition of the district has been declared and entered of record by the Court. If such election favors the abolition of the district, the clerk shall return said deposit to the petitioners, their agent or attorney, and the costs and expenses of holding said election shall be a charge against said district, to be collected as other debts in the manner hereinafter provided. If the result of such election is against the abolition of the district, then the clerk shall pay out said sum upon vouchers signed by the county judge for all costs and expenses of said election, and return the balance to the petitioners, their agent or attorney. [Id.]

Art. 8180. Election.—Notice of such election shall be posted, and such election shall be held in like manner as provided for an election to establish a district hereunder. A two-thirds vote shall be necessary to carry the proposition submitted at such election. The ballot for such election shall have printed thereon the words and no others: "For the abolition of the drainage district," and "Against the abolition of the drainage district." [Id.]

Art. 8181. Result of election.—Returns of such election shall

be made and the votes canvassed as before provided in this chapter, and if said proposition carries, the Court shall so declare and enter the same in their minutes, substantially as follows: "In the matter of the petition of _____ and _____ others, praying for the abolition of the drainage district in said petition described and designated as _____ County Drainage District No. _____, be it known that at an election called for that purpose in said district, held on the _____ day of _____, A. D. 19____, a two-thirds majority of the resident property taxpayers voting thereon voted in favor of the abolition of said drainage district. Now, therefore, it is considered and ordered by the Court that said district be, and the same is hereby abolished." [Id.]

Art. 8182. Settlement of debts.—When the district is so abolished, the Court shall provide for the settlement of the debts due by said district, including the costs and expenses of holding said election, and for such purpose shall have the power to levy and cause to be assessed and collected in the manner provided in this chapter, a tax against the real and personal property in said district, in such amount only as will be necessary for the payment of all valid debts and obligations of every character existing against said district, except bonds issued and held by purchasers. Such bonds shall be paid in accordance with the terms thereof by levy and collection of an annual tax as before provided, unless a retirement of such bonds is effected as provided in the succeeding article. [Id.]

Art. 8183. Retirement of bonds.—If there are any district bonds outstanding at the time of such dissolution, the Court shall immediately enter into negotiations with the holders of such bonds, and if, according to the terms thereof, or by agreement between said Court and the holders, said bonds can be retired at an earlier date than stipulated on their face, and such retirement is considered by said Court as feasible and practicable, then said Court shall have the power to levy and cause to be assessed and collected in the manner provided in this chapter, such a tax, either annually or all at once (not exceeding the constitutional limit), as will pay off as speedily as possible all indebtedness, both bonded and otherwise, of said district. [Id.]

Art. 8184. Custody of property.—Upon the dissolution of a district, the Court shall provide for the disposition and sale of all district property and turn the same over to the county treasurer, immediately upon the filing and approval of his bond, whereupon he shall become trustee for such defunct organization. Said treasurer shall execute a good and sufficient bond, in a sum not less than double the value of the district property and its outstanding bonds, payable to and approved by the county judge and his successors in office, conditioned for the faithful performance of his duty as treasurer and trustee of such district, and for paying over and delivering all money and other property coming into his hands as such treasurer and trustee, to

the parties entitled thereto. Said bond shall be recorded in the minutes of the Court, and when approved, shall supersede the bond theretofore given by said treasurer, as treasurer of said district. [Id.]

Art. 8185. Powers of trustee.—The said treasurer, as ex-officio trustee of said defunct district, after giving the required bond, shall take charge of all the property of said district, including the money in his hands as treasurer, said money to be held by him as treasurer of such district, and all books, notes, accounts and choses of action of every kind. As such trustee he may bring suit against any persons in possession of such property, or indebted to such district, the same as such district could if still organized, and may employ counsel in all suits hereunder, or in the care and management of the business of such defunct district. [Id.]

Art. 8186. Presentation of claims.—Any person, firm or corporation having any claim against such district, shall within six months after the approval of the bond of the trustee, present to him such claim, duly verified. If the trustee finds the same correct, he shall allow such claim and thereupon the claimant shall file the same with the clerk of the Court not less than twenty days before the beginning of the next regular session of said court, and the clerk shall immediately issue a notice of such filing to all persons interested in said district. Such notice shall be posted in three public places in the district, and at the courthouse door, not less than twenty days before the next regular session of said court. [Id.]

Art. 8187. Approval of claims.—The Court in regular session shall pass upon said claim, and if it be found correct they shall approve the same, and the order of approval shall be entered upon their minutes, whereupon said claim shall become a valid and subsisting claim against said district. Said claim shall then be filed with the trustee and shall be paid by him in the order of its filing out of the money in his hands as treasurer of said district or collected as liquidation taxes hereunder. All bonds and approved claims outstanding against said district before its dissolution shall not be required to be allowed and approved as herein provided, but shall be considered as valid and subsisting claims against said district without further approval, but subject to be contested in accordance with the provisions of this subdivision. [Id.]

Art. 8188. Rejection of claims.—If the trustee finds any claim presented to him unjust in whole or in part, he shall indorse thereon his refusal to allow same, and if it be refused in whole the owner thereof may institute suit against said trustee for said claim in any court of competent jurisdiction in the county, and if established by judgment as in other cases, said judgment shall be filed with the said treasurer and shall be paid in its order as other claims. If said claim be refused by the trustee in part and allowed in part, and the owner thereof

waives his claim to the part so refused, he shall file said claim in the Court for approval. But if he does not waive his right to the portion of said claim so refused, he shall withdraw said claim from the trustee and may bring suit thereon as herein provided. [Id.]

Art. 8189. Claimant may appeal.—If the owner of any claim acted upon by the Court is not satisfied with the judgment thereon, he may appeal therefrom as in cases of appeal from judgment of a justice court. [Id.]

Art. 8190. Contesting claim.—If any district taxpayer files with the trustee a protest against any claim which was allowed by the former drainage commissioners before the dissolution of the district and which was unpaid at the time of dissolution, together with a bond in double the amount of such claim, with sufficient sureties to be approved by the trustee and made payable to him, conditioned that such contestant will pay all costs of suit in case said claimant establishes his claim in full in any State court in which he may sue thereon, then the treasurer shall refuse to pay said claim and the owner thereof may bring suit therefor against the trustee, as in other suits of a civil nature. In such suits, the contestant and his bondsmen shall be made parties thereto, and the trustee shall make all defenses urged against said claim by the contestant. In case of recovery by the claimant, judgment shall be rendered against said contestant and his bondsmen for all costs incurred in said suit; and the owner of said claim shall file the judgment with the trustee, to be paid as other claims hereunder. [Id.]

Art. 8191. Trustee's expenses.—All reasonable expenses incurred by the trustee in the care, control and conduct of the business of the district and employment of counsel therefor, or in conducting or defending suits in his capacity as such trustee, shall be charged by him against said trust estate, and shall be presented to the Court annually at a regular term thereof, and upon due notice posted as required in case of other claims against the district. Upon approval by said court, the same shall become a valid and subsisting claim against said district and shall be a preferred claim, and may be retained by said trustee out of the funds in his hands as district treasurer. If said claim is rejected in whole or in part, and the trustee is dissatisfied with said ruling, he may appeal therefrom as other claimants. [Id.]

Art. 8192. Fees of officers.—The trustee shall receive only one compensation for his services as trustee and ex-officio treasurer hereunder. He shall be allowed one per cent upon all money received by him for the account of such district, and one per cent upon all money paid out as provided herein; but he shall not be entitled to such commission on money in his hands as treasurer of said district at the time of the dissolution thereof, as of money coming into his hands, nor on money turned over by him at the expiration of his trusteeship. The county assessor

and collector shall receive the same compensation for the assessing and collecting of taxes as before provided in this chapter, and their compensation for such service shall be provided for in the order of the Court assessing taxes hereunder. [Id.]

Art. 8193. Final report of trustee.—When all claims established against the district have been paid and all costs and expenses incurred in the control and management thereof have been satisfied, the trustee shall file his account for final settlement with the Court. Said account shall contain a full and complete account of all money received and paid out, all property of every kind that has come into his hands as trustee, and the disposition thereof, and all other matters pertaining to the management of the affairs of the district. Upon the approval of said account, the Court shall direct the trustee to turn over any property or money remaining in his hands to the person or persons entitled thereto as found by said Court, and on his compliance with said order he shall so report to the Court and thereupon the Court shall enter an order discharging said treasurer and trustee and his bondsmen and closing said trust estate. [Id.]

IV. CONSERVATION AND RECLAMATION.

CHAPTER EIGHT.

CONVERSION OF DISTRICTS.

Art. 8194. Creation.—Conservation and reclamation districts may be created and organized in any manner that water improvement, drainage, or levee improvement districts are authorized by the laws of this State to be created, and for the several purposes therein provided. [Acts 4th C. S. 1918, p. 40.]

Art. 8195. Conversion of districts.—Any water improvement, drainage, or levee improvement district organized under the laws of this State as a defined district under Section 52 of Article 3 of the Constitution, may avail itself of the benefits of Section 59 of Article 16 of the Constitution, and thereby become a conservation and reclamation district without change of name, or impairment of its obligations, in the manner provided by law. [Id.]

Art. 8196. Powers.—Any such district, or any district organized hereunder, may incur indebtedness and levy taxes to fully carry out each purpose of its organization, and for the payment of its obligations and the maintenance and operation of said district; and any such district shall be governed and controlled by the provisions of law under which it organized. [Id.]

Art. 8197. Indebtedness.—All limitations of indebtedness authorized to be incurred and taxes to be levied, imposed by Section 52 of Article 3 of the Constitution and all laws under which any such district is organized, are removed as to all conservation and reclamation districts. [Id.]

V. NAVIGATION.

CHAPTER NINE.

NAVIGATION DISTRICTS.

1. ORGANIZATION.

| | Article | | Article |
|---------------------------------------|---------|--------------------------------|---------|
| Scope of district | 3198 | Additional bond issue | 8214 |
| May include road districts | 3199 | Bonds: limit of issue | 8215 |
| Petition for district | 3200 | Bonds: requisites | 8216 |
| Deposit | 3201 | Bonds: sale | 8217 |
| Notice of hearing | 3202 | Chairman to give bond | 8218 |
| Navigation boards in cities | 3203 | Maintenance fund | 8219 |
| Hearing on petition | 3204 | District treasurer | 8220 |
| Hearing: findings | 3205 | Treasurer's bond | 8221 |
| Order for election | 3206 | Tax levy | 8222 |
| Ballot | 3207 | Sinking fund investments | 8223 |
| Election: declaration of result | 3208 | Chapter 3 applicable | 8224 |
| Navigation commissioners | 3209 | May acquire property | 8225 |
| Oath of commissioners | 3210 | May enter lands | 8226 |
| Bond of commissioners | 3211 | Employes and counsel | 8227 |
| Organization: quorum | 3212 | May sue and be sued | 8228 |
| Issuance of bonds | 3213 | | |

Art. 8198. [5955] **Scope of district.**—Navigation districts may be created so as to include therein the territory of not more than two counties or parts thereof; and such districts may or may not include villages, towns, and municipal corporations, or any part thereof. Such districts may improve rivers, bays, creeks, streams and canals within or adjacent to such districts, and construct and maintain canals and waterways to permit of navigation or in aid thereof, and may issue bonds in payment therefor as hereinafter provided. [Acts 1909, p. 32; Acts 1921, 1st C. S., p. 113.]

Art. 8199. [5956] **May include road districts.**—No navigation district including within its boundaries all or parts of two counties shall include any part of any defined or special road district which has voted bonds for the construction of public roads, except upon petition signed by a majority of the property taxpayers residing in such defined or special road district or part thereof so included, unless the whole county containing such road district be included in said navigation district, when this article shall not apply. [Id.]

Art. 8200. [5956] **Petition for district.**—When it is proposed to create a district wholly within one county, a petition shall be presented to the commissioners court of said county, signed by twenty-five of the resident property taxpayers, or if there are less than seventy-five resident property taxpayers in the proposed district, then by one-third of such taxpayers, praying for the establishment of a navigation district, and setting forth the boundaries of the proposed district, accompanied by a map thereof, the general nature of the improvements proposed, and an estimate of the probable cost thereof, and praying for the issue of bonds and levy of tax in payment thereof, and designating a name for such navigation district, which name shall include the name of the county. Said petitioners shall make affidavit to accompany said petition of their said qualifications.

When a proposed district lies in two counties, the petition shall be signed by the said number of resident property taxpayers of each county, and shall be presented to the commissioners court of the county containing the greater part of such district, which shall be the county of jurisdiction in respect to all matters concerning said district, and the name of such county shall be included in the name of such district. [Id.]

Art. 8201. [5981] Deposit.—Said petition shall be accompanied by five hundred dollars in cash, which shall be deposited with the clerk of said court, and by him held until after the result of the election for the creation of said district has been declared and entered of record by the commissioners court. If the result of said election be in favor of the establishment of said district, then said deposit shall be by said clerk returned to the petitioners, their agent or attorney; but, if the result of said election be against the establishment of said district, then said clerk shall pay out of the said five hundred dollars, upon vouchers signed by the county judge, all costs and expenses pertaining to the said proposed district up to and including the said election, and shall return the balance, if any, to the petitioners, their agent or attorney. [Acts 1909, p. 32.]

Art. 8202. [5956] Notice of hearing.—Upon presentation of such petition, said court shall set the same down for hearing at some regular or special term, not less than thirty nor more than sixty days from such presentation; and shall order the clerk of said court to give notice of the date and the place of said hearing by posting a copy of said petition, and the order of the court thereon, in five public places in said county, one of which shall be at the court house door, and four of which shall be within the limits of said proposed navigation district; and if the district be composed of more than one county, then said notices shall be so posted in each county. Said notices shall be posted not less than twenty days prior to the time set for the hearing. The clerk shall receive one dollar for each such notice and five cents per mile for each mile necessarily traveled in posting same. [Acts 1909, p. 32; Acts 1921, 1st C. S., p. 113.]

Art. 8203. [5957-8-9] Navigation boards in cities.—If the district includes a city or cities, or a part or parts thereof, acting under special charter granted by the Legislature, the hearing of said petition shall be had at the regular meeting place of the commissioners court before the county judge and members of said court, and the mayor and aldermen or commissioners of said city or cities; and said persons shall constitute a board to be known and designated as the Navigation Board, to pass upon the petition aforesaid. Each individual member of said board shall be entitled to a vote. A majority in number of the individuals composing said board shall constitute a quorum, and the action of a quorum shall control. The date for the hearing shall be set within the time before provided, but without reference to any term of the commissioners court, and notice thereof

shall be given as before provided. The county clerk shall enter and record the proceedings of the Navigation Board in a record book kept for this purpose, which record shall be a public archive. [Acts 1909, p. 32.]

Art. 8204. [5961] Hearing on petition.—Upon the day set for the hearing of said petition, any person who may be affected thereby may appear before the said court, or navigation board, and contest the creation of said district, or contend for the creation of said district, and may offer testimony in favor of or against the boundaries of the said district, to show that the proposed improvements would or would not be a public utility and would or would not be feasible or practicable, and the probable cost of such improvements, or as to any other matter pertaining to the proposed district. Said court or board shall have exclusive jurisdiction to hear and determine all contests and objections to the creation of such districts, and all matters pertaining to the creation and establishment of the same, and shall have exclusive jurisdiction in all subsequent proceedings of the district when organized, and may adjourn hearing on any matter connected therewith from day to day; and all judgments or decisions rendered by it in relation thereto shall be final, except as herein provided. [Id.]

Art. 8205. [5962] Hearing: findings.—If it appears on said hearing that the proposed improvement is feasible and practicable and that it would be a public benefit and a public utility, said court or board shall so find, and may approve the boundaries as set out in said petition or make changes therein; otherwise it shall dismiss said petition at the cost of the petitioners, but such dismissal shall not prevent the presentation of a similar petition at a later date. No changes shall be made in said boundaries until notice thereof has been given and hearing had, as provided for the hearing on petition. If said court or board approves the boundaries as set out in the petition, or as so changed, and also decides to grant the petition, it shall then find the amount of money necessary for said improvement and all expenses incident thereto, and shall determine whether to issue bonds for said full amount, or in the first instance for a less amount, and shall specify the amount of bonds to issue, the length of time they shall run, and their rate of interest, and enter all findings in its records. [Id.]

Art. 8206. [5963] Order for election.—If said findings are in favor of the establishment of the district and issuance of bonds and levy of tax therefor, the commissioners court shall order an election to vote on said proposition. Said order shall specify the amount of bonds to be issued, their maturity dates, and rate of interest, as determined under the preceding article. [Id. 1st C. S., 1921, p. 115.]

Art. 8207. [5965] Ballot.—The ballots for said election shall have printed thereon the words and none others: "For the navigation district and issuance of bonds and levy of tax

in payment thereof;" "Against the navigation district, and issuance of bonds and levy of tax in payment thereof." [Acts 1909, p. 32.]

Art. 8208. [5967] **Election: declaration of result.**—If the proposition carries at such election, the court shall enter the same in their minutes as follows: "Commissioners Court of _____ County, Texas, _____ term, A. D. _____: in the matter of the petition of _____ and _____ others praying for the establishment of a navigation district and issuance of bonds and levy of taxes in said petition described and designated by the name of _____ Navigation District. Be it known that at an election called for that purpose in said district, held on the _____ day of _____ A. D. _____ a two-thirds majority of the resident property taxpayers voting thereon voted in favor of the creation of said navigation district, and the issuance of bonds and levy of a tax. Now, therefore, it is considered and ordered by the court that said navigation district be and the same is hereby established by the name of _____ Navigation District, and that the bonds of said district in the amount of _____ dollars be issued, and a tax of _____ cents on the one hundred dollars valuation or so much thereof as may be necessary be levied upon all property within said navigation district, whether real, personal, mixed or otherwise, sufficient in amount to pay the interest on such bonds and provide a sinking fund to redeem them at maturity, and that if said tax shall at any time become insufficient for such purposes same shall be increased until the same is sufficient, the metes and bounds of said district being as follows: (Giving metes and bounds.)" [Id. Acts 1st C. S., 1921, p. 116.]

Art. 8209. [5968] **Navigation commissioners.**—After the establishment of the district, the commissioners court or Navigation Board, by a majority vote, shall biennially appoint three navigation and canal commissioners, all of whom shall be residents of the district, and freehold property taxpayers and legal voters of the county. They shall receive for their services such compensation as may be fixed by the commissioners court and made of record. Said commissioners shall hold office for two years and until their successors have qualified, unless sooner removed by a majority vote of the commissioners court or Navigation Board for malfeasance or nonfeasance in office. All vacancies in the office of such commissioners shall be filled for the unexpired term in the same manner as original appointments to such office. [Acts 1909, p. 32.]

Art. 8210. [5969] **Oath of commissioners.**—Each commissioner shall first take and subscribe before the county judge of the county having jurisdiction an oath faithfully to discharge the duties of his office without favor or partiality, and to render a true account of his doings to the court or board by which he was appointed, whenever required to do so. Such oath shall be

filed by the clerk of said court and preserved as a part of the records of said district. [Acts 1921, 1st C. S., p. 116; Id.]

Art. 8211. [5970] **Bond of commissioners.**—Each commissioner shall first give a good bond for one thousand dollars payable to the county judge for the use and benefit of said district, and conditioned upon the faithful performance of his duties. [Id.]

Art. 8212. [5971] **Organization: quorum.**—Said commissioners shall organize by electing one of their number district chairman and one secretary, and two of the commissioners shall constitute a quorum, and a concurrence of two shall be sufficient in all matters pertaining to the business of said district. [Acts 1909, p. 32.]

Art. 8213. [5973] **Issuance of bonds.**—When said commissioners shall have determined the cost of the proposed improvements, all of the expenses incident thereto and cost of maintenance thereof, they shall certify to the commissioners court the amount of bonds necessary to be issued, and thereupon the said court, at a regular or special meeting, shall make an order directing the issuance of navigation bonds for such district in the amount so certified, not to exceed the amount authorized by said election. [Id. Acts 1st C. S. 1921, p. 116.]

Art. 8214. [5973] **Additional bond issue.**—If the proceeds of the original bonds should be insufficient to complete the proposed improvement or construction, or if the commissioners determine to make further construction or improvements, or shall require additional funds with which to maintain the improvements made, they shall certify to said court the necessity for an additional bond issue, stating the amount required, the purpose of the same, the rate of interest of said bonds, and the time for which they are to run. Said court shall thereupon issue such bonds, unless the amount previously authorized has been exhausted, in which case said court shall first order an election on the issuance of said bonds to be held within such district at the earliest possible legal time. The ballots for such election shall have printed thereon the words and no others: "For the issuance of bonds and levy of tax in payment thereof;" "Against the issuance of bonds and levy of tax in payment thereof." [Id.]

Art. 8215. [5974] **Bonds: limit of issue.**—The outstanding bonds and the additional bonds so ordered shall not exceed in amount one-fourth of the assessed value of the real property in such district, as shown by the last annual assessment thereof made for State and county taxation. [Acts 1909, p. 32.]

Art. 8216. [5975] **Bonds: requisites.**—All bonds issued under the provisions of this chapter shall be issued in the name of the district, signed by the county judge, and attested by the county clerk under the seal of the commissioners court; they shall be issued in such denominations and payable at such time or times, not exceeding forty years from their date, as may be

deemed most expedient by said court, and shall bear interest not exceeding six per cent per annum. All the provisions of Subdivision 1, Chapter 6 of this title governing the approval, registration and validity of bonds of Levee Improvement Districts shall apply to all bonds issued under this chapter; and the Navigation Board or commissioners court shall require a record to be kept of such bonds by the county treasurer as for bonds of said Levee Districts. [Id. Acts 1st C. S. 1921, p. 117.]

Art. 8217. [5979] **Bonds: sale.**—When such bonds have been so registered, the district chairman shall offer for sale and sell said bonds on the best terms and for the best price possible for not less than the face par value thereof and accrued interest thereon. All moneys received therefor shall immediately be paid to the county treasurer, and by him placed to the credit of such district. [Acts 1909, p. 32.]

Art. 8218. [5980] **Chairman to give bond.**—Before said chairman shall be authorized to sell said bonds, he shall execute a good bond, payable to the county judge and his successors in office, to be approved by the county judge, for an amount to be fixed by the district commissioners, conditioned upon the faithful discharge of his duties. [Id. Acts 1923, 2nd C. S., p. 72.]

Art. 8219. [5981] **Maintenance fund.**—After the establishment of the district, all expenses of any kind, after the filing of the original petition, necessarily incurred in connection with the creation, establishment and maintenance of the district shall be paid out of the "Construction and Maintenance Fund" of such district. Said fund shall consist of all moneys received from the sale of bonds and all other amounts received by said district from whatever source, except the tax collections applied to the sinking fund and payment of interest on the navigation bonds. [Acts 1909, p. 32.]

Art. 8220. [5987] **District treasurer.**—The county treasurer of the county the commissioners court of which has jurisdiction shall be treasurer of said district, and he shall open an account of all monies received by him belonging to such district and all amounts paid out by him. He shall pay out no money except upon a voucher signed by the chairman or any two commissioners, or the commissioners court, and he shall carefully preserve on file all orders for the payment of money; and as often as required by the said commissioners or said court, he shall render a correct account to them of all matters pertaining to the financial condition of such district. [Id. Acts 1921, 1st C. S., p. 119.]

Art. 8221. [5988.] **Bond of county treasurers.**—The county treasurer upon the sale of any navigation district bonds, the proceeds of which may come in his possession or under his direction or control shall before receiving such proceeds, and before receiving any other funds from whatever source belonging to said district, execute a good and sufficient bond payable to the navigation and canal commissioners of such district and

to their successors in office, for the benefit of said district in an amount to be fixed by the navigation and canal commissioners of said district and to be approved by said navigation and canal commissioners conditioned that such treasurer shall faithfully execute the duties of his office and pay over, according to law, all moneys that shall come into his hands as such treasurer and shall render a just and true account thereof to the commissioners' court of the county where said district is located and the navigation and canal commissioners of said district whenever required by law or such commissioners' court or navigation and canal commissioners so to do. As soon as this Act shall become effective the treasurer of said district shall give the bond required by the provisions of this Act in lieu of any other bond as such treasurer which he may have given under the law as it heretofore existed and the bond herein provided for shall remain in full force and effect so long as any funds belonging to said district are in his possession or under his control or direction. The county treasurer shall receive such compensation for his services as shall be determined by said navigation and canal commissioners. The navigation and canal commissioners of any district already created and having no district depository may as soon as this Act becomes effective provide for district depository for the funds of such district by complying with the laws for the designation of county depositories where applicable; and in case such depository shall be designated by the navigation and canal commissioners and shall give a good and sufficient bond approved by the said commissioners as now provided by law for depository of county funds, then the county treasurer, as treasurer of such district shall be required to deposit the funds of said district in said depository which said depository so selected shall be the depository of said district until the date of the election of the navigation and canal commissioners of said district and until its successor is selected and qualified. Within thirty days after the election of navigation and canal commissioners of any district created under this Act, the said navigation and canal commissioners elected shall select a depository for said district in the manner provided by law for the selection of a county depository and such depository so selected shall be the depository of said district for a period of two years thereafter and until its successor is selected and qualified. [Acts 1925, p. 280.]

Art. 8222. [5982] **Tax levy.**—When bonds have been voted, the commissioners court shall levy and cause to be assessed and collected improvement taxes annually sufficient to pay the interest on such bonds and to provide a sinking fund to redeem said bonds at maturity. Said court is authorized to levy and cause to be assessed and collected for the maintenance, operation and upkeep of such district and its improvements, an annual tax not to exceed ten cents on the one hundred dollar valuation. All such taxes shall be levied upon all property within such district, whether real, personal, mixed or otherwise. The Naviga-

tion Board shall provide all necessary books for the use of the assessors and collectors and the clerk of the court of jurisdiction. [Acts 1917, p. 66.]

Art. 8223. [5983] **Sinking fund investments.**—The commissioners court may invest the sinking fund in such county, municipal, district or other bonds as the Attorney General shall approve. [Acts 1909, p. 32.]

Art. 8224. **Chapter 3 applicable.**—The provisions of Chapter 3 of this title governing Water Control and Preservation Districts shall, in the manner and to the extent herein specified, apply to all districts hereunder, and the acts therein authorized or required to be done by the district directors shall apply to the navigation commissioners:

1. **Taxes.**—When ordered by the commissioners court having jurisdiction of the navigation district, the tax assessors and collectors of each county in the district shall assess and collect the district taxes and pay the same to the district treasurer, in like manner as provided in such cases in said Chapter 3; and the provisions of said chapter relating to taxation, except the levy of maintenance taxes, creation and investment of sinking fund, and the liability of the commissioners court for failure to order such assessment, shall apply.

2. **Construction contracts.**—All the provisions of said chapter governing the advertising for, letting and performance of contracts for the construction of improvements and work authorized by law shall apply, except that the bidder's deposit shall be for five per cent of the amount bid, the contractor's bond shall be for not less than twenty-five per cent of the contract price; the contract shall be signed by any two commissioners, and the partial payments made thereon shall not exceed ninety per cent of the contract price.

3. **Construction work.**—All the provisions of said chapter governing the right of eminent domain, employment and duties of the district engineer, co-operation with the Federal Government, and the directors' annual report, shall apply.

Art. 8225. [5990] **May acquire property.**—The commissioners are empowered to acquire the necessary right of way and property of any kind for all necessary improvements contemplated by this chapter by gift, grant, purchase or condemnation proceedings. [Acts 1909, p. 32.]

Art. 8226. [5991] **May enter lands.**—The commissioners and the engineers from the time of their appointment are hereby authorized to go upon any lands lying within said district for the purpose of examining the same, making plans, surveys, maps and profiles, together with all necessary teams, help, tools and instruments, without subjecting themselves to action of trespass. [Id.]

Art. 8227. [5999] **Employes and counsel.**—The commissioners are authorized to employ such assistant engineers and

other employes as may be necessary, paying such compensation as they may determine, and the said commissioners are authorized to employ counsel to represent such district in the preparation of any contract, or the conducting of any proceedings in or out of court, and to be the legal adviser of the commissioners, on such terms and for such fees as may be agreed upon by them. [Id.]

Art. 8228. [6001] **May sue and be sued.**—All districts, by and through their commissioners, may sue and be sued in all courts of this State in the name of such navigation district; and all courts of this State shall take judicial notice of the establishment of such districts. [Id.]

2. SPECIAL POWERS.

A. PORT FACILITIES.

| Article | Article | | |
|----------------------------------|---------|-------------------------------------|------|
| Powers of certain districts..... | 8229 | Unimproved lands | 8239 |
| Petition for improvements | 8230 | Franchises | 8240 |
| Hearing: testimony | 8231 | Franchise: election | 8241 |
| Election order | 8232 | Ballots | 8242 |
| Ballots | 8233 | Petition protesting franchise | 8243 |
| Declaration of result | 8234 | District depository | 8244 |
| Governing board | 8235 | Employes | 8245 |
| Bonds | 8236 | Contracts | 8246 |
| Powers | 8237 | City police powers | 8247 |
| Property rights | 8238 | | |

Art. 8229. **Powers of certain districts.**—Navigation districts provided for in this chapter created for the development of deep water navigation, having a city containing one hundred thousand population or more according to the preceding Federal census, are hereby granted, in addition to the powers conferred by this chapter, the right, power and authority to acquire, purchase, take over, construct, maintain, operate, develop and regulate wharves, docks, warehouses, grain elevators, bunkering facilities, belt railroads, floating plants, lighterage, lands, towing facilities, and all other facilities or aids incident to or necessary to the operation or development of ports or waterways, within the district and extending to the Gulf of Mexico, as provided in this subdivision. [Acts 1st C. S. 1921, p. 53.]

Art. 8230. **Petition for improvements.**—When the Navigation Board of such district deems it advisable for said district to avail itself of the rights, powers and authority provided herein, said board shall so certify to the commissioners court of the county wherein said district is situated, petitioning the holding of an election therefor, whereupon said court shall set a day not less than thirty nor more than sixty days thereafter, for public hearing on said petition, at such place as may be designated by the said court. [Id.]

Art. 8231. **Hearing: testimony.**—Upon the day set for said hearing, any person who may be affected thereby may appear before said Navigation Board and contest the necessity, advisability or practicability of said election, and may offer testimony in favor of or against said election. [Id.]

Art. 8232. **Election order.**—After said hearing, if the Navigation Board is still of the opinion said election should be held, the commissioners court shall order an election to determine whether or not the said district should avail itself of the rights, powers and authority provided for herein. Said order shall state the day upon which said election shall be held. [Id.]

Art. 8233. **Ballots.**—The ballots for said election shall have printed thereon the words and none others: "For the development of the port by the Navigation District;" "Against the development of the port by the Navigation District." The expense of said election shall be borne by the district. [Id.]

Art. 8234. **Declaration of result.**—If said election results in favor of the development of the port by said navigation district, then such court shall so declare the result and enter the same in the minutes of the court as follows:

"Commissioners Court.....County, Texas,
term A. D....., in the matter of the petition of the Navigation Board of the.....County.....Navigation District, praying that the right, power and authority be granted said Navigation District to develop the port of.....(here enter the name of said municipality.) BE IT KNOWN, That at an election called for that purpose in said district, held on theday of....., A. D., a two-thirds majority of the resident property taxpayers voting thereon voted in favor of the development of said port by said Navigation District.

"NOW THEREFORE, it is considered and ordered by the Court that said Navigation District be and is hereby authorized to proceed with the development of said port as authorized by law." [Id.]

Art. 8235. **Governing board.**—The district shall thereafter be managed, governed and controlled by five commissioners, who shall be appointed as follows: Two shall be selected for a term of one and two years respectively by a majority of the city council of the municipality having a population of one hundred thousand or more situated in said district. At the expiration of the term of office of said commissioners, the city council shall select their successors annually to serve for two years. The other three shall each serve for two years. Two commissioners and their successors shall be selected by the commissioners court in like manner, and the other, who shall be chairman, shall be selected by a majority vote of said city council and by the commissioners court in joint session called by the county judge of said county. Each commissioner shall be a freehold property taxpayer and legal voter in said navigation district and shall give the bond and take the oath required by this chapter and shall serve until their successors are qualified. Their duties shall be as prescribed in this chapter, and they shall receive such compensation as the Navigation Board may fix. A majority of said commissioners shall have power to act. Said commissioners shall serve their full term of appointment unless sooner removed by the authority by which they were

appointed for malfeasance, nonfeasance in office, inefficiency or other cause deemed sufficient. If any vacancy occurs through the death, resignation or otherwise of any commissioner, the same shall be filled as in the first instance by appointment for the unexpired term. All acts of the commissioners shall be subject to the supervision and control of the Navigation Board. [Id.]

Art. 8236. **Bonds.**—Such districts may issue bonds in payment for the improvements authorized herein upon compliance with the provisions of this chapter. An election shall be held therefor, and such bonds shall be issued as other bonds under this chapter. The outstanding bonds and the additional bonds so ordered shall not exceed in amount ten per cent of the assessed value of the real property in such district as shown by the last annual assessment thereof made for State and county. [Id.]

Art. 8237. **Powers.**—Such districts shall have all the right, power and authority herein granted, subject to the provisions of this law, and shall have all the authority granted by general or special law to navigation districts, and shall also have the fullest powers consistent with the State Constitution for the regulation of wharfage and of all facilities of or pertaining to the said port, waterways and navigation district, and shall have a right to assess and collect charges for the use of all facilities acquired or constructed in accordance with the provisions hereof. [Id.]

Art. 8238. **Property rights.**—Such districts may exercise the right of eminent domain as provided under the preceding subdivision, and may also acquire, and take over, by lease or rental agreements, the docks, wharves, buildings, railroads, lands, improvements and other facilities already provided, constructed or owned by any incorporated municipality situated within such district for a period of not less than twenty-five years, only with the consent of the lawful authorities of such municipality, and upon such terms as may be mutually agreed upon by the district and the said municipality. No agreement for the use, acquisition or operation of such property or facilities of such municipality by the district shall be for a lease, or rental value thereof, which shall exceed the annual net revenues derived or to be derived by the navigation district after payment of the expenses of operation and maintenance of said property and facilities. The district shall have no supervision or control over such property or facilities owned, controlled or constructed by any municipality, until agreement for the lease and rental thereof by the district has been reached and made in the manner herein provided. [Id.]

Art. 8239. **Unimproved lands.**—Districts acquiring, leasing and taking over unimproved lands owned or controlled by any such incorporated municipality, may pay for the use, rent and hire of such unimproved lands, a price or rental value to be fixed by the district commissioners. If such commissioners

fail or are unable to agree upon terms and conditions for the use and rental of such unimproved lands, then the district, under its right of eminent domain, may condemn such lands or parts thereof, as in its discretion the interest of the district requires. [Id.]

Art. 8240. Franchises.—Such districts shall have power to grant franchises to persons or corporations on property owned or controlled by such districts, provided said franchises are granted for purposes consistent with the provisions of this chapter, but no franchise shall be granted for a longer period than thirty years, nor shall any franchise be granted hereunder except upon the affirmative vote of at least three commissioners at three separate meetings of said commissioners, said meetings to be not closer together than one week, and no franchise shall be granted until after the same as finally proposed to be passed shall be published at the expense of the applicant in full once a week for three consecutive weeks in some daily newspaper of general circulation published within said district. Said franchise shall require the grantee therein to file his or their written acceptance thereof within thirty days from the time of the final passage of said franchise. Nothing herein shall be construed as preventing said navigation district from granting revocable licenses or permits for the use of limited portions of water front or facilities for the purposes consistent with the provisions of this chapter. [Id.]

Art. 8241. Franchise: election.—If in the opinion of the commissioners any proposed franchise should be submitted to a vote of the people, they shall so certify to the commissioners court, whereupon said court shall order an election thereon at the earliest legal time. At said election any resident of said district qualified under the Constitution and laws of this State to vote for Governor in a general election shall be qualified to vote. [Id.]

Art. 8242. Ballots.—The ballots used for voting upon such proposed franchise shall set forth the nature of said franchise sufficiently to identify it, and shall also set forth upon separate lines the words “For the franchise” and “Against the franchise.” If at said election a majority of those voting shall vote in favor of the franchise, the same shall be granted; otherwise said franchise shall be of no force and effect. [Id.]

Art. 8243. Petition protesting franchise.—If prior to the date when any franchise has been granted by the commissioners, a petition signed by qualified voters of said district equal in number to ten per cent of the total vote cast at the last general election for State officers, shall be presented to the commissioners court protesting against the enactment or granting of said franchise, it shall be suspended from taking effect, and immediately upon the filing of such petition the commissioners court shall order an election upon said proposed franchise, which said election shall be governed by the provisions of the two preceding articles. [Id.]

Art. 8244. District depository.—The funds of such districts shall be handled in the same manner as provided in this chapter and as provided by the law governing county finances. The commissioners shall provide for a depository for all of the funds of said district, by complying with the laws governing the designation of county depositories. When the depository has given bond and the same has been approved, the county treasurer shall be required to give only such bond as the commissioners may require. [Id.]

Art. 8245. Employes.—Such commissioners may employ such persons as they may deem necessary for the construction, maintenance, operation and development of the navigation district, its business and facilities, prescribe their duties and fix their compensation. [Id.]

Art. 8246. Contracts.—The provisions governing letting of contracts for navigation districts shall apply in all cases consistent with the provisions of this law; provided, that in case of emergency, contracts may be let by the commissioners not exceeding one thousand dollars without advertisement for bids, and in case of urgent necessity or present calamity, advertisement for bids may be waived. [Id.]

Art. 8247. City police powers.—Nothing herein shall repeal or affect the police powers of any municipality within the navigation district, or any law, ordinance or regulation authorizing and empowering such municipality to exercise such powers as to any navigable stream or aids to navigation and facilities therefor, in a navigation district, not in conflict with this chapter. [Id.]

B. PILOTS.

| | Article | | Article |
|----------------------------------|---------|-------------------------------------|---------|
| Pilot Board | 8248 | Branch pilot license | 8253 |
| Jurisdiction | 8249 | Deputy branch pilots | 8254 |
| Supervision of pilots | 8250 | Pilotage charges | 8255 |
| Applicant's qualifications | 8251 | Consignee liable for pilotage | 8256 |
| Powers of board | 8252 | Unauthorized pilot: liability | 8257 |

Art. 8248. Pilot Board.—The navigation and canal commissioners of any navigation district included in Part A of this subdivision, in connection with their other duties as such commissioners, shall constitute a Pilot Board, and be commissioners of pilots and their terms of office as such shall be contemporaneous with their terms of office as navigation and canal commissioners. No person who is engaged directly or indirectly in the towing business or in any pilot boat, or in any other business affected by or connected with the performance of his duties as a commissioner of pilots, shall be a member of such pilot board. [Acts 4th C. S., 1920, p. 3; Acts 1923, p. 42.]

Art. 8249. Jurisdiction.—Such navigation districts shall have exclusive jurisdiction as hereinafter defined over the pilotage of boats between the Gulf of Mexico and their respective ports, as well as of intermediate stops or landing places for such boats upon navigable streams wholly or partly within such navigation districts. [Id.]

Art. 8250. Supervision of pilots.—The right, power and authority is hereby granted to such commission to appoint suspend or dismiss from office, branch pilots or deputy pilots of their respective ports, and to examine and determine upon their qualifications. No branch pilot or deputy pilot shall be suspended or dismissed except for misconduct, inefficiency, or inebriety on duty, and after due hearing of accusation, testimony and defense before said board of navigation and canal commissioners. [Id.]

Art. 8251. Applicant's qualifications.—Before making any appointments as branch pilot or deputy pilots, the commissioners shall examine and determine upon the qualifications for office of each applicant for the position of branch pilot or deputy pilot; and shall require of each of said applicants such terms of residence in this State preceding such appointment as they may deem advisable, not to exceed two years. [Id.]

Art. 8252. Powers of board.—The right, power and authority is further granted to such commissioners to fix rates of pilotage between the Gulf of Mexico and their respective ports, as well as intermediate stops or landing places for such boats, upon navigable streams wholly or partly within such districts; and to make, adopt and enforce all rules and regulations which they deem advisable in the matter of appointment, qualification and regulation of pilots and deputy pilots as may be needed for the government of pilots and their deputy pilots and the proper operation of their respective ports, not inconsistent with the Federal regulations thereof, the Constitution of Texas, or the provisions of this law. [Id.]

Art. 8253. Branch pilot license.—All branch pilots appointed under and in accordance with this law or the rules and regulations of such navigation district shall enter into bond with one or more good and sufficient sureties in the sum of five thousand dollars, payable to the Governor, conditioned upon the faithful performance of the duties of his office. Said bond shall be approved by the commissioners of such district, and shall be deposited in the office of the Secretary of State. Each pilot shall also take the official oath, which shall be endorsed on said bond. Upon the filing of said bond, and the taking of said oath, the commissioners of such district shall certify to the Governor that each branch pilot has duly qualified to act as such, and thereupon the Governor shall issue to said branch pilot, in the name and under the seal of the State, a commission to serve as branch pilot from such ports, across any intermediate bars, to the open gulf; and said commission shall be for a term of two years, unless such branch pilot shall be dismissed from service by said navigation and canal commissioners, in which event such commission shall expire. [Acts 1923, p. 44.]

Art. 8254. Deputy branch pilots.—Each branch pilot may appoint, subject to examination and approval by the navigation and canal commissioners, two deputies for whose acts such

branch pilot shall be responsible, and any branch pilot who shall appoint a deputy without the approval of said commissioners, shall forfeit his own appointment; provided that an additional deputy shall be appointed if such branch pilot and commissioners mutually deem it advisable. [Id.]

Art. 8255. Pilotage charges.—The rates of pilotage charged by the pilots operating under this law shall at all times be fair and just, and a schedule of such rates shall at all times be on file in the office of the district commissioners, said schedule to be furnished by the pilots and strictly adhered to by them; provided that each time a change in the rate shall be effected, a revised schedule shall be filed as above specified. Whenever a vessel, (except vessels of twenty tons or under and all vessels excepted by Federal statutes and regulations) shall decline the services of a pilot operating under this law, offered outside the bar, and shall enter any channel subject to the jurisdiction of such navigation district, without the aid of a pilot operating under this law, such vessel shall be liable to the first pilot operating under this law whose services she has declined, for the payment of half-pilotage; and any vessel which, after being brought in by a pilot operating under this law, shall go without employing one, shall be liable to the payment of half-pilotage to the pilot operating under this law who brought her in; or if she has come in without the aid of such pilot, though offered outside, she shall, on so going out, be liable for the payment of one-half pilotage to the pilot operating under this law who has first offered his services before she came in. [Id.]

Art. 8256. Consignee liable for pilotage.—The consignee of any vessel shall be held responsible to pilots operating under this law for the pilotage of said vessel or services offered, and such pilots shall be entitled to recover same from the consignee of said vessel in any court of competent jurisdiction. [Id.]

Art. 8257. Unauthorized pilot: liability.—If any person not appointed a branch pilot or deputy pilot under this law shall pilot any ship or vessel out of, or into, the port, channel or waterway of which exclusive jurisdiction is, under this law, given to the navigation and canal commissioners of such navigation district, when a branch pilot or deputy pilot, operating hereunder has offered such services, the person so piloting shall forfeit and pay to such branch pilot or deputy pilot, the sum of fifty dollars, to be recovered by suit. [Id.]

3. GENERAL PROVISIONS.

| | | | |
|------------------------------|---------|--------------------------------------|---------|
| | Article | | Article |
| "Commissioner" | 8258 | Election: declaration of result..... | 8262 |
| Election notice | 8259 | Duties imposed without compensa- | |
| Election requisites | 8260 | tion | 8263 |
| Voter's qualifications | 8261 | | |

Art. 8258. "Commissioner."—The term "commissioner" as used in this chapter, shall mean Navigation and Canal Commissioner.

Art. 8259. Election notice.—When any election is held under

this chapter, notice thereof shall be given for thirty days prior thereto, stating the time and place of holding same, the proposition to be voted on and the purpose thereof, and shall contain a copy of the election order. Such notices shall be posted in the manner provided for posting other notices hereunder.

Art. 8260. Election requisites.—At any such election a two-thirds vote shall be necessary to carry the proposition submitted thereat unless otherwise provided. The commissioners court shall order twice as many ballots printed as there are resident property taxpayers who are qualified voters in the district; and shall create and define, by order of the court, the voting precincts in the district, and name convenient polling places therein, and shall appoint necessary election officers. Each such election shall be held at the earliest legal time.

Art. 8261. Voter's qualifications.—Every person who offers to vote in any such election shall first take the following oath before the presiding judge of the polling place where he offers to vote, and the presiding judge is authorized to administer same: "I do solemnly swear that I am a qualified voter of _____ County, that I am a resident property taxpayer of the _____ Navigation District, and I have not voted before at this election."

Art. 8262. Election: declaration of result.—If the commissioners court on canvassing the returns of any such election find that the proposition submitted thereat has carried, they shall so declare and enter the same in their minutes as specially provided hereunder.

Art. 8263. [5960] Duties imposed without compensation.—The duties and powers herein conferred upon the county, city and other officers, are made a part of the legal duty of said officials, which they shall perform without additional compensation, unless otherwise provided herein. [Acts 1909, p. 32.]

[Additional legislation, Acts 1925, p. 7.]

SECTION 1. There may be created within this State under and by virtue of Section 59 of Article 16 of the Constitution of the State of Texas, districts to be known as Navigation Districts, in the manner hereinafter provided; and such districts may or may not include within their boundaries and limits villages, towns, cities, road districts, drainage districts, irrigation districts, levee districts, and other improvement districts, and municipal corporations of any kind, or any part thereof. Such navigation districts, when so established, may make improvements for the navigation of inland and coastal waters, and for the preservation and conservation of inland and coastal waters for navigation, and for the control and distribution of storm and flood waters of rivers and streams in aid of navigation, and for any and all other purposes stated in Section 59 of Article 16 of the Constitution of the State of Texas, necessary or incidental to the navigation of inland and coastal waters or in aid thereof, which districts shall be governmental agencies and

bodies politic and corporate with such powers of government and with the authority to exercise such rights, privileges and functions as may be essential to the accomplishment of such purposes; provided, that such districts shall not include therein the territory of more than two counties, or parts of two counties.

SEC. 2. When it is proposed to create a navigation district wholly within one county, there shall be presented to the county commissioners' court of the county in which the lands to be included in such districts are located, at any regular or special session, a petition accompanied by the deposit provided for in Section 26 of this Act, signed by twenty-five of the resident property taxpayers, or in the event there are less than seventy-five resident property taxpayers in the proposed district then by one-third of such resident property taxpayers in the proposed district; praying for the establishment of a navigation district, and setting forth the boundaries of the proposed district, accompanied by a map thereof, the general nature of the improvement or improvements proposed, and an estimate of the probable cost thereof, and designating a name for such navigation district, which name shall include the name of the county, said petitioners shall make affidavit to accompany said petition of their said qualifications; and when it is proposed to create such a district to be composed of lands in two counties, then a petition of the nature above indicated, signed by twenty-five of the property taxpayers residing in the territory of each county to be included in such proposed district, or in the event there are less than seventy-five property taxpayers residing in said territory, then by one-third of such resident property taxpayers, accompanied by the deposit provided for in Section 26 of this Act; which petition shall be presented to the commissioners' court of the county in which is located the greater amount of acreage of such proposed district, which shall be the county of jurisdiction in respect to all matters concerning said district, and the name of which county shall be included in the name of such district and, upon presentation of such petition the said commissioners' court shall, at the same session when said petition is presented set down for hearing at some regular term of said court, or at some special session of said court called for the purpose, not less than thirty nor more than sixty days from the presentation of said petition and shall order the clerk of said court to give notice of the date and the place of said hearing, by posting a copy of said petition, and the order of the court thereon, in five public places in said county, one of which shall be the courthouse door of said county and four of which shall be within the limits of said proposed navigation district; and if the district be composed of more than one county, then there shall be posted a copy of said petition and the order of the court thereon, at the door of the courthouse of each county in which any portion of the proposed district is located, and four copies in four different places within each county in which any

portion of the proposed district is located, and within the boundaries of said districts. Said notices shall be posted not less than twenty days prior to the time set for the hearing. The said clerk shall receive as compensation for such service one dollar for each such notice and five cents per mile for each mile necessarily traveled in posting such notices.

SEC. 3. In the event the boundaries of the proposed district shall include a city or cities, or a part or parts thereof, acting under special charter granted by the Legislature, the hearing of said petition, hereinafter provided for, shall be had before the county judge and the members of the commissioners' court and the mayor and aldermen or commissioners, as the case may be, of said city or cities; and said persons shall constitute a board to be known and designated as the navigation board, to pass upon the petition aforesaid. Each individual member of said board shall be entitled to a vote. A majority in number of the individuals composing said board shall constitute a quorum, and the action of a majority of the quorum shall control.

SEC. 4. In the event the hearing of said petition shall be had before the navigation board, the commissioners' court of said county shall set the petition down for hearing not less than thirty nor more than sixty days from the date of the presentation of said petition without reference to any term of the commissioners' court, but said hearing shall be held at the regular place of meeting of the commissioners' court, and notice shall be given of the hearing in the manner and for the time as herebefore provided.

SEC. 5. The county clerk shall enter and record the proceedings of the navigation board in a record book kept for this purpose, which record shall be a public archive.

SEC. 6. The duties and powers herein conferred upon the county judge and members of the commissioners' court, and upon the mayor and aldermen or commissioners of cities, and upon the county clerk and other officers, are made a part of the legal duty of said officials, which they shall render and perform without additional compensation, unless otherwise provided herein.

SEC. 7. Upon the day set by said county commissioners for the hearing of said petition, any person who has taxable property within the proposed district, or who may be affected thereby, may appear before the said court, or navigation board, as the case may be, and contest the creation of said district, or contend for the creation of said district, and may offer testimony in favor of or against the boundaries of the said district, to show that the proposed improvement or improvements would or would not be of any public utility and would or would not be feasible or practicable, and the probable cost of such improvement or improvements, or as to any other matter pertaining to the proposed district. Said county commissioners' court, or navigation board, shall have the exclusive jurisdiction to hear and determine all contests and objections to the creation of

such districts, and all matters pertaining to the creation of such districts, and all matters pertaining to the creation and establishment of the same, and shall have exclusive jurisdiction in all subsequent proceedings of the district when organized, except as hereinafter provided, and may adjourn hearing in any matter connected therewith from day to day; and all judgments or decisions rendered by said court, or navigation board, in relation thereto shall be final, except as herein otherwise provided.

SEC. 8. If, at the hearing of said petition, it shall appear to the commissioners' court, or navigation board, as the case may be, that the proposed improvement is feasible and practicable, that it would be a public benefit and a public utility; and, if the court, or navigation board, as the case may be, shall approve the boundaries of the proposed district as set out in said petition, then the court, or navigation board, shall so find, and shall also find the amount of money necessary for said improvement or improvements and for all expenses incident thereto, and shall determine whether to issue bonds for said full amount or in the first instance for a less amount, and shall specify the amount of bonds to issue, the length of time the bonds shall run, and the rate of interest said bonds shall bear, and cause its findings to be recorded in the records of the commissioners' court, or minutes of the navigation board, as the case may be. If the court, or navigation board, shall find that the proposed improvement is feasible and practicable, that it would be a public benefit and a public utility, but does not approve the boundaries of the proposed district as set forth in the petition, the court, or navigation board, shall so find, and shall define the boundaries of such district as the court considers the same should be, and shall also find the amount of money necessary for said improvement or improvements, and for all expenses incident thereto, and shall determine whether to issue bonds for said full amount or in the first instance for a less amount, and shall specify the amount of bonds to issue, the length of time the bonds shall run, and the rate of interest said bonds shall bear, and cause its findings to be entered of record, together with a map thereof. Providing, however, that before any change is made by said court, or navigation board, as the case may be, of the boundaries, notice and hearing thereof shall be given and had as provided for in Section 2 of this Act. If the court, or navigation board, shall find that the proposed improvement is not feasible or practicable, or that it would not be a public benefit or public utility, and that the establishment of such navigation district is therefore unnecessary, then the court, or navigation board, shall enter such findings of record and dismiss the petition at the cost of petitioners, but the order dismissing said petition shall not prevent or conclude the presentation at a later date of a similar petition.

SEC. 9. After the hearing upon the petition, as herein provided, if the court, or navigation board, as the case may be,

shall find in favor of the petitioners for the establishment of navigation district according to the boundaries as set out in said petition, or as changed or modified as above provided by the said court, or navigation board, the commissioners' court of jurisdiction shall order an election, in which order provision shall be made for submitting to the qualified property taxpaying voters residing in said district whether or not such navigation district shall be created, and whether or not said bonds shall be issued and a tax shall be levied sufficient to pay the interest and provide a sinking fund sufficient to redeem said bonds at maturity, said order specifying the amount of bonds to be issued, together with the length of time the bonds shall run and the rate of interest said bonds shall bear, as said matters have been determined by the commissioners' court or navigation board, as the case may be, under the provisions of Section 8 of this Act. Said election to be held within such proposed navigation at the earliest legal time, at which election there shall be submitted the following proposition, and none other; "For the navigation district, and the issuance of bonds and the levy of tax in payment thereof;" "Against the navigation district, and the issuance of bonds and levy of tax in payment thereof."

SEC. 10. Notice of such election, stating the time and place of holding the same, shall be given by the clerk of the said court by posting notices thereof in four public places in such proposed navigation district, and one at the courthouse door of the county in which such district is located, and if the district be composed of more than one county, then there shall be posted a copy of said notice at the door of the courthouse of each county in which any portion of the proposed district is located, and four copies in four public places within each county in which any of the proposed district is located, and within the boundaries of said district; said notices shall be posted for thirty days prior to the date set for the election. Such notices shall contain the proposition to be voted upon as set forth in Section 9 of this Act, and shall also specify the purpose for which said bonds are to be issued, and the amount of said bonds, and shall contain a copy of the order of the court ordering the election.

SEC. 11. The manner of conducting said election shall be governed by the election laws of the State of Texas, except as herein otherwise provided. None but resident property taxpayers, who are qualified voters of said proposed district, shall be entitled to vote at any election on any question submitted to the voters thereof, by the county commissioners' court at such election. The county commissioners' court shall create and define, by an order of the court, the voting precincts in the proposed navigation district, and shall name a polling place or places within said precincts, taking into consideration the convenience of the voters in the proposed navigation district, and shall also select and appoint the judges and other necessary officers of the election, and shall provide one and one-half times as many ballots as there are qualified resident property taxpaying voters within such navigation district. Said ballot shall have

printed thereon the words and none others: "For the navigation district, and issuance of bonds and levy of tax in payment thereof"; "Against the navigation district, and issuance of bonds and levy of tax in payment thereof."

SEC. 12. Immediately after said election, the officers holding the same shall make returns of the result thereof to the commissioners' court having jurisdiction, and return the ballot boxes to the clerk of said court, who shall safely keep the same and deliver them, together with the returns of the election, to the commissioners' court of jurisdiction at its next regular or special session, and the said court at such session shall canvass the vote and return; and if it be found that a majority of those voting at such election shall have been cast in favor of the navigation district and the issuance of bonds and levy of tax, then the court shall declare the result of said election to be in favor of said navigation district, the issuance of said bonds and the levy of the tax, and shall enter same in the minutes of the court as follows:

Commissioners' court of _____ County, Texas. _____ term, A. D. _____, in the matter of the petition of _____ and _____ others praying for the establishment of a navigation district, and issuance of bonds and levy of taxes in said petition described and designated by the name of _____ Navigation District. Be it known that at an election called for the purpose in said district, held on the _____ day of _____ A. D. _____ a majority of the resident property taxpayers voting thereon voted in favor of the creation of said navigation district, and the issuance of bonds and levy of a tax. Now, therefore, it is considered and ordered by the court that said navigation district, be, and the same is hereby established by the name of _____ Navigation District, and that bonds of said district in the amount of _____ dollars be issued, and a tax of _____ cents on the one hundred dollars valuation, or so much thereof as may be necessary to be levied upon all property within said navigation district, whether real, personal, mixed or otherwise, sufficient in amount to pay the interest on such bonds and provide a sinking fund to redeem that at maturity, and that if said tax shall at any time become insufficient for such purposes same shall be increased until same is sufficient. The metes and bounds of said district being as follows:

(Giving metes and bounds.)

SEC. 13. After the establishment of any navigation district, as herein provided, the commissioners' court, or navigation board, as the case may be, shall appoint three navigation and canal commissioners, all of whom shall be residents of the proposed navigation district, who shall be freehold property taxpayers and legal voters of the county, whose duties shall be as hereinafter provided, and who shall each receive for their services such compensation as may be fixed by the commissioners' court and made of record. Said navigation and canal commissioners shall hold office for the term of two years, and until

their successors have qualified, unless sooner removed by a majority vote of the county commissioners, or navigation board, as the case may be, for malfeasance or nonfeasance in office. Upon the expiration of the term of office of said navigation and canal commissioners, the commissioners' court, or navigation board, as the case may be, shall appoint their successors by a majority vote. Should any vacancy occur through the death or resignation or otherwise of any commissioners, the same shall be filled by the commissioners' court, or the navigation board, as the case may be.

SEC. 14. Before entering upon their duties, all navigation and canal commissioners shall take and subscribe before the county judge of the county having jurisdiction an oath to faithfully discharge the duties of their office without favor or partiality, and to render a true account of their doings to the commissioners' court having jurisdiction, or navigation board, by which they are appointed whenever required to do so, which oath shall be filed by the clerk of said court and preserved as part of the records of said navigation district.

SEC. 15. Before entering upon duties each of the navigation and canal commissioners shall make and enter into a good and sufficient bond in the sum of one thousand (\$1,000.00) dollars payable to the county judge of the county having jurisdiction for the use and benefit of said navigation district, and conditioned upon the faithful performance of their duties.

SEC. 16. Said commissioners shall also organize by electing one of their number chairman and one secretary, and two of the commissioners shall constitute a quorum, and a concurrence of two shall be sufficient in all matters pertaining to the business of said district.

SEC. 17. Said commissioners shall have authority to employ a competent engineer, whose term of office shall be at the will of said commissioners, and who shall receive such compensation as may be determined by such commissioners. It shall be the duty of the engineer to make all necessary surveys, examinations, investigations, maps, plans and drawings with reference to the proposed improvements. He shall make estimate or estimates of the cost of same, shall supervise the work of improvement, and shall do and perform all such duties as may be required of him by the commissioners. Provided, that if the river, creek, stream, bay, canal, or waterway, to be improved is navigable or the improvement proposed to be of such nature as requires the permission or consent of the Government of the United States, or any department or officer of the Government of the United States, the navigation and canal commissioners shall be authorized to obtain the required permission or consent of the Government of the United States, or any officer or department thereof; and, in lieu of the employment of an engineer as herein provided, or in addition thereto, the navigation and canal commissioners shall have power to adopt any survey of the river, creek, canal, stream, bay, or waterway theretofore made by the Government of the United States, or any department

thereof, and to arrange for surveys, examinations and investigations of the proposed improvement, and for supervision of the work of improvement by the Government of the United States, or the proper department or officer thereof; provided, that said commissioners shall have full power and authority to co-operate and act with the Government of the United States, or any officer or department thereof, in any and all matters pertaining to or relating to the construction and maintenance of said canals, and the improvement and navigation of all such navigable rivers, bays, creeks, streams, canals, and waterways, whether by survey, work or expenditure of money made or to be made either by said navigation and canal commissioners, or by said Government of the United States, or any proper officer or department thereof, or by both; and, to the end that the said Government of the United States may aid in all such matters, the said commissioners shall have authority to agree and consent to the said Government of the United States entering upon and taking management and control of said work, in so far as it may be necessary or permissible under the laws of the United States, and the regulations and orders of any department thereof.

SEC. 18. When said commissioners shall have determined the cost of the proposed improvement or improvements, all of the expenses incident thereto and cost of maintenance thereof, they shall certify to the commissioners' court having jurisdiction the amount of bonds necessary to be issued, and thereupon the said court, at a regular or special meeting, shall make an order directing the issuance of navigation bonds for such navigation district in the amount so certified; provided that the amount of bonds shall not exceed the amount authorized by the election theretofore held. In the event the proceeds of bonds issued by such navigation district should be insufficient to complete the proposed improvement or construction, or in the event said commissioners shall determine to make other and further construction or improvements, or shall require additional funds with which to maintain the improvements made, they shall certify to said commissioners' court the necessity for an additional bond issue, stating the amount required, the purpose of the same, the rate of interest of said bonds, and the time for which they are to run, whereupon said commissioners' court shall issue such bonds, unless the amount previously authorized shall have been exhausted, in which case said commissioners' court shall order an election on the issuance of said bonds to be held within such navigation district at the earliest possible legal time and in the manner hereinbefore provided for the original issue of bonds, at which election there shall be submitted the following proposition, and none other: "For the issuance of bonds and levy of tax in payment thereof;" "Against the issuance of bonds and levy of tax in payment thereof;" notices of said election shall be given as provided in Section 10 of this Act; and the election shall be held and conducted in the manner provided in Section 11 of this Act. Only those who are qualified property taxpaying voters as provided in this Act shall vote at such election, and the

returns of such election shall be canvassed as provided in Section 12 of this Act.

SEC. 19. If, upon a canvass of the vote, the commissioners' court shall determine that a majority of the votes cast at said election shall have been cast in favor of the issuance of bonds and levy of tax, the said court shall make an order directing the issuance of said bonds and levy of tax.

SEC. 20. All bonds issued under the provisions of this Act shall be issued in the name of the navigation district, shall be signed by the county judge of the county whose commissioners' court has jurisdiction of said district, shall be attested by the county clerk, and the seal of the commissioners' court of such county shall be affixed to each, they shall be issued in such denominations and payable at such time, or times, not exceeding forty years from their date, as may be deemed most expedient by said commissioners' court, and said bonds shall bear interest not to exceed six per cent per annum.

SEC. 21. Any navigation district in the State of Texas desiring to issue bonds in accordance with this Chapter shall, before such bonds are offered for sale, forward to the Attorney General a copy of the bonds to be issued, a certified copy of the order of the commissioners' court levying the tax, a copy of the order of the commissioners' court levying the tax to pay interest and provide a sinking fund, and a statement of the total bonded indebtedness of such navigation district as such, including the series of bonds proposed and the assessed value of property for the purpose of taxation, as shown by the last official assessment by the county, together with such other information as the Attorney General may require; whereupon it shall be the duty of the Attorney General to carefully examine said bonds in connection with the facts and the Constitution and laws on the subject of the execution of such bonds; and, if as the result of such examination the Attorney General shall find that such bonds were issued in conformity with the Constitution and laws, and that they are valid and binding obligations upon such navigation district by which they are issued, he shall so officially certify.

SEC. 22. When said bonds have been examined by the Attorney General, and his certificate issued to that effect, they shall be registered by the State Comptroller, in a book to be kept for that purpose; and the certificate of the Attorney General to the validity of such bonds shall be preserved of record for use in the event of litigation. Such bonds, after being approved by the Attorney General, and after having been registered in the Comptroller's office as herein provided, shall thereafter be held in every action, suit or proceeding in which their validity is or may be brought in question, prima facie valid and binding obligations. And, in every action brought to enforce collection of said bonds or interest thereon, the certificate of the Attorney General, or a duly certified copy thereof, shall be admitted and received as prima facie evidence of the validity of such bonds, together with the coupons thereto attached; provided, that the

only defense that can be offered against the validity of said bonds or coupons be forgery or fraud.

SEC. 23. When bonds shall have been issued under the provisions of this Act, the navigation board of said district shall procure and deliver to the treasurer of the county whose commissioners' court has jurisdiction, a well bound book in which a record shall be kept of all such bonds, with their numbers, amount, rate of interest, date of issuance, when due, where payable, amount received for same, the tax levy to pay interest on and to provide sinking funds for their payment, and said book shall at all times be open to the inspection of the parties interested in said district, either as taxpayers, or bondholders or otherwise; and upon payment of any bond, an entry thereof shall be made in said book. The county treasurer shall receive for his services in recording these matters the same fees as may be allowed by law to the county clerk for other like records.

SEC. 24. When such bonds have been registered, as provided for in the preceding section of this Act, the chairman of the navigation and canal commission shall offer for sale and sell said bonds on the best terms and for the best price possible, but none of said bonds shall be sold for less than the face par value thereof and accrued interest thereon; and, as fast as said bonds are sold, all moneys received therefor shall be paid to the county treasurer, and shall by him be placed to the credit of such navigation district.

SEC. 25. Before the said chairman of the navigation and canal commissioners shall be authorized to sell any of the navigation bonds, he shall execute a good and sufficient bond, payable to the county judge or his successors in office, to be approved by the county commissioners' court of said county, for an amount not less than the amount of the bonds issued, conditioned upon the faithful discharge of his duties.

SEC. 26. All expenses of any kind, after the filing of the original petition, necessarily incurred in connection with the creation, establishment and maintenance of any navigation district organized under the provisions of this Section, shall be paid out of the "Construction and Maintenance Fund" of such navigation district; which fund shall consist of all moneys received from the sale of bonds and all other amounts received by said district from whatever source, except the tax collections applied to the sinking fund and payment of interest on the navigation bonds; provided, that, should the proposition of the creation of such navigation district and issuance of bonds be defeated at the election called to vote upon the same then all expenses up to and including said election shall be paid in the following manner: When the original petition praying for the establishment of a navigation district is filed with the county commissioners' court, it shall be accompanied by five hundred dollars in cash, which shall be deposited with the clerk of said county commissioners' court, and by him held until after the result of the election for the creation of said navigation district has been declared and entered of record by the commissioners'

court, as hereinafter provided; and, should the result of said election be in favor of the establishment of said district, then the said five hundred dollars shall be by said clerk returned to the signers of said original petition, or their agent or attorney; but, should the result of said election be against the establishment of said district, then the said clerk shall pay out of the said five hundred dollars, upon vouchers signed by the county judge, all costs and expenses pertaining to the said proposed district up to and including the said election, and shall return the balance, if any, of said five hundred dollars to the signers of said original petition, or their agent or attorney.

SEC. 27. Whenever such navigation district bonds shall have been voted, the commissioners' court shall levy and cause to be assessed and collected improvement taxes upon all property within said navigation district, whether real, personal, mixed or otherwise, and sufficient in amount to pay the interest on such bonds, together with an additional amount to be annually placed in a sinking fund sufficient to discharge and redeem said bonds at their maturity, and in all such navigation districts which have heretofore been created or may hereafter be created, the commissioners' courts of the respective counties wherein said districts may be created, shall be and are hereby authorized to levy and cause to be assessed and collected for the maintenance, operation and up-keep of such navigation district and the improvements constructed by said district, an annual tax not to exceed ten cents on the one hundred dollar valuation upon all property within such navigation district, whether real, personal mixed, or otherwise.

SEC. 28. If advisable, the sinking fund shall, from time to time, be invested by the commissioners' court of the county in such county, municipal, district or other bonds as shall be approved by the Attorney General of the State.

SEC. 29. The navigation board of said district shall provide all necessary additional books for the use of assessors and collectors of taxes and the clerk of the commissioners' court of jurisdiction for said navigation districts. The tax assessors of each county in said navigation district, when ordered to do so by the commissioners' court having jurisdiction of said district, shall assess all property within said navigation district which is located in his county and list the same for taxation in the books or rolls furnished him for said purposes, and return said books or rolls at the same time when he returns the other books or rolls of the State and county taxes for correction and approval to the commissioners' court of his county, and if said court shall find said books or rolls correct they shall approve the same, and in all matters pertaining to the assessment of property for taxation in said district, the tax assessors and boards of equalization of the counties in which said district is located shall be authorized to act and shall be governed by the laws of Texas for assessing and equalizing property for State and county taxes, except as herein provided. All taxes authorized to be levied by this Act shall be a lien upon the property upon which said

taxes are assessed, and said taxes may be paid and shall mature and be paid at the time provided by the laws of this State for the payment of State and county taxes; and all the penalties provided by the laws of this State for the non-payment of State and county taxes shall apply to all taxes authorized to be levied by this Section. The tax assessors shall receive for such services such compensation as the said navigation and canal commissioners shall deem proper; provided that said county assessors shall in no event be allowed more than they are now allowed for like services. Should any tax assessor fail or refuse to comply with the orders of said commissioners' court requiring him to assess and list for taxation all the property in such navigation district, as herein provided, he shall be suspended from the further discharge of his duties by the commissioners' court of his county, and he shall be removed from office in the mode prescribed by law for the removal of county officers.

SEC. 30. That tax collectors of the several counties in said navigation district shall be charged with the assessment rolls of navigation districts, and are required to make collection of all taxes levied and assessed against the property in their county within such district and promptly pay over the same to the treasurer of the county, the commissioners' court of which has jurisdiction of said district; and said tax collectors shall be allowed no more compensation for the collection of said taxes than is now allowed for collection of other taxes, same to be fixed by the navigation and canal commissioners. The bonds of such collectors shall stand as security for the proper performance of their duties as tax collectors of such navigation districts; or, if in the judgment of the navigation and canal commissioners of such districts it be necessary, additional bonds, payable to such districts, may be required, and in all matters pertaining to the collection of taxes levied under the provisions of this section, the tax collectors shall be authorized to act and shall be governed by the laws of the State of Texas for the collection of State and county taxes, except as herein provided; and suits may be brought for the collection of said taxes and the enforcement of the tax liens created by this section. Should any collector of taxes fail or refuse to give such additional bond or security as herein provided, when requested to do so by said navigation and canal commissioners, within the time prescribed by law for such purposes, he shall be suspended from office by the commissioners' court of his county, and immediately thereafter be removed from office in the mode prescribed by law.

SEC. 31. It shall be the duty of the tax collector to make a certified list of all delinquent property upon which the navigation tax has not been paid, and return the same to the county commissioners' court, which shall proceed to have the same collected by the sale of such delinquent property in the same manner, both by suit and otherwise, as now or may be provided for the sale of property for the collection of State and county taxes; and, at the sale of any property for any delinquent tax,

the navigation and canal commissioners may become the purchasers of the same for the benefit of the navigation district.

SEC. 32. The county treasurer of the county, the commissioners' court of which has jurisdiction of said district, shall be treasurer of said navigation district, and it shall be his duty to open an account of all monies received by him belonging to such district and all amounts paid out by him. He shall pay out no money except upon a voucher signed by the chairman or any two of said navigation and canal commissioners, or the said commissioners' court, and he shall carefully preserve on file all orders for the payment of money; and, as often as required by the said commissioners' court, he shall render a correct account to them of all matters pertaining to the financial condition of such district.

SEC. 33. The county treasurer shall execute a good and sufficient bond, payable to the navigation and canal commissioners of such district, in a sum equal to twice the amount of funds he will have in his hands as treasurer of such district, at any time as estimated by said navigation and canal commissioners, such bond to be conditioned for the faithful performance of his duties as treasurer of such district and to be approved by said navigation and canal commissioners; provided, whenever any bonds are voted by such navigation district the county treasurer before receiving the proceeds of sale thereof shall execute additional good and sufficient bond payable to the navigation and canal commissioners of such district in the sum equal to twice the amount of bonds so issued, which bond shall likewise be conditioned and approved as aforesaid, but such additional bond shall not be required after such treasurer shall have properly disbursed the proceeds of such bond issue; and the county treasurer shall be allowed such compensation for his services as treasurer of such navigation district as may be determined by said navigation and canal commissioners not exceeding the same per cent as is now authorized by law for his services as county treasurer.

SEC. 34. The right of eminent domain is hereby conferred upon all navigation districts established under the provisions of this chapter for the purpose of condemning and acquiring the right of way over and through any and all lands, private or public, except property used for cemetery purposes, necessary for the improvement of any river, bay, creek, or stream, and the construction and maintenance of any canal or waterway, and for any and all purposes authorized by this Act. All such condemnation proceedings shall be instituted under the direction of the navigation and canal commissioners, and in the name of the navigation district, and the assessing of damages shall be in conformity to the statutes of the State of Texas for condemning and acquiring the right of way by railroads; provided, that no appeal from the finding and assessment of damage by the commissioners appointed for that purpose shall have the effect of causing a suspension of work by the navigation commis-

sioners in prosecuting the work of improvement in all of its details; provided, that no right of way can be condemned through any part of an incorporated city or town without the consent of the lawful authorities of such city or town.

SEC. 35. The navigation and canal commissioners of any district are hereby empowered to acquire the necessary right of way and property of any kind for all necessary improvements contemplated by this Act by gift, grant, purchase or condemnation proceedings.

SEC. 36. The navigation and canal commissioners of any district, and the engineers, from the time of their appointment, are hereby authorized to go upon any lands lying within said district for the purpose of examining the same, making plans, surveys, maps and profiles, together with all necessary teams, help, tools and instruments, without subjecting themselves to action of trespass.

SEC. 37. If the improvement or improvements be not carried out and performed by the Government of the United States, as herein provided, the contract or contracts for such improvement or improvements shall be let by the navigation and canal commissioners, and the same shall be awarded to the lowest and best responsible bidder, after giving notice by advertising the same in one or more newspapers, of general circulation in the State of Texas once a week for four consecutive weeks, and by posting notices for at least thirty days in five public places in the county of jurisdiction, one of which shall be at the courthouse door, and at least two of which shall be within said district. Nothing herein contained shall prevent the making of more than one improvement, and where more than one improvement is to be made, the contract may be let separately for each one contract for all such improvements.

SEC. 38. Any person, corporation, or firm, desiring to bid on the construction of any work advertised for as provided under the preceding section of this Act, shall, upon application to the navigation and canal commissioners, be furnished the survey, plans and estimates for the said work, and all bids or offers for any such work shall be in writing and sealed and delivered to the chairman of the navigation and canal commissioners, together with a certified check for at least five per cent of the total amount of bid, which shall be forfeited to the district in case the bidder refuses to enter into a proper contract, if his bid is accepted. Any and all bids may be rejected at the discretion of the navigation and canal commissioners.

SEC. 39. All contracts made by the navigation and canal commissioners shall be reduced to writing and signed by the contractors and navigation and canal commissioners, or any two of said commissioners, and a copy of same filed with the county clerk for reference.

SEC. 40. The party, firm or corporation, to whom any such contract is let, shall give bond, payable to the navigation and canal commissioners for said district, in twice the amount of

the contract price, conditioned that he, they or it, will faithfully perform the obligations, agreements and covenants of their contract, and that in default thereof will pay to said district all damages sustained by reason thereof. Said bond shall be approved by such navigation and canal commissioners.

SEC. 41. All work contracted for by the navigation and canal commissioners, unless done under the supervision of the Government of the United States, or the proper department or officer thereof, shall be done under the supervision of the engineer; and, when the work is completed according to contract, the engineer shall make a detailed report of the same to the navigation and canal commissioners, showing whether the contract has been fully complied with, according to its terms, and if not in what particular it has not been complied with.

SEC. 42. The commissioners shall have the right, and it is hereby made their duty, during the progress of the work being done under contract, to inspect the same; and, upon the completion of any contract, they shall draw a warrant on the county treasurer for the amount of the contract price in favor of the contractor or his assignee, which warrant shall be paid out of the construction and maintenance fund of such district; provided, that, if the navigation and canal commissioners shall deem it advisable, they may contract for the work to be paid for in partial payments as the work progresses; but such partial payments shall not exceed in the aggregate eight per cent of the total amount to be paid under the contract, the amount of work completed to be shown by a certificate of the engineer; and provided, further, that nothing in this Section shall affect the provisions of this Act providing for the carrying out and performing of the improvement or improvements by the Government of the United States.

SEC. 43. The commissioners shall make an annual report of their acts and doings as such commissioners, and file the same with the clerk of the county court on or before the first day of January of each year; which report shall show in detail the kind, character and amount of work done in the district, the cost of same, and the amount paid out on order, for what purpose paid, and other data necessary to show the condition of improvements made under the provisions of this Act.

SEC. 44. The commissioners are hereby authorized and empowered to employ such assistant engineers and other employees as may be necessary, paying such compensation as they may determine; and the said commissioners are authorized to employ counsel to represent such district in the preparation of any contract, or the conducting of any proceedings in or out of court, and to be the legal adviser of the navigation and canal commissioners on such terms and for such fees as may be agreed upon by them; and such commissioners shall have the authority to draw warrant or warrants in payment of such legal services, and for the salary of the engineer, his assistant, or any other

employees, and for all expense incident and pertaining to the navigation district.

SEC. 45. Neither the county judge of any county in said navigation district, nor any county commissioner of said counties, nor members of the navigation board or engineer shall be directly or indirectly interested for themselves, or as agents for any one else, in the contract for the construction of any work to be performed by such navigation district.

SEC. 46. All navigation districts established under this Act may, by and through the navigation and canal commissioners, sue and be sued in all courts of this State in the name of such navigation district, and all courts of this State shall take judicial notice of the establishment of all districts. [Acts 1925, p. 7.]

CHAPTER TEN.

PILOTS.

1. PILOT BOARDS.

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|------------------------------|--------------|------------------------------|--------------|
| Governor to appoint | Article 8264 | Regulations and rates | Article 8267 |
| Duties of board | 8265 | Settlement of disputes | 8268 |
| Pilots' qualifications | 8266 | Boards in small ports | 8269 |

Art. 8264. [6299] [3790] Governor to appoint.—The Governor shall appoint, with the consent of the Senate, for each port whose population and circumstances warrant it, and also for Matagorda and Lavaca Bays from Pass Cavallo to Indianola and Lavaca, a board of five persons of respectable standing, under the denomination of “commissioners of pilots” for such port and bays, three of whom shall be practical seamen and the other two merchants, who shall be commissioned by the Governor for the term of two years; and the Governor shall, during the recess of the Legislature, be authorized to suspend, until the next session of the same, any of said commissioners, and to fill, until the same period, any vacancies in the board caused by death, resignation or otherwise. No member of the board of commissioners shall be directly or indirectly pecuniarily interested in any pilot boat or branch pilot in the business of their trust. [Acts 1846, p. 79; G. L. Vol. 2, p. 1385; Acts 1861, p. 19; P. D. 4762, 4775; G. L. Vol. 5, p. 355.]

Art. 8265. [6300] [3791] Duties of board.—Said board of commissioners shall be authorized, if they deem it advisable, to examine and decide on the qualifications of any branch or deputy pilot whom they find already appointed at the time of their organization; and it shall be their duty to examine each new applicant for the office of branch or deputy pilot, and to decide on his qualifications, recommending to the Governor, where new appointments are proper, such as are meritorious; and it shall also be their duty to examine into any cause of alleged or supposed misconduct or inefficiency in branch or deputy pilots; and they shall be authorized, after a due hearing of accusation, testimony and defense, to suspend such pilot if sufficient cause appear, and during such suspension he shall not

be allowed to exercise the functions of his office; the Governor shall, however, have power at his will and pleasure to remove any branch pilot, or to reinstate any one of the same who has been suspended by the commissioners. [Acts 1846, p. 79; P. D. 4763; G. L. Vol. 2, p. 1385.]

Art. 8266. [6301] [3792] **Pilots' qualifications.**—The board shall require a certain term of residence in this State, not less than two years, to authorize any person to exercise the functions of branch pilot for their port or said bays; as also to establish a term of probation, not exceeding one year, as a deputy pilot before any person can exercise the functions of branch pilot. [Id.]

Art. 8267. [6302] [3793] **Regulations and rates.** — The board shall have authority, within the limits provided in this subdivision, to fix rates of pilotage, and to establish regulations respecting the stations whereat and the times wherein pilots shall be on duty, with provisions for leave of absence; as also respecting the class, condition, number and use of pilot boats, and such other minor regulations, compatible with the provisions of this subdivision as may be needed for the government of pilots and for the order and good effect of the proceedings of the board, of which proceedings a record shall be kept; provided, no regulation shall be adopted repugnant to the Constitution. [Id.]

Art. 8268. [6303] [3794] **Settlement of disputes.** — The board shall be authorized and required to hear and determine all disputes that may arise respecting pilots and pilotage; to award to pilots extra compensation for extra services to vessels in distress; as also compensation for injurious loss of time incurred by pilots in waiting on vessels or by being carried off to sea on vessels by default of the master or owner when such pilots might have been landed; provided, always, that no more than three dollars for each day shall be awarded for mere loss of time; and said board shall superintend and generally attend to all matters appertaining to pilots and pilotage; but from any decision of said board an appeal may be taken to the court having cognizance of the case. [Id.]

Art. 8269. [6304] [3795] **Boards in small ports.**—At any port whose population and circumstances do not warrant the appointment of a board of commissioners of pilots in the manner before provided, the Governor may authorize the county judge of the county to appoint a provisional committee of from three to five persons of good character and maritime experience who shall be authorized under this chapter to establish the rates of pilotage and the rules for governing pilots; to examine the qualifications of pilots and applicants for the office; to investigate the case of any pilot charged with misconduct or inefficiency, and to suspend him if sufficient cause appear. [Id.]

2. BRANCH AND DEPUTY PILOTS.

| | | | |
|-------------------------------------|---------|---|---------|
| | Article | | Article |
| Appointment | 3270 | Consignee responsible for pilotage..... | 8276 |
| Bond and oath | 3271 | Unauthorized pilot; liability | 8277 |
| May appoint deputies | 3272 | Pilots for mouth of Brazos..... | 8278 |
| Malfesance | 3273 | Pilots for Matagorda and Lavaca | 8279 |
| Pilotage | 3274 | Bays | 8279 |
| Exemptions from extra pilotage..... | 3275 | Rules for branch pilots applicable..... | 8280 |

Art. 8270. [6305] [3796] **Appointment.**—The Governor shall appoint at each of the ports such number of branch pilots as may from time to time be necessary, each of whom shall hold his office for the term of two years. [Acts 1846, p. 79; P. D. 4761; G. L. Vol. 2, p. 1385.]

Art. 8271. [6306] [3797] **Bond and oath.**—Each branch pilot shall give bond, with two or more good and sufficient sureties, in the sum of five thousand dollars, payable to the Governor, and conditioned for the faithful performance of the duties of his office. Such bond shall be approved by the board of commissioners of pilots for the port, or if there be no such board, by the county judge of the county in which the port is situated, and forwarded to the Governor. Each pilot shall also take and subscribe the official oath which shall be endorsed on said bond, and together with the bond shall be recorded in the office of the county clerk of the county in which such port is situated before being forwarded to the Governor. Certified copies of said bonds, under the hand and seal of the county clerk, may be used as evidence in all the courts with like effect as the originals. [Id.; Acts 1861, p. 19; G. L. Vol. 5, p. 355.]

Art. 8272. [6307] [3798] **May appoint deputies.**—Each branch pilot may appoint subject to examination and approval by the board of commissioners, two deputies, for whose acts the branch pilot so appointed shall be responsible; and any branch pilot who shall appoint a deputy without the approval of said board shall forfeit his own appointment and said board shall have authority to restrict all deputy pilots from piloting over the bar vessels of over a certain draught of water. [Id.]

Art. 8273. [6308] [3799] **Malfesance.**—Any branch or deputy pilot in a state of inebriety who shall take charge of a vessel shall, upon proof of the same, for the first offense be suspended for one month, and for the second offense be dismissed and be rendered incapable of again serving in either capacity. If any branch or deputy pilot shall wilfully or by neglect cause the wreck of a vessel, he shall be dismissed and be rendered incapable of again serving in either capacity. [Id.]

Art. 8274. [6309] [3800] **Pilotage.**—The rate of pilotage on any class of vessels shall not, in any port of this State, exceed four dollars for each foot of water which the vessel at the time of piloting draws, and whenever a vessel, except of the classes below excepted, shall decline the services of a pilot, offered outside the bar, and shall enter the port without the aid of one, she shall be liable to the first pilot whose services she so declined for the payment of half pilotage; and any vessel which, after being brought in by a pilot, shall go out without employing one, shall

be liable to the payment of half pilotage to the pilot who brought her in, or if she has come in without the aid of a pilot, though offered outside, she shall on so going out be liable for the payment of half pilotage to the pilot who had first offered his services before she came in, but if she has come in without the aid of a pilot, or the offer of one outside, she shall not, in case of going out without a pilot, be liable to half pilotage. At any port where vessels shall receive or discharge their cargoes at an anchorage outside of the bar, such vessel shall be liable to pilotage at the above rate to such anchorage, but shall not be liable for or compelled to pay pilotage from such anchorage to the open sea; and if any vessel bound from open sea to such anchorage, while under way, shall decline the services of a pilot, and shall afterward receive or discharge any portion of her cargo at such anchorage on the lighters or otherwise, she shall be liable for the payment of half pilotage, at the above rate to such anchorage to the first pilot whose services shall have been tendered to and declined by her, but not liable for any pilotage from such anchorage to the open sea; and when a pilot takes charge of a vessel twenty miles outside of the bar, and brings her to it, he shall be entitled to one-fourth pilotage for such off-shore service, in addition to what he is entitled to recover for bringing her in, but if such off-shore service be declined, no portion of said compensation shall be recovered. [Acts 1866, pp. 14, 15; G. L. Vol. 5, p. 932; Acts 1879, p. 99; G. L. Vol. 8, p. 1399.]

Art. 8275. [6310] [3801] **Exemptions from extra pilotage.**—The following classes of vessels shall be free from any charge for pilotage, unless for actual service, to-wit: All vessels of twenty tons and under, all vessels of whatsoever burthen owned in this State and registered and licensed in the district of Texas, when arriving from or departing to any port of this State; all vessels of seventy-five tons and under owned and licensed for the coasting trade in any part of the United States, when arriving from or departing to any port in the State of Texas; all vessels of seventy-five tons or under owned in this State and licensed for the coasting trade in the district of Texas, when arriving from or departing to any port in the United States. [Id.]

Art. 8276. [6311] [3802] **Consignee responsible for pilotage.**—The consignee of any vessel shall be held responsible for the pilotage of said vessel. [Acts 1846, p. 79; P. D. 4772; G. L. Vol. 2, p. 1385.]

Art. 8277. [6312] [3803] **Unauthorized pilot: liability.**—If any person not appointed a branch or deputy pilot shall pilot any ship or vessel out of or into any port when a branch or deputy pilot has offered such service, the person so piloting shall forfeit and pay to such branch or deputy pilot the sum of fifty dollars to be recovered by suit. [Id.]

Art. 8278. [6313-14] **Pilots for mouth of Brazos.**—The Governor shall also appoint a sufficient number of competent pilots for the mouth of the Brazos River, whose terms of office,

mode of qualification and pilotage shall be the same as prescribed in the preceding articles for branch pilots; and they shall be entitled to all the privileges and shall exercise all the powers, and discharge all the duties prescribed for branch pilots, and be subject to like penalties. The county judge of Brazoria County shall approve the bond of any such pilot. [Acts 1848, p. 144; P. D. 4776, 4782; G. L. Vol. 3, p. 144.]

Art. 8279. [6315-16-17] **Pilots for Matagorda and Lavaca Bays.**—The Governor shall also appoint not less than two nor more than four competent pilots for Matagorda and Lavaca Bays, from Pass Cavallo to Indianola and Lavaca, who shall hold their offices for the same term as branch pilots, and whose mode of qualification, powers and privileges, in so far as the same are applicable, shall be the same; the bonds of such pilots shall be approved by the county judge of Calhoun County. Such pilots shall keep the channels of said bays properly staked and marked out, and in default thereof they shall be subject to removal or suspension. The rate of pilotage for said bays shall be two dollars and fifty cents for each foot of water the vessel may draw at the time of piloting; and all vessels that may draw five feet or more shall be subject to pay any licensed pilot for said bays, whose services are tendered and declined; one-half the pilotage herein prescribed. [Acts 1861, p. 19; P. D. 4775; G. L. Vol. 5, p. 355.]

Art. 8280. [6318-19] **Rules for branch pilots applicable.**—All the provisions of this chapter relating to branch pilots at ports in so far as the same are applicable and not expressly qualified, shall apply to and govern pilots appointed for the mouth of the Brazos River and for Matagorda and Lavaca Bays. If any person not a licensed pilot or deputy shall pilot any vessel into or out of the mouth of said river or through the channel of said bays, up or down, he shall forfeit and pay to any pilot licensed or commissioned for the mouth of said river, or for said bays, full pilotage for such vessel, to be recovered by suit. [Id.]

TITLE 129.

WILLS.

| | Article | | Article |
|--------------------------|---------|----------------------------------|---------|
| Who may execute | 8281 | Descendants | 8294 |
| May pass estate | 8282 | Prior death of legatee..... | 8295 |
| Requisites | 8283 | Bequest to witness | 8296 |
| Exception | 8284 | Proof by witness | 8297 |
| Cancellation | 8285 | Separate property | 8298 |
| Nuncupative will | 8286 | Custody | 8299 |
| Requisites | 8287 | Registration | 8300 |
| Notice and proof | 8288 | Foreign will | 8301 |
| Testimony | 8289 | Foreign will; registration | 8302 |
| Soldier's will | 8290 | Effective, when..... | 8303 |
| Posthumous children..... | 8291 | Notice | 8304 |
| After-born child | 8292 | Foreign trustee | 8305 |
| Validity | 8293 | | |

Art. 8281. [7855] [5333] [4857] **Who may execute.**—Every person aged twenty-one years or upward, or who may be or may have been lawfully married, being of sound mind, shall have power to make a last will and testament, under the rules and limitations prescribed by law. [Acts 1840, p. 167; Acts 1856, p. 5; G. L. Vol. 2, p. 341; Vol. 4, p. 423.]

Art. 8282. [7856] [5334] [4858] **May pass estate.**—Every person competent to make a last will and testament may thereby devise and bequeath all the estate, right, title and interest in possession, reversion or remainder, which he has, or at the time of his death shall have, of, in or to any lands, tenements, hereditaments or rents charged upon or issuing out of them, or shall have of, in or to any personal property whatever, subject to the limitations prescribed by law. [P. D. 5361-2.]

Art. 8283. [7857] [5335] [4859] **Requisites.**—Every last will and testament except where otherwise provided by law, shall be in writing and signed by the testator or by some other person by his direction and in his presence, and shall, if not wholly written by himself, be attested by two or more credible witnesses above the age of fourteen years, subscribing their names thereto in the presence of the testator. [Acts Jan. 28, 1840; G. L. Vol. 2, p. 341.]

Art. 8284. [7858] [5336] [4860] **Exception.**—Where the will is wholly written by the testator the attestation of the subscribing witnesses may be dispensed with. [Id.]

Art. 8285. [7859] [5337] [4861] **Cancellation.**—No will in writing, made in conformity with the preceding articles, nor any clause thereof or devise therein, shall be revoked, except by a subsequent will, codicil or declaration in writing, executed with like formalities, or by the testator destroying, canceling or obliterating the same, or causing it to be done in his presence.

Art. 8286. [7860] [5338] [4862] **Nuncupative will.**—Any person who is competent to make a last will and testament, under Articles 8281 and 8282 may dispose of his property by a nuncupative will made under the conditions and limitations hereinafter prescribed. [P. D. 5366.]

Art. 8287. [7861] [5339] [4863] **Requisites.**—No nuncupative will shall be established, unless it be made in the time of

the last sickness of the decesad, at his habitation or where he has resided for ten days next preceding, except when the deceased is taken sick from home and dies before he returns to such habitation; nor when the value exceeds thirty dollars, unless it be proved by three credible witnesses that the testator called on some person to take notice or bear testimony that such is his will, or words of like import. [P. D. 5366.]

Art. 8288. [7862] [5340] [4864] **Notice and proof.**—No nuncupative will shall be proved within fourteen days after the death of the testator, nor until those who would have been entitled by inheritance, had there been no will, have been summoned to contest the same, if they desire to do so. [P. D. 5371.]

Art. 8289. [7863] [5341] [4865] **Testimony.**—After six months have elapsed from the time of speaking the pretended testamentary words, no testimony shall be received to prove a nuncupative will, unless the testimony or the substance thereof, shall have been committed to writing within six days after making the will. [P. D. 5367.]

Art. 8290. [7864] [5342] [4866] **Soldier's will.**—Any soldier in actual military service, or any mariner or seaman being at sea, may dispose of his chattels without regard to the provisions of this title. [P. D. 5369.]

Art. 8291. [7865] [5343] [4867] **Posthumous children.**—When a testator shall have children born and his wife enceinte, the posthumous child, if unprovided for by settlement and pretermitted by his last will and testament, shall succeed to the same portion of the father's estate as such child would have been entitled to if the father had died intestate; toward which portion the devisees and legatees shall contribute proportionately out of the parts devised and bequeathed to them by such last will and testament. [P. D. 5363.]

Art. 8292. [7866] [5344] [4868] **After-born child.**—If a testator having a child or children born at the time of making his last will and testament, shall at his death, leave a child or children born after the making of such last will and testament, the child or children so after born and pretermitted shall, unless provided for by settlement, succeed to the same portion of the father's estate as they would have been entitled to if the father had died intestate; toward raising which portion the devisees and legatees shall contribute proportionately out of the parts devised and bequeathed to them by such last will and testament, in the same manner as is provided in Article 8291. [P. D. 5364.]

Art. 8293. [7867] [5345] [4869] **Validity.**—Every last will and testament made when the testator had no child living, wherein any child he might have is not provided for or mentioned, if at the time of his death he shall leave a child, or leave his wife enceinte of a child which shall be born, shall have no effect during the life of such after-born child, and shall be void, unless the child die without having been married and before he shall have attained the age of twenty-one years. [P. D. 5363.]

Art. 8294. [7868] [5346] [4870] **Descendants.**—Under the name of “children” as used in this title, are included descendants of whatever degree they may be, it being understood that they are only counted for the child they represent. [P. D. 5373.]

Art. 8295. [7869] [5347] [4871] **Prior death of legatee.**—Where a testator shall devise or bequeath an estate or interest of any kind by will to a child or other descendant of such testator, should such devisee or legatee, during the lifetime of the testator, die leaving children or descendants who shall survive such testator, such devise or legacy shall not lapse by reason of such death; but the estate so devised or bequeathed shall vest in the children or descendants of such legatee or devisee in the same manner as if he had survived the testator and died intestate. [P. D. 5365.]

Art. 8296. [7870] [5348] [4872] **Bequest to witness.**—Should any person be subscribing witness to a will, and be also a legatee or devisee therein, if the will cannot be otherwise established, such bequest shall be void, and such witness shall be allowed and compelled to appear and give his testimony in like manner as if no such bequest had been made. But, if in such case the witness would have been entitled to a share of the estate of the testator had there been no will, he shall be entitled to so much of such share as shall not exceed the value of the bequest to him in the will. [Acts 1875, p. 179; G. L. Vol. 8, p. 551.]

Art. 8297. [7871] [5349] [4873] **Proof by witness.**—In the case provided for in the preceding article, such will may be proved by the evidence of the subscribing witnesses, corroborated by the testimony of one or more other disinterested and credible persons, to the effect that the testimony of such subscribing witnesses necessary to sustain the will is substantially true; in which event the bequest to such subscribing witnesses shall not be void. [Id.]

Art. 8298. [7872] [5350] [4874] **Separate property.**—The husband or wife may, by last will and testament, give to the survivor of the marriage the power to keep his or her separate property together, until each of the several heirs shall become of lawful age, and to manage and control the same under the provisions of law relating to community property, and such other restrictions as may be imposed by such will; provided, the surviving husband or wife is the father or mother, as the case may be, of the minor heirs; and provided further, that any child or heir entitled to any part of said property shall, at any time upon becoming of age, be entitled to receive his distributive portion of said estate. [Acts 1856; p. 51; G. L. Vol. 4, p. 469.]

Art. 8299. [7873] [5351] [4875] **Custody.**—All original wills, together with the probate thereof, shall be deposited in the office of the clerk of the county court of the county wherein the same shall have been probated, and shall there remain, ex-

cept during such time as they may be removed to some other court, by proper process, for inspection. [P. D. 5372.]

Art. 8300. [7874] [5352] [4876] **Registration.** — Every such will, together with the probate thereof, shall be recorded by the clerk of the county court in a book to be kept for that purpose; and certified copies of such will and the probate of the same, or of the record thereof, may be recorded in other counties, and may be used in evidence as the original might be. [Id.]

Art. 8301. [7875] [5353] **Foreign will.**—When any will or testament, or testamentary instrument of any character, conveying or in any manner disposing of land in this State, has been duly probated according to the laws of any of the United States or territories, a copy thereof and its probate, attested by the clerk of the court in which such will and testament or testamentary instrument was admitted to probate, and the seal of the court annexed, if there be a seal, together with a certificate from the judge or presiding magistrate of such court that the said attestation is in due form, may be filed and recorded in the register of deeds in any county in which said real estate is situated, in the same manner as deeds and conveyances are required to be recorded, and without further proof or authentication; provided, that, at any time within four years from the date of the record of such will in this State, the validity of such will may be contested in a proceeding instituted for that purpose as the original might have been. [Acts 1887, p. 38; G. L. Vol. 9, p. 836.]

Art. 8302. [7876] [5354] **Foreign will: registration.** — A copy of such will and testament, or testamentary instrument, and its probate so attested, together with the certificate that said attestation is in due form, as required by the preceding article, shall be prima facie evidence that said will has been duly admitted to probate, according to the laws of the State wherein it has been admitted to probate, and shall be sufficient to authorize the same to be recorded in the proper county or counties in this State. [Id.]

Art. 8303. [7877] [5355] **Effective, when.**—Every such will and testament, or testamentary instrument, and its probate, which shall be attested and proven, as provided in the second preceding article, and delivered to the clerk of the proper court to be recorded, shall take effect and be valid and effectual as a deed of conveyance of said property; and the record thereof shall have the same force and effect as the record of deeds or other conveyances to land from the time when such instrument was delivered to such clerk to be recorded, and from that time only. [Id.]

Art. 8304. [7878] [5356] **Notice.**—The record of such will and testament, or testamentary instrument, and its probate, duly attested and proven, as provided in the preceding articles, and duly made in the proper county, shall be taken and held as no-

tice to all persons of the existence of such will and testament, and of the title or titles conferred thereby. [Id.]

Art. 8305. **Foreign trustee.**—When by any foreign will, filed and recorded in this State, as authorized by the four preceding articles, power is given an executor or trustee to sell any real or personal property situated in this State, no order of court shall be necessary to authorize such executor or trustee to make such sale and execute proper conveyance, and whenever any particular directions are given by a testator in any such will respecting the sale of any such property situated in this State, belonging to his estate, the same shall be followed unless such directions have been annulled or suspended by order of a court of competent jurisdiction. [Acts 1915, p. 120.]

TITLE 130.

WORKMEN'S COMPENSATION LAW.

| | | | |
|------------------------------|---------|----------------------------------|-------------------------------------|
| Damages and compensation for | Article | Employers' Insurance Association | Article |
| personal injuries | 8306 | | Definitions and general provisions. |
| Industrial Accident Board | 8307 | | 8309 |

PART 1.

Art. 8306. Damages and compensation for personal injuries.—

Sec. 1. In an action to recover damages for personal injuries sustained by an employe in the course of his employment, or for death resulting from personal injury so sustained, it shall not be a defense:

1. That the employe was guilty of contributory negligence.
2. That the injury was caused by the negligence of a fellow employe.

3. That the employe had assumed the risk of the injury incident to his employment; but such employer may defend in such action on the ground that the injury was caused by the willful intention of the employe to bring about the injury, or was so caused while the employe was in a state of intoxication.

4. In all such actions against an employer who is not a subscriber, as defined hereafter in this law, it shall be necessary to a recovery for the plaintiff to prove negligence of such employer or some agent or servant of such employer acting within the general scope of his employment. [Acts 1917, p. 269.]

Sec. 2. The provisions of this law shall not apply to actions to recover damages for personal injuries nor for death resulting from personal injuries sustained by domestic servants, farm laborers, ranch laborers, nor to employes of any firm, person or corporation having in his or their employ less than three employes, nor to the employes of any person, firm or corporation operating any steam, electric, street, or interurban railway as a common carrier. Any employer of three or more employes at the time of becoming a subscriber shall remain a subscriber subject to all the rights, liabilities, duties and exemptions of such, notwithstanding after having become a subscriber the number of employes may at times be less than three. [Acts 1917, p. 269, Acts 1921, p. 221.]

Sec. 3. The employes of a subscriber and the parents of minor employes shall have no right of action against their employer or against any agent, servant or employe of said employer for damages for personal injuries, and the representatives and beneficiaries of deceased employes shall have no right of action against such subscribing employer or his agent, servant or employe for damages for injuries resulting in death, but such employes and their representatives and beneficiaries shall look for compensation solely to the association, as the same is hereinafter provided for. All compensation allowed under the suc-

ceeding sections herein shall be exempt from garnishment, attachment, judgment and all other suits or claims, and no such right of action and no such compensation and no part thereof or of either shall be assignable, except as otherwise herein provided, and any attempt to assign the same shall be void. [Acts 1917, p. 269; Acts 1923, p. 385.]

Sec. 3a. An employe of a subscriber shall be held to have waived his right of action at common law or under any statute of this State to recover damages for injuries sustained in the course of his employment if he shall not have given his employer, at the time of his contract of hire, notice in writing that he claimed said right or if the contract of hire was made before the employer became a subscriber, if the employe shall not have given the said notice within five days of notice of such subscription. An employe who has given notice to his employer that he claimed his right of action at common law or under any statute may thereafter waive such claim by notice in writing, which shall take effect five days after its delivery to his employer or his agent. Any employe of a subscriber who has not waived his right of action at common law or under any statute to recover damages for injury sustained in the course of his employment, as above provided in this section, shall, as well as his legal beneficiaries and representatives have his or their cause of action for such injuries as now exist by the common law and statutes of this State, which action shall be subject to all defenses under the common law and statutes of this State. [Acts 1917, p. 269.]

Sec. 3b. If an employe who has not given notice of his claim of common law or statutory rights of action, or who has given such notice and waived the same, sustains an injury in the course of his employment, he shall be paid compensation by the association as hereinafter provided, if his employer is a subscriber at the time of the injury. [Id.]

Sec. 3c. From and after the time of the receipt by the Industrial Accident Board of notice from any employer that the latter has become a subscriber under this law, all employes of said subscriber then and thereafter employed, shall be conclusively deemed to have notice of the fact that such subscriber has provided with the association for the payment of compensation under this law. If any employer ceases to be a subscriber he shall on or before the date on which his policy expires give notice to that effect to the Industrial Accident Board, and to such subscribers' employes by posting notices to that effect in three public places around such subscribers' plant. [Acts 1923, p. 384.]

Sec. 4. Employes whose employers are not at the time of the injury subscribers to said association, and the representatives and beneficiaries of deceased employes who at the time of the injury were working for non-subscribing employers can not participate in the benefits of said insurance association, but they shall be entitled to bring suit and may recover judgment

against such employers, or any of them, for all damages, sustained by reason of any personal injury received in the course of employment or by reason of death resulting from such injury, and the provisions of section 1 of this law shall be applied in all such actions. [Acts 1917, p. 269.]

Sec. 5. Nothing in this law shall be taken or held to prohibit the recovery of exemplary damages by the surviving husband, wife, heirs of his or her body, or such of them as there may be of any deceased employe whose death is occasioned by homicide from the wilful act or omission or gross negligence of any person, firm or corporation from the employer of such employe at the time of the injury causing the death of the latter. In any suit so brought for exemplary damages the trial shall be de novo, and no presumption shall exist that any award, ruling or finding of the Industrial Accident Board was correct. In any such suit, such award, ruling or finding shall neither be pleaded nor offered in evidence. [Id.]

Sec. 6. No compensation shall be paid under this law for an injury which does not incapacitate the employe for a period of at least one week from earning full wages, but if incapacity extends beyond one week compensation shall begin to accrue on the eighth day after the injury. The medical aid, hospital services, and medicines, as provided for in Section 7 hereof, shall be supplied as and when needed and according to the terms and provisions of said Section 7. If incapacity does not follow at once after the infliction of the injury or within eight days thereof but does result subsequently, compensation shall begin to accrue with the eighth day after the date incapacity commenced. In any event the employe shall be entitled to the medical aid, hospital services and medicines provided in this law. [Id.]

Sec. 7. During the first four weeks of the injury, dating from the date of its infliction, the association shall furnish reasonable medical aid, hospital services and medicines. If the association fails to so furnish same as and when needed during the time specified after notice of the injury to the association or subscriber, the injured employe may provide said medical aid, hospital service and medicines at the cost and expense of the association. The employe shall not be entitled to recover any amount expended or incurred by him for said medical aid, hospital services or medicines nor shall any person who supplied the same be entitled to recover of the association thereof, unless the association or subscriber shall have had notice of the injury and shall have refused, failed or neglected to furnish it or them within a reasonable time. At the time of the injury or immediately thereafter, if necessary, the employe shall have the right to call in any available physician or surgeon to administer first aid treatment as may be reasonably necessary at the expense of the association. During the fourth or any subsequent week of continuous total incapacity requiring the confinement to a hospital, the association shall, upon application of the attending

physician or surgeon certifying the necessity therefor to the Industrial Accident Board and to the association, furnish such additional hospital services as may be deemed necessary not to exceed one week, unless at the end of such additional week the attending physician shall certify to the necessity for another week of hospital services or so much thereof as may be needed. Such additional hospital services as are herein provided shall not be held to include any obligation on the part of the association to pay for medical or surgical services not ordinarily provided by hospitals as a part of their services. [Acts 1917, p. 269, Acts 1923, p. 384.]

Sec. 7a. If it be shown that the association is furnishing medical aid, hospital services and medicines provided for by Section 7 hereof in such manner that there is reasonable ground for believing that the life, health or recovery of the employe is being endangered or impaired thereby, the board may order a change in the physician or other requirements of said section. If the association fails promptly to comply with such order after receiving it, the board may permit the employe or some one for him to provide the same at the expense of the association under such reasonable regulations as may be provided by said board. [Acts 1917, p. 269.]

Sec. 7b. All fees and charges under Sections 7 and 7a hereof shall be fair and reasonable, shall be subject to regulation of the board and shall be limited to such charges as are reasonable for similar treatment of injured persons of a like standard of living where such treatment is paid for by the injured person himself or some one acting for him. In determining what fees are reasonable, the board may also consider the increased security of payment afforded by this law. Where such medical aid, hospital service or medicines are furnished by a public hospital or other institution, payment thereof shall be made to the proper authorities conducting the same, and the amount so paid shall be promptly reported to the board. [Id.]

Sec. 7c. All fees of attorneys for representing claimants before the board under the provisions of this law shall be subject to the approval of the board. No attorney's fees for representing claimants before the board shall be allowed or approved against any party or parties not represented by such attorney, nor exceeding an amount equal to fifteen per cent of the amount of the first one thousand dollars or fraction thereof recovered, nor ten per cent of the excess of such recovery, if any, over one thousand dollars, in addition to the reasonable expenses incurred by the attorney in the preparation and presentation of the said claim before the board, such expenses to be allowed by the board. Where an attorney represents only a part of those interested in the allowance of a claim before the board and his services in prosecuting such claim and obtaining an award therein inures to the benefit of others jointly interested therein, then the board may take these facts into consideration and allow the attorney a reasonable charge, to be assessed

against the interest of those receiving benefits from the service of such attorney. The attorney's fees herein provided for may be redeemed by the association by the payment of a lump sum or may be commuted by agreement of the parties subject to the approval of the board, but not until the claim represented by said attorney has been finally determined by the board and recognized and accepted by the association. After the approval, as first above provided for, if the association be notified in writing of such claim or agreement for legal services, the same shall be a lien against any amount thereafter to be paid as compensation; provided, that where the employe's compensation is payable by the association in periodical installments the Board shall fix at the time of approval the proportion of each installment to be paid on account of said legal services. [Id.]

Sec. 7d. For representing the interest of any claimant in any manner carried from the board into the courts, it shall be lawful for the attorney representing such interest to contract with any beneficiary under this law for an attorney's fee for such representation, not to exceed one third of the amount recovered, such fee for services so rendered to be fixed and allowed by the trial court in which such matter may be heard and determined. [Id.]

Sec. 8. If death should result from the injury the association hereinafter created shall pay the legal beneficiaries of the deceased employe a weekly payment equal to sixty per cent of his average weekly wages, but not more than \$20.00 nor less than \$7.00 per week, for a period of three hundred and sixty weeks from the date of the injury. [Acts 1917, p. 269, Acts 1923, p. 384.]

Sec. 8a. The compensation provided for in the foregoing section of this law shall be for the sole and exclusive benefit of the surviving husband who has not for good cause and for a period of three years prior thereto, abandoned his wife at the time of the injury, and of the wife who has not at the time of the injury without good cause and for a period of three years prior thereto, abandoned her husband, and of the minor children, parents and stepmother, without regard to the question of dependency, dependent grandparents, dependent children and dependent brothers and sisters of the deceased employe; and the amount recovered thereunder shall not be liable for the debts of the deceased nor the debts of the beneficiary or beneficiaries and shall be distributed among the beneficiaries as may be entitled to the same as hereinbefore provided according to the laws of descent and distribution of this State; provided the right in such beneficiary or beneficiaries to recover compensation for death be determined by the facts that exist at the date of the death of the deceased and that said right be a complete, absolute and vested one. Such compensation shall not pass to the estate of the deceased to be administered upon, but shall be paid directly to said beneficiaries when the same are capable of taking, under the laws of this State, or to their

guardian or next friend, in case of lunacy, infancy or other disqualifying cause of any beneficiary. The compensation provided for in this law shall be paid weekly to the beneficiaries herein specified, subject to the provisions of this law. [Id.]

Sec. 8b. In case death occurs as a result of the injury after a period of total or partial incapacity, for which compensation has been paid, the period of incapacity shall be deducted from the total period of compensation and the benefits paid thereunder from the maximum allowed for the death. [Acts 1917, p. 269.]

Sec. 9. If the deceased employe leaves no legal beneficiaries, the association shall pay all expenses incident to his last sickness as a result of the injury and in addition a funeral benefit not to exceed \$100.00. Where any deceased employe leaves legal beneficiaries, but is buried at the expense of his employer or any other person, the expense of such burial, not to exceed \$100.00, shall be payable out of the compensation due the beneficiary or beneficiaries of such deceased employe, subject to the approval of the board. [Id.]

Sec. 10. While the incapacity for work resulting from the injury is total, the association shall pay the injured employe a weekly compensation equal to sixty per cent of his average weekly wages, but not more than \$20.00 nor less than \$7.00 and in no case shall the period covered by such compensation be greater than four hundred and one weeks from the date of the injury. [Acts 1917, p. 269, Acts 1923, p. 384.]

Sec. 11. While the incapacity for work resulting from the injury is partial, the association shall pay the injured employe a weekly compensation equal to sixty per cent of the difference between his average weekly wages before the injury and his average weekly wage earning capacity during the existence of such partial incapacity, but in no case more than \$20.00 per week. The period covered by such compensation shall be in no case greater than three hundred weeks; provided that in no case shall the period of compensation for total and partial incapacity exceed four hundred and one weeks from the date of injury. [Id.]

Sec. 12. For the injuries enumerated in the following schedule the employe shall receive in lieu of all other compensation except medical aid, hospital services and medicines as elsewhere herein provided, a weekly compensation equal to sixty per cent of the average weekly wages of such employe, but not less than \$7.00 per week nor exceeding \$20.00 per week, for the respective periods stated herein, to-wit:

For the loss of a thumb, sixty per cent of the average weekly wages during sixty weeks.

For the loss of a first finger, commonly called the index finger, sixty per cent of the average weekly wages during forty-five weeks.

For the loss of a second finger, sixty per cent of the average weekly wages during thirty weeks.

For the loss of a third finger, sixty per cent of the average weekly wages during twenty-one weeks.

For the loss of a fourth finger, commonly known as the little finger, sixty per cent of the average weekly wages during fifteen weeks.

The loss of the second or distal phalange of the thumb shall be considered to be equal to the loss of one-half of such thumb; the loss of more than one-half of such thumb shall be considered to be equal to the loss of the whole thumb.

The loss of the third or distal phalange of any finger shall be considered to be equal to the loss of one-third of such finger.

The loss of more than the middle and distal phalange of any finger shall be considered to be equal to the loss of the whole finger; provided that in no case shall the amount received for the loss of a thumb and more than one finger on the same hand exceed the amount provided in this schedule for the loss of a hand.

For the loss of the metacarpal bone (bone or palm) for the corresponding thumb, finger or fingers above, add ten weeks to the number of weeks as above subject to the limitation that in no case shall the amount received for the loss or injury to any one hand be more than for the loss of the hand.

For ankylosis (total stiffness of) or contracture (due to scars or injuries) which make the fingers useless, the same number of weeks shall apply to such finger or fingers or parts of fingers (not thumb) as given above.

For the loss of a hand, sixty per cent of the average weekly wage during one hundred and fifty weeks.

For the loss of an arm at or above the elbow, sixty per cent of the average weekly wage during two hundred weeks.

For the loss of one of the toes other than the great toe, sixty per cent of the average weekly wages during ten weeks.

For the loss of the great toe, sixty per cent of the average weekly wages during thirty weeks.

The loss of more than two-thirds of any toe shall be considered to be equal to the loss of the whole toe.

The loss of less than two-thirds of any toe shall be considered to be equal to the loss of one-half of the toe.

For the loss of a foot, sixty per cent of the average weekly wages during one hundred and twenty-five weeks.

For the loss of a leg at or above the knee, sixty per cent of the average weekly wages during two hundred weeks.

For the total and permanent loss of the sight of one eye, sixty per cent of the average weekly wages during one hundred weeks.

In the foregoing enumerated cases of permanent, partial incapacity, it shall be considered that the permanent loss of the use of a member shall be equivalent to and draw the same compensation as the loss of that member.

For the complete and permanent loss of the hearing in both

ears, sixty per cent of the weekly wages during one hundred and fifty weeks.

For the loss of an eye and leg above the knee, sixty per cent of the average weekly wages during a period of three hundred and fifty weeks.

For the loss of an eye and an arm above the elbow, sixty per cent of the average weekly wages during a period of three hundred and fifty weeks.

For the loss of an eye and a hand, sixty per cent of the average weekly wages during a period of three hundred and twenty-five weeks.

For the loss of an eye and a foot, sixty per cent of the average weekly wages during a period of three hundred weeks.

Where the employe sustains concurrent injuries resulting in concurrent incapacities, he shall receive compensation only for the injury which produces the longest period of incapacity; but this section shall not affect liability for the concurrent loss or the loss of the use thereof of more than one member, for which member compensation is provided in this schedule, compensation for specific injuries under this law shall be cumulative as to time and not concurrent.

In all cases of permanent partial incapacity it shall be considered that the permanent loss of the use of the member is equivalent to, and shall draw the same compensation as, the loss of that member; but the compensation in and by said schedule provided shall be in lieu of all other compensation in such cases.

In all other cases of partial incapacity, including any disfigurement which will impair the future usefulness or occupational opportunities of the injured employe, compensation shall be determined according to the percentage of incapacity, taking into account among other things any previous incapacity, the nature of the physical injury or disfigurement, the occupation of the injured employe, and the age at the time of injury. The compensation paid therefor shall be sixty per cent of the average weekly wages of the employes but not to exceed \$20.00 per week, multiplied by the percentage of incapacity caused by the injury for such period not exceeding three hundred weeks as the board may determine. Whenever the weekly payments under this paragraph would be less than \$3.00 per week, the period may be shortened, and the payments correspondingly increased by the board. [Acts 1923, p. 386.]

Sec. 12a. If the injured employe refuses employment reasonably suited to his incapacity and physical condition, procured for him in the locality where injured or at a place agreeable to him, he shall not be entitled to compensation during the period of such refusal, unless in opinion of the board such refusal is justifiable. This section shall not apply in cases of specific injuries for which a schedule is fixed by this law. [Acts 1917, p. 269.]

Sec. 12b. In all claims for hernia resulting from injury sustained in the course of employment, it must be definitely proven to the satisfaction of the board:

1. That there was an injury resulting in hernia.
2. That the hernia appeared suddenly and immediately following the injury.
3. That the hernia did not exist in any degree prior to the injury for which compensation is claimed.
4. That the injury was accompanied by pain.

In all such cases where liability for compensation exists, the association shall provide competent surgical treatment by radical operation: In case the injured employe refuses to submit to the operation, the board shall immediately order a medical examination of such employe by a physician or physicians of its own selection at a time and place to be by them named, at which examination the employe and the association, or either of them, shall have the right to have his or their physician present. The physician or physicians so selected shall make to the board a written report, signed and sworn to, setting forth the facts developed at such examination and giving his or their opinion as to the advisability or non-advisability of an operation. If it be shown to the board by such examination and such report thereof and the expert opinions thereon that the employe has any chronic disease or is otherwise in such physical condition as to render it more than ordinarily unsafe to submit to such operation he shall, if unwilling to submit to the operation, be entitled to compensation for incapacity under the general provisions of this law. If the examination and the written report thereof and the expert opinions thereon then on file before the board do not show to the board the existence of disease or other physical condition rendering the operation more than ordinarily unsafe and the board shall unanimously so find and so reduce its findings to writing and file the same in the case and furnish the employe and the association with a copy of its findings, then if the employe with the knowledge of the result of such examination, such report, such opinions and such findings, thereafter refuses to submit within a reasonable time, which time shall be fixed in the findings of the board, to such operation, he shall be entitled to compensation for incapacity under the general provisions of this law for a period not exceeding one year.

If the employe submits to the operation and the same is successful, which shall be determined by the board, he shall in addition to the surgical benefits herein provided for be entitled to compensation for twenty-six weeks from the date of the operation. If such operation is not successful and does not result in death, he shall be paid compensation under the general provisions of this law the same as if such operation had not been had; other than in determining the compensation to be paid to the employe, the board may take into consideration any minor benefits that accrued to the employe by reason thereof or any aggra-

vation or increased injury which accrued to him by reason thereof.

If the hernia results in death within one year after it is sustained, or the operation results in death, such death shall be held a result of the injury causing such hernia and compensated accordingly under this law. This paragraph shall not apply where the employe has wilfully refused to submit to an operation which has been found by the examination herein provided for not to be more than ordinarily unsafe. [Acts 1917, p. 269.]

Sec. 12c. If an employe who has suffered a previous injury shall suffer a subsequent injury which results in a condition of incapacity to which both injuries or their effects have contributed, the association shall be liable because of such injury only for the compensation to which the subsequent injury would have entitled the injured employe had there been no previous injury. [Id.]

Sec. 12d. Upon its own motion or upon the application of any person interested showing a change of conditions, mistake, or fraud, the board at any time within the compensation period may review any award or order, ending, diminishing or increasing compensation previously awarded within the maximum and minimum provided in this law, or change or revoke its previous order, sending immediately to the parties a copy of its subsequent order or award. Review under this section shall be only upon notice to the parties interested. [Id.]

Sec. 12e. In all cases where liability for compensation exists for an injury sustained by an employe in the course of his employment and a surgical operation for such injury will effect a cure of the employe or will materially and beneficially improve his condition, the association or the employe may demand that a surgical operation be had upon the employe as herein provided, and the association shall provide and pay for all necessary surgical treatment, medicines and hospital services incident to the performance of said operation, provided the same is had. In case either of said parties demands in writing to the board such operation, the board shall immediately order a medical examination of the employe in the same manner as is provided for in the section of this law relating to hernia. If it be shown by the examination, report of facts and opinions of experts, all reduced to writing and filed with the board, that such operation is advisable and will relieve the condition of the injured employe or will materially benefit him, the board shall so state in writing and upon unanimous order of said board in writing, a copy of which shall be delivered to the employe and the association, shall direct the employe at a time and place therein stated to submit himself to an operation for said injury. If the board should find that said operation is not advisable, then the employe shall continue to be compensated for his incapacity under the general provisions of this law. If the board shall unanimously find and

so state in writing that said operation is advisable, it shall make its order to that effect, stating the time and place when and where such operation is to be performed, naming the physicians therein who shall perform said operation, and if the employe refuses to submit to such operation, the board may order or direct the association to suspend the whole or any part of his compensation during the time of said period of refusal. The results of such operation, the question as to whether the injured employe shall be required to submit thereto and the benefits and liabilities arising therefrom shall attach, be treated, handled and determined by the board in the same way as is provided in the case of hernia in this law. [Id.]

Sec. 12f. In all cases where a subscriber or the association has in his or its employ a physician or physicians regularly paid in any manner whatsoever by such subscriber or association to administer to or treat injured employes, the name or names of such physicians at the date of employment of the same shall be filed with the board together with a copy of the contract of such employment. If the contract of such physician or physicians is not in writing, then the same shall be reduced to writing and a copy thereof filed with the board. Such contract shall state fully the extent and scope of the employment and the compensation to be paid such physician or physicians. If the association or subscriber willfully fails or refuses to comply with this provision of this law, then an injured employe or any person acting for him shall have the right to provide hospital services, medical aid and medicine for said injured employe, at the expense of and the same shall be charged to the association, and the subscriber or association shall notify the employe at or before the time of injury what physician or physicians are contracted with to treat his or its employes. [Id.]

Sec. 12g. It shall be unlawful for any subscriber or any employer who seeks to comply with the provisions of this law to either directly or indirectly collect of or from his employes by any means or pretense whatever any premium under this law or part thereof paid or to be paid upon any policy of such insurance under this law which covers such employes, or any intended policy of such insurance designed to cover such employes. If any such subscriber or any employer of labor in this State violates this provision of this law, then any employe or the legal beneficiary of any employe of such employer or subscriber shall be entitled to all the benefits of this law and in addition thereto shall have a separate right of action to recover damages against such employer without regard to the compensation paid or to be paid to such employe or beneficiary under this law. The association shall in no wise be responsible because of such separate action by such employe or beneficiary against such employer on such separate cause of action. [Id.]

Sec. 12h. Every contract or agreement of an employer, the purpose of which is to indemnify him from loss or damage on ac-

count of the injury of an employe by accidental means or on account of the negligence of such employer or his officer, agent or servant, shall be absolutely void unless it also covers liability for the payment of the compensation provided for by this law. This section shall not apply to employers of labor who are not eligible under the terms hereof to become subscribers thereto, nor to employers whose employes have elected to reject the provisions of this law, nor to employers eligible to come under the terms of this law who do not elect to do so, but who choose to carry insurance upon their employes independently of this law and without attempting in such insurance to provide compensation under the terms of this law. Any evasion of this section whereby an insurance company shall undertake, under the guise of writing insurance against the risk of the employers who do not see proper to come under this law, to write insurance substantially or in any material respect similar to the insurance provided for by this law shall render such insurance void as provided for in this section. [Id.]

Sec. 12i. If it be established that the injured employe was a minor when injured and that under normal condition his wages would be expected to increase, that fact may be considered in arriving at his average weekly wages and compensation may be fixed accordingly. This section shall not be considered as authorizing the employment of a minor in any hazardous employment which is prohibited by any statute of this State. [Id.]

Sec. 13. If an injured employe is mentally incompetent or is a minor or is under any other disqualifying cause at the time when any rights or privileges accrue to him or exist under this law, his guardian or next friend may in his behalf claim and exercise such rights and privileges except as otherwise herein provided. In case of partial incapacity or temporary total incapacity, payment of compensation may be made direct to the minor and his receipt taken therefor, if the authority to so pay and receipt therefor is first obtained from the board. [Id.]

Sec. 14. No agreement by any employe to waive his rights to compensation under this law shall be valid. [Id.]

Sec. 15. In cases where death or total permanent incapacity results from an injury, the liability of the association may be redeemed by payment of a lump sum by agreement of the parties thereto, subject to the approval of the Industrial Accident Board. This section shall be construed as excluding any other character of lump sum settlement except as herein specified. In special cases where in the judgment of the board manifest hardship and injustice would otherwise result, the board may compel the association in the cases provided for in this section to redeem their liability by payment of a lump sum as may be determined by the board. [Id.]

Sec. 15a. In any case where compensation is payable weekly at a definite sum and for a definite period, and it appears to the board that the amount of compensation being paid is inadequate

to meet the necessities of the employe or beneficiary, the board shall have the power to increase the amount of compensation by correspondingly decreasing the number of weeks for which the same is to be paid allowing discount for present payment at legal rate of interest; provided that in no case shall the amount to which it is increased exceed the amount of the average weekly wages upon which the compensation is based; provided it is not intended hereby to prevent lump sum settlement when approved by the board. [Acts 1917, p. 269; Acts 1923, p. 384.]

Sec. 16. In all cases of injury resulting in death, where such injury was sustained in the course of employment, cause of action shall survive. [Acts 1917, p. 269.]

Sec. 17. Non-resident alien beneficiaries and resident alien beneficiaries shall be entitled to compensation under this law. Non-resident alien beneficiaries may be officially represented by the consular officers of the nation of which such alien or aliens may be citizens or subjects, and in such cases the consular officers shall have the right to receive for distribution for such non-resident alien beneficiaries all compensation awarded hereunder, and the receipt of such consular officers shall be a full discharge of all sums paid to and received by them. The association may at any time, subject to the approval of the board, commute all future installments of compensation payable to alien beneficiaries, not resident of the United States, by paying to such alien beneficiaries the sum agreed upon and filing receipts therefor with the board. [Id.]

Sec. 18. It is the purpose of this law that the compensation herein provided for shall be paid from week to week and as it accrues and directly to the person entitled thereto, unless the liability is redeemed as in such cases provided elsewhere herein. If the association willfully fails or refuses to pay compensation as and when the same matures and accrues, the board shall notify said association that such is the course it is pursuing. If after such notice the association continues to willfully refuse and fail to meet these payments of compensation as provided for in this law, the board shall have the power to hold that such association is not complying with the provisions of this law, and shall certify such fact to the Commissioner of Insurance, and said certificate shall be sufficient cause to justify said Commissioner to revoke or forfeit the license or permit of such association to do business in Texas; provided, said power of the board shall not be held to deny the association the right to bring suit or suits to set aside any ruling, order or decision of the board. [Id.]

Sec. 19. If an employe who has been hired in this State sustained injury in the course of his employment he shall be entitled to compensation according to the law of this State, even though such injury was received outside of the State. [Id.]

PART 2.

Art. 8307. Industrial Accident Board.—

Sec. 1. The Industrial Accident Board shall consist of three members, one to be biennially appointed by the Governor for a term of six years. Said board shall have the powers, duties and functions hereinafter conferred. [Id.]

Sec. 2. At the time of each appointment one member of the Industrial Accident Board shall be an employer of labor in some industry or business covered by this law; one shall be employed in some business industry as a wage earner, and the third member shall be a practicing attorney of recognized ability, and shall act in the capacity of legal adviser to the board, in addition to his other duties as a member thereof, and be chairman of said board. [Id.]

Sec. 3. The board may appoint a secretary at a salary not to exceed \$2,700.00 a year, and may appoint such other clerical and other assistants as may be necessary to properly administer this Act. It shall also be allowed a reasonable sum, the amount to be determined by the Legislature, for clerical and other services, office equipment, traveling expenses and all other expenses necessary. The board shall be provided suitable offices in the capitol where its records shall be kept. [Acts 1917, p. 269; Acts 1923, p. 384.]

Sec. 4. The board may make rules not inconsistent with this law for carrying out and enforcing its provisions, and may require any employe claiming to have sustained injury to submit himself for examination before such board or someone acting under its authority at some reasonable time and place within the State, and as often as may be reasonably ordered by the board to a physician or physicians authorized to practice under the laws of this State. If the employe or the association requests, he or it shall be entitled to have a physician or physicians of his or its own selection present to participate in such examination. Refusal of the employe to submit to such examination shall deprive him of his right to compensation during the continuance of such refusal. When a right to compensation is thus suspended no compensation shall be payable in respect to the period of suspension. If any employe shall persist in unsanitary or injurious practices which tend to either imperil or retard his recovery, or shall refuse to submit to such medical or surgical treatment as is reasonably essential to promote his recovery, the board may in its discretion order or direct the association to reduce or suspend the compensation of any such injured employe. No compensation shall be reduced or suspended under the terms of this section without reasonable notice to the employe and an opportunity to be heard.

The association shall have the privilege of having any injured employe examined by a physician or physicians of its own selection, at reasonable times, at a place or places suitable to the condition of the injured employe and convenient and accessible

to him. The association shall pay for such examination and the reasonable expense incident to the injured employe in submitting thereto. The injured employe shall have the privilege to have a physician or physicians of his own selection, at the expense of such injured employe, present to participate in such examination.

Process and procedure shall be as summary as may be under this law. The board or any member thereof shall have power to subpoena witnesses, administer oaths, inquire into matters of fact, and to examine such parts of the books and records of the parties to a proceeding as relate to questions in dispute. All rulings and decisions of the board relating to disputed claims shall be upon questions of fact and in accord with the provisions of this law. [Acts 1917, p. 269.]

Sec. 4a. Unless the association or subscriber have notice of the injury, no proceeding for compensation for injury under this law shall be maintained unless a notice of the injury shall have been given to the association or subscriber within thirty days after the happening thereof, and unless a claim for compensation with respect to such injury shall have been made within six months after the occurrence of same; or, in case of death of the employe or in the event of his physical or mental incapacity, within six months after death or the removal of such physical or mental incapacity. For good cause the board may, in meritorious cases, waive the strict compliance with the foregoing limitations as to notice, and the filing the claim before the board. [Id.]

Sec. 5. All questions arising under this law, if not settled by agreement of the parties interested therein and within the provisions of this law, shall, except as otherwise provided, be determined by the board. Any interested party who is not willing and does not consent to abide by the final ruling and decision of said board shall within twenty days after the rendition of said final ruling and decision by said board give notice to the adverse party and to the board that he will not abide by said final ruling and decision. And he shall within twenty days after giving such notice bring suit in the county where the injury occurred to set aside said final ruling and decision and said board shall proceed no further toward the adjustment of such claim, other than as hereinafter provided. Whenever such suit is brought, the rights and liability of the parties thereto shall be determined by the provisions of this law and the suit of the injured employe or person suing on account of the death of such employe shall be against the association if the employer of such injured or deceased employe at the time of such injury or death was a subscriber as defined in this law. If the final order of the board is against the association, then the association and not the employer shall bring suit to set aside said final ruling and decision of the board, if it so desires, and the court shall in either event determine the issues in such cause instead

of the board upon trial de novo and the burden of proof shall be upon the party claiming compensation. In case of recovery the same shall not exceed the maximum compensation allowed under the provisions of this law. If any party to any such final ruling and decision of the board, after having given notice as above provided, fails within said twenty days to institute and prosecute a suit to set the same aside, then said final ruling and decision shall be binding upon all parties thereto, and, if the same is against the association, it shall at once comply with such final ruling and decision, and failing to do so the board shall certify that fact to the Commissioner of Insurance and such certificate shall be sufficient cause to justify said Commissioner to revoke or forfeit the license or permit of such association to do business in Texas. [Id.]

Sec. 5a. In all cases where the board shall make a final order, ruling or decision as provided in the preceding section and against the association, and the association shall fail and refuse to obey or comply with the same and shall fail or refuse to bring suit to set the same aside as in said section is provided, then in that event, the claimant in addition to the rights and remedies given him and the board in said section may bring suit where the injury occurred, upon said order, ruling or decision. If he secures a judgment sustaining such order, ruling or decision in whole or in part, he shall also be entitled to recover the further sum of twelve per cent as damages upon the amount of compensation so recovered in said judgment, together with a reasonable attorney's fee for the prosecution and collection of such claim.

Where the board has made an award against an association requiring the payment to an injured employe or his beneficiaries of any weekly or monthly payments, under the terms of this law, and such association should thereafter fail or refuse, without justifiable cause, to continue to make said payments promptly as they mature, then the said injured employe or his beneficiaries, in case of his death, shall have the right to mature the entire claim and to institute suit thereon to collect the full amount thereof, together with twelve per cent penalties and attorney's fees, as herein provided for. Suit may be brought under the provisions of this section, either in the county where the accident occurred, or in any county where the claimants reside, or where one or more of such claimants may have his place of residence at the time of the institution of the suit. [Id.]

Sec. 6. If any subscriber to this law with the purpose and intention of avoiding any liability imposed by its terms sublets the whole or any part of the work to be performed or done by said subscriber to any sub-contractor, then in the event any employe of such sub-contractor sustains an injury in the course of his employment he shall be deemed to be and taken for all purposes of this law to be the employe of the subscriber, and in addition thereto such employe shall have an independent right

of action against such sub-contractor, which shall in no way be affected by any compensation to be received by him under the provisions of this law. [Id.]

Sec. 6a. Where the injury for which compensation is payable under this law was caused under circumstances creating a legal liability in some person other than the subscriber to pay damages in respect thereof, the employe may at his option proceed either at law against that person to recover damages or against the association for compensation under this law, but not against both, and if he elects to proceed at law against the person other than the subscriber, then he shall not be entitled to compensation under this law. If compensation be claimed under this law by the injured employe or his legal beneficiaries, then the association shall be subrogated to the rights of the injured employe in so far as may be necessary and may enforce in the name of the injured employe or of his legal beneficiaries or in its own name and for the joint use and benefit of said employe or beneficiaries and the association the liability of said other person, and in case the association recovers a sum greater than that paid or assumed by the association to the employe or his legal beneficiaries, together with a reasonable cost of enforcing such liability, which shall be determined by the court trying the case, then out of the sum so recovered the association shall reimburse itself and pay said cost and the excess so recovered shall be paid to the injured employe or his beneficiaries. The association shall not have the right to adjust or compromise such liability against such third person without notice to the injured employe or his beneficiaries and the approval of the board, upon a hearing thereof. [Id.]

Sec. 7. Every subscriber shall hereafter keep a record of all injuries, fatal or otherwise, sustained by his employes in the course of their employment. Within eight days after the occurrence of an accident resulting in an injury to an employe, causing his absence from work for more than one day, a written report thereof shall be made to the board on blanks to be procured from the board for that purpose. Upon the termination of the incapacity of the injured employe, or if such incapacity extends beyond a period of sixty days, the subscriber shall make a supplemental report upon blanks to be procured for that purpose. The said report shall contain the name and nature of the business of the employer, the location of the establishment, the name, age, sex and occupation of the injured employe and the character of work in which he was engaged at the time of the injury, and shall state the date and hour of receiving such injury and the nature and cause of the injury, and such other information as the board may require. Any employer willfully failing or refusing to make any such report within the time herein provided, or willfully failing or refusing to give said board any information demanded by said board relating to any injury to any employe, which information is in the possession

of or can be ascertained by the employer by the use of reasonable diligence, shall be liable for and shall pay to the State of Texas a penalty of not more than one thousand dollars for each and every offense, the same to be recovered in a suit to be instituted and prosecuted in Travis County by the Attorney General or by the district or county attorney under his direction in a district court thereof. [Id.]

Sec. 8. A majority of the board shall constitute a quorum to transact business, and the act or decision of any two members thereof shall be held the act or decision of the board, except as otherwise herein specifically provided. No vacancy shall impair the right of the remaining member or members of the board to exercise all the powers of the board. The board shall provide itself with a seal on which shall be inscribed the words "Industrial Accident Board, State of Texas." Any order, award or proceeding of said board when duly attested and sealed by the board or its secretary shall be admissible as evidence of the act of said board in any court in this State. [Id.]

Sec. 9. Upon the written request and payment of the fees therefor, which fees shall be the same as those charged for similar services in the Secretary of State's office, the board shall furnish to any person entitled thereto a certified copy of any order, award, decision or paper on file in the office of said board, and the fees so received for such copies shall be paid into the State Treasury and credited to the general revenue fund. No fee or salary shall be paid to any person in said department for making such copies in excess of the fees charged for such copies. [Id.]

Sec. 10. Said board or any member thereof may hold hearings or take testimony or make investigations at any point within this State, reporting the result thereof, if the same is made by one member, to the board, or it can employ or use the assistance of an inspector or adjuster for the purpose of adjusting and settling claims for compensation or developing the facts relating to any claim for compensation. [Id.]

Sec. 11. When the association suspends or stops payment of compensation, it shall immediately notify the board of that fact, giving the board the name, number and style of the claim, the amount paid thereon, the date of the suspension or stopping of payment thereon, and the reason for such suspension or stopping. [Id.]

Sec. 12. The board upon application of either party may, in its discretion, having regard to the welfare of the employe and the convenience of the association, authorize compensation to be paid monthly or quarterly.

Where the liability of the association or the extent of the injury of the employe is uncertain, indefinite or incapable of being satisfactorily established, the board may approve any compromise, adjustment, settlement or commutation thereof made between the parties. [Id.]

PART 3.

Art. 8308. Employers' Insurance Association.—

Sec. 1. The "Texas Employers' Insurance Association" is hereby created a body corporate with the powers provided in this law and with all general corporate powers incident thereto. [Id.]

Sec. 2. The Governor shall appoint a board of directors of the association consisting of twelve members, who shall serve for a term of one year or until their successors are elected by ballot by the subscribers at such time and for such term as the by-laws shall provide. At any annual meeting of subscribers the number of directors may be increased or decreased by resolution duly recorded in the minutes of such meeting. [Id.]

Sec. 3. Until the first meeting of the subscribers, the board of directors shall have and exercise all the powers of the subscribers and may adopt by-laws, not inconsistent with the provisions of this law, which shall be in effect until amended or repealed by the subscribers. [Id.]

Sec. 4. The board of directors shall immediately choose by ballot a president, who shall be a member of the board, and shall elect a secretary, a treasurer, and such other officials as the by-laws may provide. [Id.]

Sec. 5. Seven or more directors shall constitute a quorum for the transaction of business. Vacancies in any office may be filled in such manner as the by-laws shall provide. [Id.]

Sec. 6. The board of directors may appoint an executive committee which may have and exercise all of the powers of the board of directors except when the board is in session. [Id.]

Sec. 7. Any employer of labor in this State may become a subscriber except as provided in Section 2, Part 1, of this law. [Id.]

Sec. 8. In any meeting of the subscribers each subscriber shall have one vote, and if a subscriber has 500 employes to whom the association is bound to pay compensation he shall be entitled to two votes and he shall be entitled to one additional vote for each additional 500 employes to whom the association is bound to pay compensation, but no subscriber shall cast, by his own right or by right of proxy, more than 20 votes. [Id.]

Sec. 9. No policies shall be issued by the association until not less than 50 members have subscribed, who have not less than 2,000 employes to whom the association may be bound to pay compensation. [Id.]

Sec. 10. No policies shall be issued by the association until a list of the subscribers with the number of employes of each, together with such information as the Commissioner of Insurance may require, shall have been filed with the Commissioner, nor until the president and secretary of the association shall have certified under oath that every subscription on the list so filed is genuine and made with an agreement with each subscriber that he will take the policy so subscribed for by him

within thirty days of the granting of a license to the association by the Commissioner to issue policies. [Id.]

Sec. 11. If the number of subscribers falls below fifty, or the number of employes to whom the association may be bound to pay compensation falls below 2,000, no further policies shall be issued until other employers have subscribed who, together with existing subscribers, amount to not less than fifty, who have not less than 2,000 employes to whom the association may be bound to pay compensation, said subscriptions to be subject to the provisions of the preceding section. [Id.]

Sec. 12. Upon the filing of the certificates provided for in the two preceding sections, the Commissioner of Insurance shall make such investigations as he may deem proper and, if his findings warrant it, grant a license to the association to issue policies. [Id.]

Sec. 13. The board of directors may distribute the subscribers into groups for the purpose of segregating the experience of each such group as to premiums and losses, and for the purpose of determining dividends payable to and assessments payable by the subscribers within each group, but for the purpose of determining the solvency of the association, the funds of the association shall be deemed one and indivisible. The board of directors shall have power to re-arrange any of the groups by withdrawing any subscriber and transferring him wholly or in part to any group and to set up new groups at its discretion. [Id.]

Sec. 14. The association may, in its by-laws and policies, fix the limit of liability of the subscribers for the payment of assessments hereinafter provided for, but such limit of liability of the subscribers shall not, except by special agreement in writing between the association and subscriber, be fixed at an amount greater than an amount equal to and in addition to an annual premium. [Id.]

Sec. 15. If the association, at the end of any calendar year, is not possessed of admitted assets in excess of unearned premiums sufficient for the payment of its incurred losses and expenses, it shall make an assessment for the amount needed to pay such losses and expenses, first upon the subscribers within each group whose earned premiums compared with its incurred losses and expenses shows a deficiency for the group, and second only upon the subscribers within each group whose earned premiums compared with its incurred losses and expenses shows a surplus, and in no event shall it make an assessment for any aggregate amount more than is needed to pay losses and expenses. Every subscriber shall, in accordance with the law and his contract, pay his proportionate part of any assessment which may be levied by the association on account of losses and expenses incurred during any calendar year while he is a subscriber. [Id.]

Sec. 16. The board of directors may by vote fix the amount

to be paid as dividends on the policies in force during each calendar year after retaining sums sufficient to pay all compensation which may be payable on account of injuries sustained and expenses incurred during the calendar year. Dividends and assessments shall be fixed by and for groups, but the entire assets of the association, including the liability of the subscriber to assessment, within the limits fixed by the by-laws or by special agreement in writing as authorized, shall be subject to the payment of any approved claim for compensation against the association. [Id.]

Sec. 16a. Whenever the association shall have accumulated at the end of any calendar year an admitted surplus in excess of incurred losses, expenses and unearned premiums amounting to the sum of two hundred thousand dollars, the liability of its members to assessment shall be suspended during the ensuing calendar year, or for such further period as the association shall maintain unimpaired such surplus of two hundred thousand dollars or more, and the certificate of the Commissioner of Insurance, after an examination and report, shall be conclusive evidence as to the fact in any proceeding in which the fact may be an issue. [Id.]

Sec. 17. Whenever by reason of having qualified under the preceding section, to issue policies which are not subject to assessment, the association may issue policies which will not entitle the holder to participate in any distribution of surplus. [Id.]

Sec. 18. The association shall make and enforce reasonable rules for the prevention of injuries on the premises of subscribers. For this purpose the inspector of the association or of the board shall have free access to all such premises during regular working hours. Any subscriber aggrieved by such rule or regulation may petition the board for a review and it may affirm, amend or annul the rule or regulation. [Id.]

Sec. 18a. Whenever any employer of labor in this State becomes a subscriber to this law, he shall immediately notify the board of such fact, stating in such notice his name, place of business, character of the business, approximate number of employes, estimated amount of his pay roll and the name of the insurance company carrying his insurance, the date of issuing the policy and the date when the same will expire, and whenever any policy is renewed that fact shall be made known to the board and the notice thereof shall contain the above facts. The association shall also report the same to the board, giving the name of the employer, place of business, character of the business, approximate number of employes, estimated amount of pay roll, date of issuance and date of expiration of said policy. Any employer or association willfully failing or refusing to make any such report shall be liable for and shall pay to the State of Texas a penalty of not more than one thousand dollars for each offense, the same to be recovered by suit in Travis County

by the Attorney General or by the district or county attorney under his direction in the district court thereof. [Id.]

Sec. 19. Every subscriber shall, as soon as he secures a policy, give notice in writing or print, or in such manner or way as may be directed or approved by the board, to all persons under contract of hire with him that he has provided for payment of compensation for injuries with the association. [Id.]

Sec. 20. Every subscriber shall, after receiving a policy, give notice in writing or print, or in such manner or way as may be directed or approval by the board to all persons with whom he is about to enter into a contract of hire that he has provided for payment of compensation for injuries by the association. If any employer ceases to be a subscriber, he shall on or before the date on which his policy expires, give notice to that effect in writing or print or in such other manner or way as the board may direct or approve to all persons under contract of hire with him. In case of the renewal of his policy no notice shall be required under this law. He shall file a copy of said notice with the board. [Id.]

Sec. 21. If a subscriber who has complied with all the rules regulations and demands of the association is required by any judgment of a court at law to pay any employe any damages actual or exemplary, on account of any personal injury sustained by such employe in the course of his employment during the period of subscription, the association shall pay to the subscriber the full amount of the judgment and the cost assessed therewith, if the subscriber shall have given the association notice of the bringing of the action upon which the judgment was recovered and an opportunity to appear and defend same in his or its name. [Id.]

Sec. 22. The corporate powers of the association shall not expire because of failure to issue policies or to make insurance. [Id.]

Sec. 23. The association shall set up and maintain reserves adequate to meet anticipated losses, carry all claims to maturity and policies to termination, which reserves shall be computed in accordance with such rules as shall be approved by the Commissioner of Insurance and may be invested in such securities as are permitted to casualty companies organized under the General Laws; and, for the protection of its reserves and surpluses against the liability herein imposed, shall have the same right to reinsure or be reinsured as casualty companies organized under General Laws. [Acts 1917, p. 269, Acts 1923, p. 384.]

PART 4.

Art. 8309. Definitions and general provisions.—

Sec. 1. The following words and phrases as used in this law shall, unless a different meaning is plainly required by the context, have the following meanings, respectively:

“Employer” shall mean any person, firm, partnership, asso-

ciation of persons or corporations or their legal representatives that makes contracts of hire.

"Employee" shall mean every person in the service of another under any contract of hire, expressed or implied, oral or written, except masters of or seamen on vessels engaged in interstate or foreign commerce, and except one whose employment is not in the usual course of trade, business, profession or occupation of his employer.

The words "legal beneficiaries" as used in this law shall mean the relatives named in section 8a, part 1, of this law. "Association" shall mean the "Texas Employers' Insurance Association" or other insurance company authorized under this law to insure the payment of compensation to injured employes or to the beneficiaries of deceased employes.

"Subscriber" shall mean any employer who has become a member of the association by paying the required premium; provided that the association holds a license issued by the Commissioner of Insurance, as provided for in section 12, part 3, of this law.

"Average weekly wages" shall mean:

1. If the injured employe shall have worked in the employment in which he was working at the time of the injury, whether for the same employer or not, substantially the whole of the year immediately preceding the injury, his average annual wages shall consist of three hundred times the average daily wage or salary which he shall have earned in such employment during the days when so employed.

2. If the injured employe shall not have worked in such employment during substantially the whole of the year, his average annual wages shall consist of three hundred times the average daily wage or salary which an employe of the same class working substantially the whole of such immediately preceding year in the same or in a similar employment in the same or a neighboring place, shall have earned in such employment during the days when so employed.

3. When by reason of the shortness of the time of the employment of the employe, or other employe engaged in the same class of work in the manner and for the length of time specified in the above subsections 1 and 2, or other good and sufficient reasons it is impracticable to compute the average weekly wages as above defined, it shall be computed by the board in any manner which may seem just and fair to both parties.

4. Said wages shall include the market value of board, lodging, laundry, fuel, and other advantage which can be estimated in money, which the employe receives from the employer as part of his remuneration. Any sums, however, which the employer has paid to the employe to cover any special expenses entailed on him by the act of his employment shall not be included.

5. The average weekly wages of an employe shall be one-fifty-second part of the average annual wages.

The terms "injury" or "personal injury" shall be construed

to mean damage or harm to the physical structure of the body and such diseases or infection as naturally result therefrom.

The term "injury sustained in the course of employment," as used in this law, shall not include:

1. An injury caused by the act of God, unless the employe is at the time engaged in the performance of duties that subject him to a greater hazard from the act of God responsible for the injury than ordinarily applies to the general public.

2. An injury caused by an act of a third person intended to injure the employe because of reasons personal to him and not directed against him as an employe, or because of his employment.

3. An injury received while in a state of intoxication.

4. An injury caused by the employe's willful intention and attempt to injure himself, or to unlawfully injure some other person but shall include all other injuries of every kind and character having to do with and originating in the work, business, trade or profession of the employer received by an employe while engaged in or about the furtherance of the affairs or business of his employer whether upon the employer's premises or elsewhere.

Any reference to any employe herein who has been injured shall, when the employe is dead, also include the legal beneficiaries, as that term is herein used, of such employe to whom compensation may be payable. The word "board" whenever used in this law shall be held to mean the Industrial Accident Board created by this law. Whenever in this law the singular is used, the plural shall be included; whenever the masculine gender is used, the feminine and neuter shall be included. [Acts 1917, p. 269.]

Sec. 1a. The president, vice-president or vice-presidents, secretary or other officers thereof provided in its charter or by-laws and the directors of any corporation which is a subscriber to this law shall not be deemed or held to be an employe within the meaning of that term as defined in the preceding section hereof, and this notwithstanding they may hold other offices in the corporation and may perform other duties and render other services for which they receive a salary. [Acts 1917, p. 269, Acts 1923, p. 384.]

Sec. 2. Any insurance company, which term shall include mutual and reciprocal companies, lawfully transacting a liability or accident business in this State shall have the same right to insure the liability and pay the compensation provided for in part 1 of this law, and when such company issues a policy conditioned to pay such compensation, the holder of such policy shall be regarded as a subscriber so far as applicable under this law, and when such company insures such payment of compensation it shall be subject to the provisions of parts 1, 2 and 4 and of sections 10, 17, 18a and 21 of part 3 of this law. Such company may have and exercise all of the rights and powers

conferred by this law on the association created hereby, but such rights and powers shall not be exercised by a mutual or reciprocal organization unless such organization has at least fifty subscribers who have not less than 2,000 employes. [Acts 1917, p. 269.]

Sec. 3. Any subscriber who has paid a premium as provided in section 1, part 4, of this law may upon application to the board and to the association and after a showing satisfactory to the board that he has notified all of his employes, in such manner as may be required by the board, cease to be a subscriber, and be entitled to a refund of the unearned portion of his premium, subject, however, to any rule approved by the Commissioner of Insurance as to the minimum premiums or short rate cancellation. [Id.]

Sec. 3a. Any subscriber who shall willfully misrepresent the amount of his pay roll to the association writing his insurance upon which any premium under this law is to be based shall be liable to the association insuring the compensation of his employes in an amount not to exceed ten times the amount of the difference between the premium which he paid and the amount which said subscriber should have paid had his pay roll been correctly computed; and the liability to said association for such misrepresentation if it was deceived thereby, may be enforced by suit therefor. [Id.]

Sec. 3b. No inchoate, vested, matured, existing or other rights, remedies, powers, duties or authority, either of any employe or legal beneficiary, or of the board, or of the association, or of any other person shall be in any way affected by any of the amendments herein made to the original law hereby amended, but all such rights, remedies, powers, duties, and authority shall remain and be in force as under the original law just as if the amendments hereby adopted had never been made, and to that end it is hereby declared that said original law is not repealed, but the same is, and shall remain in full force and effect as to all such rights, remedies, powers, duties and authority; and further this law in so far as it adopts the law of which it is an amendment is a continuation thereof, and only in other respects a new enactment. [Id.]

Sec. 4. In cases of emergency or impending necessity the association may make advance payments of compensation to any employe during the period of his incapacity or to his beneficiaries within the terms of this law, and when the same is either directed or approved by the board it shall be credited as against any unaccrued compensation due said employe or beneficiaries. [Id.]

Sec 5. The reports of accidents required by this law to be made by subscribers shall not be deemed as admissions and evidence against the association or the subscriber in any proceedings before the board or elsewhere in a contested case where the facts set out therein or in any one of them is sought to be contradicted by the association or subscriber. [Id.]

TITLE 131.
WRECKS.
CHAPTER ONE.
WRECK-MASTERS.

| | Article | | Article |
|----------------------------------|---------|-------------------------------------|---------|
| Appointment | 8310 | To keep a record | 8315 |
| Bond and oath | 8311 | Additional record and reports | 8316 |
| Duties | 8312 | Fees and perquisites | 8317 |
| Controlled by commissioners..... | 8313 | Duty to prosecute | 8318 |
| To sell property | 8314 | | |

Art. 8310. [7887] [5365] **Appointment.**—The Governor shall appoint not more than three persons of good character in each maritime county of the State as wreck-masters for such county. [Acts April 30, 1846, p. 158; G. L. 2, p. 1464.]

Art. 8311. [7888] [5366] **Bond and oath.**—Each person so appointed shall, before entering upon the duties of his office, give a good bond in the sum of five thousand dollars, payable to and to be approved by the county judge of the county for which he is appointed, conditioned that the appointee shall faithfully discharge the duties of his office; which bond shall be deposited with the county clerk of such county. The appointee shall also take the official oath, which oath shall be indorsed on said bond before the same is filed. [Id.]

Art. 8312. [7889] [5367] **Duties.**—It shall be the duty of each wreck-master so appointed, as soon as he may be apprised of any wreck in his county, or the portion of such county allotted to him, to repair at once to the place where such wreck occurred. If the property so wrecked be found abandoned, to attend to the salving thereof, to use his best endeavors for the preservation of the same and to attend generally to the interests of the owners of such property or whom it may concern. The wreck-master shall have the command and direction of all persons engaged in saving and preserving such property. [Id.]

Art. 8313. [7890] [5368] **Controlled by commissioners.**—Wreck-masters shall be subject to the control and direction of the commissioners of pilots for the principal ports of their counties, if such there be. In case there are no such officers in such county, then wreck-masters shall be under the control of the county judge of their county. [Id.]

Art. 8314. [7891] [5369] **To sell property.**—Each wreck-master shall take into his custody and safely keep all wrecked property salved by him, or under his direction, or found wrecked and abandoned in his county, or that portion of the county under his supervision and jurisdiction. After the notice required by law, he shall sell the same at public auction for the benefit of the owners or underwriters and the salvors, to all of whom he shall faithfully account. [Id.]

Art. 8315. [7892] [5370] **To keep a record.**—Each wreck-master shall keep a true account of all property salved by him, or under his direction, with the circumstances under which it

was salvaged, and the name of each person engaged in salvaging, the time that each was so employed and other data needful for the proper apportionment of salvage. [Id.]

Art. 8316. [7893] [5371] Additional record and reports.—He shall also keep a true account, in a book to be kept for that purpose of all sales made by him and the proceeds thereof, commissions, expenses, salvage, balance left, and the condition and disposition of the same. Within one month after each sale, and at other times when required, he shall make an abstract report in writing, signed by him, of the matters provided for in this and the preceding article, to the commissioners of pilots or the county judge, as the case may be, and he shall also, when required, report the same, together with all needful information in his possession, to the court or other tribunal before which cases of salvage may be pending. [Id.]

Art. 8317. [7894] [5372] Fees and perquisites.—Wreck-masters shall receive a commission of five per cent upon the amount of all sales made by them, after deducting all expenses, not including salvage, with such reasonable expenses as may be allowed by the authority which may control them, or the court before which the case may come; which expenses may include the wages and mileage of a crier, at a rate to be fixed by such controlling authority. [Id.]

Art. 8318. [7895] [5373] Duty to prosecute.—It shall be the duty of each wreck-master to cause a prosecution of any person who may be guilty of wasting, stealing or embezzling any wrecked property. [Id.]

CHAPTER TWO.

COTTON SALVAGE.

| | Article | | Article |
|---------------------------------|---------|------------------------------------|---------|
| Wrecked cotton advertised | 8319 | Proceeds | 8322 |
| Delivered to owner | 8320 | County clerk may act | 8323 |
| When sold | 8321 | Warrant for suspected cotton | 8324 |

Art. 8319. [7896] [5374] Wrecked cotton advertised.—It shall be the duty of the person taking up cotton afloat, abandoned in rivers, or in the waters of the Gulf of Mexico on the coast of this State, or in the bays or bayous thereof, to place the same in a secure place out of the weather, and give early notice by advertisement, or by other means, at the port to which said cotton was destined, if within this State, and, if without the limits of the State, or its destination be unknown to the finder, then at the nearest port of entry in this State to the locality where it may be taken up, of the finding of the same, giving a description of the marks or brands on said cotton, together with the place of finding and the name of the finder. [Act Aug. 30, 1856, p. 76; G. L. Vol. 4, p. 494.]

Art. 8320. [7897] [5375] Delivered to owner.—It shall be the duty of the finder or other person having said cotton in his possession, to deliver the same to the owner, insurer or consignee thereof, on demand, upon being paid the expenses of ad-

vertisement and five dollars upon each bale so saved and delivered. [Id.]

Art. 8321. [7898] **When sold.**—If no owner, insurer or consignee of the cotton appear within three months after such advertisement, the person finding shall cause the same to be sold at auction by a legal wreck-master of the county in which said cotton is deposited, at public outcry to the highest bidder. The wreck-master shall, from the proceeds of such sale, pay the necessary expenses attending the storage, advertising and sale of said cotton, and to the finder the salvage of five dollars for each bale as aforesaid. The remainder, less his commissions and other necessary expenses, he shall hold in trust for the benefit of the owner of others concerned. [Id.]

Art. 8322. [7899] [5377] **Proceeds.**—If, at the expiration of one year thereafter, no legal claimant appears therefor, said proceeds shall be paid over by said wreck-master to the treasurer of the county in which the sale took place; and said treasurer shall immediately pay the same over to the State Treasurer who shall pay the same over to the person entitled thereto on proof being made of the right of the claimant in the manner provided for the recovery of money paid into the State treasury by executors or administrators of estates where no heirs, devisees or legatees of the estate appear to claim the fund of the estate on the final settlement thereof. [Id.]

Art. 8323. [7900] [5378] **County clerk may act.**—If there shall be no wreck-master in the county in which the cotton is deposited, then the county clerk shall perform all the duties required of wreck-masters by the two preceding articles, and such clerk shall receive the same compensation as is allowed to wreck-masters under this chapter. [Id.]

Art. 8324. [7901] [5379] **Warrant for suspected cotton.**—Upon affidavit being made before any justice of the peace that the affiant has good reason to believe, and does believe, that certain cotton within his county has been so found, or having been found without such county has been brought therein, and that reasonable time has elapsed, and that the finder has neglected to comply with the requirements of the foregoing articles, such justice shall issue his warrant and cause said cotton, or its proceeds, to be seized by a legal officer and delivered to the wreck-master of said county, to be disposed of according to the provisions of this chapter. [Id.]

FINAL TITLE.

Be it further enacted:

Sec. 2. Repealing clause.—That all civil statutes of a general nature, in force when the Revised Statutes take effect, and which are not included herein, or which are not hereby expressly continued in force, are hereby repealed.

Sec. 3. Not ex post facto.—That the repeal of any statute, or any portion thereof, by the preceding section, shall not affect or impair any act done, or right vested or accrued, or any proceeding, suit or prosecution had or commenced in any cause before such repeal shall take effect; but every such act done, or right vested or accrued, or proceeding, suit or prosecution had or commenced shall remain in full force and effect to all intents or purposes as if such statute, or part thereof so repealed, had remained in force, except that where the course of practice or procedure for the enforcement of such right, or the conducting of such proceeding, suit or prosecution shall be changed, the same shall be conducted as near as may be in accordance with the Revised Statutes. No offense committed and no liability, penalty or forfeiture, either civil or criminal, incurred prior to the time when any statute, or part thereof, shall be repealed or altered by the Revised Statutes, shall be discharged or affected by such repeal or alteration; but prosecutions and suits for such offenses, liabilities, penalties or forfeitures shall be instituted and proceeded with in all respects as if such prior statute, or part thereof, had not been repealed or altered, except that where the mode of procedure or matters of practice have been changed by the Revised Statutes, the procedure had after the Revised Statutes shall have taken effect in such prosecution or suit shall be, as far as practicable, in accordance with the Revised Statutes.

Sec. 4. Validating Acts.—That no general or special law heretofore enacted validating or legalizing the acts or omissions of any officer, or validating any law, act or proceeding whatever, shall be affected by the repealing clause of this title; but all validating or legalizing statutes whatsoever now in force in this State are hereby continued in force.

Sec. 5. Public debt.—That no law relating to the public debt or the public credit shall be affected by the repealing clause of this title.

Sec. 6. School funds.—That no law relating to the University or public school fund, or to the Agricultural and Mechanical College fund, or the investment of any such funds, or making any reservation in favor of the same, and no law affecting Federal aid for vocational education in this State, shall be affected by the repealing clause of this title, except where altered or amended by the Revised Statutes.

Sec. 7. Counties.—That no statute creating, adding to or organizing any county, or establishing any county seat, and no law affecting unorganized or new counties, shall be affected by

the repealing clause of this title, or by any law relating to the establishment of county boundaries contained in this Act.

Sec. 8. Courts.—That the laws now in force organizing the several district and other courts, or increasing, diminishing, restoring or defining the jurisdiction of said courts, and prescribing the times of holding said courts, except as herein otherwise provided, are continued in force.

Sec. 9. Public and other lands.—That all laws affecting the issuance of patents under valid land certificates; or fixing a time limit in which to redeem lands sold for taxes; or authorizing suits to contest forfeiture of sale for non-payment of interest on public lands, or affecting the reinstatement of rights after such forfeiture; or conferring a prior right to purchase land surveyed by virtue of a private right, for which a patent cannot issue; or extending oil and gas permits on public lands; or extending the time for payment of principal due on public lands sold in accordance with law; or affecting the title to public and other lands; or authorizing the Land Commissioner, the Governor, or any authorized board, to sell or lease certain lands or water rights; or granting land to cities; or affecting land reservations, or setting apart portions of such reservations for the benefit of actual settlers, are continued in force.

Sec. 10. Public buildings, etc.—That no law providing for the construction or repairing of the public buildings of this State, or providing for the establishment of a central prison system, nor any law establishing or providing for the maintenance of any public institution, shall be affected or impaired by the repealing clause of this title, unless expressly altered or repealed in some of the preceding articles of the Revised Statutes.

Sec. 11. Public libraries.—That no law giving authority to cities or towns to establish public libraries, or for like purposes, shall be affected or impaired by the repealing clause herein.

Sec. 12. Taxes.—That all laws now in force which donate taxes to, or release the inhabitants from payment of taxes in any city or county or part of a county in this State on account of any calamity; and all laws now in force authorizing the levy of taxes by levee or drainage districts to redeem certificates of indebtedness issued on account of damage from flood, are continued in force.

Sec. 13. Railroads.—That all laws now in force authorizing railroad companies to sell or buy or lease other railroad companies, or to buy, sell or abandon tracks or right of way, or extending the time for constructing main or branch lines; and all laws now in force affecting the State Railroad, are continued in force.

Sec. 14. Public roads.—That all laws providing for the maintenance of public roads in certain counties by a patrol system, are continued in force.

Sec. 15. Pensions.—That all laws granting pensions to soldiers and other persons entitled thereto by reason of service

performed in connection with the Mexican War are continued in force.

Sec. 16. World War veterans.—That all laws exempting persons who served in the late world war from payment of fees in public educational institutions in Texas are continued in force.

Sec. 17. Monuments.—That all laws authorizing the erection of monuments are continued in force.

Sec. 18. Appropriations.—That all laws making specific appropriations of public funds are continued in force.

Sec. 19. Special laws.—That all laws, civil or criminal, of a local nature, operating in particular counties, cities or towns, or of a temporary nature operative when these Statutes go into effect, and all laws of a private nature operating on particular persons or corporations, are not affected by the repealing clause of this title.

Sec. 20. Effect of repeal.—That nothing in the repealing clause of this title shall be construed as releasing any person or corporation from any duty enjoined in the limitation or condition imposed by any law that may be repealed by said repealing clause.

Sec. 21. New laws.—That nothing in this Act shall be construed to repeal or in anywise affect the validity of any law passed by this legislature in its regular session.

Sec. 22. Validity of Statutes.—That these Revised Statutes when adopted shall be construed to be an Act of the Legislature. No law herein shall be held to be void because its caption, when enacted, was in any way defective.

Sec. 23. Publication of Statutes.—That the Revised Statutes shall not be printed in the pamphlet laws of the thirtieth Legislature, but shall be printed, published and distributed at such time and in such manner as may be provided by law.

Sec. 24.—Date effective.—That these Revised Statutes shall take effect and be in force at twelve o'clock, meridian, on the first day of September, Anno Domini, one thousand nine hundred and twenty-five.

Sec. 25. Reading Act.—The importance and great length of this Act, the fact that it is impossible to read the same on any one day or on any three consecutive days, the length of time required for its publication, and the near approach of the end of the present session of the Legislature, create an imperative public necessity requiring that the constitutional rule which requires that bills be read on three several days in each house be and the same is hereby suspended.

INDEX.

| A. | Article. | Page. | Article. | Page. |
|--|----------|-------|--------------------------------------|---------------|
| ABANDONED WELLS— | | | ACKNOWLEDGMENTS—Cont'd. | |
| Plugging | 6005 | 1716 | Execution proved | 6609 1884 |
| ABANDONMENT— | | | Form | 6607-11 1884 |
| Children | 2330 | 620 | Handwriting proved | 6612-15 1885 |
| Divorce, grounds for | 4629 | 1268 | How made | 6603 1883 |
| Of homestead | 3833 | 1026 | Identification | 6604 1883 |
| ABATEMENT AND DIS- CONTINUANCE— | | | Mark proved | 6614 1886 |
| Another, Suit for | 2085 | 502 | Married woman | 6605 1884 |
| Death | 2078-83 | 561 | Officers' authority | 6616-18 1886 |
| Defendant not served | 2087 | 562 | Proof by witness | 6609-11 1884 |
| Defendants served | 2090 | 563 | Record book | 6619-22 1887 |
| Injury, death from | 2086 | 562 | ACROBATIC PERFORM- ANCES— | |
| Marriage | 2084 | 562 | Tax | 7047(27) 2021 |
| Principal obligor | 2088 | 562 | ACTIONABLE FRAUD— | |
| Scire facias | 2091 | 563 | What is | 4004 1086 |
| Vacation, in | 2089 | 563 | ACTS, LEGISLATIVE— | |
| ABSENCE— | | | Congress, distribution | 4331(11) 1153 |
| Death presumed | 5541 | 1561 | Construed | 10-11 4 |
| Limitation | 5537 | 1561 | Distribution | 4335 1155 |
| ABSENTEE VOTING— | | | Evidence | 3719 1001 |
| Mode | 2956 | 815 | Special | 2-9 3 |
| ABSTRACTS— | | | Grammatical errors | 11 4 |
| Companies | 1302(56) | 392 | ADDRESS— | |
| Evidence, certain | 3729 | 1003 | Officers removed by | 5964 1703 |
| Judgments, of | 5447 | 1536 | ADJOURNMENT OF COURT— | |
| Title suits | 7376-9 | 2144 | Civil Appeals | 1818 512 |
| ACCEPTANCE— | | | Commissioners' Courts | 2348 625 |
| Bills of exchange | 5941 | 1694 | County Court | 1964 538 |
| Honor, for | 5944 | 1698 | Criminal Appeals | 1804 509 |
| Presentment for | 5942 | 1695 | District Court | 1922 530 |
| Service, of | 2045 | 556 | Death of judge | 2288 609 |
| Waiver of | 2224 | 595 | Justice Courts | 2380 633 |
| ACCIDENT BOARD, IN- DUSTRIAL— | | | Probate cases | 3303 924 |
| Duties | 8306 | 2391 | Supreme Court | 1727 496 |
| Organization | 8307 | 2404 | ADJUTANT GENERAL— | |
| ACCOUNTANTS— | | | Appointment | 5787 1631 |
| Public | 36-40 | 11 | Assistants 6813, 5795-96 | 1952, 1633 |
| Construction of | 41 | 12 | Company funds | 5814 1640 |
| ACCOUNTS— | | | Duties | 5791 1632 |
| Counties, of | 1634 | 475 | Fees | 3913 1050 |
| County officers 1617, 3897 | 471, | 1044 | Fines | 5875 1663 |
| Open, interest on | 5070 | 1480 | Military, control of | 5768 1626 |
| Open, limitation on | 5526 | 1558 | Oath and bond | 5788 1632 |
| Penitentiary | 6176 | 1756 | Powers | 5790 1632 |
| State, inspection | 4400 | 1172 | Railroad pass | 4006 1087 |
| State officers | 688 | 225 | Rangers | 6564 1874 |
| Sworn, suit on | 3736 | 1006 | Report | 5794 1633 |
| ACKNOWLEDGMENTS— | | | Salary | 6813 1952 |
| Authority to take | 6602 | 1883 | Stores, purchase | 5798 1634 |
| Certificate | 6606-11 | 1884 | ADMINISTRATORS— | |
| Damages for neglect | 6623 | 1887 | Appointment | 3353 933 |
| Defective, correction | 6655 | 1895 | Bank stock liability | 537 196 |
| | | | Common law governs | 3312 925 |
| | | | Duties | 3426 946 |
| | | | Oath and bond | 3382 939 |
| | | | Settlement, final | 3634 986 |
| | | | Tax, inheritance | 7126 2063 |

| | Article. | Page. | Article. | Page. |
|-------------------------------------|------------|----------|---|------------------|
| ADMISSIONS— | | | AGRICULTURAL AND MECHANICAL COLLEGE— | |
| Attorney General | 4411 | 1174 | Canning demonstration..... | 164 53 |
| Claims barred on..... | 5539 | 1561 | Directors appointed..... | 2907 796 |
| District and county attorneys | 340 | 149 | Directors' powers..... | 2610-15 690 |
| ADOPTION— | | | Entomologist | 549 200 |
| Dependent Children's | | | Experiment stations | 137 49 |
| Home | 3259 | 911 | Experimental apiary | 565 203 |
| Inheritance | 2572 | 680 | Feed bulletins | 3877 1037 |
| Mode of | 42 | 13 | Free tuition | 2609 690 |
| ADULTERATION— | | | Funds | 2614-15 693 |
| Feeding stuff | 3879 | 1038 | Highway experiments | 6671 1900 |
| Fertilizers | 100 | 33 | John Tarleton College..... | 2616 694 |
| Food | 4471 | 1197 | Junior Agricultural College | 2620 694 |
| Milk | 4474 | 1197 | Prairie View Normal..... | 2638 699 |
| ADULTERY— | | | President's duties | 57, 2839 17, 764 |
| Divorce | 4629-30 | 1268 | AGRICULTURAL PRODUCTS— | |
| AD VALOREM TAXES— | | | Agricultural finance corporations | 1514 444 |
| Calculation | 7042-3 | 2019 | International trading corporations | 1527 448 |
| ADVERSE POSSESSION— | | | Marketing Associations | 5739 1616 |
| Defined | 5515 | 1555 | AGRICULTURE— | |
| Ejectment | 7364 | 2143 | Agricultural seeds | 83-93 26 |
| Title by | 5513 | 1555 | Animals destroying crops..... | 4029 1096 |
| ADVERTISING— | | | Bollworm, pink | 68-82 20 |
| Corporations | 1302(41) | 392 | Commissioner of | 47-55 14 |
| Flags, on | 6139 | 1747 | Corporations: | |
| Political | 29, 29a | 8, 9 | Cotton harvesting..... | 1302(27) 392 |
| By private banks | 541a | 197 | Finance | 1514 444 |
| AEROPLANES— | | | Rice | 1302(28) 392 |
| Corporations | 1302(78) | 392 | Seed | 1302(8) 392 |
| AFFIDAVITS— | | | Sugar cane | 1302(25) 392 |
| By agent | 24 | 7 | Warehouse | 5578 1570 |
| Defined | 23 | 6 | Cotton classing | 2915 798 |
| Paupers | 2070 | 560 | Cotton seed growers..... | 56-67 17 |
| Who may take | 26 | 7 | Experiment stations | 136-165 49 |
| AFFIRMANCE— | | | Farmers' Associations: | |
| Certificate | 1841 | 516 | Co-operative | 2514 659 |
| Civil Appeals | 1857 | 519 | Credit | 2508 658 |
| Supreme Court | 1767 | 503 | Credit unions | 2461 648 |
| AGE— | | | Marketing | 5739 1616 |
| Becoming of | 2969 | 821 | Pools | 2485 653 |
| Child labor | 5181 | 1454 | Warehouse | 5578 1570 |
| Disabilities removed | 5921 | 1675 | Fertilizers, commercial | 94-108 29 |
| Juvenile | 2330 | 620 | Fruits and vegetables..... | 109-118 36 |
| Marriage | 4603-5 | 1263 | Insuring crops | 4955 1380 |
| Marriage emancipates | 4625 | 1267 | Landlord and tenant..... | 5475 1544 |
| Minority | 4104(2) | 1113 | Nursery stock | 119-135 45 |
| Poll tax | 2959-60 | 818 | Teaching | 2914 798 |
| Scholastic | 2902 | 795 | AGRICULTURE AND LIVE STOCK POOLS— | |
| School teachers | 2880 | 781 | General provisions..... | 2485-99 653 |
| AGENTS— | | | AIR BRAKES— | |
| Affidavit by | 24 | 7 | Inspection | 6378-9 1812 |
| Insurance | 5055-8 | 1413 | Requisites | 6382 1813 |
| Service on | 2045, 1377 | 556, 415 | ALCOHOL— | |
| Ticket | 6415 | 1824 | Corporations | 1302(18) 392 |
| AGREED CASE— | | | Prescriptions | 5090-91 1425 |
| Transcript on appeal..... | 2244 | 601 | | |
| Trial on | 2177 | 587 | | |

| | Article. | Page. |
|------------------------------------|-------------|----------|
| ALIAS WRITS— | | |
| Execution | 3783 | 1017 |
| Process | 2035 | 554 |
| Process on appeal | 2262 | 604 |
| ALIENATION OF LANDS— | | |
| Aliens, by | 168 | 55 |
| Corporations, by | 1360 | 412 |
| Fraudulent | 3996 | 1084 |
| ALIENS— | | |
| Compensation insurance | 3306(17) | 2391 |
| Inheritance from | 2583 | 682 |
| Property rights | 166-177 | 55 |
| Suffrage | 2955 | 815 |
| ALMONY— | | |
| Temporary | 4637 | 1270 |
| ALLEGATIONS— | | |
| Corporation, Alleging | 1999 | 548 |
| Petition, The | 2003 | 548 |
| ALLEYS— | | |
| City control | 1016, 1082 | 306, 322 |
| ALLOWANCE— | | |
| Claims against county | 1660 | 481 |
| Ward's | 4170-71 | 1125 |
| Widow and children | 3476 | 955 |
| ALTERATION OF INSTRUMENTS— | | |
| Marriage contract | 4610 | 1264 |
| Negotiable instruments | 5939(124-5) | 1692 |
| Warehouse receipts | 5624 | 1585 |
| AMENDMENTS TO CONSTITUTION— | | |
| Ballots | 2982 | 825 |
| Contesting | 3071 | 846 |
| Voting on | 3076 | 848 |
| AMERICAN LEGION SANITARIUM— | | |
| Management | 3252 | 909 |
| AMUSEMENTS— | | |
| Occupation tax | 7047(22-38) | 2021 |
| Public houses of | 178-179 | 58 |
| ANATOMICAL BOARD— | | |
| General provisions | 4583-90 | 1255 |
| ANCILLARY WRITS— | | |
| Attachment | 275 | 136 |
| Distress warrant | 5227 | 1467 |
| Garnishment | 4076 | 1107 |
| Injunction | 4642 | 1273 |
| Issuance on Sunday | 1974 | 540 |
| Scire facias | 2079 | 561 |
| Sequestration | 6840 | 1960 |
| ANIMALS— | | |
| Breeder's lien | 5501 | 1552 |
| Breeding in city | 1015(17) | 301 |

| | Article. | Page. |
|--------------------------------------|------------|------------|
| ANIMALS—Continued. | | |
| Cruelty to | 180-189 | 59 |
| Dead in city | 1015(12) | 301 |
| Destroying crops | 4029 | 1096 |
| Destruction of | 190-192 | 61 |
| Estrays | 6911 | 1978 |
| Execution | 3794, 3814 | 1019, 1023 |
| Humane Society | 4597 | 1262 |
| Hunting | 4032-7 | 1097 |
| Inspection | 6978 | 1997 |
| Mines, in | 5918 | 1673 |
| Railroad killing | 6402 | 1819 |
| Running at large | 6930 | 1938 |
| Shipping by carrier | 889 | 272 |
| Veterinarians | 7460 | 2167 |
| ANNUITIES— | | |
| Tax valuation | 7174 | 2080 |
| ANNULMENT OF MARRIAGE— | | |
| Grounds for | 4628 | 1268 |
| ANSWER— | | |
| Appearance constitutes | 2047 | 556 |
| Defendant's pleadings | 2006 | 549 |
| ANTHRAX— | | |
| Dead bodies, shipping | 4477(78) | 1198 |
| Preventive measures | 4447 | 1189 |
| ANTI-TRUST LAWS— | | |
| General provisions | 7426-47 | 2154 |
| APARTMENTS— | | |
| Corporations | 1302(44) | 392 |
| APIARIES— | | |
| Corporations | 1302(26) | 392 |
| Experiment station | 565 | 203 |
| Inspection | 549-564 | 200 |
| APPEALS— | | |
| Civil Appeals, from: | | |
| Application | 1739, 1881 | 499, 523 |
| Bond | 1747 | 500 |
| Certified questions | 1851 | 518 |
| Costs | 1767 | 503 |
| Defendant served | 1882 | 523 |
| Filing | 1742 | 499 |
| Sent up | 1883 | 523 |
| Writ of error | 1739, 1881 | 499, 523 |
| Cost bonds: | | |
| Civil Appeals | 1747 | 500 |
| District Court | 2265 | 605 |
| Exemptions | 2072-4 | 560 |
| Death pending: | | |
| Civil Appeals, in | 1850 | 517 |
| District and County Courts, in | 2277 | 607 |
| Supreme Court, in | 1760 | 502 |
| District and county, from: | | |
| Bills of exception | 2237 | 598 |
| Bond, cost | 2265 | 605 |
| Bond, error | 2258 | 604 |
| Briefs | 2283 | 608 |
| Certain districts, in | 2092(31) | 563 |

| | Article. Page. | | Article. Page. |
|-----------------------------------|---------------------|------------------------------|---------------------|
| APPEALS—Continued. | | ARCHIVES— | |
| Costs | 2065, 1857 559, 519 | General Land Office | 250, 5264 129, 1475 |
| General provisions | 2249-85 602 | Other archives | 254-260 130 |
| Mandate not filed | 1775 505 | Registration | 6625 1888 |
| Pauper's oath | 2266 605 | Sale of | 5443 1534 |
| Perfected | 2253, 2267 603, 605 | Translation | 6581 1878 |
| Plea of privilege | 2008 549 | | |
| Reversal, citation on | 2049 557 | ARREST— | |
| Supersedeas | 2270 606 | City marshal, by | 999 297 |
| Time to file | 2246 601 | Fire marshal, by | 4896 1363 |
| Transcript | | Game wardens, by | 4018 1092 |
| 2210, 2278, 2238 593, 607, 599 | | Humane Society officers | 183 59 |
| Writ of error | 2255 603 | Militia | 5871 1662 |
| Justice Courts, from | 2254-9 603 | Rangers, by | 6571 1875 |
| Writ of error: | | Voter's privilege | 3023 835 |
| Civil Appeals, to | 2255 603 | Witnesses' privilege | 3710 1000 |
| Supreme Court, to | | | |
| 1739, 1881 499, 523 | | ARREST OF JUDGMENT— | |
| | | Costs | 2064 559 |
| APPEARANCE— | | Motion | 2232 597 |
| Answer | 2047 556 | Pleadings amended | 2001(3) 548 |
| Attorney, by | 1993 543 | | |
| Brief, by | 1846 517 | ARSON— | |
| Constructive | 2048 557 | Investigation | 4896 1363 |
| Day: | | | |
| District and County | | ARTESIAN WELLS— | |
| Courts | 2152 583 | General provisions | 7579-83 2193 |
| Justice Court | 2404 639 | | |
| Entering | 2046 556 | ARTIFICIAL LIGHTING | |
| Judgment without | 2050 557 | SYSTEM— | |
| Presumed | 2049 557 | City may install | 1221 336 |
| Reversal on | 2049 557 | | |
| | | ART SOCIETIES— | |
| APPELLATE COURTS— | | Charter renewed | 1315 403 |
| Civil Appeals | 1812 511 | Consolidation | 1316 403 |
| Commission of Appeals | 1781 506 | Incorporation | 1302(3) 392 |
| Criminal Appeals | 1801 509 | Tax exempt | 7150(14) 2069 |
| Supreme | 1715 494 | | |
| | | ASSAULT AND BATTERY— | |
| APPORTIONMENT— | | Costs | 2062 558 |
| Congressional districts | 197 75 | | |
| Index of counties | 64 64 | ASSESSOR, TAX— | |
| Judicial districts | 199-200 77 | And assessments | 7177 2081 |
| Representative districts | | | |
| 195-196 71 | | ASSIGNMENTS— | |
| 195-196 71 | | Bank, by | 531 195 |
| 193-194 69 | | Creditors | 261-274 132 |
| Supreme Judicial districts 198 76 | | Fraudulent | 3996-7 1084 |
| | | Negotiable instruments | |
| APPRENTICES— | | 569, 5934 204, 1682 | |
| General provisions | 201-223 119 | Partnership | 6128-9 1744 |
| | | Trade marks | 849 258 |
| APPROPRIATIONS— | | Wages, of | 6164 1753 |
| Budgets, Departmental | 688 225 | | |
| Deficiency | 4351 1158 | ASSIGNMENTS OF ERROR— | |
| Estimates submitted | 688 225 | Civil Appeals, to | 1844 516 |
| General | 4385 1169 | Supreme Court, to | 1875 522 |
| Normal schools | 2647(7) 701 | Transcript, in | 2281 608 |
| Special | 4386 1169 | | |
| | | ASSUMED NAME— | |
| ARBITRATION— | | Business under | 5924 1676 |
| General rules of | 224-238 123 | Signing instrument un- | |
| Industrial Commission | 5183 1456 | der | 5932(18) 1678 |
| Labor disputes | 239-249 125 | | |
| Labor disputes, investiga- | | ASSUMED RISK— | |
| tion | 5187 1457 | General liability | 4671 1281 |
| | | Railroad liability | 6437 1832 |
| | | Workmen's insurance | 8306 2391 |

| | Article. | Page. |
|--|------------|------------|
| ASYLUMS— | | |
| Blind | 3206 | 894 |
| Deaf and Dumb | 3203 | 894 |
| General provisions 3174-3263 | 883 | |
| Lunatic | 3185 | 885 |
| Orphan | 3211 | 895 |
| ATTACHMENT— | | |
| Certain districts, in 2092(9) | 563 | |
| Exemptions | 3832 | 1026 |
| Issuance | 275, 1974 | 136, 540 |
| Registration | 6662 | 1897 |
| Venue for damages 1995(8) | 544 | |
| ATTORNEY GENERAL— | | |
| Anti-trust law | 7426 | 2154 |
| Blind Institute property | 3206 | 894 |
| Blue Sky Law | 598 | 211 |
| Bond Investment Com- pany | 697 | 228 |
| Bonds, examine 709, 4398 | 230, 1171 | |
| Building and Loan Assoc- iations | 868 | 266 |
| Casualty Insurance Com- panies | 5005 | 1399 |
| Corporations in politics | 1352 | 410 |
| Drainage districts | 8175 | 2345 |
| Duties, general | 4395-4413 | 1171 |
| Election | 4394 | 1170 |
| Election returns | 3034 | 838 |
| Employment agents | 5220 | 1464 |
| Escheat alien property | 172 | 56 |
| Escheat corporation land | 1364 | 412 |
| Examine bonds 709, 4398 | 230, 1171 | |
| Examine corporation rec- ords | 1366 | 413 |
| Examnie Treasurer's bond | 4369 | 1166 |
| Farmers' co-operative so- cieties | 2524 | 661 |
| Fees | 3913, 3917 | 1050, 1053 |
| Fire escape law | 3972 | 1079 |
| Foreclosure of corpora- tion lien | 1377 | 415 |
| Forfeit bank charter | 491 | 133 |
| Free pass law | 4015 | 1091 |
| Gas pipe lines | 6051 | 1723 |
| Humane Society | 4597 | 1262 |
| Insolvent corporations | 1380 | 416 |
| Insurance charters | 4699 | 1291 |
| Irrigation districts | 7726, 7666 | 2232, 2215 |
| Labor restrictions | 5199 | 1459 |
| Liquidation of banks | 371 | 155 |
| Liquor law enforcement | 5108 | 1430 |
| Medicine, unlawful prac- tice | 4509 | 1231 |
| Member Banking Board | 439 | 171 |
| Member Depository Board | 2525 | 662 |
| Nuisance, enjoin | 4666-69 | 1279 |
| Prison Commission | 6169-80 | 1754 |
| Public land suits | 5420-21 | 1527 |
| Quo warranto: | | |
| Against corporation | 2295 | 612 |
| Against officers | 5997 | 1714 |

| | Article. | Page. |
|-------------------------------------|--------------------|------------------|
| ATTORNEY GENERAL—Cont'd. | | |
| Generally | 6253 | 1782 |
| Railway penalties | 6285, 6519, 6477 | 1791, 1859, 1845 |
| Salary | 6813 | 1952 |
| Supply contracts | 635 | 217 |
| Surveyors, may use | 5276 | 1478 |
| Tax officers, failure | 7216 | 2095 |
| Taxes, suits for | 7076, 7095 | 2042, 2050 |
| Textbook contracts | 2842 | 765 |
| Title to State forests | 2613(11) | 691 |
| Water engineers | 7471 | 2172 |
| Watered stock | 1354 | 411 |
| Workmen's Compensation Law | 8307(7), 8308(18a) | 2404, 2409 |
| ATTORNEYS— | | |
| Affidavit by | 24 | 7 |
| Appearance by | 1993 | 543 |
| Confession of judgment | 2225 | 596 |
| Disbarment | 313 | 143 |
| District and county | 321-341 | 145 |
| Examination | 304 | 141 |
| Examination fees | 310 | 142 |
| Foreign | 308 | 142 |
| Jury service, exempt | 2135 | 581 |
| License fees | 3923 | 1056 |
| Licenses | 304-320 | 141 |
| Oath | 309 | 142 |
| Officers practicing as | 319 | 143 |
| Recovery of fees | 2226 | 596 |
| Special judge as | 1887 | 524 |
| Withholding money | 317 | 143 |
| AUCTIONEERS— | | |
| Tax | 7047(6) | 2021 |
| AUDIT COMPANIES— | | |
| Incorporation | 1302(59) | 392 |
| AUDITORS— | | |
| County | 1646a | 478 |
| AUDITS— | | |
| County finances | 1641 | 476 |
| Pending suit | 2292 | 610 |
| Prison system | 6177 | 1757 |
| AUTOMOBILE— | | |
| Bus lines | 6548 | 1869 |
| Damaging bridge, etc. | 6716 | 1923 |
| Dealers: | | |
| Incorporation | 1302(64-5) | 392 |
| License | 6686 | 1904 |
| Gasoline tax | 7065 | 2035 |
| Liquor in | 5112 | 1431 |
| Registration: | | |
| Chauffer | 6687 | 1904 |
| Delinquent | 6697 | 1906 |
| Fee | 6678 | 1901 |
| License and seal | 6688-90 | 1904 |
| Transfer fee | 6685 | 1903 |
| When | 6677 | 1901 |
| Where | 6675 | 1901 |
| Unsafe | 6696 | 1906 |

| | Article. | Page. | | Article. | Page. |
|-----------------------------------|------------|------------|---------------------------------|------------|-----------|
| AVAILABLE SCHOOL FUND— | | | BANKING COMMISSIONER— | | |
| Apportionment | 2692 | 716 | Continued. | | |
| Pro rating | 2663 | 707 | Loan and brokerage com- | | |
| Revenues | 2823 | 759 | panies | 1522 | 446 |
| | | | Loans to | 529 | 195 |
| | | | Member Banking Board | 439 | 171 |
| B. | | | Member Depository Board | 2525 | 662 |
| BABIES— | | | Morris Plan Banks | 548 | 199 |
| Birth precautions | 4441 | 1183 | Mutual loan corporations | 2502 | 657 |
| Hygiene | 4443 | 1184 | Rural Credit Unions | | |
| Maternity homes | 4442 | 1183 | | 2463, 2484 | 648, 653 |
| | | | Salary | 6813 | 1952 |
| BADGE— | | | Savings bank report | 426 | 168 |
| Humane Society officers | 188 | 60 | Savings departments | 430-436 | 169 |
| Railroad employes | 6368 | 1810 | | | |
| | | | BANKRUPTCY— | | |
| BAGGAGE— | | | Assignments for creditors | 261-274 | 132 |
| Checking | 6369 | 1810 | Merchant, tax | 7048 | 2027 |
| Passenger's allowance | 6416 | 1824 | Sales tax | 7047(1) | 2021 |
| Unclaimed | 900 | 275 | Tax lien superior | 7269 | 2111 |
| | | | BANKS— | | |
| BAILEE— | | | Advertising: | | |
| Boarding house | 4592 | 1260 | Guaranty law | 438 | 171 |
| Gratuitous | 4593 | 1260 | Titles | 491 | 183 |
| Lien | 4594 | 1260 | Agricultural pools | 2485 | 653 |
| | | | Bank and trust companies | 393-396 | 160 |
| BAKERIES— | | | Banking Board | 439 | 171 |
| City regulation | 1015(6) | 301 | Banks of deposit | 388-392 | 159 |
| State inspection | 4420 | 1177 | Bond Security System | 375-489 | 156 |
| | | | Capital stock: | | |
| BAKING POWDER— | | | Banks | 391 | 159 |
| Standard of purity | 4475 | 1198 | Banks and trust com- | | |
| | | | panies | 395 | 160 |
| BALLOT BOXES— | | | Impairment | 365 | 154 |
| Inspecting | 3003 | 830 | Increase | 501 | 187 |
| Requisites | 2990 | 827 | Liability in excess of | 515 | 191 |
| | | | Loans on | 524 | 194 |
| BALLOTS, OFFICIAL— | | | Ratio to deposits | 506 | 188 |
| General provisions | 2978-2985 | 824 | Reduction | 500 | 186 |
| | | | Savings banks | 412 | 165 |
| BALL PARKS— | | | Surplus | 509 | 189 |
| Tax | 7047(32) | 2021 | Cash reserve | 521-2 | 192 |
| | | | Charter: | | |
| BANKING COMMISSIONER— | | | Amendments | 3921 | 1055 |
| Agricultural finance cor- | | | Amendments, filing | 505 | 188 |
| porations | 1519 | 445 | Application for | 379 | 157 |
| Appoint Warehouse Com- | | | Fees | 3921, 384 | 1055, 158 |
| missioner | 5562 | 1566 | Requisites | 377-8 | 156 |
| Appointment | 342-345 | 150 | Commissioner, Banking | 342-375 | 150 |
| Bond Security System | 475-489 | 178 | | | |
| Certified copies of records | 3722 | 1001 | Deposits: | | |
| Cotton Board | 5674 | 1596 | Accepting when insol- | | |
| Depositors Guaranty Law | 437 | 171 | vent | 533 | 195 |
| Director's statement | 494 | 184 | Certificates of | 530 | 195 |
| Disqualified | 356 | 152 | Protecting | 437 | 171 |
| Dissolution of bank | 539 | 196 | Ratio to capital | 506 | 188 |
| False advertising | 438 | 171 | Recovery of | 534 | 196 |
| Fees | 3913, 3921 | 1050, 1055 | Reserve | 521-2 | 192 |
| General duties | 346-375 | 150 | Savings | 432 | 170 |
| Guaranty Fund Plan | 441-474 | 172 | Dissolution | 539-540 | 196 |
| Incorporation of banks | 376-384 | 156 | | | |
| Interest in banks | 355 | 152 | | | |
| Liquidation duties: | | | | | |
| Federal Reserve Bank | 373 | 156 | | | |
| Forced | 369 | 155 | | | |
| Mode | 452-477 | 175 | | | |
| Receiver | 371 | 155 | | | |
| Savings bank | 374 | 156 | | | |
| Voluntary | 450 | 174 | | | |

| | Article. | Page. |
|---------------------------------|----------|----------|
| BANKS—Continued. | | |
| Dividends: | | |
| Officers' liability | 508 | 189 |
| Regulation of | 507 | 189 |
| Surplus fund | 509 | 189 |
| Examinations: | | |
| Fees | 362 | 153 |
| Hindering | 364 | 154 |
| Time | 358 | 153 |
| Examiners, bank | 350-354 | 151 |
| Federal Reserve Banks: | | |
| Cash reserve | 521 | 192 |
| Converting to | 519 | 192 |
| Examination | 359 | 153 |
| Insolvency | 373 | 156 |
| Powers | 520 | 192 |
| Franchise tax | 7084 | 2045 |
| General provisions | 490-541 | 183 |
| Guaranty Fund Plan | 441-474 | 172 |
| Incorporation | 376-387 | 156 |
| Insolvency: | | |
| Assignments | 531 | 195 |
| Converting deposits | 447 | 174 |
| Debts created in | 533 | 195 |
| Liquidation | 452-74 | 175 |
| Receiver | 371 | 155 |
| Transfers | 532 | 195 |
| Liquidation: | | |
| Execution | 532 | 195 |
| Federal Reserve Bank | 373 | 156 |
| Forced | 369 | 155 |
| Mode | 452-474 | 175 |
| Receiver | 371 | 155 |
| Savings bank | 374 | 156 |
| Voluntary | 450 | 174 |
| Loans: | | |
| Agricultural | 516 | 191 |
| Approval | 527 | 194 |
| Commissioner, to | 529 | 195 |
| Cotton | 525 | 194 |
| Limitation of | 515 | 191 |
| Officers, to | 526 | 194 |
| Other banks, to | 513 | 190 |
| Stock, on own | 524 | 194 |
| Morris Plan Banks | 542-48 | 198 |
| National Banks: | | |
| Bond Security System | 483 | 180 |
| Converting to | 502 | 187 |
| Permission to operate | 490 | 183 |
| Political contributions | 1352 | 410 |
| Protecting deposits | 441 | 172 |
| Negotiable Instrument Act | 5932 | 1678 |
| Officers and directors: | | |
| Authority | 499 | 186 |
| Bank, of | 388 | 159 |
| Bonds of | 498 | 186 |
| Disqualified | 386 | 158 |
| Duty | 437 | 171 |
| Election | 503, 387 | 188, 158 |
| Fraud | 367 | 154 |
| Investments | 511 | 190 |
| Liability | 508, 536 | 189, 196 |
| Loans to | 526 | 194 |

| | Article. | Page. |
|--------------------------------|-----------|----------|
| BANKS—Continued. | | |
| Meetings | 527 | 194 |
| Oath | 385 | 158 |
| Savings bank, of | 397 | 162 |
| Statement | 494 | 184 |
| Trust company, of | 393 | 160 |
| Unlawful acts | 533 | 195 |
| Powers: | | |
| Agricultural obligations | 516 | 191 |
| Capital, changing | 500-1 | 186 |
| Dissolution | 539 | 196 |
| Domicile | 512 | 190 |
| Indebtedness | 515 | 191 |
| Interest in other bank | 513 | 190 |
| Investments | 511 | 190 |
| Limitation of | 510 | 190 |
| Loans | 524-9 | 194 |
| National bank, change to | 502 | 187 |
| Pledge of securities | 517 | 191 |
| Real estate | 514 | 190 |
| Reserve bank, change to | 519 | 192 |
| Private banks | 541, 1307 | 197, 401 |
| Receiver | 371 | 155 |
| Reserves: | | |
| Cash | 521-2 | 192 |
| Guaranty Fund | 444 | 173 |
| Savings deposit | 432 | 170 |
| Surplus fund | 509 | 189 |
| Savings banks | 397-429 | 162 |
| Savings departments | 430-436 | 169 |
| Statement, fiscal | 494 | 184 |
| Stockholders: | | |
| Election of directors | 387 | 158 |
| Increasing capital | 501 | 187 |
| Liability | 455, 535 | 175, 170 |
| Liquidation by | 468 | 177 |
| Reducing capital | 500 | 186 |
| Vote | 503 | 188 |
| Surety and trust powers | 4982 | 1390 |
| Tax franchise | 7084 | 2045 |
| Tax rendition | 7165-6 | 2076 |
| Trust powers, special | 1513 | 444 |
| Warehouse Receipts Act | 5612 | 1582 |
| BAR— | | |
| Admittance to | 304-320 | 141 |
| BARRATRY— | | |
| Disbars attorney | 313 | 143 |
| BARREL— | | |
| Weights, standard | 5734 | 1613 |
| BASEBALL PARKS— | | |
| Tax | 7047 (32) | 2021 |
| BASTARDS— | | |
| Divorce, effect of | 4639 | 1270 |
| Inheritances | 2582 | 682 |
| Marriages validated | 4608-9 | 1264 |
| Recognition | 2581 | 682 |

| | Article. | Page. | | Article. | Page. |
|-------------------------------------|------------|------------|---|------------|------------|
| BAYS, GULF— | | | BILLS OF LADING— | | |
| Channels across | | | Agent's authority | 893 | 273 |
|1483, 1479(6) | 437, | 435 | Charges based on | 6363 | 1809 |
| Oil and gas | 5353 | 1509 | Definitions | 892 | 273 |
| Pilots | 8248, 8270 | 2363, 2383 | Delivery under | 6364-5 | 1809 |
| Water uses | 7489 | 2174 | Duty to give | 885 | 271 |
| BEEES— | | | Failure to deliver | 895 | 274 |
| Corporations | 1302(26) | 392 | Issuance | 890 | 272 |
| Entomologist, State | 549 | 200 | Liable, not | 898 | 274 |
| Experimental apiary | 565 | 203 | Loss of order bill | 897 | 274 |
| Inspection | 549-564 | 200 | Partial delivery | 896 | 274 |
| Shipment of | 552 | 201 | Railroad Commission, powers | 899 | 275 |
| BENEFICIARIES— | | | Requisites | 891 | 272 |
| Corporate | 5048 | 1410 | Validity | 894 | 273 |
| Rights forfeited | 5047 | 1410 | BILLS OF REVIEW— | | |
| Suits by, venue..... | 1995(28) | 544 | Escheat | 3288 | 920 |
| BENEVOLENT SOCIETIES— | | | Guardianship | 4328 | 1152 |
| Consolidation | 1316 | 403 | Judgment by default | 2236 | 598 |
| Incorporation | 1302(2) | 392 | Probate reviewed | 3288 | 920 |
| Powers | 1396 | 419 | Suits by publication | 2236 | 598 |
| Renewal of charter | 1315 | 403 | BILLS OF SALE— | | |
| Tax exemption | 7094 | 2050 | Automobiles | 6685 | 1903 |
| BEQUESTS— | | | Live stock | 6903-10 | 1975 |
| Tax | 7117 | 2060 | Parol proof | 6582 | 1878 |
| Wills | 8281 | 2386 | Registration | 6626 | 1888 |
| BEVERAGES— | | | BIRDS— | | |
| Adulterated | 4471 | 1197 | Care of | 181 | 59 |
| Corporations | 1302(17) | 392 | BIRTHS— | | |
| BIDS— | | | Protecting the eyes at | 4441 | 1183 |
| Buildings, State | 671 | 222 | Vital statistics | 4477(34) | 1198 |
| County improvements | 2368 | 630 | BLACKLISTING— | | |
| County material | 1659 | 481 | Defined | 5196 | 1458 |
| County supplies 1658, 2359 | 483, | 629 | Penalty | 5199 | 1459 |
| Departmental supplies | 635 | 217 | BLIND INSTITUTE— | | |
| Depositories | 2526 | 662 | Application for admission | 3202 | 894 |
| Improvement districts | 1668 | 483 | Board of trustees | 3206 | 894 |
| Printing, State | 608 | 213 | Colored boys, For | 3221 | 898 |
| Publications, official | 29 | 8 | Management | 3174 | 883 |
| School books | 2847 | 768 | Oculist | 3207 | 895 |
| BILL OF DISCOVERY— | | | BLUE SKY LAW— | | |
| Use | 2002 | 548 | Corporations exempt | 599 | 211 |
| BILLS AND NOTES— | | | General provisions | 579-600 | 207 |
| General provisions | 566-578 | 204 | Permit | 583 | 208 |
| Negotiable Instruments Act | 5932 | 1678 | BOARDING HOUSES— | | |
| Surety's rights | 6252 | 1781 | Fire escapes | 3956 | 1071 |
| BILLS OF EXCEPTION— | | | Gratuitous bailee | 4593 | 1260 |
| Approval by successor | 2288 | 609 | Liability for valuables | 4592 | 1260 |
| Approve, refusal to | 1838 | 515 | Lien | 4594 | 1260 |
| Bystander's | 2237 | 598 | Nuisance | 4664, 5107 | 1278, 1430 |
| Findings, exceptions to | 2210 | 593 | Report diseases | 4477(23) | 1198 |
| Requisites | 2237 | 598 | BOARD OF CONTROL— | | |
| Time for filing | 2246 | 601 | Builder's wage bond | 5160 | 1447 |
| When taken | 2237 | 598 | Deficiencies | 4351 | 1158 |
| BILLS OF EXCHANGE— | | | Eleemosynary institutions .....690-695, 3174 | 225, | 883 |
| Fixing liability | 566 | 204 | Eleemosynary salaries | 6815 | 1953 |
| General provisions | 5940 | 1694 | Engineering Division | 679-687 | 223 |
| Acceptance of | 5941 | 1694 | Estimates and appropria- tions | 688-689 | 225 |
| Protest | 576, 5943 | 205, 1697 | | | |
| Suits on, parties | 1986 | 542 | | | |
| Surety's rights | 6252 | 1781 | | | |

| | Article. | Page. |
|--------------------------------------|----------|-------|
| BOARD OF CONTROL—Cont'd. | | |
| General provisions | 601-606 | 212 |
| Highway Department sup- plies | 6674 | 1900 |
| Interest in contracts | 3181 | 884 |
| Juvenile school | 5119 | 1435 |
| Library publications | 5442 | 1533 |
| Mineral lands | 5399 | 1521 |
| Parks, State | 6073 | 1734 |
| Printing at asylum | 3204 | 894 |
| Printing Division | 607-630 | 213 |
| Provide fire escapes | 3960 | 1072 |
| Public buildings and grounds | 665-678 | 221 |
| Publishing notices | 29 | 8 |
| Purchasing Division | 631-664 | 217 |
| Salaries | 6813 | 1952 |
| Test weights | 5720 | 1608 |
| BOARDS AND COMMIS- SIONS— | | |
| Anatomical Board | 4583 | 1255 |
| Arbitration, Board of | 239 | 125 |
| Banking Board | 439 | 171 |
| Bollworm Claim Board | 75-6 | 24 |
| Chiropody Examiners | 4568 | 1250 |
| Control, Board of | 601 | 212 |
| Cotton Board | 5674 | 1596 |
| Dental Examiners | 4543 | 1242 |
| Depository Board | 2525 | 662 |
| Education, Board of | 2664 | 707 |
| Embalming, Board of | 4576 | 1253 |
| Health, Board of | 4414 | 1175 |
| Highway Commission | 6664 | 1898 |
| Historical Board | 6145 | 1748 |
| Industrial Accident Board | 8307 | 2404 |
| Industrial Commission | 5183 | 1456 |
| Insurance Commission | 4876 | 1354 |
| Law Examiners | 304 | 141 |
| Library Examiners | 1682 | 487 |
| Library and Historical Commission | 5434 | 1531 |
| Livestock Sanitary Com- mission | 7009 | 2007 |
| May administer oaths | 26 | 7 |
| Medical Examiners | 4495 | 1224 |
| Mining Board | 5892 | 1668 |
| Naval Board | 5891 | 1667 |
| Nurse Examiners | 4513 | 1233 |
| Optometry Board | 4553 | 1244 |
| Pardon Board | 6203 | 1766 |
| Parks Board | 6067 | 1717 |
| Pharmacy, Board of | 4529 | 1237 |
| Pilot Board | 8264 | 2381 |
| Plant Breeder Examin- ers | 56-67 | 17 |
| Plumbers, City Board of | 1078 | 321 |
| Prison Commissioners | 6168 | 1754 |
| Prison Supervisory Board | 6202 | 1756 |
| Public Accountancy, Board of | 31-41 | 10 |
| Railroad Commission | 6447 | 1835 |
| Rate Making Board | 2540 | 668 |
| Regents, University | 2907 | 796 |
| Seals | 27 | 7 |

| | Article. | Page. |
|---|------------|------------|
| BOARD OF COMMISSIONS— Continued. | | |
| State College Regents | 2907 | 796 |
| Surveyors Examining Board | 5268 | 1476 |
| Tax Board, Ad Valorem | 7041 | 2019 |
| Tax Board, Intangible | 7098 | 2051 |
| Teachers' Examiners | 2877 | 780 |
| Textbook Commission | 2839 | 764 |
| Veterinary Board | 7448 | 2164 |
| Water Engineers, Board of | 7468 | 2171 |
| BOATS— | | |
| Liquor on | 5107, 5112 | 1430, 1431 |
| BOLLWORM, PINK— | | |
| Eradication | 68-82 | 20 |
| BOND INVESTMENT COM- PANIES— | | |
| Deposit | 696 | 228 |
| Receiver | 698 | 228 |
| Tax on deposit | 7158 | 2073 |
| BONDS— | | |
| Appeal | 2253 | 603 |
| Bank security | 475 | 178 |
| Bond investment com- panies | 696 | 228 |
| Brokers | 1513-20 | 444 |
| Corporations generally | 1321 | 405 |
| Cost | 2265 | 605 |
| County: | | |
| Courthouse and jail | 718-25 | 231 |
| Hospitals | 4478 | 1216 |
| Irrigation | 803-22 | 247 |
| Issuance | 701-17 | 229 |
| Roads | 726-84 | 233 |
| Sale | 708, 2673 | 230, 709 |
| Seawalls | 6830 | 1957 |
| Sinking fund | 836-841 | 254 |
| Viaducts and bridges | 785-95 | 244 |
| Drainage districts | 8127 | 2335 |
| Election to issue | 701-5 | 229 |
| Examination | 709 | 230 |
| Federal Farm Loan | 842 | 256 |
| Fresh water supply dis- tricts | 7931-41 | 2289 |
| Funding and compromise | 796, 802 | 245, 247 |
| Interest rate | 707 | 230 |
| Irrigation districts | 7707-41 | 2227 |
| Issuance | 701-17 | 229 |
| Levee districts | 8001 | 2310 |
| Manuscript | 2606 | 689 |
| Maturity dates | 706 | 230 |
| Municipal: | | |
| Compromise | 828-34 | 252 |
| Funding | 827 | 252 |
| Harbors | 8236, 835 | 2361, 254 |
| Issuance | 701-17 | 229 |
| Purposes | 823 | 251 |
| Rights of holders | 1263 | 378 |
| Sale | 708, 2673 | 230, 709 |
| Seawalls | 6830 | 1957 |

| | Article. | Page. | | Article. | Page. |
|------------------------------------|------------|------------|--|----------|-------|
| BONDS—Continued. | | | BRAZOS RIVER— | | |
| Signature | 825 | 252 | Pilots | 8278 | 2384 |
| Sinking fund | 836-41 | 254 | BREACH OF PEACE— | | |
| Viaducts | 6557 | 1872 | Impending riot | 5831 | 1643 |
| Navigation districts | | | In city | 1015(20) | 301 |
| 8215, 8236 | 2355, | 2361 | Militia used | 5778 | 1629 |
| Official | 5998, 4969 | 1715, 1384 | BREACH OF PROMISE— | | |
| Option to purchase | 2673 | 709 | Limitation | 5524 | 1558 |
| Railroads | 6520-34 | 1859 | BREACH OF WARRANTY— | | |
| Registration | 710-11 | 230 | Limitation | 5527 | 1559 |
| Road district | 726 | 233 | Notice | 5546 | 1562 |
| Sale, option | 2673 | 709 | Venue | 1995(15) | 544 |
| Sale price | 708 | 230 | BREAD— | | |
| School district | 2784-97 | 743 | City regulations | 1015(6) | 301 |
| Signature of officers | 716 | 239 | Ingredients | 4475-6 | 1198 |
| Sinking funds | 836-41 | 254 | Unwholesome | 4470 | 1196 |
| State manuscript | 2606 | 689 | BREEDING ANIMALS— | | |
| Supersedeas | 2270 | 606 | Breeder's lien | 5501 | 1552 |
| Tax rendition | 7162(37-8) | 2074 | In city | 1015(17) | 301 |
| Union depot corporations | 6551 | 1870 | BRIDGES— | | |
| Water control districts | 7859-69 | 2275 | Across Gulf of Mexico | 1466 | 432 |
| Writ of error | 2258 | 604 | Bond issue, county 718, 785 | 231, 244 | |
| BOND SECURITY SYS- TEM— | | | City, powers | 1015(25) | 301 |
| Adoption by bank | 437 | 171 | Corporations | 1474 | 435 |
| Application for | 440 | 171 | County, powers | 6794 | 1947 |
| General provisions | 475-489 | 178 | County tax | 7048 | 2027 |
| BOOKKEEPER— | | | Damaging | 6716 | 1923 |
| Lien | 5483-88 | 1546 | Joint city and county | 2356 | 629 |
| BOOKS, TEXT— | | | Joint county | 6796 | 1947 |
| Publishers | 7069 | 2039 | Tax, intangible assets | 7105 | 2053 |
| Teachers interested in | 2910 | 797 | Toll | 6795 | 1947 |
| Textbook Commission | 2839 | 764 | Toll rates | 1476 | 434 |
| BOTTLERS— | | | BRIEFS— | | |
| Trade marks | 843 | 257 | Civil Appeals, in | 1846 | 517 |
| BOUNDARIES— | | | Filing | 2283 | 608 |
| Bridges across | 6796 | 1947 | Supreme Court, in | 1757 | 502 |
| County | 1606 | 468 | BROKERS— | | |
| Ferries between | 6810-11 | 1950 | Agricultural finance com- panies | 1514 | 444 |
| School districts on | 2743 | 730 | Fraud, liable for | 4004 | 1086 |
| Streams, State | 7489 | 2174 | Loan broker | 6162 | 1752 |
| Venue | 1996 | 547 | Loan and brokerage com- panies | 1520 | 446 |
| BOUNTIES— | | | Pawnbroker | 6146 | 1750 |
| Destruction of animals | 192 | 63 | Tax | 7047(8) | 2021 |
| BOWLING ALLEYS— | | | Tax rendition | 7165 | 2076 |
| License issued | 1615 | 471 | Trust companies | 1513 | 444 |
| License, term of | 7048 | 2027 | BUCKET SHOPS— | | |
| Tax | 7047(36) | 2021 | Injunction | 4667 | 1279 |
| BRAKES, AIR— | | | BUDGETS— | | |
| Inspection | 6378-9 | 1812 | Shall investigate | 689 | 225 |
| Requisites | 6382 | 1813 | BUFFALO— | | |
| BRANDS— | | | Tax exempt | 7150(13) | 2069 |
| Counterbranding | 6998 | 2003 | BUILDING AND LOAN ASSOCIATIONS— | | |
| Fertilizers | 94 | 29 | Domestic: | | |
| Infringement | 846, 850 | 258 | Capital | 1311 | 402 |
| Log | 7360 | 2142 | Certificate | 875 | 268 |
| Road | 6986 | 2000 | | | |
| Stock | 6890-99 | 1971 | | | |
| Trade marks | 843-851 | 257 | | | |

INDEX TO CIVIL STATUTES.

2433

| Article. Page. | | Article. Page. | |
|---|--------------------|-----------------------------|-----------------------|
| BUILDING AND LOAN ASSOCIATIONS—Cont'd. | | C. | |
| Fee, charter | 3914 1051 | CAMPAIGN, POLITICAL— | |
| Judgment against | 878 269 | Corporate contributions | 1350 410 |
| Laws governing | 874 268 | Expenditures limited | 3170 878 |
| Penalty | 881 270 | Unlawful contributions | 3171 880 |
| Securities deposited | 875 268 | CANALS— | |
| Statement | 877 269 | Channel and dock com- | |
| Supervision | 879-81 270 | panies | 1479 435 |
| Foreign: | | Corporations | 1302(30-2) 392 |
| Capital | 856, 1311 261, 402 | Deep water companies | 1483 437 |
| Charter | 852-3 260 | Diversion | 7496-7 2176 |
| Consolidation | 871 267 | Drainage | 8097 2328 |
| Directors and officers | 854-5 261 | Irrigation | 7490, 7589 2174, 2196 |
| Dissolution | 872 267 | Lien, builder's | 5452 1537 |
| Fee, charter | 3915 1053 | Navigation | 8198 2351 |
| Liquidation | 867-8 265 | CANNING— | |
| Loans | 857-9 262 | Companies | 1302(19) 392 |
| Real estate | 861 263 | Co-operative associations | 5758 1623 |
| Renewal | 862 264 | Demonstration work | 164 53 |
| Reserves | 870 267 | Ice companies, by | 1528 448 |
| Shares forfeited | 869 267 | CAPITAL STOCK— | |
| Statement | 863 264 | Blue Sky Law | 579 207 |
| Supervision | 864-6 264 | Brokers | 1513-20 444 |
| BUILDINGS— | | Corporations generally | 1308-12 401 |
| Destruction by city | 1070 319 | Garnisheeing | 4080 1108 |
| Fire escapes | 3955 1071 | Stockholder's liability | 1345 408 |
| Protection of workmen on | | Tax exemptions | 7163 2075 |
| | 5182 1455 | Tax, inheritance | 7117 2060 |
| Public | 671 222 | Tax rendition | 7162(37-8) 2074 |
| School, specifications | 2920 799 | Non-par | 1538a-1538m 451 |
| BULK SALES— | | CAPITOL, STATE— | |
| Fraud in | 4001 1085 | Control of | 667 222 |
| BULLETINS— | | Sleeping in | 668 222 |
| Blue sky operations | 595 210 | CAR COMPANIES— | |
| County health | 4483 1219 | Street | 6545 1868 |
| Experiment stations | 148 51 | Tax | 7062 2033 |
| Feeding stuff | 3877 1037 | CARBONATED WATER— | |
| Fertilizers, commercial | 98 32 | Corporations | 1302(16) 392 |
| Food and drugs | 4468 1196 | Trade marks | 843 257 |
| Honey bees | 559 202 | CARNIVALS— | |
| BUREAU OF LABOR STATISTICS— | | Tax | 7047(25) 2021 |
| Duties | 5145 1444 | CARPENTERS— | |
| Salaries | 6814 1953 | Liens | 5452, 5503 1537, 1552 |
| BURGLARY INSURANCE— | | Safety measures | 5182 1455 |
| General casualty compa- | | CARRIERS— | |
| nies | 4989 1394 | Animals, care of | 889 272 |
| Mutual companies | 4963 1382 | Bee shipments | 552 201 |
| BURIAL— | | Bills of lading: | |
| Regulations | 4477(40) 1198 | Agent's certificate | 893 273 |
| BUS LINES— | | Definitions | 892 273 |
| Street railway powers | 6547 1869 | Delivery | 895-6 274 |
| BUTCHERS— | | Liable, Not | 898 274 |
| Bond | 6908 1977 | Loss | 897 274 |
| City regulation | 1015(7) 301 | Must give | 885 271 |
| Report | 6904 1976 | Requisites | 891 272 |
| BYSTANDERS BILL— | | Validity | 894 273 |
| Filing | 2237 598 | Who shall issue | 890 272 |
| | | Common law governs | 882 271 |

| | Article. | Page. | | Article. | Page. |
|-------------------------------|------------|------------|--------------------------------|-----------|-------|
| CARRIERS—Continued. | | | CENSUS— | | |
| Connecting lines: | | | Federal defined | 23 | 6 |
| Brakes | 6385 | 1814 | Scholastic | 2816 | 756 |
| Contract | 6406 | 1820 | CERTIFICATES— | | |
| Defined | 905, 6408 | 276, 1821 | Acknowledgement, Of | 6606 | 1884 |
| Interchange | 6407 | 1820 | Birth | 4477(43) | 1198 |
| Interchange refused | 6385, 6413 | 1814, 1823 | Death | 4477(42) | 1198 |
| Liability | 906 | 277 | Deposit, Of | 530 | 195 |
| Lien | 6412 | 1823 | Election, Of | 3032 | 837 |
| Terms | 6409 | 1821 | Teachers' | 2877-2891 | 780 |
| Cotton shipments | 5678 | 1597 | CERTIFIED ACCOUNTANT— | | |
| Dead body shipments | 4477(77) | 1198 | Certificate | 36-40 | 11 |
| Deer shipments | 4037 | 1099 | CERTIFIED COPIES— | | |
| Delay | 888 | 272 | Evidence | 3720-31 | 1001 |
| Diligence in delivery | 887 | 272 | State records | 3913 | 1050 |
| Duty | 884 | 271 | CERTIFIED QUESTIONS— | | |
| Express companies | 3860 | 1032 | Supreme Court, To | 1851 | 518 |
| Injuries, liability | 4671 | 1231 | CERTIORARI— | | |
| Interurbans | 6535 | 1864 | Costs | 2065 | 559 |
| Liability | 883, 886 | 271, 271 | County Court, To | 932-40 | 283 |
| Liable for injuries | 4671 | 1231 | Guardianship proceedings | 4329 | 1152 |
| Liquor shipments | 5092 | 1425 | Issuance by Supreme | 1733 | 498 |
| Open port law | 907-11 | 277 | Court | 2220 | 595 |
| Pipe lines, Gas | 6050 | 1727 | Judgment certified | 2460 | 647 |
| Pipe lines, Oil | 6018 | 1719 | Justice Court, From | 941-60 | 284 |
| Poultry shipments | 181 | 59 | CHALLENGES— | | |
| Protecting movements by | 907-11 | 277 | Array, To | 2131 | 579 |
| Railroad Commission | 6445 | 1834 | Cause, For | 2143 | 582 |
| Railroads | 6259 | 1734 | Juror, To | 2142 | 582 |
| Regulation, State | 6445 | 1834 | Peremptory | 2147 | 583 |
| Sale of unclaimed goods | 900-4 | 375 | Voter, To | 3007 | 831 |
| Sanitation | 4477(58) | 1198 | CHAMBERS OF COMMERCE— | | |
| Separate coaches | 6417 | 1825 | Incorporation | 1302(53) | 392 |
| Sheep imports | 7038 | 2018 | Carnival tax | 7047(25) | 2021 |
| Street railways | 6545 | 1868 | CHANCERY, MASTER IN— | | |
| Terminal railways | 6549 | 1870 | Appointment | 2320 | 617 |
| Unclaimed freight | 900-4 | 275 | CHANGE OF NAME— | | |
| Venue | 1995(24) | 544 | Application | 5928 | 1677 |
| Warehouseman, Liable as | 886 | 271 | Divorce, On | 5931 | 1677 |
| CASING— | | | Minors | 5929 | 1677 |
| Oil and gas wells | 6004 | 1716 | CHANGE OF VENUE— | | |
| CASUALTY INSURANCE— | | | Application | 2170 | 586 |
| Corporate powers | 4989 | 1394 | By consent | 2169 | 586 |
| CATTLE— | | | Granting | 2171 | 586 |
| Brands | 6890 | 1971 | Justice Court, In | 2394 | 637 |
| Dip | 7032 | 2017 | Militiaman | 5884 | 1665 |
| Cattle guard | 6400 | 1818 | To what county | 2172 | 586 |
| CAUSEWAYS— | | | Transcript | 2174 | 587 |
| Across Gulf of Mexico | 1466 | 432 | On plea of privilege | 2019 | 851 |
| City bond issue | 6557 | 1872 | CHANNEL AND DOCK | | |
| Corporations | 1302(62) | 392 | COMPANIES— | | |
| County bond issue | 785 | 244 | Powers | 1479 | 435 |
| Railroad | 6555 | 1872 | CHARBON— | | |
| CEMETERIES— | | | Preventive measures | 4447 | 1189 |
| City regulations | 1015(13) | 301 | CHARACTER— | | |
| Corporations | 919 | 280 | Defamation | 5430 | 1530 |
| General provisions | 912-931 | 279 | Libel, limitation | 5524 | 1558 |
| Public lands, patent | 5406 | 1523 | | | |
| Tax exempt | 7150(3) | 2069 | | | |
| Trust fund | 912 | 279 | | | |

| | Article. | Page. |
|----------------------------------|------------|------------|
| CHARGE OF COURT— | | |
| Exceptions to | 2237 | 598 |
| Jury, To | 2184 | 588 |
| Special | 2186 | 589 |
| CHARITABLE INSTITUTIONS— | | |
| Societies, powers | 1396 | 419 |
| Tax exempt | 7150(7) | 2069 |
| CHARTERS— | | |
| City | 966 | 288 |
| Corporation | 1304 | 400 |
| Fees, corporations | 3914 | 1051 |
| Amendments (bank) | 3921 | 1055 |
| Amendments, Filing | 505 | 188 |
| Application for | 379 | 157 |
| Fees 3921, 384, 1156 | 1055, 158, | 345 |
| Requisites | 377-8 | 156 |
| CHATTEL MORTGAGES— | | |
| Defined | 5489 | 1548 |
| Destruction | 5499 | 1551 |
| Execution on property | 3797 | 1020 |
| Foreclosure, sequestration | 6840 | 1960 |
| Fraudulent | 4000 | 1085 |
| Realty, chattels on | 5498 | 1550 |
| Registration | 5491, 6645 | 1549, 1893 |
| Removal of property | 5496 | 1550 |
| Satisfaction | 5495 | 1550 |
| Wage assignments, For | 6164 | 1753 |
| CHATELS— | | |
| Loan, Fraudulent | 3999 | 1085 |
| Realty, on | 5498 | 1550 |
| Title recorded | 6645 | 1893 |
| CHAUFFER— | | |
| City regulations | 1015(36) | 301 |
| License | 6675, 6678 | 1901, 1904 |
| CHECKS— | | |
| Negotiable Instruments Act | 5947 | 1700 |
| CHILDREN— | | |
| Adoption of | 42-46 | 13 |
| Allowance from State | 3476-85 | 955 |
| Apprenticing | 201-223 | 119 |
| Commitment to home | 3257 | 910 |
| Compulsory school law | 2392 | 792 |
| Consumptives | 4482, 482 | 1218, 180 |
| Delinquent child | 2338 | 622 |
| Dependent or neglected | 2330 | 620 |
| Half-fare | 6416, 6544 | 1824, 1867 |
| Hospital for crippled | 3260 | 911 |
| Humane Society | 4597 | 1262 |
| Labor law | 5181 | 1454 |
| Posthumous | 8291 | 2387 |
| CHIROPODY— | | |
| Board of Examiners | 4568 | 1250 |
| Defined | 4567 | 1250 |
| Examination | 4569-70 | 1251 |
| Exceptions | 4575 | 1253 |
| License | 4571-3 | 1251 |
| CHURCHES— | | |
| Sites, Patent for | 5406 | 1523 |
| Tax exempt | 7150 | 2069 |

| | Article. | Page. |
|----------------------------------|-------------|-----------|
| CIGARETTE DEALERS— | | |
| Tax | 7047(39) | 2021 |
| CIRCUS— | | |
| City regulation | 1015(38) | 301 |
| Tax | 7047(24) | 2021 |
| CITATION— | | |
| Appeal, On | 2259 | 604 |
| Certain districts, In | 2092 | 563 |
| Issuance | 2021 | 552 |
| Mistake in | 2048 | 557 |
| Non-resident | 2037 | 554 |
| Publication | 2039 | 555 |
| Requisites | 2022 | 552 |
| Return | 2034 | 554 |
| Return to extended term | 1926 | 531 |
| Service | 2026 | 553 |
| Tax suits | 7342 | 2135 |
| Time of service | 2036 | 554 |
| CITIES AND TOWNS— | | |
| Abolition | 1241-63 | 373 |
| Adoption of title | 961, 967 | 287, 289 |
| Artificial lighting | 1221-40 | 366 |
| Attorney, Salary | 1269 | 381 |
| Auditor, Salary | 1269 | 381 |
| Bonds: | | |
| Compromise | 828 | 252 |
| Funding | 827 | 252 |
| Harbor bonds | 835 | 254 |
| Issuance, general rules | 701-717 | 229 |
| Option to purchase | 2673 | 709 |
| Outstanding on dissolution | 1263 | 378 |
| Power to issue | 823 | 251 |
| Sinking fund investments | 836 | 254 |
| Storms, In case of | 796 | 245 |
| Voter's qualifications | 2957 | 817 |
| Boundaries and limits: | | |
| Annexation | 974, 1265 | 291, 379 |
| Discontinuing territory | 973, 1266 | 291, 380 |
| Extension of limits | 2803-5 | 752 |
| Maximum area | 971 | 290 |
| Withdrawals | 975-6 | 291 |
| Cemetery, Control of | 930 | 282 |
| Cemetery lots | 964 | 288 |
| City council: | | |
| Appointments by | 1002-3 | 299 |
| Bonds, issuance | 823 | 251 |
| Bridge, joint | 2356 | 629 |
| Control of officers | 1002 | 299 |
| Depository | 2559 | 674 |
| Election | 977-9 | 292 |
| Financial statement | 1023 | 308 |
| Fire escapes | 3960 | 1072 |
| Fire prevention | 1067-70 | 317 |
| Health and sanitation | 1071, 4436 | 320, 1181 |
| Installation | 983 | 294 |
| Interurban merger | 6543 | 1867 |
| Mayor pro tem | 991 | 295 |
| Meetings | 1008-9, 991 | 299, 295 |

| | Article. | Page. | | Article. | Page. |
|---------------------------------|------------|----------|---------------------------------|--------------|-----------|
| CITIES AND TOWNS—Cont'd. | | | CITIES AND TOWNS—Cont'd. | | |
| Members | 977 | 292 | Fire department: | | |
| Moneys paid over | 7295 | 2118 | Destroy buildings, May | 1070 | 319 |
| Officers' salary | | | Jury service | 2136 | 581 |
| 1010, 1269 | 300, | 381 | Officers authority | 1068(9) | 318 |
| Official paper | 1025 | 308 | Organization | 1069 | 319 |
| Ordinances 997, 1012-13 | 296, | 334 | Passes | 4006 | 1087 |
| Parks | 6080, 1017 | 1736 | Pensions | 6230 | 1776 |
| Powers | 1011-15 | 300 | Tax exempt | 7150(10) | 2069 |
| Presiding officer | 1007 | 299 | Health officer: | | |
| Public utilities | 1106-32 | 328 | Appointment 1071, 4425 | 320, | 1178 |
| Qualifications | 987-8 | 294 | Charges against | 4432 | 1180 |
| Quorum | 977 | 292 | Consumptives | 4440 | 1183 |
| Railroad relocations | 6350 | 1804 | Cooperation | 4434 | 1181 |
| Removal | 5991-5 | 1713 | Dead, disposal of | 4584 | 1255 |
| Remove officers, May | 1006 | 299 | Duties | 4430 | 1179 |
| Secretary | 1000 | 298 | Powers | 1075 | 320 |
| Service on | 2028 | 553 | Removal | 4431 | 1180 |
| Streets and alleys | | | Sanitary Code | 4477 | 1198 |
| 1016, 1082 | 306, | 322 | Venereal diseases | 4445 | 1186 |
| Suits by, security | 2072 | 560 | Home rule | 1165-82 | 347 |
| Taxing power 1026, 2798 | 309, | 750 | Hospital, Aid to | 4437 | 1182 |
| Telephone regulations | 1430 | 425 | Incorporation: | | |
| Warrants, May issue | 1264 | 378 | Authorization | 966 | 288 |
| Claims against | 1246-57 | 374 | Boundaries | 971 | 290 |
| Commission government | | | Mode | 1134-9 | 340 |
| 1154-64 | 344 | | Village | 1133 | 339 |
| Consolidation | 1188-93 | 359 | Marshal | 999 | 297 |
| Corporation court: | | | Mayor: | | |
| Clerk | 1200 | 361 | Audit board | 1022 | 307 |
| Creation | 1194 | 360 | City council, chairman | 1007 | 299 |
| Fines, remission | 1014 | 301 | Duties | 994 | 296 |
| Judge | 1196-9 | 361 | Election | 979 | 293 |
| Judge's salary | 1269 | 381 | Ordinances | 997 | 292 |
| Jurisdiction | 1195 | 361 | Police, special | 995 | 291 |
| Dissolution | 1241, 1024 | 373, 308 | Powers | 996 | 296 |
| Elections: | | | Pro tem | 991 | 295 |
| Challenged vote | 3007 | 831 | Qualifications | 987 | 294 |
| Duty of officials | 2997 | 828 | Removal | 5991-5 | 1731 |
| Expenses | 2997 | 828 | Riot, impending | 5831 | 1643 |
| Notice | 2951 | 814 | Sign bonds | 825 | 252 |
| Poll tax | 2962 | 818 | Vacancy | 989 | 295 |
| Primary | 3164 | 875 | Warrants, sign | 2565 | 677 |
| Provision for | 2931 | 808 | Military appropriations | 5885 | 1666 |
| Voters, qualifications | 2957 | 817 | Navigable streams, On | 1183-7 | 358 |
| Wards | 2934, 992 | 809, 295 | Officers: | | |
| Eminent domain: | | | Accounts examined | 1022 | 307 |
| Highways | 1206 | 363 | Appointees | 1003 | 299 |
| Prohibited | 7491 | 2174 | Assessor, tax | 1044 | 312 |
| Public utilities | 1107 | 328 | Control of | 1002 | 299 |
| Water works 1110, 7533 | 333, | 2183 | Election | 978-82 | 293 |
| Finances: | | | Enumeration | 977 | 292 |
| Audit | 1022 | 307 | Fire department | 1069 | 319 |
| Current expenses | 1264 | 378 | Health | 1071, 4425 | 320, 1178 |
| Disbursements restrict- | | | Ineligibility | 2927 | 807 |
| ed | 2565 | 677 | Installation | 983 | 294 |
| Interest on indebtedness | | | Marshal | 999 | 297 |
| 1021 | 307 | | Mayor | 994-6 | 296 |
| Receiver | 1024 | 308 | Oath | 993 | 295 |
| Statement | 1023 | 308 | Police | 998 | 297 |
| Utility revenues | 1106 | 328 | Qualifications | | |
| Warrants, requisites | | | 2927, 987-8 | 807, | 294 |
| 2562, 2565 | 676, | 677 | Removal | 1006, 5991-5 | 299, 1575 |
| Fines, remission | 1014 | 236 | Resignation | 1005 | 299 |

| Article. Page. | Article. Page. |
|--------------------------------------|--------------------------------------|
| CITIES AND TOWNS—Cont'd. | CITIES AND TOWNS—Cont'd. |
| Salaries .....1010, 1269 300, 381 | Streets and alleys: |
| School .....2774-5 741 | Assessments .....1083-5 322 |
| Secretary .....1000 298 | Eminent domain .....1201-20 362 |
| Term of office.....977 292 | Improvements |
| Treasurer .....2561, 1001 675, 255 |1083, 1086 322, 323 |
| Vacancies .....1002, 989-90 299, 295 | Lighting system for 1221-40 366 |
| Official paper .....1025 308 | Powers .....1016, 1082 306, 322 |
| Oil lands .....1267 380 | Sale .....1017 307 |
| Ordinances: | Use by railroad .....1018 307 |
| Publication .....1013 300 | Taxation: |
| Requisites .....997 296 | Assessor's duties .....1044-66 312 |
| Style .....1012 300 | Back taxes .....1047 312 |
| Village .....1152 344 | Collection .....1057, 7343 314, 2136 |
| Parks .....6080-81 1736 | Complaint of valuation |
| Pensions .....6229 1775 |1051 313 |
| Police: | County officers, use.....7359 2141 |
| Appointment .....998 297 | Deed .....1059 315 |
| Hours of duty .....5167 1450 | Dissolution, on .....1255-9 376 |
| Pensions .....6229 1775 | Equalization Board 1048-56 313 |
| Powers .....998 297 | Exemptions |
| Special .....995 296 |1038, 7150 311, 2069 |
| Property, adverse posses- | Levy, requisites .....1033 310 |
| sion .....5517 1555 | Licenses .....1031-5 310 |
| Public utilities: | Occupations 1031, 7048 310, 2027 |
| Control .....1120 336 | Payment .....833, 1066 254, 317 |
| Eminent domain .....1107 328 | "Personal estate" .....1037 311 |
| Encumbering .....1111-18 333 | Poll tax .....2962, 1030 818, 310 |
| Powers .....1108, 1123 329, 337 | Powers of council .....1041-2 311 |
| Rates .....1119, 1124 335, 337 | Rate .....1026-8 309 |
| Revenues .....1106 328 | "Real estate" .....1036 311 |
| Sale of franchise.....1268 380 | Redemption |
| Suits against .....1132 339 |7340, 1064-5 2134, 317 |
| Waterworks .....1109-10 329 | Rendition .....1043 312 |
| Public weighers .....5681 1598 | Sales .....1058-65 315 |
| Receiver .....1024, 1244 308, 374 | School taxes .....2798 750 |
| Sanitary department: | Special taxes .....1039 311 |
| Disease regulations .....1072-4 320 | Supplemental roll .....7209 2092 |
| Health officers | Treasurer .....1001, 2561 298, 675 |
|1071, 4425 320, 1178 | Vehicle registration .....6676 1901 |
| Plumbing .....1077-81 321 | Viaducts .....6555 1872 |
| Sewerage .....1076 321 | Villages .....1133-53 339 |
| Schools: | Wards .....992, 2934 295, 809 |
| Adjacent schools, con- | Warrants .....1264, 2562-5 378, 676 |
| trol .....2759 736 | Water rights .....7490-1 2174 |
| Assuming control of .....2768 739 | Waterworks .....1109-10 329 |
| Ballot for officers .....2983 826 | CITIZENS— |
| Bonds .....823 251 | Alien .....166-177 55 |
| Building specifications 2921 800 | Franchise .....2954-5 814 |
| Dissolution of city .....1258-9 377 | CIVIL WAR VETERANS— |
| Election .....2769 740 | Pensions .....6208 1769 |
| Extending limits .....2803-2805 750 | Railroad passes .....4006 1087 |
| Laws governing .....2771 740 | CLAIMS— |
| Property .....2772 740 | Bank, insolvent .....456 175 |
| Taxes .....2798 750 | Bankrupt, against .....269 134 |
| Teachers' certificates 2891 791 | City, dissolved .....1246 374 |
| Trustees .....2774-2783 741 | Counter .....2014 551 |
| Sealer: | County, against 1573, 1660 461, 481 |
| Appointment .....1015(5) 301 | Creditor's .....269 134 |
| Charges against .....5721 1608 | Decedent's estate .....3502 960 |
| Duty .....5723 1609 | Presentation of .....3186 2348 |
| Inspections .....5725 1610 | Improvements, for .....7393 2147 |
| Rules governing .....5708 1606 | Mining .....5383 1516 |
| Seawalls .....6830 1957 | |
| Secretary .....1000 298 | |

| | Article. | Page. | | Article. | Page. |
|------------------------------------|------------|------------|---------------------------------------|-----------|-------|
| CLAIMS—Continued. | | | COLLUSION— | | |
| Receivers, against | 2299 | 612 | Divorce suits | 4630 | 1269 |
| State, against | 4349, 4355 | 1158, 1160 | Suits by executor | 1981 | 541 |
| Ward's estate | 4239 | 1140 | COLOR OF TITLE— | | |
| CLAY— | | | Defined | 5508 | 1554 |
| Corporations | 1495 | 440 | COLORED PERSONS— | | |
| CLEARING HOUSE— | | | Adoptions by | 46 | 13 |
| Incorporation | 1302 (54) | 392 | College for | 2638 | 699 |
| CLERKS— | | | Deaf and Dumb Asylum | 3221 | 898 |
| Civil Appeals | 1827 | 514 | Intermarriage | 4607 | 1264 |
| Collections, reports | 1617, 3897 | 471, 1044 | Separate coaches | 6417 | 1825 |
| County | 1935 | 533 | Separate schools | 2900 | 795 |
| Courts of record, powers | 26 | 7 | Training School, Boys | 5131 | 1438 |
| Criminal Appeals | 1808 | 509 | Voting in primary | 3104 | 858 |
| Deputies | 3902 | 1046 | COMBINATIONS— | | |
| District | 1894 | 525 | Anti-trust law | 7426 | 2154 |
| Fees | 3923-32 | 1056 | COMMERCE— | | |
| Office, lien | 5483 | 1546 | Open port law | 907 | 277 |
| Supreme Court | 1718 | 494 | COMMERCIAL FERTILIZERS— | | |
| COAL LANDS, STATE— | | | Preparation and sale | 94-108 | 29 |
| Application | 5383 | 1516 | COMMISSION FORM OF GOVERNMENT— | | |
| COAL MINES— | | | Adoption | 1154 | 344 |
| Regulation | 5901 | 1669 | City officers | 1161 | 346 |
| COAST, GULF— | | | Officers of commission | 1158 | 345 |
| Breakwaters | 7578 | 2193 | Powers | 1163 | 347 |
| Causeways | 1466 | 432 | COMMISSION MERCHANTS— | | |
| Channel and dock companies | 1478 | 434 | Account of sales | 1278 | 384 |
| Deep water corporations | 1483 | 437 | Bond | 1275 | 383 |
| Harbor bonds | 835 | 254 | Defined | 1274 | 383 |
| Navigation districts | 8229 | 2359 | False charges | 1279 | 385 |
| Seawalls | 6830 | 1957 | Live stock merchants | 1281 | 385 |
| COLD STORAGE— | | | Poultry, care of | 181 | 59 |
| Ice companies' powers | 1528 | 448 | Tax | 7047 (12) | 2021 |
| COLLECTING AGENCIES— | | | Weighers, must use | 5703 | 1604 |
| Tax | 7061 | 2033 | COMMISSION OF APPEALS— | | |
| COLLECTOR, TAX— | | | Clerk | 1795 | 508 |
| Election | 7245 | 2103 | Dockets | 1797 | 508 |
| COLLEGE OF INDUSTRIAL ARTS— | | | Duration | 1800 | 508 |
| Courses | 2626 | 696 | Judges | 1781 | 506 |
| President | 2839 | 764 | Opinions | 1790 | 507 |
| Regents | 2625 | 696 | Practice | 1799 | 508 |
| COLLEGES— | | | Seal | 1796 | 508 |
| A. & M. | 2607 | 690 | Stenographer | 1794 | 508 |
| C. I. A. | 2624 | 696 | Terms | 1793 | 507 |
| Corporations | 1410-15 | 421 | Writs and process | 1798 | 508 |
| Governing boards | 2907 | 796 | COMMISSIONER OF AGRICULTURE— | | |
| John Tarleton | 2616 | 694 | Agricultural seeds | 83-93 | 26 |
| Junior Agricultural | 2620 | 694 | Animal poisons | 190 | 61 |
| Mines, School of | 2633 | 693 | Appoint Warehouse Commissioner | 5562 | 1566 |
| North Texas Teachers | 2651 | 704 | Cotton Board | 5674 | 1596 |
| Prairie View Normal | 2638 | 699 | Election | 47-48 | 14 |
| Sam Houston State Teachers | 2648 | 703 | Fees | 3913 | 1050 |
| State University | 2584 | 683 | General duties | 49-55 | 14 |
| Tax exempt | 7150 | 2069 | Nursery stock | 119-135 | 45 |
| Teachers' certificates | 2888-9 | 785 | | | |
| Teachers' Colleges | 2644 | 701 | | | |
| Technological College | 2629 | 697 | | | |

| | Article. | Page. |
|--|------------|------------|
| COMMISSIONER OF AGRICULTURE—Cont'd. | | |
| Pink bollworm | 68-82 | 20 |
| Plant breeding | 56-67 | 17 |
| Salary | 6813 | 1952 |
| Vegetable containers | 118 | 45 |
| Shall perform duties of Markets and Warehouses (Acts 39th Legislature) | | 35 |
| COMMISSIONER OF INSURANCE— | | |
| Annual statement | 4697 | 1291 |
| Appointment | 4679 | 1284 |
| Building and loan associations | 852-881 | 260 |
| Casualty companies, general | 4989 | 1394 |
| Certificate of authority | 4686-7 | 1288 |
| Clerks | 4680 | 1284 |
| Commission, Insurance | 4876 | 1354 |
| Consolidation of companies | 5041 | 1408 |
| Co-operative savings companies | 4698 | 1291 |
| Dividends, unlawful | 5036 | 1407 |
| Duties | 4682 | 1285 |
| Employers' Insurance Association | 8308 | 2409 |
| Employers' liability companies | 4987 | 1392 |
| Examinations | 5061, 4690 | 1414, 1289 |
| Fees | 3913, 3920 | 1050, 1055 |
| Fire and marine | 4919 | 1369 |
| Foreign assessment companies | 4781 | 1320 |
| Fraternal societies | 4820 | 1331 |
| Gross receipts tax | 4769 | 1315 |
| Hail companies, mutual | 4950 | 1379 |
| Life, health and accident companies | 4716-4764 | 1294 |
| Lloyds | 5013 | 1401 |
| Mutual assessment accident companies | 4784 | 1321 |
| Mutual companies | 4860 | 1350 |
| Mutual life companies | 4800 | 1326 |
| Printers | 4960 | 1382 |
| Reserves, Compute | 4688-9 | 1288 |
| Salary | 6813 | 1952 |
| Storm companies, mutual | 4933 | 1368 |
| Surety | 4969 | 1384 |
| Tax, gross receipts | 7064 | 2034 |
| Texas securities | 4765 | 1313 |
| Theft | 4963 | 1382 |
| Trust | 4982 | 1390 |
| Violations | 5062 | 1415 |
| Witnesses | 4684 | 1287 |
| Workmen's Compensation Law | 8308 | 2409 |
| COMMISSIONER OF LABOR STATISTICS— | | |
| Appointment | 5144 | 1444 |

| | Article. | Page. |
|--|------------|-----------|
| COMMISSIONER OF LABOR STATISTICS—Continued. | | |
| Assistants | 6814 | 1953 |
| Duties | 5145 | 1444 |
| Employment agents | 5210 | 1461 |
| Females, protection of | 5173 | 1451 |
| Gins | 5679 | 1597 |
| Inspections | 5148 | 1445 |
| Mine sanitation | 5920 | 1674 |
| Records | 5147 | 1445 |
| Reports | 5146 | 1445 |
| Salary | 6814 | 1953 |
| Violations, Report | 5149 | 1545 |
| Wages, payment of | 5159 | 1447 |
| COMMISSIONER OF LAND OFFICE— | | |
| Duties | 5251 | 1473 |
| Election | 5249 | 1473 |
| Fees | 3918 | 1053 |
| COMMISSIONER OF MARKETS AND WAREHOUSES— | | |
| Agricultural pools | 2494 | 655 |
| Appointment | 5563 | 1566 |
| Duties, general | 5565-67 | 1566 |
| Examiners, Appoint | 5596 | 1577 |
| Ginners | 5673 | 1596 |
| Marketing associations | 5741 | 1616 |
| Public weighers | 5695 | 1602 |
| Salary | 6813 | 1952 |
| Warehouse corporations | 5578 | 1570 |
| Weights and measures | 5705 | 1605 |
| COMMISSIONERS COURTS— | | |
| Accounts, Examine | 1637 | 475 |
| Agricultural stations | 150 | 51 |
| Appoint deputies | 3902 | 1046 |
| Appoint justice | 2374 | 632 |
| Bidder's affidavit | 2367 | 630 |
| Bidder's bond | 2363 | 630 |
| Bids | 2359 | 629 |
| Bond and oath | 2340 | 624 |
| Bond issues authorized | 718 | 231 |
| Bonds, official | 6002 | 1715 |
| Bridges | 6794, 2356 | 1947, 629 |
| Canning demonstration | 164 | 53 |
| Cemetery, control of | 931 | 282 |
| City bridges | 2356-7 | 629 |
| Claims, approval of | 1573 | 461 |
| Clerk | 2345 | 625 |
| Collector's bond | 7249 | 2104 |
| Collector's report | 7262 | 2109 |
| Condemn roadway | 1150 | 343 |
| Condemned stock, claims | 6902 | 1975 |
| Constable's bond | 6881 | 1969 |
| Constable's deputies | 6879 | 1969 |
| Consumptives, indigent | 4440 | 1183 |
| Contracts | 2365-69 | 630 |
| Cotton classing in school | 2916 | 798 |
| Counties, creation | 1554, 7242 | 458, 2101 |
| Counties, new | 7242, 1563 | 2092, 460 |
| Counties, organization | 1563, 7242 | 460, 2101 |
| County auditor | 1646 | 478 |

| | | Article. | Page. | | | Article. | Page. |
|------------------------------|------------|----------|-----------------------------|------------------------------|-----------|----------|-------|
| COMMISSIONERS COURTS— | | | | COMMISSIONERS COURTS— | | | |
| Continued. | | | | Continued. | | | |
| County court, terms | 1961 | 537 | Navigation districts | 8198 | 2351 | | |
| County library | 1677 | 486 | Notice posted | 2347 | 625 | | |
| Courthouse, control | 6872 | 1967 | Order of commissioners | | | | |
| Court, The | 2342 | 624 | court | 798 | 246 | | |
| Depository | 2544 | 669 | Parks tax | 6078 | 1735 | | |
| Depository, special | 2567 | 677 | Paying salaries | 6827 | 1956 | | |
| Destruction of animals | | | Courts shall hold at seat | 1602 | 468 | | |
| 190-192 | 61 | | Poll tax books | 2970 | 821 | | |
| Detention homes | 5138 | 1440 | Powers, certain specified | 2351 | 627 | | |
| District bonds | 768 | 239 | Audit by accountant | 1641 | 476 | | |
| Drainage company reports | | | Process | 2346 | 625 | | |
| 1525 | 447 | | Public weighers | 5683-5702 | 1598 | | |
| Drainage districts: | | | Quarantine, county | 4460 | 1194 | | |
| Bonds | 8127 | 2335 | Quorum | 2343 | 624 | | |
| Dissolution | 8177 | 2346 | Railroad relocations | 6349 | 1804 | | |
| Election | 8111 | 2331 | Records, old | 6574 | 1877 | | |
| Engineer | 8104 | 2330 | Rest-room | 2371 | 631 | | |
| Establishment | 8097 | 2328 | Roads: | | | | |
| Officers | 8118 | 2333 | Advice | 6667 | 1899 | | |
| Taxes | 8136 | 2337 | And bridge fund | 6736 | 1929 | | |
| Powers | 6771 | 1938 | Bond issue | 754 | 236 | | |
| Duties, general | 2351 | 627 | Closing | 6716 | 1923 | | |
| Election | 2339 | 624 | Commissioners | 6737 | 1930 | | |
| Election duties | 2924 | 807 | Contracts | 750-751 | 236 | | |
| Election of county super- | | | Eminent domain | 1150 | 343 | | |
| intendent | 2688 | 714 | Establishment | 6703 | 1919 | | |
| Election officers | | | Funds | 6691 | 1905 | | |
| 2937, 2945 | 810, 813 | | Law, optional | 6762 | 1936 | | |
| Election precincts | 2933 | 809 | Maintenance | 6717 | 1924 | | |
| Election returns, count- | | | Material | 6729 | 1927 | | |
| ing | 3030 | 837 | Superintendents | 6743 | 1931 | | |
| Equalization board | 7206 | 2090 | Tax | 2352, 6790 | 603, 1945 | | |
| Ex-officio fees, allowing | 3895 | 1044 | Salaries | 2350, 2350c | 625, 626 | | |
| Ferries | 6798 | 1948 | Sale of real estate | 1577 | 462 | | |
| Funds, Class | 1629-30 | 474 | School boundaries, change | | | | |
| Health officer, Appoint- | | | of | 2766 | 739 | | |
| 4423, 4435 | 1177, 1181 | | School districts, establish | 2741 | 729 | | |
| Hide inspectors | 6973 | 1997 | School districts, line | 2744 | 730 | | |
| Hog law election | 6947 | 1988 | School funds, depository | 2828 | 761 | | |
| Horse law election | 6954 | 1990 | School lands | 2824-2826 | 760 | | |
| Hospitals, aid to | 4437-38 | 1182 | Schools, Taxing power | 2784 | 743 | | |
| Hospitals, establishing | 4478 | 1216 | Seal | 2344 | 624 | | |
| Interpreters | 2372 | 631 | Seawalls | 6830 | 1957 | | |
| Irrigation bonds, county | 803 | 247 | Sheriff's bond | 6866 | 1966 | | |
| Irrigation districts | 7589-7617 | 2196 | Sinking fund investments | 836 | 254 | | |
| Water rights transferred | 7767 | 2246 | Stock law election | 6930 | 1983 | | |
| Jails | 5115 | 1435 | Supplies | 2358 | 629 | | |
| Judgment, sale | 1621 | 472 | Tax board | 7292 | 2117 | | |
| Judgment, settlement | 1575 | 462 | Tax levy, time of | 2354 | 628 | | |
| Jury quarters | 2102 | 573 | Tax limit | 2353 | 628 | | |
| Law library | 1697 | 491 | Tax rate, Calculate | 7045-6 | 2020 | | |
| Levee districts: | | | Tax, Road | 2352, 6790 | 628, 1945 | | |
| Organized districts (re- | | | Tax rolls, supplemental | 7356 | 2140 | | |
| pealed) | 8040 | 2327 | Tax suits | 7297 | 2118 | | |
| Bonds | 8008 | 2312 | Tax supplies | | | | |
| Establishment | | | 7195-97, 7259 | 2085, 2106 | | | |
| 7972, 8032 | 2297, 2324 | | Taxes, back | 7302 | 2119 | | |
| Bonds | 8011 | 2313 | Taxes, delinquent | 7321 | 2124 | | |
| Livestock diseases | 7012 | 2008 | Taxes, occupation | 7054 | 2030 | | |
| Loan of archives | 260 | 131 | Taxes re-assessed | 7346 | 2137 | | |
| Military appropriations | 5885 | 1666 | Taxing power | 7048, 2352 | 2027, 628 | | |
| Minutes | 2349 | 625 | Telephone connections | 1430 | 425 | | |
| Moneys paid over | 7295 | 2118 | | | | | |

| Article. | Page. | Article. | Page. |
|--------------------------------|-------------------------|--------------------------------|-----------------------|
| COMMISSIONERS COURTS— | | COMPTRROLLER—Continued. | |
| Continued. | | Deficiencies | 4351 1158 |
| Terms | 2348 625 | Defined | 23 6 |
| Traffic officers | 6699 1907 | Deposit receipts | 4354 1160 |
| Treasurer's accounts | 1636 475 | Deposit warrants | 4353 1159 |
| Vacancies, Fill | 2355 628 | Duties, general | 4344 1156 |
| Vacancy | 2341 624 | Election | 4342 1156 |
| Veneraeal clinics | 4445 1186 | Escheat account | 3285 919 |
| Veterinarian | 7029 2016 | Examine Treasurer's bond | |
| Viaduct bonds | 785 244 | | 4369 1166 |
| Vital Statistics registrar | | Fees t | 3913, 3919 1050, 1055 |
| | 4477(39) 1198 | Land Office accounts | 5319 1489 |
| Water Commissioner | 7484 2174 | Ledgers | 4364 1163 |
| Water control districts | | Liquor permits | 5083-96 1421 |
| | 7808, 7870 2264, 2277 | Member Board of Educa- | |
| Water improvement dis- | | tion | 2664 707 |
| tricts | 7589, 7617 2196, 2201 | Military warrants | 5769 1626 |
| Water supply districts | 7882 2280 | North Texas Teachers Col- | |
| Widow's pension | 6228 1774 | lege | 2652 714 |
| COMMISSIONERS OF DEEDS— | | Official bonds | 5999 1715 |
| Appointment | 1270 382 | Patent abstracts | 5254 1474 |
| Authority | 1273 382 | Pay warrants | 4358-9 1161 |
| COMMISSIONS, OFFICIAL— | | Penitentiary audit | 6177 1757 |
| Fee | 3914 1051 | Pension warrants | 4360 1162 |
| Governor, by | 3035, 3040 838, 839 | Pensions, Confederate | |
| Military | 5800 1636 | | 6204-6227 1768 |
| Must take out | 3882, 4341 1039, 1156 | Prairie View Normal | 2643 701 |
| Secretary of State, by | 4331(5) 1153 | Prison Commission report | |
| COMMON LAW— | | | 6170 1754 |
| Adopted | 1 3 | Railroad reports | 6282 1790 |
| Carriers governed by | 882 271 | Return municipal funds | 4379 1168 |
| Evidence | 3713 1000 | Salary | 6813 1952 |
| Executors governed by | 3312 925 | Sam Houston Normal | 2650 704 |
| Liens | 5506 1553 | School fund | 2834-2836 763 |
| Marriages Validated | 4608-9 1264 | School fund bonds | 1553 458 |
| COMMUNITY PROPERTY— | | Special depository | 2568 678 |
| Administration | 3661-83 990 | Statement | 4348 1158 |
| Defined | 4619 1266 | Taxes: | |
| Divorce | 4638 1270 | Back taxes | 7299 2119 |
| Homestead, sale of | 4618 1266 | Collector's report | 7260 2106 |
| Homestead, setting apart | 3498 959 | Delinquent | 7263-71 2109 |
| Inheritance of | 2578-79 681 | Gas | 6060 1731 |
| Liabie for debts | 4620-21 1266 | Gross receipts | 7058 2031 |
| Liabie for necessaries | 4623 1267 | Inheritance | 7117-44 2060 |
| Partition | 3627 984 | Instruct assessor | 7210 2092 |
| COMPRESSES— | | Intangible tax board | 7098 2051 |
| Incorporation | 1302(16) 392 | Investigations | 7057 2030 |
| Regulation | 5677-78 1597 | Non-residents | |
| COMPTRROLLER— | | | 7265, 7293 2110, 2118 |
| Accounts | 4345, 4347 1158 | Occupation | 7047 2021 |
| Accounts by funds | 4363 1163 | Oil | 6032 1723 |
| Archives of | 257 131 | Payment into Treasury | 7294 2118 |
| Asylum funds | 3182 884 | Pension | 6204 1768 |
| Bond | 4343 1156 | Redemption | 7289 2117 |
| Bond clerk | 4362 1163 | Tax board | 7041 2019 |
| Bond registration | | Unorganized counties | 7229 2099 |
| | 711-714, 4361 230, 1162 | Unrendered rolls | 7353 2140 |
| Claims, general | 4355-7 1160 | Warrants, canceled | 4366 1165 |
| Claims, special | 4349 1158 | Warrants, duplicate | 4365 1164 |
| Clerk, chief | 4352 1159 | Warrants, Treasury | 4350 1158 |
| Custody of papers | 4346 1158 | COMPULSORY EDUCATION— | |
| | | Requirements | 2892-2898 792 |
| | | CONCERTS— | |
| | | Tax | 7047(30) 2021 |

| | Article. | Page. | | Article. | Page. |
|--------------------------------------|--------------|------------|--------------------------------|--------------|-----------|
| CONCLUSIONS— | | | CONSIDERATION— | | |
| Fact and law | 2208 | 593 | Conveyances without | 3997 | 1084 |
| Time to file | 2247 | 602 | Negotiable instruments | 5993 | 1682 |
| CONDEMNATION— | | | CONSPIRACY— | | |
| Bees, infected | 553, 562 | 201, 203 | Anti-trust law | 7426 | 2154 |
| Eminent domain | 3264 | 912 | Open Port Law | 907 | 277 |
| Fertilizers, commercial | 103 | 34 | CONSTABLES— | | |
| Fire hazards | 1067-1070 | 317 | Bond and oath | 6881 | 1969 |
| Food and drugs | 4470 | 1196 | Collections report | | |
| Irrigation works | 7478 | 2173 | | 1617, 3897 | 471, 1044 |
| Road material | 6729 | 1927 | Damage suit against | 1988 | 542 |
| Shrubs, infected | 121 | 46 | De facto constable | 6882 | 1969 |
| Stock with glanders | 6901 | 1975 | Deputies | 6879 | 1969 |
| Weights, false | 5717 | 1607 | Duties, general | 6885 | 1970 |
| CONDUCTORS— | | | Election | 6878 | 1969 |
| Badge | 6368 | 1810 | Election fees | 2995 | 828 |
| Jim Crow Law | 6417 | 1825 | Failure of duty | 6887 | 1970 |
| Jury service exemption | 2135 | 581 | Failure to pay | 6888 | 1970 |
| CONFECTIONERY— | | | Failure to qualify | 6883-4 | 1969 |
| Adulterated | 4471 | 1197 | Fees | 3936 | 1064 |
| CONFEDERATE HOME— | | | Fees, maximum | 3883 | 1039 |
| General provisions | 3213-3217 | 896 | Impounding stock | 6965 | 1994 |
| Woman's | 3218 | 898 | Jurisdiction | 6889 | 1970 |
| CONFEDERATE SOLDIERS— | | | Levy, bond on | 6403 | 1819 |
| Care of | 3213 | 896 | Liquor seizures | 5112 | 1431 |
| Pension | 6205 | 1768 | Posse comitatus | 6886 | 1970 |
| Wives of | 3217 | 897 | Railroad passes | 4006 | 1087 |
| CONFESSION— | | | Removal | 5970 | 1710 |
| Of judgment | 2225 | 596 | CONSTITUTIONAL | | |
| CONGRESS— | | | AMENDMENTS— | | |
| Acts of, evidence | 3718 | 1001 | Ballots | 2982 | 825 |
| Congressional Districts | 197 | 75 | Contesting | 3071 | 846 |
| Members, death certified | 2926 | 807 | Voting on | 3076 | 848 |
| Members nominated | 3101 | 856 | CONSTRUCTION COMPANIES— | | |
| CONNECTING LINES— | | | Incorporation | 1302 (45-46) | 392 |
| Brakes | 6385 | 1814 | CONSTRUCTION, STATU- | | |
| Contract | 6406 | 1820 | TORY— | | |
| Defined | 905, 6408 | 276, 1821 | General rules | 10-11 | 4 |
| Interchanges | 6407 | 1820 | CONSUMPTIVES— | | |
| Liability | 906 | 277 | Children | 4482 | 1218 |
| Lien | 6412 | 1823 | Indigent | 4440 | 1183 |
| Refusal to interchange | | | CONTAGIOUS DISEASES— | | |
| | 6385, 6413 | 1814, 1823 | Quarantine | 4477 | 1198 |
| Terms | 6409 | 1821 | CONTAINERS— | | |
| CONSERVATION AND RECLAMATION— | | | Commercial fertilizers | 106 | 35 |
| Districts: | | | Fruits and vegetables | 109 | 36 |
| Creation | 8194 | 2350 | Measures, standard | 5733-34 | 1613 |
| Drainage | 8176 | 2345 | Trade marks on | 843 | 257 |
| Indebtedness | 806, 8197 | 248, 2350 | CONTEMPT OF COURT— | | |
| Irrigation | 7770 | 2247 | Civil Appeals | 1826 | 513 |
| Levees | 8030 | 2324 | Commissioners courts | | |
| Powers | 8196 | 2350 | | 2351 (13) | 627 |
| Federal Government | 7584-5 | 2195 | County court | 1955 | 536 |
| Forests | 2613 (10-11) | 691 | District court | 1911 | 528 |
| Oil and gas | 6029 | 1723 | Impeachment trial | 5962 | 1705 |
| Reclamation Engineer | 7960 | 2294 | Injunction, disobedience | 4661 | 1277 |
| Water | 7466 | 2170 | Judgment, enforced | 2217 | 594 |

| | Article. | Page. | | Article. | Page. |
|---------------------------------|------------|------------|------------------------------------|---------------|------------|
| CONTEMPT OF COURT— | | | CONVICTION— | | |
| Continued. | | | Affecting estate | 2571 | 679 |
| Juror, defaulting | 2121 | 578 | Attorney-at-law | 311 | 142 |
| Justice courts | 2386 | 634 | Guardian | 4234 | 1139 |
| Legislature's powers | 5962 | 1705 | Removal of officers on | 5968 | 1709 |
| Posse comitatus | | | CONVICTS— | | |
| | 6876, 6886 | 1968, 1970 | Commutation | 6195 | 1764 |
| Supreme Court | 1736 | 498 | Female | 6185 | 1761 |
| Witness, defaulting | 3707 | 999 | Hiring | 6167 | 1754 |
| CONTESTS— | | | Insane | 3186 | 885 |
| Election | 3041 | 839 | Parole | 6194 | 1764 |
| Wills, limitation | 5534 | 1560 | Working | 6193, 6200 | 1763, 1765 |
| CONTINUANCE— | | | CO-OPERATIVE ORGANIZATIONS— | | |
| Application | 2168 | 585 | Co-operative credit associations | 2508 | 658 |
| Certain districts, In 2092(19) | | 563 | Farmers' co-operative societies | 2514 | 659 |
| Justice court | 2403 | 639 | Marketing associations | 5739 | 1616 |
| CONTRACT— | | | Mutual loan corporations | 2500 | 656 |
| Breach, notice | 5546 | 1562 | Rural credit unions | 2461 | 648 |
| Counties | 2365-69 | 630 | Savings and loan companies | 4698 | 1291 |
| Limitation | 5527 | 1559 | Warehouse corporations | 5578 | 1570 |
| Marriage | 4610 | 1264 | COPIES— | | |
| Specific performance | | | Evidence | 3719-23 | 1001 |
| | 3324, 5531 | 927, 1560 | Public records | 3913 | 1050 |
| Suits on, parties | 1986 | 542 | Registration | 6587 | 1880 |
| Trusts, unlawful | 7437 | 2158 | CORPORATION COURTS— | | |
| Usurious | 6165 | 1753 | Clerk | 1200 | 361 |
| Venue | 1995(5) | 544 | Creation | 1194 | 360 |
| Water rights | 7543 | 2185 | Judge or recorder | 1196 | 361 |
| Weights and measures | 5736 | 1615 | Jurisdiction | 1195 | 361 |
| CONTRACTORS— | | | Salary of judge | 1269 | 381 |
| Bond for wages | 5160 | 1447 | CORPORATIONS— | | |
| Lien | 5452 | 1537 | Agricultural and live stock pools | 2485 | 653 |
| Protect workmen | 5182 | 1455 | Agricultural finance | 1514-19 | 444 |
| CONTRIBUTORY NEGLIGENCE— | | | Alien—property rights | 166 | 55 |
| Railroads | 6388, 6436 | 1815, 1831 | Banks, incorporation of | 376 | 156 |
| Workmens' insurance | 8306 | 2391 | Beneficiary, insurance | 5048 | 1410 |
| CONVENTIONS, POLITICAL— | | | Blacklisting | 5196 | 1458 |
| County and precinct | 3134 | 865 | Blue Sky Law | 579 | 207 |
| District | 3135 | 866 | Bond investment companies | 696 | 228 |
| National | 3167 | 876 | Bonds | 1354, 1321 | 411, 405 |
| State | 3136 | 867 | Bridge | 1474-7 | 434 |
| CONVERSION— | | | Building and Loan Associations | 852 | 260 |
| Limitation | 5526 | 1558 | By-laws | 1320(6), 1326 | 404, 405 |
| CONVEYANCES— | | | Campaign contributions | 1350-2 | 410 |
| Corporate | 1322 | 405 | Capital stock: | | |
| Executor, By | 3586 | 975 | Amount paid in | 1308-12 | 401 |
| Fraudulent | 3996 | 1084 | Blue Sky Law | 579 | 207 |
| General provisions | 1288-1301 | 389 | Execution on | 3795 | 1020 |
| Guardian, By | 4218 | 1135 | Forfeiture | 1339-43 | 407 |
| Homestead | 1300, 4618 | 391, 1266 | Garnisheeing | 4080 | 1108 |
| Loss of | 6582 | 1878 | Increase | 1330-1 | 406 |
| Pending suit | 6642 | 1892 | Payment | 1335-9 | 407 |
| Registration necessary | 6627 | 1888 | Personal estate | 1334 | 407 |
| Separate property | 4614 | 1265 | Reduction | 1332-3 | 406 |
| Tax deeds | 1059, 7281 | 315, 2114 | | | |
| Water rights | 7528 | 2181 | | | |

| Article. Page. | | Article. Page. | |
|-----------------------------|---------------------|-----------------------------|------------------------|
| CORPORATIONS—Cont'd. | | CORPORATIONS—Cont'd. | |
| Sale, misrepresentations | 4004 1086 | Properties | 1409, 1412-13 421, 422 |
| Stockholder's liability | 1344-5 408 | Removal | 1415 422 |
| Tax exemptions | 7163 2075 | Renewal of charter | 1315 403 |
| Tax rendition 7162(37-8) | 2074 | Tax exemptions | 7150 2069 |
| Unpaid | 1338 407 | Trustees | 1411 421 |
| Watering | 1353-5 410 | Trustees, number | 1320(8) 404 |
| Causeway | 1473 433 | Employers' Insurance As- | sociation 8308 2409 |
| Cemetery | 919 280 | Express companies | 3860 1032 |
| Channel and dock | 1478-82 434 | Farmers' co-operative so- | cieties 2514 659 |
| Charter: | | Fees, charter | 3914 1051 |
| Acknowledgments | 1305 401 | Ferry | 1474-7 434 |
| Amendments | 1314 402 | Finances | 1348, 1321 409, 405 |
| Fees | 3914 1051 | Foreign: | |
| Filing | 1313 402 | Banking business | 490 183 |
| Foreign corporations | 1529 449 | Blue sky permit | 548 199 |
| Married women sub- | scribing 1306 401 | Building and loan | 874, 3915 268, 1053 |
| Renewal | 1315 403 | Charter amendments | 1537 450 |
| Requisites | 1304 400 | Insurance | 5068 1417 |
| Citation | 2029 553 | Loan, charter fee | 3915 1053 |
| Claims against | 1391 418 | Permit | 1529 449 |
| Classification | 1319 404 | Permit fees | 3914-15 1051 |
| Commission merchant | 1274 383 | Powers | 1532 449 |
| Contributions | 1349-52 409 | Service on | 2031 553 |
| Conveyances | 1322 405 | Stock | 1530 449 |
| Creation: | | Tax, franchise | 7085 2045 |
| Authorization | 1303 400 | Venue | 1995(27) 544 |
| Capital stock | 1308-12 401 | Withdrawal | 7093 2050 |
| Charter requisites | 1304-6 400 | Gas | 1435-8, 1495 426, 440 |
| Filing charter | 1313 402 | Ice companies | 1528 448 |
| Firm incorporating | 1307 401 | Indebtedness | 1321, 1348 405, 409 |
| Ostensible corporation | 1317 403 | Insolvency | 1379-86 416 |
| Deep water | 1483-94 437 | Instruments under seal | 27 7 |
| Directors and officers: | | Insurance beneficiary | 5048 1410 |
| Failure to elect | 1324 405 | Insurance, incorporation | 4699 1291 |
| Liability | 1347 409 | International trading | 1527 448 |
| Life insurance for | 5048 1410 | Irrigation | 1526 447 |
| Liquidation by | 1388 418 | Joint stock companies | 6133 1745 |
| Married women | 1306 401 | Lands: | |
| Number | 1320(8) 404 | Conveyances | 1322 405 |
| Officers | 1325 405 | Escheat | 1364-5 412 |
| Powers | 1326-35 405 | Land companies | 1362-3 412 |
| Quorum | 1323 405 | Lien on, for fines | 1372 414 |
| Dissolution: | | Powers | 1320(4) 404 |
| Causes | 1387 417 | Purchase, conditions of | 1359 412 |
| Claims, suit on | 1391 418 | Surplus, sale | 1360 412 |
| Extension of existence | 1389 418 | Term of holding | 1360-1 412 |
| Insolvency | 1381 416 | Town lot companies | 1363 412 |
| Mode | 1387-95 417 | Lien for fines | 1372-7 414 |
| Officers, liquidation by | 1388 418 | Light | 1435-8 426 |
| Pending suit | 1390 418 | Liquidation | 1381, 1388 416, 418 |
| Receiver | 1375, 1381 415, 416 | Loan and brokerage | 1520-4 446 |
| Suits against stock- | holders 1392-3 418 | Marketing associations | 5739 1616 |
| Unpaid stock | 1339-43 407 | Misnomer | 1357 411 |
| Dividends | 1347, 1329 409, 406 | Morris Plan banks | 543 198 |
| Drainage | 1525 447 | Municipal-incorporation | 966 288 |
| Educational: | | Mutual loan | 2500 656 |
| Consolidation | 1316 403 | Non-par | 1538a-1538m 451 |
| Faculty | 1410 421 | Notes, May execute | 1321 405 |
| Liability of trustees | 1414 422 | Office, principal | 1358 411 |

| | Article. | Page. |
|------------------------------|------------------|---------------|
| CORPORATIONS—Cont'd. | | |
| Oil: | | |
| Eminent domain | 1497 | 440 |
| Foreign business | 1502 | 442 |
| Gasoline tax | 7065 | 2035 |
| Gross receipts tax | 6060 | 1731 |
| Powers | 1499, 1506 | 441 |
| Private pipe line | 1503 | 442 |
| Production tax | | |
| | 6032, 7071 | 1723, 2040 |
| Regulation | 6004-66 | 1716 |
| Salt water disposal | 1512 | 444 |
| Pipe line | 1500 | 441 |
| Political contributions | 1350-2 | 410 |
| Power | 1435-8 | 426 |
| Powers | 1320-2 | 404 |
| Principal office | 1358 | 411 |
| Public utility: | | |
| City regulation | 1119 | 335 |
| Gas | 1435-8 | 426 |
| Injuries, liability | 4671 | 1281 |
| Interest on deposits | 1440 | 423 |
| Judicial regulation | 1125 | 337 |
| Light | 1435-8 | 426 |
| Power | 1435-8 | 426 |
| Reports | 1441-6 | 428 |
| Sale of properties | 1268 | 380 |
| Sewerage | 1439 | 427 |
| Tax, occupation 7047 (17-21) | | 2021 |
| Telephone and telegraph | 1417-32 | 422 |
| Water | 1433-4 | 426 |
| Purposes | 1302 | 392 |
| Railroads, incorporation | 6259 | 1784 |
| Receiver: | | |
| Appointment | | |
| | 1375, 1381, 2293 | 415, 416, 611 |
| General provisions | | |
| | 2293-2330 | 611 |
| Term | 2317, 1389 | 616, 418 |
| Records: | | |
| Duty to keep | 1328 | 405 |
| Examination | 1366-70 | 413 |
| Religious and charitable: | | |
| Affiliation | 1408 | 421 |
| Consolidation | 1316 | 403 |
| Directors, number 1320 (8) | | 404 |
| Lodges | 1399-1407 | 420 |
| Powers | 1396 | 419 |
| Property rights | 1409 | 421 |
| Renewal of charter | 1315 | 403 |
| Secular affairs | 1397 | 419 |
| Spiritual affairs | 1398 | 419 |
| Tax exemption | 7150 | 2069 |
| Road | 1447-8 | 429 |
| Sand and clay | 1495 | 440 |
| Service on | 2029 | 553 |
| Sewerage | 1439 | 427 |
| Stockholders: | | |
| By-laws, Change | 1326 | 405 |
| Decrease of capital | 1332-3 | 406 |
| Directors, elect | 1320 (8) | 404 |
| Dissolution by | | |
| | 1383, 1387 | 416, 417 |

| | Article. | Page. |
|-----------------------------|------------------|---------------|
| CORPORATIONS—Cont'd. | | |
| Dividends, authoriza- | | |
| | tion | 1329 406 |
| Increase of capital | 1330 | 406 |
| Inspect records, May | 1328 | 405 |
| Liability, defined | 1344-5 | 408 |
| Liability, extent | 1393-5 | 419 |
| Life insurance benef- | | |
| | ciary | 5048 1410 |
| Lists of | 1346 | 409 |
| Married women | 1306 | 401 |
| Stock forfeited | 1336 | 407 |
| Suits against | 1392 | 418 |
| Unpaid capital | 1338-43 | 407 |
| Sulphur | 1495 | 440 |
| Surety and trust powers | 4982 | 1390 |
| Tax, franchise | 7084 | 2045 |
| Tax rendition | | |
| | 7152 (7-8), 7170 | 2072, 2079 |
| Telephone and telegraph | | |
| | 1417-32 | 422 |
| Toll road | 1448-65 | 430 |
| Trust companies | 1513 | 444 |
| Trusts, unlawful | 7426 | 2154 |
| Union depots | 6551 | 1871 |
| Venue | 1995 (21-23) | 544 |
| Warehouses, incorpora- | | |
| | tion | 5578 1570 |
| Waste water | 1508-12 | 1554 |
| Water | 1433-4 | 426 |
| CORRECTION— | | |
| Acknowledgments | 6655 | 1895 |
| Field notes | 5305 | 1484 |
| Judgments | 2228-2231 | 596 |
| COSTS— | | |
| Administrators | 3695, 2072 | 996, 560 |
| Advance payment | 2151 | 583 |
| Arrest of judgment | 2064 | 559 |
| Appeal, On | 2065 | 559 |
| Assault and battery | 2062 | 558 |
| Bond for | | |
| | 2069, 2074, 2265 | 559, 560, 605 |
| Certiorari | 2065 | 559 |
| Collection | 2054, 2077 | 558, 560 |
| County, suits against | 1581 | 463 |
| Court may adjudge | 2066 | 599 |
| Demand for payment | 2053 | 577 |
| Deposit for | 2071 | 560 |
| Divorce | 4641 | 1271 |
| Election contest | 3057 | 842 |
| Exceptions | 2059 | 558 |
| Execution for | 2055, 2077 | 558, 560 |
| Executors | 3695, 2072 | 996, 560 |
| Exemptions | 2072 | 560 |
| Garnishment | 4100 | 1112 |
| Guardianship | | |
| | 4314-15, 2072 | 1150, 560 |
| Interpreter's fees | 2076 | 560 |
| Judgment on bond | 2069 | 559 |
| Justice courts | 2432 | 642 |
| Motions | 2058 | 558 |
| New trials | 2063 | 559 |
| Parties responsible | 2051-2 | 557 |

| Article. Page. | | Article. Page. | |
|-----------------------------------|-----------------|-----------------------|--|
| COSTS—Continued. | | | |
| Partition | 6109 | 1741 | |
| Pauper's oath | 2070 | 559 | |
| Recovery by defendant | 2061 | 558 | |
| Recovery by winner | 2056 | 558 | |
| Rule for | 2068 | 559 | |
| Security for | 2067, 2072 | 559, 560 | |
| Several suits | 2060 | 558 | |
| Stenographer's fees | 2075 | 560 | |
| Taxing | 2075-6 | 560 | |
| Witness fees | 2057 | 558 | |
| COTTON— | | | |
| Baling | 5677 | 1597 | |
| Board, Cotton | 5674 | 1596 | |
| Broker's tax | 7047 (12) | 2021 | |
| Certificate of ginner | 5672 | 1596 | |
| Classing, teaching | 2915 | 798 | |
| Ginner's license | 5667 | 1594 | |
| Marking | 5675 | 1596 | |
| Salvage | 8319 | 2417 | |
| Seed breeders | 58-67 | 17 | |
| Shipment of | 5678 | 1597 | |
| Warehouse receipts | 5570-71 | 1568 | |
| Weighing | 5703 | 1604 | |
| Wrapping | 5677 | 1597 | |
| COUNTER CLAIM— | | | |
| Judgment | 2215-16 | 594 | |
| No discontinuance | 2016 | 551 | |
| Plea of defendant | 2015 | 551 | |
| Pleading of plaintiff | 2004 | 549 | |
| COUNTIES— | | | |
| Agent for, contracting | 1580 | 463 | |
| Apportionment Index | | 64 | |
| Bonds: | | | |
| Courthouse, jail, etc. | 718-25 | 231 | |
| Irrigation and reclama- tion | | 803 247 | |
| Issuance, general rules | | 701-717 229 | |
| Schools | | 2784 743 | |
| Storms, in case of | | 796 245 | |
| Boundaries | | 1606 468 | |
| Bridge, joint | | 6796 1947 | |
| Bridges | | 6794 1947 | |
| Claims against | 1573, 1660 | 461, 481 | |
| Commissioners court | | 2342 624 | |
| County clerk | | 1935 533 | |
| County seats | | 1593 465 | |
| Creation | | 1539 456 | |
| Depositories | | 2544 669 | |
| Hospitals | | 4478 1216 | |
| Lines | | 1582 463 | |
| Organization | 1563, 7242 | 460, 2101 | |
| Parks | | 6078-9 1735 | |
| Rights and powers | 1572-1581 | 461 | |
| Roads | | 6703 1919 | |
| Roads | | 726-84 233 | |
| Sale of real estate | | 1577 462 | |
| Schools: | | | |
| Common school dis- tricts | | 2741 729 | |
| Superintendent | | 2688 714 | |
| Taxes and bonds | | 2784 743 | |
| COUNTIES—Continued. | | | |
| Trustees | 2676 | 710 | |
| Unit system | 2702 | 719 | |
| Seawalls | 6830 | 1957 | |
| Stock brands | 6891 | 1971 | |
| Suits against: | | | |
| Citation | 2027 | 553 | |
| Corporation name | 1980 | 541 | |
| Costs | 1581 | 463 | |
| Venue | 1995 (19) | 544 | |
| Taxation: | | | |
| Exemptions | 7150 | 2069 | |
| Parks | 6078 | 1735 | |
| Poll tax | 7046 | 2042 | |
| Powers | 2352, 7048 | 628, 2027 | |
| Rate calculation | 7045 | 2020 | |
| Road, special | 6790 | 1945 | |
| Schools | 2784 | 743 | |
| Seawalls | 6830 | 1957 | |
| Unorganized county | | 7203, 7228 2089, 2099 | |
| Vehicle registration | 6676 | 1901 | |
| COUNTY ASSESSOR— | | | |
| Duties and assessments | 7177 | 2081 | |
| COUNTY ATTORNEY— | | | |
| Advice from Attorney Gen- eral | | | |
| Advise officers | 4399 | 1171 | |
| Anti-trust suits | 334 | 148 | |
| Assistants | 7436 | 2158 | |
| Bond | 331, 3902 | 147, 1046 | |
| Collections, report | | 330 147 | |
| Election | 337, 1617, 3897 | 148, 471, 1044 | |
| Epileptic's expenses | 329-331 | 147 | |
| Escheat corporation lands | 3206 | 894 | |
| Escheat proceedings | 1364 | 412 | |
| Fees | 3273 | 917 | |
| Fees, maximum | 3887 | 1042 | |
| Fire escape law | 3883 | 1039 | |
| Food condemnation | 3972 | 1079 | |
| General duties | 4470 | 1196 | |
| Inheritance tax suits | 332-341 | 148 | |
| Liquor law enforcement | 7134-41 | 2065 | |
| Lunacy proceedings | 5108 | 1430 | |
| Medicine, unlawful prac- tice | 5550 | 1563 | |
| Military violations | 4509 | 1231 | |
| Monthly report | 5887 | 1666 | |
| Nuisance enjoined | 1620 | 472 | |
| Office | 4666-69 | 1279 | |
| Oil and gas violations | 1605 | 468 | |
| Public land depreddations | 6011 | 1718 | |
| Quo Warranto | 5421 | 1527 | |
| Railroad crossings | 6253 | 1782 | |
| Railroad headlights | 6327 | 1799 | |
| Railroad shelter | 6372 | 1811 | |
| Railway brake inspection | 6389 | 1815 | |
| Railway depots | 6379 | 1812 | |
| Railway water closets | 6395 | 1817 | |
| Report | 6398 | 1818 | |
| Road damage suits | 333 | 148 | |
| Tax suits | 6716 | 1923 | |
| | 7297-8, 7326 | 2118, 2127 | |

INDEX TO CIVIL STATUTES.

2447

| | Article. | Page. |
|--------------------------------|--------------------|-----------------|
| COUNTY ATTORNEY—Cont'd. | | |
| Tuberculars' expenses | 3241 | 903 |
| Vehicle wheels, unlawful | 6701 | 1909 |
| Water suits | 7573 | 2192 |
| COUNTY AUDITOR— | | |
| Accounts | 1663-4 | 482 |
| Appointment | 1645-8 | 478 |
| Assistants | 1650, 1673 | 479, 484 |
| Bids for supplies | 1658-9 | 481 |
| Bond for oath | 1649 | 479 |
| Budget | 1666 | 483 |
| Cash | 1655 | 480 |
| Claims, approve | 1660-1 | 481 |
| Deposits | 1657 | 481 |
| Duties, general | 1651 | 480 |
| Examine accounts | 1653 | 480 |
| Examine reports | 1654 | 480 |
| Forms, prescribe | 1656 | 480 |
| Improvement district duties | 1667-73 | 483 |
| Qualifications | 1648 | 479 |
| Removal | 1676 | 485 |
| Reports of | 1665 | 482 |
| Salary | 1645 | 478 |
| School ledger | 1652 | 480 |
| Supplies, bids for | 1658-9 | 481 |
| Warrant register | 1662 | 482 |
| COUNTY CLERK— | | |
| Assumed name record | 5926 | 1676 |
| Bonds, official | 6000 | 1715 |
| Brands, records | 6890 | 1971 |
| Chattel mortgage | 5492-99 | 1549 |
| Cigarette dealers' license | 7047 (39) | 2021 |
| Citation, issuing | 2021 | 552 |
| Clerk of commissioners court | 2345 | 625 |
| Collections report | 1617, 3897 | 471, 1044 |
| Cost bond | 2067 | 559 |
| Costs, execution for | 2077 | 560 |
| Costs, taxing | 2075-6, 3770, 5072 | 560, 1015, 1418 |
| Cotton salvage | 8323 | 2418 |
| Deputy | 1938 | 534 |
| Election | 1935 | 533 |
| Election returns | 3026-28 | 835 |
| Election supplies | 2992 | 827 |
| Estrays | 6911 | 1978 |
| Execution docket | 3831 | 1025 |
| Fees | 3929-32 | 1059 |
| Fees, maximum | 3883 | 1039 |
| Filing petition | 1972 | 540 |
| Finance ledger | 1607, 1644 | 469, 477 |
| Fines and fees | 1946-7 | 535 |
| Garnishment | 4076 | 1107 |
| Guardianship | 4114 | 1115 |
| Inheritance tax report | 7126 | 2063 |
| Injunction, writ | 4652 | 1276 |
| Irrigation districts | 7601, 7633 | 2198, 2206 |
| Joint clerk | 1903 | 527 |

| | Article. | Page. |
|------------------------------|------------|-----------|
| COUNTY CLERK—Cont'd. | | |
| Judgment index | 1944 | 535 |
| Judgment record | 5448 | 1536 |
| Jurors, summoning | 2117 | 577 |
| Jury fee | 2124 | 579 |
| Jury wheel list | 2094 | 570 |
| Landlord's lien records | 5238 | 1469 |
| Log brand record | 7361 | 2142 |
| Lost records | 6585 | 1879 |
| Marriage licenses | 4604-06 | 1263 |
| Militia enrollment | 5772 | 1627 |
| Mineral land application | 5383 | 1516 |
| Motion docket | 2291 | 610 |
| Neglect of duty | 2287 | 609 |
| Notaries public | 5951-2 | 1702 |
| Oath and bond | 1937 | 534 |
| Office | 1605 | 468 |
| Oil land applications | 5339 | 1499 |
| Optometry register | 4562 | 1247 |
| Patents, Recording | 5413 | 1524 |
| Pawnbroker's bond | 6147 | 1750 |
| Probate notices | 3306 | 924 |
| Probate records | 3295-3301 | 922 |
| Process, requisites | 2286 | 609 |
| Publish primary results | 3129 | 865 |
| Record of proceedings | 1942-3 | 535 |
| Recorders | 1941, 6591 | 534, 1881 |
| Records, transcribing | 6577 | 1877 |
| Registration duties | 6591 | 1881 |
| School trustees commissions | 2677 | 711 |
| Seal | 1948 | 535 |
| Sequestration | 6840 | 1960 |
| Soldiers' records | 1939 | 534 |
| Stevedores' license | 5192-4 | 1457 |
| Subpoena witnesses | 3704 | 999 |
| Surveyor's records | 5297 | 1482 |
| Tax collector's report | 7261 | 2108 |
| Tax deed, recording | 7328 | 2128 |
| Tax list, delinquent | 7322 | 2125 |
| Tax receipts record | 7258 | 2106 |
| Vital statistics | 4477 (36) | 1198 |
| Warehouseman's bond | 5569 | 1567 |
| Water litigation | 7482 | 2174 |
| Water permit | 7519 | 2180 |
| Wills, custody of | 8299 | 2388 |
| Writ of error | 2259 | 604 |
| COUNTY COLLECTOR | | |
| Election and duties | 7245-98 | 2103 |
| COUNTY COMMISSIONERS— | | |
| Election | 2339 | 624 |
| Estrays | 6915 | 1979 |
| Holding election | 2924 | 807 |
| Powers | 2351 | 627 |
| Road supervisors | 6713 | 1923 |
| Salaries | 2350 | 625 |
| COUNTY COURTS— | | |
| Adjournment | 1964 | 538 |
| Appeal from | 2249 | 602 |
| Appeal, judgment on | 221 | 122 |
| At law | 1970 | 539 |
| Certiorari | 932 | 283 |
| Clerk | 1935 | 533 |

| | Article. | Page. | | Article. | Page. |
|-------------------------------|------------|------------|--------------------------------|------------|------------|
| COUNTY COURTS—Cont'd. | | | COUNTY FINANCES—Cont'd. | | |
| Contempt | 1955 | 536 | Report, treasurer's | 1631 | 474 |
| Judge | 1927 | 532 | Suit on | 1573 | 461 |
| Judgments, loss of | 6585 | 1879 | Collection reports | 1617 | 471 |
| Jurisdiction: | | | Depositories | 2544 | 669 |
| Appellate | 1952 | 536 | Finance ledger | 1607 | 469 |
| Certiorari | 1953 | 536 | Funds' classified | 1623 | 479 |
| Changed | 1960 | 537 | Interest on deposits | 2546 | 669 |
| Concurrent | 1950 | 536 | Judgment sold | 1621 | 472 |
| Eminent domain | 1960 | 537 | Jury scrip | 2122 | 578 |
| Feeble minded persons | 3867 | 1034 | Statement published | 1609 | 469 |
| Guardianship | 4102 | 1113 | Supplies | 1658-9 | 481 |
| Injunctions | 4642 | 1273 | Taxation: | | |
| Juvenile | 2329 | 620 | Exemptions | 7150 | 2069 |
| No jurisdiction | 1951 | 536 | Parks | 6078 | 1735 |
| Original | 1949 | 536 | Poll tax | 7046 | 2021 |
| Probate | 3290 | 921 | Powers | 2352, 7048 | 628, 2027 |
| Jury: | | | Rate, calculation | 7045 | 2020 |
| Challenges | 2143 | 582 | Road, special | 6790 | 1945 |
| Commissioners | 2104 | 573 | Seawalls | 6830 | 1957 |
| Fee | 2124 | 579 | Unorganized counties..... | | |
| List | 2114 | 576 | ..... | 7203, 7228 | 2089, 2099 |
| Number | 2191 | 590 | Treasurer, county | 1703 | 492 |
| Pay | 2122 | 578 | Warrants: | | |
| Talesmen | 2141 | 582 | Attested | 1643 | 477 |
| Juvenile courts | 2329 | 620 | Countersigned | 1661 | 482 |
| Minutes | 1965 | 538 | Payment | 2554 | 673 |
| Place of holding | 1602 | 468 | Register | 1662 | 482 |
| Practice in | 1971-2328 | 540 | COUNTY HEALTH OFFI- | | |
| Probate business | 1963 | 537 | CERS— | | |
| Reporter, official | 2327 | 618 | Appointment | 4423 | 1177 |
| Seal | 1966 | 538 | Charges against | 4429 | 1179 |
| Special judge | 1930 | 532 | Dead, disposal of the..... | 4584 | 1255 |
| Terms | 1961-2 | 537 | Duties | 4427 | 1178 |
| Transfer of cases | 1968 | 538 | Railroad pass | 4006 | 1087 |
| COUNTY DEPOSITORIES— | | | Removal | 4428 | 1179 |
| Bond for school funds..... | 2829 | 761 | Sanitary code | 4477 | 1198 |
| General provisions | 2544-58 | 669 | Venereal diseases | 4445 | 1186 |
| Payments of tax money..... | 7250 | 2104 | COUNTY HOSPITALS— | | |
| COUNTY FINANCES— | | | Additional hospitals | 4490 | 1222 |
| Accounts | 1610-24 | 470 | Admission of patients..... | 4486-7 | 1221 |
| Auditor, county | 1645 | 478 | Authority to establish | | |
| Audits | 1636-41 | 475 | ..... | 4478, 4490 | 1216, 1222 |
| Bonds: | | | Board of managers | 4479-80 | 1217 |
| Bridges, causeways, etc. | 785 | 244 | Bond issue | 4493 | 1223 |
| Courthouse, jail, etc..... | 718 | 231 | Bulletins, health | 4483 | 1219 |
| Election | 701 | 229 | Children's school | 4482 | 1218 |
| Hospitals | 4478, 4493 | 1216, 1223 | Clinics | 4481 | 1218 |
| Irrigation | 803 | 247 | Contract | 4491 | 1222 |
| Issuance | 706-717 | 230 | Inspection | 4488 | 1222 |
| Refunding | 796 | 245 | Joint city and county..... | 4492 | 1223 |
| Roads | 726 | 233 | Joint county | 4494 | 1223 |
| Sale | 2673 | 709 | Poorhouse | 4489 | 1222 |
| School districts | 2784 | 743 | Records | 4484 | 1219 |
| Sinking fund | 836 | 254 | Superintendent | 4485 | 1219 |
| Claims: | | | COUNTY JAILS— | | |
| Approval | 1660 | 481 | Bond issue | 718 | 231 |
| Audit and settlement | | | Establishment | 5117 | 1434 |
| ..... | 2351(10) | 627 | Guards | 6871 | 1967 |
| Cancellation | 1635 | 475 | COUNTY JUDGE— | | |
| Classification | 1626 | 473 | Appoint commissioners | 2341 | 624 |
| Receipt of payee..... | 1632 | 474 | Apprenticeship proceed- | | |
| Registration | 1625-27 | 473 | ings | 206-222 | 119 |
| Report, officers | 1633 | 474 | | | |

| | Article. | Page. |
|--------------------------------|------------|-----------|
| COUNTY JUDGE—Cont'd. | | |
| Approval of bills, etc. | 2248 | 602 |
| Assessor's bond | 7178 | 2082 |
| Assessor's penalty | 7186 | 2083 |
| Bond | 1928 | 532 |
| Bonds, notice | 2673 | 709 |
| Certify officer's death | 2926 | 807 |
| Child labor permit | 5181 | 1454 |
| Collections report | | |
| | 1617, 3897 | 471, 1044 |
| Collector's bond | 7247 | 2103 |
| Commission merchant | | |
| bond | 1284 | 387 |
| County clerk pro tem | 1936 | 533 |
| County seat election | 1593 | 465 |
| Death during term | 2288 | 609 |
| Delinquent tax record | 7338 | 2133 |
| Detachment election | 1556 | 459 |
| Election | 1927 | 532 |
| Election duties: | | |
| Candidate, death of | 2979 | 824 |
| Certificate of legislator | 3038 | 838 |
| Certificates of election | 3032 | 837 |
| General election notice | 2950 | 813 |
| List of officers | 3039 | 839 |
| Ordering election | 2947 | 813 |
| Supplies | 2992 | 827 |
| Eminent domain proceedings | 3264 | 912 |
| Epileptic persons | 3230 | 901 |
| Ex-officio superintendent | | |
| | 2701, 3888 | 719, 1043 |
| Fees | 3925-26 | 1057 |
| Fees, maximum | 3883 | 1039 |
| Glanders, suppress | 6900 | 1974 |
| Guardianship docket | 4110 | 1114 |
| Hide inspector, election | 6972 | 1996 |
| Home Guard | 6144 | 1748 |
| Inheritance | 7117-41 | 2060 |
| Injunctions | 4642 | 1273 |
| Jury, charge to | 2184 | 588 |
| Jury commissioners | 2109 | 575 |
| Juvenile board | 5139 | 1440 |
| Lunacy proceedings | 5547 | 1563 |
| Member commissioners court | 2342 | 624 |
| Moneys paid over | 7295 | 2118 |
| Office | 1605 | 468 |
| Organization of counties | 1564 | 460 |
| Pensions, Confederate | | |
| | 6208-6219 | 1769 |
| Private practice | 319 | 143 |
| Probate appraisal | 3407 | 943 |
| Probate proceedings | 3302 | 923 |
| School election to consolidate | 2806 | 753 |
| School district election | 2757 | 735 |
| School trustees election | 2676 | 710 |
| Sequestration | 6840 | 1960 |
| Special judge | 1930 | 532 |
| Stock law elections | 6928 | 1982 |
| Supplemental tax rolls | 7356 | 2140 |
| Survey county lines | 1582 | 463 |

| | Article. | Page. |
|----------------------------------|------------|----------|
| COUNTY JUDGE—Cont'd. | | |
| Surveyors, May use | 5276 | 1478 |
| Trusts, evidence | 7439 | 2159 |
| Tubercular patients | 3244 | 905 |
| Water supply districts | 7882 | 2280 |
| Wreck-masters | 8313 | 2416 |
| COUNTY LIBRARIES— | | |
| Farmers' | 1681 | 487 |
| Free: | | |
| Authority to establish | 1677 | 486 |
| Board of examiners | 1682 | 487 |
| Branch for negroes | 1688 | 488 |
| City, joinder with | 1690 | 488 |
| Contracts | 1693-4 | 489 |
| Funds | 1689 | 488 |
| Gifts and bequests | 1680 | 486 |
| Joint county | 1695 | 490 |
| Librarian | 1683-6 | 487 |
| Maintenance tax | 1679 | 486 |
| Merger | 1681, 1690 | 486, 488 |
| Supervision | 1687 | 488 |
| Termination | 1696 | 490 |
| Territory | 1678 | 486 |
| Use | 1688 | 488 |
| Law: | | |
| Appropriation | 1698 | 491 |
| Establishment | 1697 | 491 |
| Funds | 1702 | 491 |
| Gifts | 1701 | 491 |
| Librarian | 1700 | 491 |
| Rules | 1699 | 491 |
| COUNTY OFFICERS— | | |
| Accounts with | 1607-24 | 469 |
| Assessor, tax | 7177 | 2081 |
| Attorney, county | 329 | 147 |
| Auditor | 1645 | 478 |
| Bond, failure to give | 5975 | 1710 |
| Bond, new | 6002 | 1715 |
| Bond, recording | 6000 | 1715 |
| Clerk | 1935 | 533 |
| Collection report | 1617 | 471 |
| Collector, tax | 7245 | 2103 |
| Commissioners | 2339 | 624 |
| Constable | 6878 | 1969 |
| Extortion | 3909 | 1049 |
| Fees | 3883-3883a | 1039 |
| Ineligibility | 2927 | 807 |
| Judge | 1927 | 532 |
| Justice of peace | 2373 | 632 |
| Offices of | 1605 | 468 |
| Opinions and advice | 334 | 148 |
| Removed by district judge | | |
| | 5970 | 1710 |
| Removal on appeal | 5969 | 1709 |
| Removal on conviction | 5968 | 1709 |
| School superintendent | 2688 | 714 |
| School trustees | 2676 | 710 |
| Sheriff | 6865 | 1970 |
| Supplies | 1658-9 | 481 |
| Surveyor | 5283 | 1480 |
| Treasurer | 1703 | 492 |
| Vacancies | 2355 | 628 |
| Veterinarian | 7029 | 2016 |

| Article. Page. | | Article. Page. | |
|-------------------------------|-----------------------|------------------------------------|--------------|
| COUNTY SUPERINTENDENT— | | COUNTY TREASURER—Cont'd. | |
| Appointments to C. I. A. | 2628 697 | Tax moneys | 7250 2104 |
| Bond | 2689 715 | Unclaimed proceeds | 5505 1553 |
| Building plans | 2921 800 | Vacancy | 1706-8 492 |
| Duties | 2693 716 | Warrants, payment | 2554 673 |
| Ex-officio | 2701, 3888 719, 1043 | Warrants, requisites of | 1643 477 |
| List of pupils | 2897 794 | COUNTY UNIT SYSTEM— | |
| Office established | 2688 714 | Abolition | 2740 729 |
| Salary | 2700 718 | Board of Education | 2703 720 |
| Scholastic census | 2816 756 | Duties of board | 2709 721 |
| Supervise expenditures | 2830 761 | Election | 2702 719 |
| Teachers' examinations | 2878 780 | Finances | 2721 724 |
| Text book fund | 2868 775 | COURTHOUSE— | |
| COUNTY SURVEYOR— | | Bond issue | 718 231 |
| Bond | 5284 1480 | Commissioners court, du- | |
| Chain carriers | 5286 1480 | ties | 2351(7) 627 |
| Deputy | 5285 1480 | Door defined | 3809 1022 |
| Duties | 5287 1480 | Execution sales at | 3804 1021 |
| Election | 5283 1480 | Rest-rooms | 2371 631 |
| Failure to survey | 5289 1481 | Sheriff to control | 6872 1967 |
| Fees | 3944 1067 | COURT OF CRIMINAL APPEALS— | |
| Lost records | 5294 1481 | Attorney, State prosecut- | |
| Map | 5291 1481 | ing | 1811 510 |
| Mineral land survey | | Attorney's salary | 6813 1952 |
| | 5392, 5383 1519, 1516 | Clerk | 1808 509 |
| Record of surveys | | Deputy clerk | 1809 510 |
| | 3721, 5290 1001, 1481 | Judge disqualified | 1803 509 |
| Records, transcribing | 6576 1877 | Judge, presiding | 1802 509 |
| Standards of measure | | Judges, election | 1801 509 |
| | 5295, 5730 1482, 1612 | Judges practicing law | 319 143 |
| COUNTY TAX OFFICERS— | | Judges' salary | 6819 1954 |
| Assessor | 7177 2081 | Jurisdictional facts | 1806 509 |
| Collector | 7245 2103 | Mandate | 1807 509 |
| Equalization board | 7206 2090 | Reporter and reports | 1810 510 |
| Tax board | 7292 2117 | Reporter's salary | 6819 1954 |
| COUNTY TREASURER— | | Reports, printing | 620-628 215 |
| Accounts | 1634, 1710 475, 493 | Seal | 1805 509 |
| Bond | 1704-5 492 | Term | 1804 509 |
| Claim register | 1625 473 | COURT REPORTERS, OF-FICIAL— | |
| Claims, report of | 1631 474 | Appointment | 2321 617 |
| Collector's report | 1671 484 | Deputy | 2323 617 |
| Delivery to successor | 1712 493 | Duties | 2324 618 |
| Deposit of funds | 2549 671 | Fees | 2325 618 |
| Disbursements | 1713 493 | In county court | 2327 618 |
| Drainage district funds | | Oath | 2322 617 |
| | 8146-8 2339 | Salary | 2326 618 |
| Election | 1703 492 | Transcript | 2238 599 |
| Estray funds | 6924 1981 | COURT REPORTS— | |
| Examine accounts | 1714 493 | Criminal Appeals | 1810 510 |
| Fees | 3941-43 1066 | Distribution | 4332-34 1154 |
| Ferries, unlicensed | 6812 1951 | Printing of | 620-628 215 |
| Levee district funds | 8017 2316 | Reporters' salaries | 6819 1954 |
| Liable for neglect | 2557 674 | Supreme Court | 1724-5 496 |
| Moneys, county | 1709 493 | COURTS— | |
| Navigation district funds | 8220 2356 | Civil Appeals | 1812 511 |
| Office | 1605 468 | Commissioners | 2339 624 |
| Pawnbroker's sale | 6157 1751 | Corporation | 1194 360 |
| Paying salaries | 6827 1956 | County | 1927 532 |
| Report on sinking fund | 838 255 | | |
| Report to Commissioners | 1711 493 | | |
| School funds | 2830 761 | | |
| Stevadore's tax | 5194 1458 | | |
| Tax collections | 7261(3) 2108 | | |

| | | Article. Page. | | | Article. Page. |
|---------------------------------------|------------------|----------------|---|----------|----------------|
| COURTS—Continued. | | | CREAMERY COMPANIES— | | |
| Criminal Appeals | 1801 | 509 | Continued. | | |
| District | 1884 | 524 | Inferior milk | 4474 | 1197 |
| Judicial districts | 199 | 77 | Trade mark | 844 | 257 |
| Justice | 2373 | 632 | CREDIT APPRAISERS— | | |
| Juvenile | 2329 | 620 | Tax | | 7047(16) 2021 |
| Military | 5859 | 1660 | CREDIT ORGANIZATIONS— | | |
| Officers practicing in | 319 | 143 | Agricultural and livestock | | |
| Practice in | 1971 | 540 | pools | 2485 | 653 |
| Supreme | 1715 | 494 | Co-operative credit associ- | | |
| Supreme Judicial Districts 198 | | 76 | ations | 2508 | 658 |
| COURTS OF CIVIL AP- PEALS— | | | Farmers' co-operative so- | | |
| Adjournment | 1818 | 512 | cieties | 2514 | 659 |
| Appearance by brief | 1846 | 517 | Mutual loan corporations | 2500 | 656 |
| Assignments of error | 1844 | 516 | Rural credit unions | 2461 | 648 |
| Certification of questions | | | CREDITORS— | | |
| ..... | 1851-5 | 518 | Assignments for | | 261-274 132 |
| Clerk: | | | Attachment | 275 | 136 |
| Appointment | 1827 | 514 | Claims against estate | 3502 | 960 |
| Bond | 1828 | 514 | Claims against receiver | 2299 | 612 |
| Costs, execution for 1869-72 | | 521 | Conveyance to defraud | 3996 | 1084 |
| Costs, reported | 1834-5 | 514 | Garnishment | 4076 | 1107 |
| Deputies | 1833 | 514 | CREMATORIES— | | |
| Docket | 1845 | 517 | Disposal of bodies | | 4477(40) 1198 |
| Fees | 3924 | 1056 | Incorporation | 1302(87) | 392 |
| Librarian | 1832 | 514 | CRIME— | | |
| Process | 1825 | 513 | Attorney committing | | 311 142 |
| Records | 1831 | 514 | Guardian, By | 4234 | 1139 |
| Removal | 1829 | 514 | Officers committing | 5968 | 1709 |
| Seal | 1830 | 514 | Venue for torts | 1995(9) | 544 |
| Conclusions | 1873-6 | 521 | CRIMINAL DISTRICT AT- TORNEYS— | | |
| Contempt | 1826 | 513 | Removal | | 5985 1712 |
| Execution for costs | 1869-72 | 521 | CRIPPLED CHILDREN— | | |
| Filing transcript 1839, 1843 | | 515, 516 | Hospital for | | 3260 911 |
| Judges: | | | CROPS— | | |
| Election and term | 1813 | 511 | Animals destroying | | 4029 1096 |
| Practicing law | 319 | 143 | Insurance | 4955 | 1380 |
| Qualifications | 1814 | 511 | Johnson grass | 6401 | 1819 |
| Quorum | 1812 | 511 | CRUELTY— | | |
| Salaries | 6819 | 1954 | Animals | | 180-189 59 |
| Special | 1815 | 511 | Children | 2330 | 620 |
| Judgment, The | 1856-72 | 519 | Divorce | 4629 | 1268 |
| Jurisdiction | 1819-26 | 512 | Humane Society | 4597 | 1262 |
| Location | 1817 | 512 | Ward | 4234 | 1139 |
| Mandamus | 1823-4 | 513 | CULBERSON COUNTY— | | |
| Mandate | 1864-7 | 520 | District attorney's salary .. | | 326 147 |
| Proceedings | 1837-50 | 515 | CULVERTS— | | |
| Process | 1825 | 513 | City owned | | 1015(25) 301 |
| Questions certified | 1851-5 | 518 | Drainage districts | 8160-1 | 2342 |
| Rehearing | 1877-80 | 522 | Irrigation districts | 7643-4 | 2210 |
| Remittitur | 1861-3 | 520 | Public roads | 6730 | 1928 |
| Salaries | 6819 | 1954 | Railroad | 6328 | 1799 |
| Seal | 1830 | 514 | Toll roads | 1461 | 431 |
| Stenographers | 1836 | 515 | CURRENCY— | | |
| Supreme Judicial Districts | 198 | 76 | Tax, subject to | | 7175 2081 |
| Terms | 1816 | 511 | | | |
| Trial | 1837 | 515 | | | |
| Unapproved bills | 1838 | 515 | | | |
| Writ of error | | | | | |
| ..... | 1729, 1739, 1881 | 497, 499, 523 | | | |
| CREAMERY COMPANIES— | | | | | |
| Ice company powers | 1528 | 448 | | | |
| Incorporation | 1302(21) | 392 | | | |

| D. | | Article. | Page. | Article. | | Page. |
|------------------------------|------------|------------|-----------------------------|-----------------------------|------------|-------|
| DAIRIES— | | | | DEATH—Continued. | | |
| Ice company powers | 1528 | 448 | Defendant, Of | 2080 | 561 | |
| Incorporation | 1302(21) | 392 | Descent and distribution | 2570 | 679 | |
| Inferior milk | 4474 | 1197 | Injuries resulting in | 4671 | 1284 | |
| Trade marks | 844 | 257 | Judge, Of | 2248, 2288 | 602, 609 | |
| DAMAGES— | | | | Juror, during trial | 2204 | 592 |
| Destruction of buildings | 1070 | 319 | Limitation, Interrupts | 5538 | 1561 | |
| Eminent domain | 3265 | 913 | Officer, certified | 2926 | 807 | |
| Execution, clerk failing | 3831 | 1025 | Pending appeal | 2277 | 607 | |
| Execution, officer failing | 3824 | 1024 | Plaintiff, Of | 2078 | 561 | |
| Executor, against | | | Presumption of | 5541 | 1561 | |
| | 3543, 3626 | 967, 984 | Proof of instruments | 6612 | 1885 | |
| Ferryman, against | 6806 | 1949 | Vital statistics | 4477(35) | 1198 | |
| Forcible entry | 3990 | 1083 | Suit for fatal injuries | 2086 | 562 | |
| Fraud, actionable | 4004 | 1086 | DEBT— | | | |
| Guardian, against | 4266 | 1143 | Exemptions | 3832-59 | 1026 | |
| Injunction, delay | 4660 | 1277 | Limitation | 5526 | 1558 | |
| Injuries, fatal | 4673 | 1282 | DEBTOR AND CREDITOR— | | | |
| Libel | 5431 | 1530 | Assignments | 261-274 | 132 | |
| Notice of claim for | 5546 | 1562 | Attachment | 275 | 136 | |
| Overflow | 7577 | 2193 | Conveyance to defraud | 3996 | 1084 | |
| Personal injuries | 8306 | 2391 | Garnishment | 4076 | 1107 | |
| Process, sheriff failing | 6873 | 1967 | Registration of conveyances | 6627 | 1888 | |
| Railroads, against: | | | DEED, TAX— | | | |
| Baggage, failure to | | | City | 1059 | 315 | |
| check | 6369 | 1810 | State | 7281 | 2114 | |
| Employes, injuries to | 6439 | 1832 | DEEDS— | | | |
| Extortion | 6475 | 1844 | Acknowledgment | 6602-23 | 1883 | |
| Freight, refusal to de- | | | Commissioners of | 1270 | 382 | |
| liver | 6365 | 1809 | Form | 1292 | 389 | |
| Johnson grass | 6401 | 1819 | Loss of | 6582 | 1878 | |
| Refusal to transport | 6360 | 1808 | Registration | 6596, 6630 | 1881, 1889 | |
| Stock, killing | 6402 | 1819 | Requisites | 1288 | 389 | |
| Roads, liability | 6716 | 1923 | DEEDS OF TRUST— | | | |
| Surveyor, failing | 5289 | 1481 | Limitation of sales | 5523 | 1557 | |
| Trade mark, infringement | 850 | 258 | DEEP WATER CORPO- | | | |
| Trespass and ejection | | | RATIONS— | | | |
| | 7389, 7417 | 2146, 2152 | Harbor facilities | 1489 | 438 | |
| DAMS— | | | | Powers | 1483 | 437 |
| Coast, On | 7578 | 2193 | Railroad facilities | 1491 | 439 | |
| Corporations | 1302(32) | 392 | Rates | 1490 | 439 | |
| Private | 7500 | 2176 | DEFALCATION— | | | |
| Rights of owner | 7499 | 2176 | Parties to suits | 1989-1991 | 542 | |
| Unsafe | 7478 | 2173 | Venue | 1995(7) | 544 | |
| DEAD BODIES— | | | | DEFAULT JUDGMENT— | | |
| Anatomical Board | 4583 | 1255 | District and county courts | 2154 | 584 | |
| Burial | 4477(40) | 1198 | Justice courts | 2405, 2439 | 639, 643 | |
| Embalming | 4577 | 1253 | DEFENDANT— | | | |
| Scientific study of | 4584 | 1255 | Death | 2080 | 561 | |
| Transportation | 4477(77) | 1198 | Pleadings | 2006 | 549 | |
| Vital statistics | 4477(35) | 1198 | DEFICIENCIES— | | | |
| DEAF AND DUMB ASYLUM— | | | | Sworn estimate of | 4351 | 1158 |
| Application for admission | 3202 | 894 | DEFINITIONS— | | | |
| Control | 3174 | 883 | General | 23 | 6 | |
| DEALERS, AUTOMOBILE— | | | | DELINQUENT CHILDREN— | | |
| Incorporation | 1302(64-5) | 392 | In school | 2898 | 794 | |
| License | 6686 | 1904 | Incorrigibles | 5143 | 1443 | |
| DEATH— | | | | Proceedings against | 2338 | 622 |
| Beneficiary causing | 5047 | 1410 | | | | |
| Candidate, Of | 2979, 3019 | 824, 834 | | | | |

INDEX TO CIVIL STATUTES.

2453

| | Article. | Page. | | Article. | Page. |
|----------------------------|------------|------------|-------------------------------|------------|----------|
| DELINQUENT TAXES— | | | DEPOSITORIES, COUNTY— | | |
| Automobiles | 6697 | 1906 | Bids | 2544-46 | 669 |
| General provisions | 7319-45 | 2123 | Bids from adjoining county | 2558 | 674 |
| Property liable | 7272 | 2112 | Bond | 2547-8 | 670 |
| DEMONSTRATION WORK— | | | Bond, new | 2556 | 673 |
| Canning | 164 | 53 | Clearing house | 2551 | 672 |
| DENATURED ALCOHOL— | | | Deposits not bid for | 2550 | 672 |
| Manufacture and sale | 1302(18) | 392 | Designation | 2549 | 671 |
| DENTISTS— | | | Drafts on | 2554 | 673 |
| Board of examiners | 4543-4 | 1242 | Failure of bank | 2567 | 677 |
| License fee | 4551 | 1243 | Payments | 2552-4 | 672 |
| License necessary | 4548 | 1243 | School funds | 2828-9 | 761 |
| License revoked | 4549 | 1243 | Selection | 2544, 2555 | 669, 673 |
| Qualifications | 4545 | 1242 | Special depository | 2567 | 677 |
| Record license | 4546 | 1242 | Suit against | 2547, 2569 | 670, 678 |
| DEPENDENT CHILDREN— | | | Treasurer liable | 2557 | 674 |
| Commitment | 3257 | 910 | DEPOSITORIES, SPECIAL— | | |
| Custody | 2337 | 622 | Failure, On | 2567 | 677 |
| Defined | 2330 | 620 | School funds | 2832-3 | 762 |
| Disposition | 2336 | 622 | Selection optional | 2569 | 678 |
| Home for | 3255 | 909 | State funds | 2568 | 678 |
| Proceedings against | 2331 | 620 | DEPOSITORIES, STATE— | | |
| DEPOSITIONS— | | | Acceptance | 2528 | 663 |
| Adverse party | 3769 | 1013 | Application for deposits | 2527 | 663 |
| Cross interrogatories | 3743, 3758 | 1009, 1012 | Bids | 2526 | 662 |
| Election contest, In | 3060-2 | 843 | Board, Depository | 2525 | 662 |
| Evidence | 3766 | 1013 | Contract canceled | 2537 | 667 |
| Grounds for | 3738 | 1007 | Deposit by | 2530 | 664 |
| Jury, inspection by | 2193, 2199 | 590, 591 | Deposits in | 2532 | 662 |
| Objections | 3765 | 1012 | Extensions | 2536 | 667 |
| One's own | 3768 | 1013 | Failure of bank | 2568 | 678 |
| Open to inspection | 3763 | 1012 | Failure to qualify | 2531 | 665 |
| Oral: | | | Interest rate | 2536, 2539 | 667 |
| Commission | 3756 | 1011 | Meetings, joint | 2543 | 668 |
| Examination | 3760 | 1012 | Qualifications | 2529 | 663 |
| Notice | 3753 | 1011 | Rate making board | 2540-3 | 668 |
| Request | 3755 | 1011 | Remittances | 2535 | 666 |
| Return | 3762 | 1012 | Reserve depositories | 2533 | 665 |
| Right to | 3752 | 1011 | Security | 2530 | 664 |
| Swearing witness | 3759 | 1012 | Special depositories | 2568 | 678 |
| Surplusage | 3767 | 1013 | Surplus | 2538 | 667 |
| Written: | | | Withdrawals | 2534 | 666 |
| Commission | 3744-50 | 1009 | DEPOSITS— | | |
| Cross interrogatories | 3743, 3758 | 1009, 1012 | Bank: | | |
| Notice | 3739 | 1007 | Husband or wife | 4622 | 1267 |
| Perpetuate testimony | 3742 | 1008 | Protection by banks | 437 | 171 |
| Publication | 3740 | 1008 | Savings | 409-410 | 164 |
| Return | 3751 | 1010 | Costs of suit | 2071 | 560 |
| Right to | 3738 | 1007 | Guaranty, tax on | 7158 | 2073 |
| DEPOSITORIES, CITY— | | | Jury fee | 2124 | 579 |
| Bids | 2559 | 674 | Pending suit | 2290 | 610 |
| Bids, new | 2563 | 676 | DEPOTS— | | |
| Bond | 2560 | 675 | Freight | 6393 | 1817 |
| Definitions | 2566 | 677 | Pasenger | 6395 | 1817 |
| Designations | 2561 | 675 | Union | 6499 | 1854 |
| Drafts on | 2562, 2565 | 676, 677 | Union depot corporations | 6551 | 1871 |
| Failure of bank | 2567 | 677 | Sanitation | 4477 (58) | 1198 |
| Special depository | 2567 | 677 | DEPUTIES— | | |
| Treasurer liable | 2564 | 676 | Appointment | 3902 | 1046 |
| | | | Constable | 6879 | 1969 |
| | | | Fees, maximum | 3884 | 1041 |

| | Article. | Page. | | Article. | Page. |
|----------------------------------|------------|------------|------------------------------------|------------|------------|
| DESCENT AND DISTRIBUTION— | | | DISEASES—Continued. | | |
| Adopted heir | 43, 2572 | 13, 680 | Contagious | 4477 (3) | 1198 |
| Advancements | 2576 | 680 | Glanders | 6900 | 1974 |
| Alienage | 2583 | 682 | Honey bees | 560 | 202 |
| Bastards | 2582 | 682 | Nursery stock | 120 | 46 |
| Community estate | 2578-9 | 681 | Quarantine | 4449 | 1191 |
| Escheat | 3272-89 | 917 | Stock, of | 7011 | 2007 |
| General rule | 2570-1 | 679 | Venereal | 4445 | 1186 |
| Half-blood | 2573 | 680 | DISHONOR— | | |
| Illegitimate child | 2581 | 681 | Notice of | 5938 | 1689 |
| Joint owners | 2580 | 681 | DISINTERMENT— | | |
| Jus accrescendi abolished | 2580 | 681 | Regulated | 4477 (84) | 1198 |
| Per capita and per stirpes | 2577 | 681 | DISMISSAL AND NON-SUIT— | | |
| Source of property | 2572 | 680 | Certain district courts, in | 2092 (20) | 563 |
| Suicide | 2574 | 680 | Costs, failure to secure | 2068 | 559 |
| Tax, inheritance | 7117 | 2060 | Mandate not filed | 1775 | 505 |
| Unborn child | 2575 | 680 | Non-suit | 2182 | 588 |
| Venue | 1995 (11) | 544 | DISORDERLY HOUSES— | | |
| Wills, probate | 3328, 3339 | 928, 930 | Injunction | 4664, 4667 | 1278, 1279 |
| Wills, requisites | 8281 | 2386 | DISQUALIFICATION— | | |
| Destruction of animals | 192 | 63 | Judge | 15 | 5 |
| DETECTIVES— | | | Jury | 2134 | 580 |
| Strike-breakers | 5207 | 1460 | Voter | 2954 | 814 |
| DEVISES AND BEQUESTS— | | | Witness | 3714-17 | 1000 |
| Inheritance by | 3314 | 925 | DISSOLUTION— | | |
| Tax | 7117 | 2060 | City | 1241 | 373 |
| Wills | 8281 | 2386 | Corporation | 1387 | 417 |
| DINING CARS— | | | Drainage district | 8177 | 2346 |
| Sanitation | 4477 (64) | 1198 | Injunction | 4658 | 1277 |
| Tax | 7063 | 2033 | Marriage | 4628 | 1268 |
| DIP CATTLE— | | | Partnership | 6132 | 1723 |
| Scabies | 7021 | 2017 | DISTRESS PROCEEDINGS— | | |
| Tick | 7032 | 2013 | Instituted on Sunday | 1974 | 540 |
| DISABILITIES— | | | Landlord's remedy | 5227 | 1467 |
| Limitation, Interrupts | 5518, 5535 | 1556, 1560 | Warrants, distress | 5227 | 1467 |
| Marriage removes | 4625 | 1267 | DISTRIBUTION, DESCENT AND— | | |
| Minor's, removal of | 5921 | 1675 | Allowances to widow, etc. | 3484-5 | 956 |
| Tacking | 5544 | 1562 | Inheritance by | 2570 | 679 |
| DISAGREEMENT— | | | DISTRICT ATTORNEYS— | | |
| Jury discharged on | 2200 | 591 | Admissions | 340 | 149 |
| DISBARMENT— | | | Advice from Attorney General | 4399 | 1171 |
| Attorney at law | 313 | 143 | Advise officers | 334 | 148 |
| DISCHARGE— | | | Anti-trust suits | 7436 | 2158 |
| Jury | 2200 | 591 | Assistants | 3902, 324 | 1046, 145 |
| Sureties | 6001, 6245 | 1715, 1780 | Bond | 323 | 145 |
| DISCONTINUANCE— | | | Culberson County, for | 326 | 147 |
| Counter claim | 2016 | 551 | Duties, general | 332-341 | 148 |
| Defendants served | 2090 | 563 | Election | 321-328 | 145 |
| Principal obligor | 2088 | 562 | Escheat corporation lands | 1364 | 412 |
| Vacation, In | 2089 | 563 | Escheat proceedings | 3273 | 917 |
| DISCOVERY, BILL OF— | | | Fees | 3885-86 | 1041 |
| Use | 2002 | 548 | Fire escape law | 3972 | 1079 |
| DISEASES— | | | Food, condemnation | 4470 | 1196 |
| Charbon and anthrax | 4447 | 1189 | Hudspeth County, for | 326 | 147 |
| City regulation | 1072 | 320 | | | |

INDEX TO CIVIL STATUTES.

2455

| | Article. | Page. |
|-----------------------------|--------------------|-----------------|
| DISTRICT ATTORNEYS— | | |
| Continued. | | |
| Inheritance tax suit | 7134-41 | 2065 |
| Liquor law enforcement | 5108 | 1430 |
| Medicine, unlawful practice | 4509 | 1231 |
| Military violations | 5887 | 1666 |
| Nuisances, Enjoin | 4664-69 | 1278 |
| Oil and gas violations | 6011 | 1718 |
| Quo warranto | 6253 | 1782 |
| Railroad, shelter | 6389 | 1815 |
| Railway brake inspection | 6379 | 1812 |
| Railway depots | 6395 | 1817 |
| Railway headlights | 6372 | 1811 |
| Railway water closets | 6389 | 1818 |
| Removal | 5984-85 | 1712 |
| Report collections | | |
| | 1617, 337 | 471, 148 |
| Report, term | 1620 | 472 |
| Report to Attorney General | 333 | 148 |
| Tax suits | 7297-8, 7326 | 2118, 2127 |
| Traveling expenses | 6820 | 1954 |
| Vacancy | 328 | 147 |
| Vehicle wheels, unlawful | 6701 | 1909 |
| Water suits | 7573 | 2192 |
| DISTRICT CLERKS— | | |
| Acknowledgments | 6602 | 1883 |
| Bond an oath | 1897 | 526 |
| Care of records | 1901 | 527 |
| Cost bond | 2067 | 559 |
| Costs, execution for | 2077 | 560 |
| Costs, taxing | | |
| | 2075-6, 3770, 5072 | 560, 1015, 1418 |
| Deputies | 1898 | 526 |
| Deputy, special | 3903 | 1048 |
| Election | 1894 | 525 |
| Execution docket | 3831 | 1025 |
| Fee list | 3910 | 1049 |
| Fees | 3927-29 | 1058 |
| Fees, maximum | 3883-3893 | 1039 |
| Filing petition | 1972 | 540 |
| Garnishment | 4076 | 1107 |
| Injunction writ | 4652 | 1276 |
| Issuing citation | 2021 | 552 |
| Joint clerk | 1903 | 527 |
| Judgment, abstracts of | 5447 | 1536 |
| Judgment, index | 1902 | 527 |
| Judgments transferred | 1912 | 528 |
| Jurors, Summoning | 2117 | 577 |
| Jury fee | 2124 | 579 |
| Jury wheel list | 2094 | 570 |
| Lost records | 6583 | 1879 |
| Medical register | 4499 | 1225 |
| Motion docket | 2291 | 610 |
| Neglect of duty | 2287 | 609 |
| Office | 1605 | 468 |
| Process, requisites | 2286 | 609 |
| Pro tem | 1896, 3046 | 526, 840 |
| Record of proceedings | 1899 | 526 |
| Removal | 5990 | 1713 |
| Report, collections | | |
| | 1617, 3897 | 471, 1044 |
| Report of fines, etc. | 1900 | 526 |

| | Article. | Page. |
|--------------------------------|------------|----------|
| DISTRICT CLERKS—Cont'd. | | |
| Sequestration | 6840 | 1960 |
| Trespass to try title | 7401 | 2149 |
| Veterinary register | 7453 | 2165 |
| Water litigation | 7482 | 2174 |
| Witnesses, Subpoena | 3704 | 999 |
| Writ of error | 2259 | 604 |
| DISTRICT COURTS— | | |
| Adjournment | 1922 | 530 |
| Appeal from | 2249 | 602 |
| Certain, practice in | 2092 | 563 |
| Clerk | 1894 | 525 |
| Contempt | 1910 | 528 |
| Disbar attorneys | 313 | 143 |
| Extension of term | 1923 | 530 |
| Judge disqualified | 1885 | 524 |
| Judge, election | 1884 | 524 |
| Judge, special | 1886-93 | 524 |
| Judicial districts | 199 | 77 |
| Jurisdiction: | | |
| Anti-trust | 7436 | 2158 |
| Commissioners Court | 1908 | 528 |
| Election contests | 3041 | 839 |
| Equity | 1913 | 529 |
| General | 1909 | 528 |
| Guardianship | 4102 | 1113 |
| Injunctions | 4642 | 1273 |
| Juvenile | 2329 | 620 |
| Officers, delinquent | 1910 | 528 |
| Officers, ineligible | 2929 | 808 |
| Original | 1906 | 527 |
| Partition | 6083 | 1737 |
| Probate | 1907, 3291 | 528, 921 |
| Quo warranto | 6253 | 1782 |
| Remedial writs | 1914 | 529 |
| Place of holding | 1602 | 468 |
| Practice in | 1971-2328 | 540 |
| Public utility rates | 1125 | 337 |
| Seal | 1905 | 527 |
| Special judge | 1887 | 524 |
| Special terms | 1920-21 | 530 |
| Terms of | 199, 1919 | 77, 529 |
| DISTRICT JUDGES— | | |
| Appoint counsel | 1917 | 529 |
| Appoint county auditor | 1647 | 479 |
| Appoint finance committee | 1638 | 475 |
| Approval of bills, etc. | 2248 | 602 |
| Charge to jury | 2184 | 588 |
| Clerk, vacancy | 1895 | 526 |
| Court reporter | 2321 | 617 |
| Death during term | 2288 | 609 |
| Disqualification | 1885 | 524 |
| Election | 1884 | 524 |
| Employment arbitration board | 240 | 125 |
| Exchange districts | 1916 | 529 |
| Injunctions | 4642 | 1273 |
| Jury commissioners | 2104 | 573 |
| Juvenile board | 5139 | 1440 |
| Lost instruments | 6584 | 1879 |
| Minor's disabilities removed | 5922 | 1675 |

| | Article. | Page. | | Article. | Page. |
|-------------------------------------|-------------|------------|-------------------------------|------------|------------|
| DISTRICT JUDGES—Cont'd. | | | DIVORCE—Continued. | | |
| Minutes | 1918 | 529 | Children | 4639 | 1270 |
| Names, changing | 5928 | 1677 | Costs | 4641 | 1271 |
| Oil and gas, waste | 6013 | 1718 | Court's powers | 4636 | 1270 |
| Partition proceedings | 6082 | 1759 | Debts | 4634 | 1270 |
| Quo warranto proceed- ings | 6253 | 1782 | Grounds | 4629 | 1268 |
| Remove officers, May | 5970-86 | 1710 | Inventory | 4635 | 1270 |
| Report of fees | 3897 | 1044 | Jurisdiction, appellate | 1821 | 512 |
| Riot, Impending | 5831 | 1643 | Jurisdiction, original | 1906 | 527 |
| Salary | 6819 | 1954 | Name, change of | 5931 | 1677 |
| Sequestration | 6840 | 1960 | Plaintiff's residence | 4631 | 1269 |
| Special | 1887 | 524 | Procedure | 4632 | 1269 |
| Supervise county schools | 2682 | 713 | Property | 4619, 4638 | 1266, 1270 |
| Surveyors, May use | 5276 | 1478 | Remarriage | 4640 | 1270 |
| Traveling expenses | 6820 | 1954 | Seduction | 4630 | 1269 |
| Vacation, powers in, etc. | 1914-5 | 529 | Sequestration | 6840 | 1960 |
| Water, Storm | 7548 | 2186 | Testimony, parties | 4633 | 1269 |
| Writs, remedial | 1914 | 529 | Venue | 1995(16) | 544 |
| DISTRICT OFFICERS— | | | DOCK COMPANIES— | | |
| Accounts with | 1607 | 469 | Powers | 1480 | 436 |
| Death certified | 2926 | 807 | DOCKETS— | | |
| Practicing law | 319 | 143 | Appeal | 2284 | 608 |
| Primary nominations | 3101 | 856 | Appearance, call of | 2153 | 584 |
| Opinions and advice | 334 | 148 | Claim | 3297 | 922 |
| DISTRICTS— | | | Execution | 3831 | 1025 |
| Congressional | 197 | 75 | File | 1973 | 540 |
| Conservation | 8194 | 2350 | Jury | 2128 | 579 |
| Drainage | 8097 | 2328 | Motion | 2291 | 610 |
| Fresh water supply | 7881 | 2280 | Probate | 3295 | 922 |
| Irrigation | 7589 | 2196 | DOCTORS— | | |
| Judicial | 199 | 77 | Alcoholic prescriptions | | |
| Levee improvement | 7972, 8031 | 2297, 2324 | ..... | 5090-91 | 1425 |
| Navigation | 8198 | 235 | Eyes of new born | 4441 | 1183 |
| Reclamation | 8194 | 2350 | Registration | 4498 | 1225 |
| Representative | 195-6 | 71 | Sanitary code | 4477 | 1196 |
| Road | 726, 769 | 233, 239 | Venereal diseases | 4445 | 1186 |
| School | 2741 | 729 | DOCUMENTS— | | |
| Senatorial | 193-4 | 69 | Archives | 250 | 129 |
| Supreme judicial | 198 | 76 | Evidence | 3718-37 | 1001 |
| Water control | 7808 | 2264 | Fraudulent | 3996 | 1084 |
| DITCHES— | | | Historical | 5438 | 1532 |
| Corporations | 1302(30-31) | 392 | Parol proof | 6582 | 1878 |
| Drainage districts | 8097 | 2328 | Registration | 6624 | 1888 |
| Private connections | 8167, 6789 | 2344, 1945 | State, custody of | 4331 | 1153 |
| Roads, public | 6730, 6771 | 1928, 1938 | Translation | 6580 | 1878 |
| DIVERSION— | | | DOMESTIC CORPORATIONS— | | |
| Overflow damages | 7577 | 2193 | General provisions | 1302-1528 | 392 |
| Water courses | 7496-7 | 2176 | DOMESTIC VESSELS— | | |
| DIVIDENDS— | | | Lien on | 5500 | 1552 |
| Banks | 507-9 | 189 | DOMICILE— | | |
| Corporations generally | 1329 | 406 | Corporations | 1358 | 411 |
| Insurance companies, life | 4729 | 1299 | Railroads | 6278, 6286 | 1788, 1791 |
| Railroads | 6307 | 1795 | Venue | 1995 | 544 |
| DIVORCE— | | | DONATIONS, CORPORATE— | | |
| Adultery | 4630 | 1269 | Lawful | 1349 | 409 |
| Alimony | 4637 | 1270 | Political | 1350, 1352 | 410 |
| Annulment | 4628 | 1268 | DORMANT JUDGMENTS— | | |
| | | | Execution on revival | 3773 | 1015 |
| | | | Justice courts | 2451 | 645 |

INDEX TO CIVIL STATUTES.

2457

| | Article. | Page. |
|--------------------------------|------------|------------|
| DRAINAGE— | | |
| Corporations | 1525 | 447 |
| Diverting water | 7496-7 | 2176 |
| Overflow, damages | 7577 | 2193 |
| Private drains | | |
| ..... | 6789, 8176 | 1945, 2345 |
| Public roads | 6771 | 1938 |
| DRAINAGE DISTRICTS— | | |
| Bonds and taxes: | | |
| General provisions | 8127-44 | 2335 |
| Limitation of indebted- | | |
| ness | 806 | 248 |
| Option to purchase | 2673 | 709 |
| Retirement of bonds | 8183 | 2347 |
| Classification | 8117 | 2333 |
| Connecting drains | 8167-71 | 2344 |
| Conservation district | 8176 | 2345 |
| Contracts | 8155-66 | 2341 |
| Depository | 2567, 8149 | 677, 2340 |
| Dissolution: | | |
| Claims | 8186 | 2348 |
| Deposit | 8179 | 2346 |
| Election | 8180 | 2346 |
| Petition | 8177-8 | 2346 |
| Settlement | 8182 | 2347 |
| Trustee | 8185 | 2348 |
| Election | 8111 | 2331 |
| Eminent domain | 8151 | 2340 |
| Establishment: | | |
| Deposit | 8099 | 2329 |
| Election | 8111 | 2331 |
| Hearing | 8101 | 2329 |
| Petition | 8098 | 2329 |
| Plans | 8106 | 2330 |
| Funds | 8150 | 2340 |
| Improvements, Added | 8162 | 2343 |
| Notices, publication | 28 | 7 |
| Officers: | | |
| Attorney | 8173 | 2345 |
| Auditor | 1667 | 460 |
| Commissioner | 8118 | 2333 |
| Engineer | 8124 | 2334 |
| Tax officers | 8145 | 2339 |
| Treasurer | 8146 | 2339 |
| Private drains | 8153 | 2341 |
| Report to State Engineer | 7970 | 2296 |
| Right of way | 8152 | 2341 |
| Suits | 8173-5 | 2345 |
| DRAWER— | | |
| Liability | 567, 5936 | 204, 1686 |
| Notice of dishonor | 5938 | 1687 |
| Protest fixes liability | 575 | 205 |
| DRILLING— | | |
| Contractor's lien | 5473 | 1543 |
| Corporations | 1302(38) | 392 |
| Injunction | 4644 | 1274 |
| Regulations | 6004-6016 | 1716 |
| DRUGS— | | |
| Adulterated | 4471 | 1197 |
| Condemnation | 4470 | 1196 |
| Druggists | 4534 | 1239 |
| Inspection | 4466 | 1195 |
| Manufacturer's registra- | | |
| tion | 4469 | 1196 |

| | Article. | Page. |
|--------------------------------|------------|----------|
| DRUNKARDS— | | |
| Guardianship proceedings | 4267 | 1143 |
| E. | | |
| EDUCATION— | | |
| A. and M. | 2607-15 | 690 |
| C. I. A. | 2624-28 | 696 |
| Common school districts | | |
| ..... | 2741-56 | 729 |
| Compulsory | 2892-98 | 792 |
| County superintendent | | |
| ..... | 2688-2701 | 714 |
| County trustees | 2676-87 | 710 |
| County unit system | 2702-40 | 719 |
| District finances | 2784 | 743 |
| Independent districts in | | |
| cities | 2768-83 | 739 |
| Independent districts in | | |
| towns | 2757-67 | 735 |
| John Tarleton | 2616-19 | 694 |
| Miscellaneous provisions | | |
| ..... | 2899-2922 | 795 |
| Normals | 2644-54 | 701 |
| North Texas A. and M. | | |
| ..... | 2620-23 | 694 |
| Prairie View Normal | 2638-43 | 699 |
| Scholastic census | 2816-22 | 756 |
| School funds | 2823-38 | 759 |
| School of Mines | 2633-37 | 698 |
| State Board | 2664-75 | 707 |
| State Superintendent | 2655-63 | 705 |
| Teachers' certificates | 2877-91 | 780 |
| Tech. College | 2629-32 | 697 |
| Textbooks, free | 2839-76 | 764 |
| University of Texas | 2584-2606 | 683 |
| Vocational | 2914-18 | 798 |
| Vocational, Federal aid Sec. 6 | | |
| EDUCATIONAL CORPORA- | | |
| TIONS— | | |
| Faculty | 1410 | 421 |
| Incorporation | 1302(2) | 392 |
| Powers of trustees | 1411 | 421 |
| Property | 1409, 1412 | 421, 422 |
| Renewal of charter | 1315 | 403 |
| EDUCATIONAL INSTITU- | | |
| TIONS— | | |
| Tax exempt | 7150 | 2069 |
| EFFECTS— | | |
| Defined | 23 | 6 |
| EIGHT-HOUR LAW— | | |
| Violating | 5166 | 1449 |
| ELECTIONS— | | |
| Absentee voting | 2956 | 815 |
| Ballot boxes: | | |
| Inspection | 3003 | 830 |
| Marking | 2990 | 827 |
| Requisites | 2991 | 827 |
| Return | 3028 | 836 |
| Ballots: | | |
| Constitutional amend- | | |
| ment | 2982 | 825 |

| Article. Page. | | Article. Page. | |
|--------------------------------|-----------------------|-------------------------------|------------------------|
| ELECTIONS—Continued. | | ELECTIONS—Continued. | |
| Counting | 3016-22 834 | Duties of officers | 3077 849 |
| Death or declination | 2979 824 | Fraud | 3078 849 |
| Form | 2980, 2985 825, 826 | Officers named | 3076 848 |
| Marked | 3009 832 | Contests: | |
| Marking | 2981 825 | Appeal | 3056 842 |
| Mutilated | 3013 833 | Bond | 3055, 3048-52 842, 841 |
| Number furnished | 2984 826 | Constitutional amend- ment | 3071-5 846 |
| Official | 2978 824 | Costs | 3057 842 |
| Returned | 3028 836 | Damages | 3058 843 |
| Booths | 2986-9 826 | Election declared void | 3054 842 |
| Candidates: | | Evidence and procedure | |
| Death | 2979, 3019 824, 834 | | 3047 841 |
| Expenditures | 3170 878 | Filing papers | 3045 840 |
| Fees | 3116 861 | Fraudulent votes | 3053 840 |
| Ineligibility | 2927-29 807 | Jurisdiction | 3041 839 |
| Name on ballot | | Legislators | 3059-65 843 |
| | 3173, 3131 882, 865 | Notice | 3042-4 840 |
| Request to go on ballot | | Other elections | 3069-70 845 |
| | 3111-3 860. | Presidential electors | 3068 845 |
| Certificates: | | Primary | 3146-53 870 |
| County officers | 3032 837 | State officer | 3066 844 |
| Legislator | 3038 838 | United States Senator | 3067 845 |
| State and district | 3035 838 | Conventions: | |
| Challenged vote | 3006-7 831 | County | 3134 865 |
| Cities, in: | | District | 3135 866 |
| Ballots | 2983 826 | National | 3167 876 |
| Booths | 2986 826 | Precinct | 3134 865 |
| Commissions | 3040 839 | State | 3136-41 867 |
| Expenses | 2997 828 | Conveying voters | 3025 835 |
| Nominations | 3164, 3106 875, 858 | Death certified | 2926 807 |
| Officers' duties | 2997 828 | Death of candidate | |
| Ordinary elections | 2951 814 | | 2979, 3019 824, 834 |
| Place | 2931 808 | Death, order on | 2952 814 |
| Poll tax | 2962, 2968 818, 820 | Distance markers | 2999 829 |
| Precincts | 2934 809 | Expenses: | |
| Suffrage | 2957 817 | Campaign, limited | 3170 878 |
| Commissions: | | Campaign, statements | |
| Failure to take out | | | 3144-5 869 |
| | 3882, 4341 1039, 1156 | Officers' fees | 2994-5 828 |
| Fee | 3914 1051 | Primary | 3105 858 |
| Governor, By | 3035, 3040 838, 839 | Supplies | 2996 828 |
| Conducting: | | General election, time | 2930 808 |
| Aid to voter | 3010 832 | Invalid voter | 3025 835 |
| Announcer | 3005 831 | Judges: | |
| Arrangements, prelimi- nary | 2999 829 | Absence | 3001 830 |
| Ballot delivered | 3008 832 | Pay | 2943 812 |
| Ballot deposited | 3012 833 | Powers | 3002 830 |
| Boxes inspected | 3003 830 | Primary | 3109 859 |
| Bstanders | 3014 833 | Qualifications | 2939-40 811 |
| Challenged vote | 3006-7 831 | Returns | 3026 835 |
| Counting ballots | 3016-22 834 | Supplies | 2984, 2393 826, 828 |
| Instruction card | 3000 830 | Nominations: | |
| Judge absent | 3001 830 | Candidate's fees | 3116 861 |
| Loitering | 3024 835 | Declination | 2979, 3165 824, 876 |
| Marked ballot | 3009 832 | Independent | 3159 873 |
| Mutilated ballot | 3013 833 | Minor party | 3154 872 |
| Officers sworn | 2998 829 | Non-partisan | 3159 873 |
| Receipt lost | 3005 831 | Objections | 3130 865 |
| Receipt presented | 3004 830 | Publication | 3129 865 |
| Returns | 3026-39 835 | Request to go on ballot | |
| Constitutional amendment: | | | 3111-3 860 |
| Ballot | 2982 825 | State and district | 3101 856 |
| Contest | 3071-5 846 | | |

INDEX TO CIVIL STATUTES.

2459

| | Article. | Page. |
|--------------------------------|---------------|-----------|
| ELECTIONS—Continued. | | |
| United States Senator | 3090 | 852 |
| Unorganized party | 3163 | 874 |
| Notice of: | | |
| Primary | 3107 | 858 |
| Proclamation | 2946 | 813 |
| Requisites | 2950 | 813 |
| Officers: | | |
| Conduct of elections | 2999 | 829 |
| Death certified | 2926 | 807 |
| Electioneering | 3011 | 833 |
| Failing to act | 2924 | 807 |
| Oath | 2998 | 829 |
| Pay | 2943 | 812 |
| Precinct | 2937-8 | 810 |
| Primary | 3108 | 858 |
| Qualifications | 2939-40 | 811 |
| Service on | 2944 | 812 |
| Supervisors | 2941-2 | 811 |
| Ordering: | | |
| Cities, In | 2951 | 814 |
| County judge, By | 2947 | 813 |
| Failure to order | 2949 | 813 |
| Governor's proclamation | 2946 | 813 |
| Notice | 2950 | 813 |
| Vacancy, To fill | 2952 | 814 |
| Writs of election | 2948 | 813 |
| Place and time | 2930-6 | 808 |
| Poll tax: | | |
| Becoming of age | 2969 | 821 |
| Exemptions | 2960 | 818 |
| Loss of receipt | 3005 | 831 |
| Officers' duties | 2970-7 | 821 |
| Payment | 7046, 2959 | 2021, 818 |
| Receipt, form | 2965 | 819 |
| Removal | 2966-7 | 819 |
| Precincts established | 2933-5 | 809 |
| Presidential electors: | | |
| Meeting | 3084 | 850 |
| Pay | 3085 | 851 |
| Proclamation | 3080 | 850 |
| Returns | 3081-3 | 850 |
| Time | 3079 | 849 |
| Primary: | | |
| Ballot | 3106 | 858 |
| Ballot, order of names | 3117 | 866 |
| Campaign contributions | | |
| | 3171 | 880 |
| Campaign expenses | 3170 | 878 |
| Candidate's expense statements | 3172, 3144 | 881, 869 |
| Candidate's fee | 3116 | 861 |
| Committee | 3115 | 861 |
| Contest | 3146-53 | 870 |
| Conventions | | |
| | 3167, 3134-41 | 876, 865 |
| County executive committees | 3118 | 862 |
| Defined | 3100 | 856 |
| Excessive expenditures | 3173 | 882 |
| Expenses | 3105 | 858 |
| Independent | 3159-62 | 873 |
| Judges | 3109 | 859 |
| List of voters | 3121 | 863 |

| | Article. | Page. |
|-----------------------------|-------------|----------|
| ELECTIONS—Continued. | | |
| Manager appointed | 3169 | 877 |
| Manager's expense statement | 3172, 3145 | 881, 869 |
| Mandamus | 3142 | 869 |
| Minor parties | 3154-8 | 872 |
| Name on ballot | | |
| | 3173, 3131 | 882, 865 |
| Names posted | 3132 | 865 |
| Nomination declined | 3165 | 876 |
| Nominations | 3101 | 856 |
| Nominees published | 3129 | 865 |
| Non-partisan | 3159-62 | 873 |
| Objections to nominations | 3130 | 865 |
| Officers | 3108 | 858 |
| Party name | 3166 | 876 |
| Place | 3107 | 858 |
| Platform | 3133 | 865 |
| Pledge | 3110 | 859 |
| Request to go on ballot | | |
| | 3111-13 | 860 |
| Returns | 3123-5 | 863 |
| Second primary | 3106 | 858 |
| Spirit of the law | 3143 | 869 |
| Statement of expenses | 3172 | 881 |
| Supplies | 3119 | 862 |
| Tabulated statement | 3127 | 864 |
| Tie | 3126 | 864 |
| Time | 3102 | 857 |
| United States Senator | 3090 | 852 |
| Unorganized party | 3163 | 874 |
| Vote, kind of | 3103 | 857 |
| White | 3104 | 858 |
| Residence defined | 2958 | 817 |
| Returns: | | |
| Delivery | 3028 | 836 |
| District officers | 3033 | 837 |
| Governor | 3036 | 838 |
| Legislators | 194-6, 3037 | 70, 838 |
| Opening | 3030 | 837 |
| Presidential electors | 3081-3 | 850 |
| Primary | 3123 | 863 |
| Requisites | 3026 | 835 |
| Return day | 3042 | 840 |
| State officers | 3033 | 837 |
| Storing | 3027 | 836 |
| Suffrage: | | |
| Absentee voting | 2956 | 815 |
| How to vote | 2981 | 825 |
| Invalid voted | 3025 | 835 |
| Majority, reaching | 2969 | 821 |
| Poll tax | 2959 | 818 |
| Privileged from arrest | 3023 | 835 |
| Qualifications | 2954-55 | 814 |
| Residence defined | 2958 | 817 |
| When to vote | 3102, 2930 | 857, 808 |
| Where to vote | 2936 | 810 |
| Supervisors: | | |
| Agreed | 2942 | 812 |
| Appointed | 2941 | 811 |
| Counting ballots | 3020 | 835 |
| Qualifications | 2939-40 | 811 |
| Supplies: | | |
| Ballot boxes | 2990-1 | 827 |

| | Article. | Page. | Article. | Page. |
|------------------------------|------------|----------|-------------------------------|----------------------|
| ELECTIONS—Continued. | | | ELEEMOSYNARY INSTI- | |
| Ballots | 2984 | 826 | TUTIONS, STATE—Cont'd. | |
| Blanks | 2925 | 807 | Secretary | 3215 897 |
| Board to provide | 2992 | 827 | Superintendent | 3214 896 |
| Booths | 2986-9 | 826 | Wife of inmate | 3217 897 |
| Expenses | 2996 | 828 | Confederate Women's | |
| Failure to deliver | 2993 | 828 | Home | 3218 898 |
| Primary | 3119 | 862 | Control of | 393, 3174 160, 883 |
| Tie vote | 2953, 3126 | 814, 864 | Crippled children's Hospi- | |
| Time: | | | tal | 3260-3 911 |
| General election | 2930 | 808 | Deaf, Dumb and Blind: | |
| Presidential electors | 3079 | 849 | Admission to | 3202 894 |
| Primary | 3102 | 857 | Colored youths, For | 3221-2 898 |
| Second primary | 3106 | 858 | Oculist | 3207 895 |
| United States Senator | 3086 | 851 | Printing | 3203-4 894 |
| United States Senato.: | | | Dependent Children's | |
| Application | 3093, 3097 | 852, 854 | Home: | |
| Expenditures | 3170 | 878 | Commitment to | 3257 910 |
| Fee, primary | 3116 | 861 | Dismissal of child | 3259 910 |
| Laws applicable | 3088 | 851 | Officers | 3255 909 |
| Name on ballot | 3089 | 852 | Rules | 3256 909 |
| Nomination | 3090 | 852 | Unruly child | 3258 910 |
| Second primary | 3094 | 853 | Epileptic Colony: | |
| Term | 3099 | 856 | Admission | 3224-30 899 |
| Time | 3086 | 851 | Expenses of patient | 3231-2 901 |
| Vacancy | 3087 | 851 | Feeble Minded Colony: | |
| Unorganized counties: | | | Definitions | 3233 902 |
| Officers | 2945 | 813 | Duties of board | 3234-5 902 |
| Place | 2935 | 809 | Escape from | 3237 902 |
| Vacancy, order to fill | 2952 | 814 | Expenses of inmates | 3238 903 |
| Voter's privilege | 3023 | 835 | Release and parole | 3236 902 |
| ELECTRIC COMPANIES— | | | Juvenile Training Schools: | |
| City regulation | 1119 | 335 | Care of inmates | 5129 1437 |
| Deposits, interest on | 1440 | 428 | Commitment | 3257, 5124 910, 1436 |
| Eminent domain | 1436 | 427 | Discharge | 5126 1436 |
| Finances | 1437 | 427 | Escape | 5127 1437 |
| Judicial regulation | 1125 | 337 | Girls | 5132 1438 |
| Powers | 1435 | 426 | Negro boys | 5131 1438 |
| Reports | 1441 | 428 | Officers | 5119-23 1435 |
| Sale of properties | 1268 | 380 | Punishment | 5130 1437 |
| Tax, gross receipts | 7060 | 2032 | Term | 5128 1437 |
| Tax, occupation | 7047(18) | 2021 | Lunatic Asylums: | |
| ELECTRIC RAILROADS— | | | Admission to | 3185-90 885 |
| Eminent domain | 6535 | 1864 | Convicts | 3186 885 |
| Light and power | 6541 | 1866 | Discharge of patients | 3193 887 |
| Merger | 6543 | 1867 | Escape from | 3196 893 |
| Powers | 6546-47 | 1869 | Expenses of patients | 3191-5 887 |
| Right of way | 6536-40 | 1865 | Pasteur hospital | 3197 893 |
| Tax, gross receipts | 7067 | 2038 | Superintendent | 3184 885 |
| ELEEMOSYNARY INSTI- | | | Orphan home | 3208 895 |
| TUTIONS, PRIVATE— | | | Pasteur hospital | 3197 803 |
| Additions to State Sana- | | | Salaries | 6815 1953 |
| torius | 3249-51 | 906 | School districts, at | 2666 708 |
| Corporate powers | 1396 | 419 | Superintendents: | |
| Incorporation | 1302(2) | 392 | Accounts | 3177 883 |
| ELEEMOSYNARY INSTI- | | | Disbursements | 3182 884 |
| TUTIONS, STATE— | | | Duties, general | 3175 883 |
| American Legion Sana- | | | Funds | 3179 884 |
| torium | 3252 | 908 | Interest in contract | 3181 884 |
| Confederate Home: | | | Powers | 3176 883 |
| Admission to | 3213 | 896 | Reports | 3178 884 |
| Application for admis- | | | Tuberculosis sanitariums: | |
| sion | 3216 | 897 | Admission to | 3240-8 903 |
| | | | American Legion Sana- | |
| | | | torium | 3252 908 |

INDEX TO CIVIL STATUTES.

2461

| | Article. | Page. |
|---|-------------|------------|
| ELEEMOSYNARY INSTITUTIONS, STATE—Cont'd. | | |
| Duties of board..... | 3239 | 903 |
| Private additions to..... | 3249-51 | 906 |
| ELEVATORS, GRAIN— | | |
| Corporations | 1302 (81) | 392 |
| Farmers' Co-operative..... | 5742 | 1616 |
| Supervision | 6445 | 1834 |
| EMBALMERS— | | |
| Application for license..... | 4578 | 1254 |
| Board of examiners..... | 4576-7 | 1253 |
| Corporate | 1302 (86) | 392 |
| Diseased bodies | 4477 (78) | 1198 |
| Exceptions | 4582 | 1255 |
| License revoked | 4580 | 1254 |
| Renewal of license..... | 4579 | 1254 |
| EMINENT DOMAIN— | | |
| Authorization: | | |
| Causeway approaches..... | 1469 | 433 |
| Cemetery corporation..... | 922 | 281 |
| Channel and dock companies | 1479 | 435 |
| City highways | 1202 | 362 |
| City powers | 1107 | 328 |
| City waterworks | 1110 | 333 |
| County road material | 6729 | 1927 |
| Drainage districts | 8151 | 2340 |
| Federal exercise of..... | 5242 | 1471 |
| Fuller's earth pipe lines | 1507 | 443 |
| Gas and light companies | 1436 | 427 |
| Interurbans | 6535 | 1864 |
| Irrigation districts | 7642 | 2209 |
| John Tarleton College..... | 2619 | 694 |
| Levee districts | 882 | 271 |
| Navigation districts | 8225 | 2358 |
| Normal colleges | 2647 (9-11) | 701 |
| Oil companies | 1497 | 440 |
| Pipe lines | 6022 | 1721 |
| Railroads | 6336 | 1800 |
| Riparian rights | 7491 | 2174 |
| Sewerage companies | 1439 | 427 |
| State exercise of | 5240 | 1471 |
| Technological College | 2632 | 698 |
| Telegraph companies | 1417 | 422 |
| Toll road companies | 1463 | 432 |
| Town powers | 1149 | 343 |
| Union depot corporations | 6554 | 1871 |
| Waste water companies | 1510 | 443 |
| Water companies | 1433 | 426 |
| Water rights | 7491, 7573 | 2174, 2192 |
| Procedure: | | |
| Costs | 3267 | 915 |
| Damages | 3265 | 913 |
| General provisions | 3266 | 914 |
| Judgment vests right..... | 3271 | 916 |
| Jurisdiction | 1960 | 537 |
| Possession after payment | 3268 | 915 |

| | Article. | Page. |
|---|------------|----------|
| EMINENT DOMAIN—Cont'd. | | |
| Practice | 3269 | 916 |
| Rules | 3264 | 912 |
| Term of right..... | 3270 | 916 |
| EMPLOYEE— | | |
| Arbitration of disputes..... | | |
| | 239-249 | 125 |
| Compensation for injuries | | |
| | 8306 | 2391 |
| Fatal injuries to | 4671 | 1281 |
| Hours of labor | 5165-7 | 1449 |
| EMPLOYERS INSURANCE ASSOCIATION— | | |
| General provisions | 8308 | 2409 |
| EMPLOYERS' LIABILITY ACT— | | |
| General provisions | 8306-8309 | 2391 |
| EMPLOYMENT AGENTS— | | |
| Advertising, false | 5214 | 1463 |
| Bond | 5210-11 | 1461 |
| Defined | 5208-9 | 1460 |
| Female applicants | 5217 | 1464 |
| Injunction | 5220 | 1464 |
| License canceled | 5212 | 1462 |
| Overcharging | 5215 | 1463 |
| Receipt | 5216 | 1464 |
| Strike or lock-out | 5221 | 1465 |
| ENGINEERS, STATE— | | |
| Civil (Surveyors) | 5276 | 1478 |
| Construction | 679 | 223 |
| Highway | 6669 | 1899 |
| Reclamation | 7960 | 2294 |
| Water | 7468 | 2171 |
| ENTOMOLOGIST, STATE— | | |
| Control of bees | 549 | 200 |
| Authority | 550 | 200 |
| Seizures by | 553 | 201 |
| Quarantined by | 555 | 201 |
| Bulletins by | 559 | 202 |
| EPILEPTIC COLONY— | | |
| Admission to | 3224 | 899 |
| Application | 3228 | 900 |
| Examination | 3229 | 900 |
| Management | 3223 | 899 |
| Private patients | 3227 | 900 |
| Transportation | 3231 | 901 |
| EQUALIZATION— | | |
| City board of | 1048 | 313 |
| County board of | 7206 | 2090 |
| EQUITY— | | |
| Bill of discovery | 2202 | 592 |
| Injunctions | 4663 | 1278 |
| New trials | 2235 | 598 |
| Partition | 6106 | 1741 |
| Receivership | 2293 | 611 |
| ERROR, WRIT OF— | | |
| Civil Appeals, To | 2255 | 603 |
| Supreme Court, To | 1739, 1881 | 499, 523 |

| | Article. | Page. | | Article. | Page. |
|------------------------------|------------|-----------|------------------------------|------------|------------|
| ESCAPE— | | | ESTATES OF DECEDENTS— | | |
| Convict, reward | 6198 | 1765 | Continued. | | |
| Feeble-minded person | 3237 | 902 | Inventory | 3406-25 | 943 |
| Juvenile, delinquent | 5127 | 1437 | Jurisdiction | 3290-4 | 921 |
| Lunatic | 3196 | 893 | Notices, publication | 28 | 7 |
| ESCHEAT— | | | Partition | 3598-3633 | 979 |
| Alien lands | 172 | 56 | Payment into Treasury | 3644-60 | 987 |
| Comptroller's duty | 3285 | 919 | Probate: | | |
| Corporation lands | 1364 | 412 | Appeal | 3698-3703 | 997 |
| Estates liable to | 3272 | 917 | Application | 3325-32 | 928 |
| Heir may sue | 3286-7 | 919 | Apply, who may | 3339 | 930 |
| Jurisdiction | 1906 | 527 | Citation | 3333-8 | 930 |
| Probate reviewed | 3288 | 920 | Costs, security | 3697 | 996 |
| Proceedings | 3273-84 | 917 | Foreign | 3352 | 933 |
| Suits for assets | 3289 | 920 | Jurisdiction | 3290-1 | 921 |
| Unclaimed proceeds | 3644 | 987 | Jury | 3304 | 924 |
| ESTATES— | | | Proof of wills | 3344-51 | 931 |
| Conveyance of | 1238 | 389 | Venue | 3293 | 921 |
| Inheritance, By | 2570 | 679 | Void | 3292 | 921 |
| Inheritance tax | 7117 | 2060 | Withholding will | 3308 | 924 |
| ESTATES OF DECEDENTS— | | | Review of decree | 3288 | 920 |
| Administration transferred | 3684-8 | 994 | Revival of proceedings | 932 | 283 |
| Administration under will | 3433-51 | 948 | Setting apart | 3485-3501 | 957 |
| Administration withdrawn | 3457-65 | 952 | Specific performance | 3324 | 927 |
| Administrators and execu- | | | Suits against, parties | 1982 | 541 |
| tors: | | | Tax, inheritance | 7117 | 2060 |
| Appointment | 3353-72 | 933 | ESTATES OF WARDS— | | |
| Bond and oath | 3382-3400 | 939 | Fiscal management | 4174-92 | 1126 |
| Claims classified | 3531 | 964 | ESTRAYS— | | |
| Claims, notice | 3502 | 960 | Account of | 1623 | 473 |
| Claims, paid | 3539 | 966 | Care of | 186 | 60 |
| Commissions | 3689-90 | 995 | General provisions | 6911-27 | 1978 |
| Duties and powers | 3426-32 | 946 | EVIDENCE— | | |
| Expenses | 3691-2 | 996 | Acts, certified copies of | 3719 | 1001 |
| Letters issued | 3401-5 | 942 | Archives | 250-260 | 129 |
| Letters, requisites | 3369-70 | 936 | Bonds | 715-6 | 230 |
| Qualifications | 3353 | 933 | Brands and marks | 6899 | 1974 |
| Qualified, how | 3322 | 927 | Certified copies: | | |
| Removal | 3466-9 | 953 | Acts, legislative | 3719 | 1001 |
| Rentals | 3545-51 | 968 | Archer County | 6658 | 1896 |
| Report of moneys | 3646 | 988 | Bond registration | 715 | 230 |
| Resignation | 3470-5 | 954 | Comptroller's record | 3724 | 1002 |
| Sales | 3552-89 | 969 | Corporation records | 3737 | 1007 |
| Settlement, final | 3634-43 | 986 | County records, old | 3727 | 1003 |
| Subsequent | 3452-6 | 951 | County surveyor | 3721 | 1001 |
| Temporary | 3373-81 | 937 | Early instruments | 3725 | 1002 |
| Title through | 3323 | 927 | Notarial records | 3723 | 1001 |
| Allowances | 7269, 3476 | 2111, 955 | Note, etc. | 3730 | 1005 |
| Appeals | 3698-3703 | 997 | Recorded instruments | 3726 | 1002 |
| Appraisal | 3406-25 | 943 | State officers, By | | |
| Claims paid | 3531-44 | 964 | | 3720, 3731 | 1001, 1005 |
| Claims presented | 3502-30 | 960 | State records | 3720-3722 | 1001 |
| Community administration | 3661-83 | 990 | Tax records | 3732 | 1005 |
| Descent and distribution | 2570, 3314 | 679, 925 | Transcribed records | 3728 | 1003 |
| Funeral expenses | 7269, 3511 | 2111, 961 | Common law rules | 3713 | 1000 |
| Heirship adjudicated | 3590-7 | 976 | Depositions: | | |
| | | | Adverse party, Of | 3769 | 1013 |
| | | | Election contest, In | 3060-2 | 843 |
| | | | Objections | 3765 | 1012 |
| | | | One's own | 3768 | 1013 |
| | | | Open to inspection | 3763 | 1012 |
| | | | Oral | 3752-62 | 1011 |

INDEX TO CIVIL STATUTES.

2463

| | Article. | Page. |
|--------------------------------|------------|------------|
| EVIDENCE—Continued. | | |
| Surplusage | 3767 | 1013 |
| Written | 3738-51 | 1007 |
| Husband or wife | 3715 | 1000 |
| Interest in cause | 3714 | 1000 |
| Interest rate, foreign | 3733 | 1006 |
| Interpreters | 3712 | 1000 |
| Jury may inspect | 2193 | 590 |
| Lost papers pending suit | 2289 | 609 |
| Lost records | 6582-90 | 1878 |
| Ordinances | 1013 | 360 |
| Parol | 6582 | 1878 |
| Presumptions: | | |
| Chattel mortgages | 5499 | 1577 |
| Community property | 4619 | 1266 |
| Death from absence | 5541 | 1561 |
| Execution of note, etc. | 3734 | 1006 |
| Foreign interest rate | 3733 | 1006 |
| Notice of claim | 5546 | 1562 |
| Payment, Of | 5521 | 1557 |
| Recorded instruments | | |
| ..... | 6658-6660 | 1896 |
| Religious opinion | 3717 | 1001 |
| Statutes, printed | 3718 | 1001 |
| Title, common source | 7382 | 2145 |
| Trust cases, In | 7439 | 2159 |
| Witnesses | 3704-17 | 999 |
| Written: | | |
| Abstracts, old | 3729 | 1003 |
| Acts, Legislative | 3719 | 1001 |
| Certified copies | 3720-8 | 1001 |
| Corporation records | 3737 | 1007 |
| Depositions | 3738-69 | 1007 |
| Letters testamentary | 3735 | 1006 |
| Note, etc. | | |
| 570, 3730, 3734 | 204, 1005, | 1006 |
| Ordinances | 1013 | 300 |
| Recorded instruments | | |
| ..... | 6658, 3726 | 1896, 1002 |
| Statutes, printed | 3718 | 1001 |
| EXAMINATIONS— | | |
| Accountants, public | 34 | 10 |
| Attorney at law | 306 | 141 |
| Banks | 358-360 | 153 |
| Chiropodists | 4570 | 1251 |
| Corporate records | 1366 | 413 |
| Court reporter, official | 2321 | 617 |
| Dentists | 4544-5 | 1242 |
| Doctors | 4501 | 1227 |
| Embalmers | 4578 | 1254 |
| Fees (bank) | 362 | 153 |
| Hindering | 364 | 154 |
| Insurance companies | 4690-1 | 1289 |
| Medicine, To practice | 4501 | 1227 |
| Nurses | 4519 | 1234 |
| Optometrists | 4558-9 | 1245 |
| Pharmacists | 4533 | 1238 |
| Teachers | 2878 | 730 |
| Veterinarians | 7457 | 2167 |
| EXCEPTIONS— | | |
| Bills of exception | 2237 | 598 |
| Charge, To | 2185 | 588 |
| Findings, To | 2210 | 592 |

| | Article. | Page. |
|------------------------------|------------|------------|
| EXCHANGE, BILLS OF— | | |
| Fixing liability | 566 | 204 |
| General provisions | 5940 | 1694 |
| Protest | 576, 5943 | 205, 1697 |
| Suit on, parties | 1986 | 542 |
| Surety's rights | 6252 | 1781 |
| EXECUTION— | | |
| Against partnership | 3796 | 1020 |
| Costs for: | | |
| County court | 2077 | 560 |
| Court of Civil Appeals | 1869 | 521 |
| District court | 2077 | 560 |
| Justice court | 2448 | 644 |
| Supreme Court | 1777 | 505 |
| County, Against | 1575 | 462 |
| "Courthouse door" | 3809 | 1022 |
| Death: | | |
| After issuance | 3829-30 | 1025 |
| Before issuance | 3775-9 | 1016 |
| Officer, Of | 3787 | 1018 |
| Delivery bond | 3801-3 | 1020 |
| Docket | 3831 | 1025 |
| Dormant judgment | 3773 | 1015 |
| Exemptions, general | 3832-59 | 1026 |
| Foreclosure of lien | 2218 | 594 |
| Injunction to stay | 4646 | 1274 |
| Injunction, venue | 1995(17) | 544 |
| Issuance: | | |
| County, To what | 3780-2 | 1017 |
| Death of parties | 3775-9 | 1016 |
| Delayed | 3773 | 1015 |
| Docket | 3831 | 1025 |
| Removal, On | 3774 | 1016 |
| Requisites | 3783 | 1017 |
| Suspended | 2236, 3772 | 598, 1015 |
| Time | 3770-1 | 1015 |
| Levy: | | |
| Death of officer | 3787 | 1018 |
| Death of parties | 3829-30 | 1025 |
| Delivery of bond | 3801 | 1020 |
| Designation of property | | |
| ..... | 3859, 3789 | 1031, 1019 |
| Exempt property | 3792 | 1019 |
| Expense of keeping | 3800 | 1020 |
| Mortgaged property | | |
| ..... | 3792, 3797 | 1019 |
| Officer failing | 3825 | 1025 |
| Officer liable | 3799 | 1020 |
| Officer's duty | 3785-3801 | 1018 |
| Partner, Against | 3796 | 1020 |
| Personal property, On | | |
| ..... | 3859, 3793 | 1031, 1019 |
| Principal, Against | 3786 | 1018 |
| Real property, On | 3793 | 1019 |
| Stock, On corporate | | |
| ..... | 3798, 3795 | 1020 |
| Stock, On live | 3794 | 1019 |
| Surety, Against | 6247-9 | 1780 |
| Suspended | 3829 | 1025 |
| Money paid over | 3824 | 1024 |
| New trial, On | 2236 | 598 |
| Not satisfied | 3815 | 1023 |
| Probate matters | 3309 | 924 |
| Railroad, Against | 6425 | 1829 |

| | Article. | Page. | | Article. | Page. |
|-----------------------------|------------|------------|--------------------------------|------------|------------|
| EXECUTION—Continued. | | | EXECUTORS AND AD- | | |
| Receiver, Against | 2301 | 613 | MINISTRATORS—Cont'd. | | |
| Removal of property, On | 3774 | 1016 | Temporary | 3373-81 | 937 |
| Requisites | 3783 | 1017 | Title through | 3323 | 927 |
| Return: | | | Venue | 1995(6) | 544 |
| Failure to | 3826 | 1025 | EXEMPTIONS— | | |
| How made | 3828 | 1025 | Cemetery lots | 964 | 288 |
| Indorsement | 3785 | 1018 | City pensions | 6243 | 1779 |
| Mail, By | 3823 | 1024 | Family | 3832 | 1026 |
| Motion for | 5533 | 1560 | Ferryman | 3836 | 1027 |
| When | 3784 | 1018 | Fraternal insurance | 4847 | 1342 |
| Sales: | | | Homestead: | | |
| Conveyance | 3816-8 | 1023 | Defined | 3833 | 1026 |
| “Courthouse door” | 3809 | 1022 | Excess set apart | 3841-58 | 1028 |
| Deed of trust, Under | 3810 | 1022 | Inapplicable, Exemption | | |
| Notice | 3808, 3812 | 1021, 1023 | 3499, 3839 | 959, 1027 | |
| Officer failing | 3825 | 1025 | Proceeds of sale | 3834 | 1026 |
| Officer purchasing | 3820 | 1024 | Widow, Set apart to | 3485 | 957 |
| Personal property | 3811-13 | 1023 | Libraries | 3838 | 1027 |
| Proceeds of | 3824 | 1024 | Military equipment | 5854 | 1648 |
| Purchaser failing | 3821 | 1024 | Not applicable | 3839-40 | 1027 |
| Purchasers right | 3818 | 1024 | Personal property, excess | 3859 | 1031 |
| Real property | 3804-10 | 1021 | Persons: | | |
| Re-sale | 3822 | 1024 | Jury service | 2135-7 | 581 |
| Stock, Corporate | 3798 | 1020 | Militia | 5840, 5767 | 1645, 1625 |
| Stock, Live | 3814 | 1023 | Poll tax | 2960 | 818 |
| Surplus | 3827 | 1025 | Road duty | 6721 | 1925 |
| Unlawful | 3819 | 1024 | Public property | 3837 | 1027 |
| Supersedeas: | | | Rents | 3840 | 1027 |
| Bond | 3772 | 1015 | Single persons | 3835 | 1027 |
| Death of defendant | 3829 | 1025 | Taxation: | | |
| Trial of right of property | 7421 | 2152 | Cemetery lots | 964 | 288 |
| EXECUTORS AND AD- | | | Enumeration | 7150 | 2069 |
| MINISTRATORS— | | | Federal lands | 5248 | 1472 |
| Appointment | 3353-72 | 933 | Poll tax | 2960 | 818 |
| Arbitration | 237 | 124 | Militiamen | 5840 | 1645 |
| Bank stock liability | 537 | 196 | Widow and children | 3500 | 959 |
| Bond and oath | 3382-3400 | 939 | Workmen's insurance | 8306(3) | 2391 |
| Bond, suits on | 5528 | 1559 | EX-OFFICIO— | | |
| Claims | 3502 | 960 | County clerk | 3932 | 1061 |
| Commission | 3689 | 995 | Sheriff | 3934 | 1063 |
| Death pending suit | 2081 | 561 | County Judge—Superin- | | |
| Directions of will | 3433 | 948 | tendent | | |
| Duties and powers | 3426-32 | 946 | 2701, 3888, 796 719, 1043, 245 | | |
| Expenses | 3691-2 | 996 | EXPERIMENT FARMS | | |
| Inventory | 3408 | 543 | AND STATIONS— | | |
| Letters issued | 3401-5 | 942 | Apiary | 565 | 203 |
| Letters, requisites | 3369-70 | 936 | County farms | 150-164 | 51 |
| Limitation pending quali- | | | Director's duties | 3880 | 1038 |
| fication | 5538 | 1561 | Railway farms | 165 | 54 |
| Oath and bond | 3382 | 939 | State farms | 136-149 | 49 |
| Powers | 3545, 3426 | 968, 946 | EXPLOSIVES— | | |
| Qualifications | 3355 | 933 | City regulation | 1068(7) | 318 |
| Qualified, how | 3322 | 927 | Express shipments | 3860 | 1032 |
| Removal | 3466-9 | 953 | Fire hazards abated | 4897 | 1363 |
| Rentals | 3545-51 | 968 | Military regulations | 5835 | 1644 |
| Report of moneys | 3646 | 988 | Mines, In | 5908 | 1671 |
| Resignation | 3470-5 | 954 | Tax | 7047(38) | 2021 |
| Sales | 3552, 3583 | 969, 975 | EXPORTATION— | | |
| Settlement, final | 3634 | 986 | Hides and animals | 6987 | 2000 |
| Subsequent | 3452-6 | 951 | | | |
| Suits, bond on appeal | 2276 | 607 | | | |
| Suits by | 1981 | 541 | | | |
| Tax, inheritance | 7126 | 2063 | | | |

INDEX TO CIVIL STATUTES.

2465

| | Article. | Page. |
|---------------------------------------|-----------|-------|
| EXPRESS COMPANIES— | | |
| Birds and poultry | 181 | 59 |
| Common carrier | 3860 | 1032 |
| Dead body shipments | | |
| ..... | 4477 (83) | 1198 |
| Deer, Shipping | 4037 | 1099 |
| Explosive shipments | 3860 | 1032 |
| Franks prohibited | 4005 | 1087 |
| Liability | 882 | 271 |
| Liquor shipments | 5092 | 1425 |
| Notify Railroad Commis- sion | 3865 | 1033 |
| Nursery shipments | 127-130 | 47 |
| Office, General | 3864 | 1033 |
| Overcharge, penalty | 3862 | 1032 |
| Penalty | 3866 | 1033 |
| Railway facilities | 6414 | 1824 |
| Regulations | 3861-3 | 1032 |
| Tax | 7058 | 2031 |
| Unclaimed goods | 900 | 275 |
| EXTENSION— | | |
| Land notes, limitation | 5522 | 1557 |
| Term of district court | 1923 | 530 |
| Time of filing record | 2245 | 601 |
| EXTORTION— | | |
| Express companies | 3862 | 1032 |
| Officers | 3909 | 1049 |
| Railroads | 6473 | 1842 |
| F. | | |
| FACTORIES— | | |
| Employe's lien | 5483 | 1546 |
| Female employes in | 5173-80 | 1451 |
| Fire hazards in | 4897 | 1363 |
| Health conditions | 4420 | 1177 |
| Labor conditions | 5148 | 1445 |
| FACTORS— | | |
| Accounts, limitation | 5527 | 1559 |
| Commission merchants | 1274 | 383 |
| Livestock | 1281 | 385 |
| Tax, occupation | 7047 (12) | 2021 |
| FACTS— | | |
| Conclusions of | 2208 | 593 |
| Jury disagreeing on | 2199 | 591 |
| Statement of | 2238-46 | 599 |
| FALSE REPRESENTA- TIONS— | | |
| Actionable | 4004 | 1086 |
| FALSE SWEARING— | | |
| Voter, By | 2973-4 | 822 |
| FALSE WEIGHTS— | | |
| Condemnation | 5717 | 1607 |
| Liable for | 5735 | 1615 |
| FARM LABORERS— | | |
| Lien for wages | 5483 | 1546 |
| FARMERS— | | |
| County library | 1681 | 487 |
| Crops: | | |
| Animals destroying | 4029 | 1096 |

| | Article. | Page. |
|---|------------|------------|
| FARMERS—Continued. | | |
| Insuring | 4955 | 1380 |
| Johnson grass | 6401 | 1819 |
| Railroad cars | 6493 | 1852 |
| Fences | 3947 | 1069 |
| Landlord's lien | 5222 | 1466 |
| Stock: | | |
| Cattle guards | 6400 | 1818 |
| Estrays | 6911 | 1978 |
| Impounding | 6942 | 1986 |
| Railroad killing | 6402 | 1819 |
| Shipping facilities | 6362 | 1808 |
| FARMERS' CO-OPERATIVE ORGANIZATIONS— | | |
| Credit associations | 2508 | 658 |
| Farmers' societies | 2514 | 659 |
| Hail insurance companies | | |
| ..... | 4950 | 1379 |
| Marketing associations | 5739 | 1616 |
| Mutual loan corporations | 2500 | 656 |
| Rural Credit Unions | 2461 | 648 |
| Warehouse corporations | 5578 | 1570 |
| FARMS— | | |
| Experiment stations | 136-165 | 49 |
| Prison farms, inspection | 6202 | 1766 |
| Prison farms, sale of pro- ducts | 6174 | 1756 |
| FATAL INJURIES— | | |
| Actions on | 4671 | 1281 |
| FEDERAL COURTS— | | |
| Insurance companies suing | | |
| in | 4687 | 1288 |
| Judgments, abstracts of | 5451 | 1537 |
| Railroads suing in | 6423 | 1828 |
| FEDERAL FARM LOAN BONDS— | | |
| Lawful investments | 842 | 256 |
| FEDERAL GOVERNMENT— | | |
| Irrigation projects | | |
| ..... | 7794, 7584 | 2258, 2195 |
| Lands, Acquisition | 5242 | 1471 |
| Lien record | 6644 | 1893 |
| Mail | 6393, 592 | 1816, 210 |
| Tax exempt | 7150 (4) | 2069 |
| Vehicle registration | 6676 | 1901 |
| Water projects | 7584-6 | 2195 |
| FEDERAL RESERVE BANKS— | | |
| Cash reserve | 521 | 192 |
| Examination of | 359 | 153 |
| Insolvency | 373 | 156 |
| Powers | 520 | 192 |
| Requirements of | 519 | 192 |
| Securities, Pledging | 518 | 192 |
| FEEBLE MINDED— | | |
| Colony for | 3233 | 902 |
| Proceedings: | | |
| Citation | 3869 | 1034 |
| Commitment | 3871 | 1035 |
| Hearing | 3870 | 1034 |
| Jurisdiction | 3867 | 1034 |
| Petition | 3868 | 1034 |

| | Article. | Page. | | Article. | Page. |
|-------------------------------|-------------|------------|--------------------------------|------------|------------|
| FEE BOOKS— | | | FEES—Continued. | | |
| County officers | 3896 | 1044 | Maximum fees | 3884 | 1041 |
| Inspection | 3907 | 1049 | Disposition of | 3891 | 1043 |
| Justice | 2382(12) | 633 | District attorney | 3885-6 | 1041 |
| Probate | 3298 | 923 | District clerk: | | |
| State officers | 3913 | 1050 | Assessing damages | 3929 | 1059 |
| Treasurer, State | 4389 | 1170 | Enumeration | 3927 | 1058 |
| FEE SIMPLE— | | | Other fees | 3928 | 1059 |
| Defined | 1291 | 389 | Several districts, For | 3893 | 1044 |
| FEEDING STUFF— | | | Special deputy | 3903 | 1048 |
| General provisions | 3872-81 | 1036 | Examination (banks) | 362 | 153 |
| Storage in mine | 5918 | 1673 | Excess | 3891 | 1043 |
| FEES— | | | Ex-officio services, For | 3895 | 1044 |
| Accounts: | | | Extortion | 3909 | 1049 |
| Expenses | 3899 | 1045 | Fee book | 3896, 3907 | 1044, 1049 |
| Fee book | 3896, 3907 | 1044, 1049 | Hindering | 364 | 154 |
| Fiscal year | 3898 | 1045 | Insurance Commissioner | | |
| Itemized | 3908 | 1049 | 3913, 3920 | 1050, 1055 | |
| Report not necessary | 3900 | 1046 | Interpreter's | 2372 | 631 |
| Sworn statement | 3897 | 1044 | Justice of the Peace | 3935 | 1063 |
| Acknowledgments, For | 3905 | 1049 | Land Commissioner | | |
| Attorney General | | | 3918, 3913 | 1053, 1050 | |
| 3917, 3913 | 1053, 1050 | | Maximum: | | |
| Banking commissioner | | | Deputies | 3884 | 1044 |
| 3921, 3913 | 1055, 1050 | | Failure to collect | 3892 | 1043 |
| Census to govern | 3889 | 1043 | Officers | 3883 | 1039 |
| Charter: | | | Notary public | 3945 | 1067 |
| Banks | 3921 | 1055 | Officer not entitled | | |
| Corporations generally | 3914-5 | 1051 | 3882, 3904 | 1039, 1049 | |
| Farmers' Co-operative | | | Posted | 3910 | 1049 |
| Societies | 2517 | 660 | Process, Executing | 3911 | 1050 |
| General casualty com- | 4991 | 1395 | Public weigher | 3946 | 1068 |
| panies | | | Railroad Commissioner | 3922 | 1055 |
| Life and accident com- | 4718 | 1295 | Secretary of State | 3913-16 | 1050 |
| panies | 5764 | 1624 | Sheriff | 3933-4 | 1062 |
| Marketing associations | 4787 | 1321 | State not liable | 3890 | 1043 |
| Mutual accident com- | | | State officers | 3913 | 1050 |
| panies | | | Tax assessor | | |
| Warehouses | 5581, 5611 | 1572, 1581 | 3901, 3937-8 | 1046, 1065 | |
| Clerk of Civil Appeals | 3924 | 1056 | Tax collector | | |
| Clerk of Supreme Court | 3923 | 1056 | 3901, 3939-40 | 1046, 1065 | |
| Comptroller | 3919, 3913 | 1055, 1050 | Water Engineers, Board | | |
| Constables | 3936 | 1064 | of | 7494 | 2175 |
| Copy not authorized | 3906 | 1049 | Witness | 3708 | 1000 |
| County attorney | 3887 | 1042 | FELLOW SERVANTS— | | |
| County clerk | 3929-32 | 1059 | Railway injuries | 6434 | 1831 |
| County judge: | | | FEMALES— | | |
| Enumeration | 3925 | 1057 | Hours of work | 5168-70 | 1450 |
| Ex-officio superintend- | 3888 | 1043 | Protection in factories | 5173-80 | 1451 |
| ent | 3926 | 1057 | Savings bank deposit | 409 | 164 |
| Other fees | 3890 | 1043 | Seats in factories | 5172 | 1451 |
| County not liable | | | FEME COVERT— | | |
| County officers | 3883, 3883a | 1039, 1040 | Limitation of action | 932 | 283 |
| County surveyor | 3944 | 1067 | FEME SOLE— | | |
| County treasurer | 3941-3 | 1066 | Application to be | 4626 | 1267 |
| Delinquent | 3894 | 1044 | Marriage pending suit | 2084 | 562 |
| Deputies: | | | FENCES— | | |
| Appointment | 3902 | 1046 | Farm lands, On | 3947 | 1069 |
| District clerk | 3903 | 1048 | Free range, On | 6942 | 1986 |
| | | | Gates | 6712 | 1922 |

INDEX TO CIVIL STATUTES.

2467

| | Article. | Page. | | Article. | Page. |
|-----------------------------------|------------|-----------|---|------------|------------|
| FENCES—Continued. | | | FIRES— | | |
| Joint owners, Of..... | 3952-3 | 1070 | City regulations..... | 1067 | 317 |
| Oyster location, Around..... | 4055 | 1106 | Forest..... | 2613(10) | 691 |
| Public lands, unlawfully | | | Investigation..... | 4896 | 1363 |
| inclosing..... | 5419 | 1526 | Mines, In..... | 5906 | 1671 |
| Railroad's liability..... | 6402 | 1819 | FIREWORKS— | | |
| Removal of..... | 3954 | 1070 | Tax..... | 7047(38) | 2021 |
| Roads along section..... | 6711 | 1922 | FISCAL YEAR— | | |
| Stock entering through..... | | | State..... | 12 | 5 |
| ..... | 3948-51 | 1069 | FISH AND OYSTERS— | | |
| FERRIES— | | | Dealer's license..... | 4045 | 1102 |
| Bond..... | 6800 | 1948 | Fishing boat..... | 4049 | 1104 |
| Charter..... | 1474 | 434 | Fishing license..... | 4047 | 1103 |
| Duties of ferryman..... | 6805 | 1949 | Oyster beds..... | 4041, 4050 | 1100, 1104 |
| Exemptions..... | 3836 | 1027 | Tax..... | 4044 | 1101 |
| Liability..... | 1477 | 434 | Limiting location..... | 4039 | 1100 |
| License..... | 6799, 6809 | 1948 1950 | FISHING CLUBS— | | |
| Rates..... | 6801 | 1949 | Incorporation..... | 1302(10) | 392 |
| Right of owner..... | 6798 | 1948 | FIXTURES— | | |
| Tax, intangible assets..... | 7105 | 2053 | Liens on..... | 5498 | 1550 |
| Toll rates..... | 1476 | 434 | Real property includes..... | 7146 | 2067 |
| Unlicensed..... | 6812 | 1951 | FLAGS— | | |
| FERTILIZERS— | | | Degrading..... | 6139 | 1747 |
| Commercial..... | 94-108 | 29 | FLOOD WATERS— | | |
| FIDELITY COMPANIES— | | | Diversion..... | 7496-7 | 2176 |
| General provisions..... | 4969-81 | 1384 | Impounding..... | 7502 | 2177 |
| Special powers..... | 4982 | 1390 | Use..... | 7548 | 2186 |
| FIDUCIARY CORPORATIONS— | | | FLOWERS— | | |
| Bank and trust..... | 396 | 160 | Sale and shipment..... | 119 | 45 |
| Loan and brokerage companies..... | 1520 | 446 | FOOD— | | |
| Trust companies..... | 1513 | 444 | Adulterated..... | 4471 | 1197 |
| FIRE CRACKERS— | | | Baking powder..... | 4475 | 1198 |
| Tax..... | 7047(38) | 2021 | City inspection..... | 1015(5) | 301 |
| FIRE DEPARTMENTS— | | | Condemnation..... | 4470 | 1196 |
| City..... | 1069 | 319 | Dining car sanitation..... | | |
| Jury service, firemen's..... | 2136 | 581 | ..... | 4477(64) | 1198 |
| May destroy buildings..... | 1070 | 319 | Factory, diseased employe..... | | |
| Passes, firemen's..... | 4006 | 1087 | ..... | 4477(24) | 1198 |
| Pensions, firemen's..... | 6230 | 1776 | Flour..... | 4476 | 1198 |
| Tax exempt..... | 7150(10) | 2069 | Manufacturer's registra- tion..... | 4469 | 1196 |
| FIRE ESCAPES— | | | Milk..... | 4474 | 1197 |
| Construction, requisites..... | | | Preservatives added..... | 4473 | 1197 |
| ..... | 3963-70 | 1072 | State inspection..... | 4465 | 1195 |
| Injunction..... | 3972 | 1079 | FORCIBLE ENTRY AND DETAINER— | | |
| Inspection..... | 3971 | 1079 | Actionable, when..... | 3973 | 1080 |
| Private buildings..... | 3955-8 | 1071 | Defined..... | 3974-5 | 1080 |
| Public buildings..... | 3959-60 | 1071 | Limitation..... | 5526 | 1558 |
| Specifications, minimum..... | 3966 | 1073 | Proceedings..... | 3977-94 | 1081 |
| Tests..... | 3968-9 | 1078 | Rent, recovery of..... | 3976 | 1081 |
| FIRE MARSHAL, STATE— | | | FORECLOSURE— | | |
| Appointment..... | 4877 | 1355 | Attachment proceedings..... | 301 | 140 |
| Deputy..... | 4898 | 1364 | Judgments of..... | 2218 | 594 |
| Duties..... | 4896 | 1363 | Receiver appointed..... | 2293 | 611 |
| Fire escape inspection..... | 3971 | 1079 | FOREIGN CORPORATIONS— | | |
| Powers..... | 4897 | 1363 | General provisions..... | 1529-38 | 449 |
| FIRE SALES— | | | | | |
| Tax..... | 7047(1) | 2021 | | | |

| | Article. | Page. | | Article. | Page. |
|-------------------------------------|---------------|-----------|---|------------|------------|
| FOREIGN COUNTRIES— | | | FRATERNAL BENEFIT SOCIETIES—Continued. | | |
| Action for death in..... | 4678 | 1283 | Beneficiaries | 4831-3 | 1335 |
| FOREIGN JUDGMENTS— | | | Benefits | 4824-5 | 1332 |
| Federal courts | 5451 | 1537 | Benefits exempt | 4847 | 1342 |
| Limitation | 5530 | 1559 | Certificate | 4834 | 1335 |
| FOREIGN MILITARY FORCES— | | | Charter | 1400 | 420 |
| Permission to enter State..... | 5890 | 1667 | Constitution | 4846, 4848 | 1342, 1343 |
| FOREIGN STATUTES— | | | Definitions | 4820-2 | 1331 |
| Evidence | 3718 | 1001 | Examinations | 4852-7 | 1346 |
| FOREIGN WILLS— | | | Foreign society | 4842 | 1340 |
| Executor | 3365-6 | 935 | Funds | 4835-7 | 1336 |
| Filing | 3352, 8301-5 | 933, 2389 | Incorporation | 4838, 1399 | 1337, 420 |
| FOREMAN, JURY— | | | Investments | 4836 | 1336 |
| Appointment | 2192 | 590 | Laws governing | 4823 | 1332 |
| Asking instruction..... | 2198 | 591 | Liability, personal | 4845 | 1342 |
| Communicating with court | | | License | 4841 | 1340 |
| ..... | 2197 | 591 | Mergers | 4840 | 1340 |
| Signing verdict..... | 2202 | 592 | Office | 4844 | 1342 |
| FORESTRY— | | | Powers | 4839, 1401 | 1329, 420 |
| State Forester | 2613(10) | 691 | Reserve | 4827 | 1334 |
| State forests | 2613(11) | 691 | Service on | 4843 | 1341 |
| FORFEITURES— | | | Statements | 4849, 4828 | 1343, 1334 |
| Charter: | | | Tax exempt..... | 4858 | 1349 |
| Blacklisting | 5198 | 1457 | Valuation of certificates | | |
| Indebtedness, excessive | 1348-51 | 409 | ..... | 4849-51 | 1343 |
| Insolvency | 1380 | 416 | FRATERNAL ORDERS— | | |
| Political activities | 1351 | 410 | Charter | 1400 | 420 |
| Railroad | 6418-19 | 1826 | Incorporation | 1399 | 420 |
| Refusing examination | 1370 | 414 | Insurance benefits | 4820 | 1331 |
| Trust violations | 7430 | 2155 | Powers | 1401 | 420 |
| Unpaid capital | | | FRAUDS AND FRAUDULENT CONVEYANCES— | | |
| ..... | 1331, 1339 | 406, 407 | Actionable | 4004 | 1086 |
| Venue | 1995(21) | 544 | Attachment may issue..... | 275 | 136 |
| Corporate lands | | | Banks | 367 | 154 |
| ..... | 6342, 1364 | 1802, 412 | Conveyances: | | |
| Jurisdiction | 1906 | 527 | Bulk estate | 4001 | 1085 |
| Public lands | 5326 | 1492 | Chattel mortgage | 3970 | 1079 |
| Water rights | 7521 | 2180 | Debtor, By | 268 | 134 |
| FORGERY— | | | Divorce, pending | 4634 | 1270 |
| Negotiable instrument..... | | | Fraudulent | 3996 | 1084 |
| ..... | 573, 5932(23) | 205, 1678 | Gift | 3998 | 1084 |
| Plea of | 573 | 205 | Innocent purchaser | 3996 | 1084 |
| Will, limitation | 5536 | 1650 | Loan of chattels | 3999 | 1085 |
| FRANCHISE TAX— | | | Registration necessary | 6627 | 1888 |
| Corporations exempt | 1407 | 421 | Requisites | 1288 | 389 |
| Corporations subject..... | 7084-97 | 2045 | Writing required | 3995 | 1084 |
| Mutual loan corporations | | | Creditor's assignments..... | 267-8 | 133 |
| exempt | 2505 | 657 | Defendant, By | 275 | 136 |
| Water associations exempt | | | Executor, By | 1981 | 541 |
| ..... | 7586 | 2195 | Judgment obtained by | | |
| FRANKS— |  |  | ..... | 2285, 1981 | 608, 541 |
| Prohibited | 4005 | 1087 | Passes and franks | 4013 | 1090 |
| Venue | 6477 | 1845 | Physician, By | 4505 | 1242 |
| FRATERNAL BENEFIT SOCIETIES— | | | Purchase of property | 2293 | 611 |
| Annual reports | 4848 | 1343 | Tax evasion | 7187 | 2083 |
| Associations excepted..... | 4859 | 1349 | Venue | 1995(7) | 544 |
| | | | Warehouse receipt | 5624 | 1585 |
| | | | Will, limitation..... | 5536 | 1560 |
| | | | FREE TRANSPORTATION— | | |
| | | | Permissible | 4009 | 1089 |
| | | | Venue | 6477 | 1845 |

| | Article. | Page. |
|--------------------------------------|------------|------------|
| FREIGHT— | | |
| Carrier's liability | 883-6 | 254 |
| Depots | 6393 | 1817 |
| Rates | 6448-6463 | 1836 |
| Refusal to ship | 6360 | 1808 |
| Request for cars | | |
| ..... | 6481, 6399 | 1846, 1818 |
| Stock | 6362 | 1808 |
| Storage | 6394 | 1817 |
| Unclaimed, sale of | 900-4 | 275 |
| FRESH WATER— | | |
| Commercial use | 7881 | 2280 |
| Gulf breakwaters | 7578 | 2193 |
| Polluting | 4444 | 1185 |
| Water Control Districts..... | 7809 | 2264 |
| FRESH WATER SUPPLY DISTRICTS— | | |
| Application for permit..... | 7493 | 2175 |
| Bonds | 7931 | 2289 |
| Establishment | 7882 | 2280 |
| Officers | 7900 | 2284 |
| Powers | 7915 | 2286 |
| Purposes | 7881 | 2280 |
| Taxes | 7942 | 2291 |
| FRUIT— | | |
| Canning companies | 1302(19) | 392 |
| Cars for shipment | 6493 | 1852 |
| Certificate of examination | 126 | 47 |
| Disease, protection from | 119 | 45 |
| Grades and packs | 109-116 | 36 |
| Ice company powers | 1528 | 448 |
| Shipments | 128, 131 | 47, 48 |
| Weights, standard | 5734 | 1613 |
| FULL CREW— | | |
| Railroad to furnish | 6380 | 1812 |
| FULLERS EARTH— | | |
| Pipe line carriers | 1507 | 443 |
| FUNDS— | | |
| A. & M. College | 2614 | 693 |
| Asylum | 5418 | 1526 |
| Available school | 2823 | 759 |
| Bank Depositor's Guar- anty | 444 | 173 |
| Cotton seed inspection | 66 | 19 |
| Highway, State | 6694 | 1906 |
| Permanent school | 5416 | 1525 |
| Revenue, distribution of | | |
| ..... | 5347, 5364 | 1506, 1511 |
| University of Texas | | |
| ..... | 2590, 5417 | 684, 1526 |
| FUNERAL EXPENSES— | | |
| Allowances | 7269 | 2111 |
| Claims for | 3511 | 961 |
| FURNITURE— | | |
| Exempt from forced sale | 3832 | 1026 |
| Security for loan | 6164 | 1753 |
| Tax exempt | 7150(11) | 2069 |
| FUTURE ESTATES— | | |
| Conveyance creating | 1296 | 390 |

| | Article. | Page. |
|--|------------|------------|
| G. | | |
| GAMBLING— | | |
| Injunction | 4664-7 | 1278 |
| Military grounds, On | 5888 | 1667 |
| Penitentiary, At | 6199 | 1765 |
| GAME, FISH AND OYSTER COMMISSIONER— | | |
| Appointment | 4016 | 1092 |
| Application for oyster bed | 4035 | 1098 |
| Bond and Oath | 4017 | 1092 |
| Seining in closed waters..... | 4045 | 1102 |
| Deputies | 4021-3 | 1093 |
| Duties | 4018 | 1092 |
| Disposition of money | 4025 | 1095 |
| Protection of reservation | 4049 | 1104 |
| Distribution of fund | 5347 | 1506 |
| Hunting license | 4032 | 1097 |
| Tax deposit | 4031 | 1097 |
| Maintain markings | 4040 | 1100 |
| Property of State | 4026 | 1095 |
| May take brood fish | 4050 | 1104 |
| Polluting water | | |
| ..... | 4444, 5336 | 1185, 1498 |
| Powers | 4018 | 1092 |
| Railroad pass | 4006 | 1087 |
| Report by | 4019 | 1093 |
| Salary | 4024 | 1095 |
| Rights of locator | 4038 | 1099 |
| Locator's certificate | 4037 | 1099 |
| Permit to use seine | 4044 | 1101 |
| GAMING— | | |
| Injunction | 4664-7 | 1278 |
| Military grounds, On | 5888 | 1667 |
| Penitentiary, At | 6199 | 1765 |
| GARNISHMENT— | | |
| Bond | 4077 | 1107 |
| Certain districts, In 2092(10) | | 563 |
| Exemptions: | | |
| Fraternal insurance | 4847 | 1342 |
| Wages | 4099 | 1112 |
| Workmen's insurance | | |
| ..... | 8306(3) | 2391 |
| Grounds for | 4076 | 1107 |
| Issuance | 4076 | 1107 |
| Judgment | 4087-9 | 1110 |
| Jurisdiction | 4076 | 1107 |
| Proceedings | 4094-4101 | 1111 |
| Stock, shares of | 4091-2 | 1111 |
| Writ | 4080-5 | 1108 |
| GAS— | | |
| Cities' powers | 1015(29) | 301 |
| Permit and lease | 5338-82 | 1499 |
| Pipe lines | 6051 | 1728 |
| Utilities, natural gas | 6050 | 1727 |
| GAS COMPANIES— | | |
| City regulation | 1119 | 335 |
| Deposits, interest on | 1440 | 428 |
| Eminent domain | 1436 | 427 |
| Finances | 1437 | 427 |
| Judicial regulation | 1125 | 337 |
| Natural gas | 1495, 6050 | 440, 1727 |

| | Article. | Page. | | Article. | Page. |
|--------------------------------|------------|-------|----------------------------------|-----------|-------|
| GAS COMPANIES—Cont'd. | | | GOVERNOR—Continued. | | |
| Powers | 1435 | 426 | Board of Control | 601 | 212 |
| Reports | 1441 | 428 | Bollworm Commission 71-76 | 21 | |
| Sale of properties | 1268 | 380 | College Regents | 2907 | 796 |
| Tax, gross receipts | 7060 | 2032 | Commission of Appeals | 1781 | 506 |
| Tax, occupation | 7047(17) | 2021 | Commissioner of Deeds 1270 | 382 | |
| GAS WELLS— | | | County Judge, special | 1931-1933 | 532 |
| Abandoned | 6005 | 1716 | Dental Examiners, | | |
| Casing | 6004 | 1716 | Board of | 4543 | 1242 |
| Confining gas 6008, 6016 | 1717, 1719 | | District Attorney (va- | | |
| Salt water in | 1508 | 443 | cancy) | 328 | 147 |
| Water in | 6010 | 1717 | District Judge, special | 1885 | 524 |
| GASOLINE— | | | Employers' Insurance | | |
| Tax | 7065 | 2035 | Association | 8308 | 2409 |
| GATES— | | | Game Commissioner | 4016 | 1092 |
| Across roads | 6712 | 1922 | Health, Board of | 4414 | 1175 |
| GAYULE— | | | Highway Commission | 6664 | 1898 |
| Sale | 5324 | 1491 | Historical Board | 6145 | 1748 |
| GENERAL ELECTION— | | | Humane Society | 4597 | 1262 |
| Order for | 2950 | 813 | Industrial Accident | | |
| Time and place | 2930 | 808 | Board | 8307 | 2404 |
| GENERAL LAND OFFICE— | | | Industrial Commission | 5183 | 1456 |
| Archives | 250-253 | 129 | Insurance Commission | 4876 | 1354 |
| Commissioner of | 5249 | 1473 | Insurance, Commission- | | |
| General provisions | 5261-7 | 1479 | er of | 4679 | 1284 |
| GIFTS— | | | Judge Civil Appeals, | | |
| Consideration, Without | 3997 | 1084 | special | 1815 | 511 |
| Corporations, By | 1349-52 | 409 | Judge Criminal Ap- | | |
| Requisites | 3998 | 1084 | peals, special | 1803 | 509 |
| To defraud | 3996 | 1084 | Judge Supreme Court | | |
| GINN AND GINNERS— | | | (vacancy) | 1715 | 494 |
| Baling | 5677 | 1597 | Junior A. & M. Board | 2620 | 694 |
| Bond | 5668 | 1595 | Labor, Commissioner of | 5144 | 1444 |
| Corporations | 1302(15) | 392 | Library Commission | 5434 | 1531 |
| Defined | 5666 | 1593 | Livestock Sanitary Com- | | |
| Guarantee | 5672 | 1596 | mission | 7009 | 2007 |
| Inspectors | 63 | 19 | Medical Examiners, | | |
| Liability | 5678 | 1597 | Board of | 4495 | 1224 |
| License | 5667 | 1594 | Military Examining | | |
| Marking cotton | 5675 | 1596 | Board | 5805 | 1637 |
| Samples | 5670 | 1595 | Mining Board | 5892 | 1668 |
| GIRLS' TRAINING SCHOOL— | | | Naval Board | 5891 | 1667 |
| General provisions | 5132-7 | 1438 | Notaries Public | 5949 | 1702 |
| Salaries | 6815 | 1953 | Nurse Examiners, Board | | |
| GLANDERS— | | | of | 4513 | 1233 |
| Eradication | 6900-02 | 1974 | Optometry Board | 4554 | 1245 |
| GOATS— | | | Pardons, Board of | 6203 | 1766 |
| Exempt from inspection | 6979 | 1998 | Parks Board | 6067 | 1733 |
| Free range election | 6930 | 1983 | Pharmacy, Board of | 4529 | 1237 |
| GONZALES PARK— | | | Pilots | 8264-79 | 2381 |
| Established | 6074 | 1734 | Prison Commission | 6168 | 1754 |
| GOVERNING BODY— | | | Prison Supervisors | 6202 | 1766 |
| Defined | 23 | 6 | Prosecuting Attorneys, | | |
| GOVERNOR— | | | State | 1811 | 510 |
| Appointments by: | | | Public Weighers | 5681 | 1598 |
| Adjutant General | 5787 | 1631 | Quartermaster General | 5799 | 1635 |
| Banking Commissioner | 342 | 150 | Rate Making Board, | | |
| | | | Texas | 2540 | 668 |
| | | | Reclamation Engineer | 7960 | 2294 |
| | | | Secretary of State | 4330 | 1153 |
| | | | State Treasurer (sus- | | |
| | | | pension) | 4369 | 1166 |

| | Article. | Page. |
|---------------------------------|---------------|------------|
| GOVERNOR—Continued. | | |
| Surveyor's Examining Board | 5268 | 1476 |
| Tax Commissioner | 7098 | 2051 |
| Technological College | | |
| Directors | 2630 | 697 |
| Text Book Commission | 2839 | 764 |
| United States Senator (vacancy) | 3087 | 851 |
| Vacancies | 21-25 | 6 |
| Veterinary Board | 7448 | 2164 |
| Water Engineers, Board of | 7468 | 2171 |
| Water Inspector | 4444 | 1185 |
| Wreck-masters | 8310 | 2416 |
| Blind Institute property | 3206 | 894 |
| Certificates of election | 3035 | 838 |
| Cession of lands to U. S. | 5247 | 1472 |
| Clemency | 6194-5 | 1764 |
| Commission contestant | 3051 | 841 |
| Commission officers | 3040 | 831 |
| Communtation | 6195 | 1764 |
| Constitutional amendments | 2982 | 825 |
| Deficiencies, approval of | 4351 | 1158 |
| Education, member of Board of | 2664 | 707 |
| Election contest | 3066 | 844 |
| Elections, Ordering | 2946 | 813 |
| Fish and oysters, report | 4019 | 1093 |
| Foreign troops admitted | 5890 | 1667 |
| Hide inspectors | 6972 | 1996 |
| Impeachment proceedings | 5962 | 1705 |
| Insurrection | 5889 | 1667 |
| Issue manuscript bonds | 2606 | 689 |
| Juveniles, pardon | 5126-37 | 1436 |
| Labor disputes | 5186 | 1457 |
| Land Office cashier | 5257 | 1474 |
| Lands, purchase of | 5240 | 1471 |
| Livestock quarantine | 7017 | 2011 |
| Mansion | 6816 | 1953 |
| Martial law | 5889 | 1667 |
| Military, control of | 5768, 5830 | 1626, 1642 |
| Nominated at primary | 3101 | 856 |
| Open Port Law | 907 | 277 |
| Pardon | 5126-37, 6194 | 1436, 1764 |
| Parks, State | 6067-72 | 1733 |
| Patents, Sign | 5404 | 1523 |
| Penitentiary, Inspect | 6201 | 1766 |
| Presidential Electors | 3080 | 850 |
| Proclamations: | | |
| Election notice by | 2946 | 813 |
| Impeachment proceedings | 5962 | 1705 |
| Insurrection | 5889 | 1667 |
| Labor disputes | 5186 | 1457 |
| Livestock regulations | 7017 | 2011 |
| Martial law | 5889 | 1667 |
| Open Port Law | 907 | 277 |
| Presidential Electors | 3080 | 850 |
| Publication | 29 | 8 |
| Quarantine | 4449 | 1191 |

| | Article. | Page. |
|------------------------------|------------|------------|
| GOVERNOR—Continued. | | |
| Quarantine powers | 4448 | 1191 |
| Railroad reports | 6282 | 1790 |
| Railway mail rates | 6392 | 1816 |
| Rangers | 6564 | 1874 |
| Removal of officers | 5964-67 | 1708 |
| Salary | 6813 | 1952 |
| School report | 2660 | 706 |
| State forests | 2613(11) | 691 |
| Surveyor, May use | 5276 | 1478 |
| Tax Board, Member | 7041 | 2019 |
| Tax investigation | 7057 | 2030 |
| Tax law enforcement | 7102 | 2053 |
| Text Book Commission, Member | 2839 | 764 |
| Unlawful inclosure | 5419 | 1526 |
| Warrant to seize arms | 5852 | 1648 |
| GRAIN— | | |
| Weights, standard | 5734 | 1613 |
| GRAIN ELEVATORS— | | |
| Co-operative | 5579 | 1571 |
| Incorporation | 1302(81) | 392 |
| GRAMMATICAL ERRORS— | | |
| Statutes, In | 11 | 4 |
| GRAND JURY— | | |
| Examine officers' accounts | 3896 | 1044 |
| Special term, At | 1920 | 530 |
| GRAPEFRUIT— | | |
| Experiment station | 141 | 50 |
| Grades and packs | 109-110 | 36 |
| Inspection | 119 | 45 |
| GROSS RECEIPTS TAX— | | |
| Corporations generally | 7058-83 | 2031 |
| Gas, natural | 6060 | 1731 |
| Insurance, fire | 4902, 7064 | 1365, 2034 |
| Insurance, generally | 7064 | 2034 |
| Insurance, life | 4769 | 1315 |
| Insurance, storm | 4949 | 1378 |
| Insurance, workmen's | 4906 | 1366 |
| Oil, production | 7071, 6032 | 2040, 1723 |
| Reports by utilities | 1442 | 428 |
| GUARANTY COMPANIES— | | |
| General provisions | 4969-81 | 1384 |
| Special powers | 4982 | 1390 |
| Stockholder's liability | 1344 | 408 |
| GUARANTY FUND PLAN— | | |
| Protection of depositors | 437 | 171 |
| Application for protection | 440 | 171 |
| Assessments for fund | 443 | 172 |
| Deposits protected | 446-7 | 173 |
| Guaranty fund | 444 | 173 |
| First lien on assets | 449 | 174 |
| Liquidation | 450-474 | 174 |
| National bank may apply | 441 | 172 |
| Refunding to banks | 445 | 173 |
| Use of fund | 448 | 174 |

| | Article. | Page. | | Article. | Page. |
|-------------------------------|------------|------------|-------------------------------|------------|------------|
| GUARDIAN AD LITEM— | | | GUARDIAN AND WARD— | | |
| Appointment | 2159 | 584 | Continued. | | |
| Estate, settlement | | | Death of guardian | 4228 | 1138 |
| ..... | 3605, 3633 | 980, 985 | Death of ward | 4128 | 1118 |
| | | | Definitions | 4104 | 1113 |
| GUARDIAN AND WARD— | | | Dependent child | 2336 | 622 |
| Appeal, Right of | 4318 | 1151 | Drunkards | 4123, 4267 | 1117, 1143 |
| Appointment of guardian: | | | Duties of guardian: | | |
| Application | 4113 | 1115 | Accounts, annual | 4224-7 | 1136 |
| Death | 4228 | 1138 | Claims | 4239-66 | 1140 |
| Facts, requisite | 4123 | 1117 | Compensation | 4309-12 | 1150 |
| Failure to qualify | 4127 | 1118 | Continuation of busi- | | |
| Judge, by | 4117 | 1115 | ness | 4174-92 | 1126 |
| Letters of guardianship | 4133 | 1119 | Of the person—powers | | |
| Persons of unsound |  |  | ..... | 4162-73 | 1124 |
| mind | 4121 | 1116 | Inventory | 4153-61 | 1122 |
| Minor may select | 4126 | 1118 | Resignation | 4229 | 1138 |
| Natural guardian | 4118 | 1116 | Sales | 4193-4223 | 1130 |
| Non-resident | | | Settlement, final when | | |
| ..... | 4285, 4132 | 1146, 1119 | ..... | 4296-4308 | 1148 |
| Oath and bond | 4139-52 | 1120 | Subsequent guardian | 4238 | 1139 |
| Order of appointment | 4125 | 1117 | Final settlement, when | 4296 | 1148 |
| Orphans | 4120 | 1116 | Inventory | 4153 | 1122 |
| Qualified, Not | | | Investments | 4180 | 1127 |
| ..... | 4236, 4122 | 1139, 1117 | Jurisdiction | 4102-3 | 1113 |
| Receiver pending | 4129 | 1118 | Letters of guardianship | 4133 | 1119 |
| Single appointment | 4124 | 1117 | Lunatics | 4123, 4267 | 1117, 1143 |
| Temporary appointments | 4134-8 | 1119 | Mineral lease | 4192 | 1129 |
| Term | 4128 | 1118 | Disposition of child | 2336 | 622 |
| Will, By | 4119 | 1116 | Non-residents | 4132, 4285 | 1119, 1146 |
| Appraisers | 4158, 4313 | 1123, 1150 | Orphans | 4120 | 1116 |
| Guardian of person | 223 | 122 | Publications | 4112 | 1115 |
| Liability of executor | 537 | 196 | Receiver | 4129-31 | 1118 |
| Bond of guardian | 4139-52 | 1120 | Removal without notice | 4233 | 1138 |
| Bond, suits for | 5528 | 1405 | Removal of guardianship, | | |
| Certiorari | 4329 | 1152 | application | 4290 | 1147 |
| Claims: | | | Rentals | 4175 | 1126 |
| Payment | 4239 | 1140 | Resignation of guardian | 4229 | 1138 |
| Allowance of claim | 4246 | 1141 | Perishable property | 4193 | 1130 |
| Appeal | 4252 | 1141 | Subsequent guardian | 4238 | 1139 |
| Examination of claim | 4247 | 1141 | Suits, no bond required | 2276 | 607 |
| May contest claim | 4248 | 1141 | Suits by executors | 1981 | 541 |
| Corporation, Of claim | 4240-1 | 1140 | Term of appointment | 4128 | 1118 |
| Examination of claim | 4247 | 1141 | Venue | 4111, 1114 | |
| "Established" claim | 4255 | 1142 | Ward, rights of: | | |
| Execution against guar- | | | Education | 4171 | 1125 |
| dian | 4264 | 1143 | Expenses | 4170 | 1125 |
| "Exhibited" claim— | | | Of the person, duties | 4163 | 1124 |
| time | 5254-6 | 1142 | Select guardian | 4126 | 1118 |
| Execution of guardian | 4264 | 1143 | Title | 4186, 4173 | 1128, 1125 |
| Filing claim | 4259 | 1142 | | | |
| Guardian's claim | 4253 | 1141 | GULF OF MEXICO— | | |
| Indorsement | | | Breakwaters | 7578 | 2193 |
| ..... | 4250, 4242 | 1140, 1140 | Causeways | 1466 | 432 |
| Limitation interrupted | 4257 | 1142 | Channel and dock com- | | |
| Lost claim | 4251 | 1141 | panies | 1478 | 434 |
| Payment of claims | 4262-6 | 1142 | Deep water corporations | 1483 | 437 |
| Purchase by guardian | 4258 | 1142 | To maintain markings | 4040 | 1100 |
| Mortgaged property | 4209 | 1134 | Harbor bonds | 835 | 254 |
| Suit | 4244-5 | 1140 | Oil and gas | 5353 | 1509 |
| Contesting proceedings | 4109 | 1114 | Pilots | 8270-79 | 2383 |
| Conveyances | 4218-20 | 1135 | Pilots, port | 3248 | 2363 |
| Costs of Exhibition, etc. | | | Seawalls | 6830 | 1957 |
| ..... | 4260, 4309 | 1142, 1150 | Water, Sweetening | 7490 | 2174 |

| H. | | Article. | Page. |
|---|------------|----------|-------|
| HABEAS CORPUS— | | | |
| Issuance | 1737 | 498 | |
| HABITUAL DRUNKARDS— | | | |
| Guardianship 4123, 4267 | 1117, | 1143 | |
| HAIL INSURANCE— | | | |
| Mutual companies | 4933-49 | 1375 | |
| Mutual, Farmers' | 4950-9 | 1379 | |
| HALF-BLOOD— | | | |
| Inheritance | 2573 | 680 | |
| HALF-FARE— | | | |
| Street cars | 6544 | 1867 | |
| HANDWRITING— | | | |
| Proof of instruments | 6612 | 1885 | |
| HARBORS— | | | |
| City bond issue | 835 | 254 | |
| Facilities | 8229 | 2359 | |
| Harbor corporations | 1483 | 487 | |
| HEADS OF DEPARTMENTS— | | | |
| Adjutant General | 5787 | 1631 | |
| Agriculture, Commissioner of | 47 | 14 | |
| Appropriation estimates .. | 688 | 225 | |
| Attorney General | 4394 | 1170 | |
| Banking Commissioner | 342 | 150 | |
| Certified copies by | 3913 | 1050 | |
| Comptroller | 4342 | 1156 | |
| Deficiencies created by | 4351 | 1158 | |
| Education, Superintend- ent of | 2655 | 705 | |
| Game Commissioner | 4016 | 1092 | |
| Health Officer, State | 4414 | 1175 | |
| Insurance Commissioner | 4679 | 1284 | |
| Judicial authority over | 1735 | 498 | |
| Land Commissioner | 5249 | 1473 | |
| Removal | 5961-7 | 1705 | |
| Secretary of State | 4330 | 1153 | |
| Suits by, security | 2276 | 607 | |
| Treasurer | 4367 | 1165 | |
| Venue | 1995(20) | 544 | |
| HEALTH— | | | |
| Anatomical Board | 4583 | 1255 | |
| Anthrax | 4447 | 1189 | |
| Babies: | | | |
| Birth certificate | 4477(43) | 1198 | |
| Birth reports | 4477(34) | 1198 | |
| Eyes, Protecting | 4441 | 1183 | |
| Maternity homes | 4442 | 1183 | |
| Board of, State | 4414 | 1175 | |
| Charbon | 4447 | 1198 | |
| Child hygiene | 4443 | 1184 | |
| Chiropody | 4567 | 1250 | |
| City health department | 1071 | 320 | |
| City officers | 4424-36 | 1178 | |
| Consumptives, indigent | 4440 | 1177 | |
| Contagious diseases | 4477(1-33) | 1198 | |
| County officers | 4422-35 | 1177 | |

| HEALTH—Continued. | | Article. | Page. |
|--------------------------------|-------------|------------|-------|
| Dead: | | | |
| Anatomical Board | 4583 | 1255 | |
| Certificate, death | 4477(42) | 1198 | |
| Disposal of | 4477(40) | 1198 | |
| Embalming | 4576 | 1253 | |
| Reports | 4477(35) | 1198 | |
| Transportation | 4477(77) | 1198 | |
| Dentists | 4535 | 1239 | |
| Drugs | 4465-76 | 1195 | |
| Food and drugs | 4465-76 | 1195 | |
| Hospitals: | | | |
| City | 1072 | 320 | |
| County | 4478 | 1216 | |
| Indigent patients | 4438 | 1182 | |
| Joint | 4437 | 1182 | |
| Lepers | 4439 | 1183 | |
| Maternity homes | 4442 | 1183 | |
| Medicine | 4495 | 1224 | |
| Nurses | 4513 | 1233 | |
| Optometry | 4552 | 1244 | |
| Pharmacy | 4529 | 1237 | |
| Physicians | 4495 | 1224 | |
| Poorhouse | 4489 | 1222 | |
| Quarantine | 4448-64 | 1191 | |
| Railroads, rules | 4477(58-86) | 1198 | |
| Sanitary Code | 4477 | 1198 | |
| State Board of | 4414 | 1175 | |
| Surgeons | 4495 | 1224 | |
| Venereal diseases | 4445 | 1186 | |
| Vital statistics | 4477(34) | 1198 | |
| Water, pollution of | 4444 | 1185 | |
| HEIRS— | | | |
| Adjudication of heirship | 3590 | 976 | |
| Adoption, By | 42 | 13 | |
| Descent and distribution | 2570 | 679 | |
| Escheated estate, suit | 3286 | 919 | |
| Inheritance by devise | 3314 | 925 | |
| Inheritance tax | 7117 | 2060 | |
| Unknown, citation of | 2040 | 555 | |
| HIDES— | | | |
| Imported | 6989 | 2000 | |
| Inspection | 6978 | 1997 | |
| Sale | 6984, 6993 | 1999, 2002 | |
| Seizure | 6981-2 | 1998 | |
| Stolen | 6991 | 2001 | |
| Unbranded | 6981-2 | 1998 | |
| HIGH SCHOOLS— | | | |
| Classification of | 2679 | 712 | |
| Consolidation | 2812 | 755 | |
| Subjects | 2680 | 712 | |
| HIGHWAY COMMISSION— | | | |
| Aid road officials | 6667 | 1899 | |
| Appointment | 6664 | 1898 | |
| Control of highways | 6673 | 1900 | |
| Convict labor | 6200 | 1765 | |
| Engineer | 6669 | 1899 | |
| Expenses | 6674 | 1900 | |
| Federal aid | 6672 | 1900 | |
| Fund, Highway | 6694 | 1906 | |
| Organization | 6665 | 1898 | |
| Registration, motor | 6675-97 | 1901 | |
| Revenues, gasoline | 7065 | 2035 | |
| Rules | 6666 | 1898 | |

| | Article. | Page. | | Article. | Page. |
|---|---------------|-----------|--|------------|------------|
| HIGHWAYS— | | | HOTELS— | | |
| City | 1202 | 362 | Defined | 4596 | 1261 |
| County | 6703 | 1919 | Disease in | 1074 | 320 |
| State | 6673 | 1900 | Fire escapes | 3956 | 1071 |
| HISTORY— | | | Gratuitous bailee | 4593 | 1260 |
| Archives | 256 | 130 | Injunction | 4664 | 1278 |
| Historical Board | 6145 | 1748 | Liability for valuables | 4592 | 1260 |
| Historical Commission | 5434 | 1531 | Lien | 4594 | 1260 |
| HOGS— | | | Report diseases | 4477(23) | 1198 |
| Brands | 6890 | 1971 | Sale to satisfy lien | 4595 | 1261 |
| HOLIDAYS— | | | HOURS OF LABOR— | | |
| Enumeration | 4591 | 1259 | Convicts | 6193 | 1763 |
| Free range election | 6947 | 1988 | Female employes | 5168-70 | 1450 |
| HOME FOR DEPENDENT AND NEGLECTED CHILDREN— | | | General provisions | 5165-67 | 1449 |
| Commitment to | 3257 | 910 | Railroads | 6390 | 1815 |
| HOME GUARD— | | | HOUSE OF REPRESENT- ATIVES— | | |
| Organizatoim | 6144 | 1748 | Certificate of election | 3038 | 838 |
| HOME RULE— | | | Impeachment proceedings | 5962 | 1705 |
| Adoption by city | 1165 | 347 | Organization | 5422-9 | 1528 |
| Franchises | 1181 | 357 | HUDSPETH COUNTY— | | |
| Powers | 1175 | 350 | District attorney's salary | 326 | 147 |
| HOMESTEAD— | | | HUMANE SOCIETY— | | |
| Abandonment of | 3833 | 1026 | Duties | 180-9 | 59 |
| Defined | 3833 | 1026 | Organization | 4597-4601 | 1262 |
| Excess set apart | 3841 | 1028 | HUSBAND AND WIFE— | | |
| Exemptions | 3499, 3839 | 959, 1027 | Community property: | | |
| Improvements on | 3839 | 1027 | Administration | 3661-3683 | 990 |
| Lien for improvements | 5460 | 1027 | Defined | 4619 | 1266 |
| Sale | 4618, 1300 | 1266, 391 | Furniture, Encumber- ing | 6164 | 1753 |
| Survivor's rights in | 3496-3501 | 959 | Inheritance of | 2578-9 | 681 |
| Taxes, liable for | 7279 | 2114 | Partition after death | 3627 | 984 |
| HONEY BEES— | | | Status pending divorce | 4634 | 1270 |
| Inspection | 549-565 | 200 | Death intestate | 2571 | 679 |
| HORSES— | | | Divorce | 4629 | 1268 |
| Brands | 6891 | 1971 | Executors, etc.: | | |
| Free range election | 6954 | 1990 | Minor, surviving | 3353, 3391 | 933, 941 |
| Glanders | 6900 | 1974 | Wife | 3390 | 940 |
| HORTICULTURE— | | | Female emancipated | 4625 | 1267 |
| Experiment station | 141 | 50 | Femme sole | 4626 | 1267 |
| Nursery stock | 119 | 45 | Foreign marriages | 4627 | 1268 |
| HOSPITALS— | | | Guardians: | | |
| City | 1072, 1015(4) | 320, 301 | Appointment | 4122 | 1117 |
| County | 4478 | 1216 | Bond | 4146-7 | 1121 |
| County and city | 4437 | 1182 | Homestead: | | |
| Crippled children | 3260 | 911 | Defined | 3833 | 1026 |
| Fire escapes | 3956 | 1071 | Excess set apart | 3841 | 1028 |
| Pasteur Hospital | 3197 | 893 | Exemptions | 3499 | 959 |
| Sanitary Code | 4477 | 1198 | Improvements on | 3839 | 1027 |
| Venereal diseases | 4445 | 1186 | Liable for taxes | 7279 | 2114 |
| HOTCHPOTCH— | | | Lien on | 5460 | 1540 |
| Advancements of intestate | 2576 | 680 | Sale | 4618, 1300 | 1266, 391 |
| | | | Survivor's right to | 3496-3501 | 959 |
| | | | Injuries, actions for..... | | |
| | | | | 4615, 4675 | 1266, 1282 |
| | | | Marriage: | | |
| | | | Annulment | 4628 | 1268 |

| | Article. | Page. |
|-------------------------------|-------------|------------|
| HUSBAND AND WIFE— | | |
| Continued. | | |
| Celebrated by whom | 4602 | 1263 |
| Consent | 4605 | 1263 |
| Contracts | 4610-12 | 1264 |
| Divorce | 4629 | 1268 |
| Early marriages | 4608-9 | 1264 |
| Emancipates female | 4625 | 1267 |
| Foreign | 4627 | 1268 |
| Intermarriage | 4607 | 1264 |
| License | 4604-6 | 1263 |
| Prohibited | 4603 | 1263 |
| Remarriage | 4640 | 1270 |
| Necessaries: | | |
| Husband's property lia- | | |
| ble | 4613 | 1265 |
| Other property liable | 4623 | 1267 |
| Suits for | 1984 | 542 |
| Parties to suits | 1983-1985 | 542 |
| Separate property, hus- | | |
| band's | 4613 | 1265 |
| Separate property, wife's: | | |
| Control of | 4614 | 1265 |
| Defined | 4614-7 | 1265 |
| Registration | 6647 | 1894 |
| Suits against | 1984-5 | 542 |
| Suits for | 1983 | 542 |
| Tax rendition | 7152(4) | 2072 |
| Wage assignments | 6164 | 1753 |
| Wills | 8281 | 2386 |
| Witness, competent | 3715 | 1000 |
| HYDRAULIC USES— | | |
| Public waters | 7490 | 2174 |
| HYDROPHOBIA— | | |
| Pasteur Hospital | 3197 | 893 |
| I. | | |
| ICE DEALERS— | | |
| Incorporation | 1302(15-17) | 392 |
| Powers | 1528 | 448 |
| Tax | 7047(20) | 2163 |
| IDIOTS— | | |
| Asylum for | 3184-8 | 885 |
| Care of, by county | 2351(11) | 627 |
| Colony for | 3233 | 902 |
| Disfranchised | 2954 | 814 |
| Feeble-minded persons | 3867 | 1034 |
| Guardian ad litem | 2159 | 584 |
| Guardianship | 4123, 4267 | 1117, 1143 |
| Proceedings against | 5547 | 1563 |
| Suit by next friend | 1994 | 543 |
| Tax rendition | 7152(5) | 2072 |
| ILLEGITIMATE CHILDREN— | | |
| Inheritance | 2582 | 682 |
| Recognition | 2581 | 681 |
| ILLUMINATION— | | |
| Artificial | 1221 | 366 |
| Natural gas, By | 6006 | 1717 |
| IMMIGRANTS— | | |
| Actions against | 5542 | 1561 |

| | Article. | Page. |
|-------------------------------|------------|------------|
| IMPEACHMENT— | | |
| Officers subject to | 5961 | 1705 |
| Proceedings | 5962 | 1705 |
| IMPORTATION— | | |
| Hides and animals | 6989-90 | 2000 |
| Nursery stock | 128 | 47 |
| Sheep | 7038 | 2018 |
| IMPOUNDING— | | |
| Estrays | 6911 | 1978 |
| Horses | 6966 | 1994 |
| Limited range | 6938 | 1984 |
| IMPRISONMENT— | | |
| Contempt, for: | | |
| Civil Appeals | 1826 | 513 |
| Commissioners Court | | |
| | 2351(13) | 627 |
| County Court | 1955 | 536 |
| District Court | 1911 | 528 |
| Justice Court | 2386 | 634 |
| Supreme Court | 1736 | 498 |
| Ground for divorce | 4629 | 1268 |
| Judgment enforced by: | | |
| County Court | 2217 | 594 |
| District Court | 2217 | 594 |
| Justice Court | 2434 | 643 |
| Limitation, Interrupts | | |
| | 5518, 5535 | 1556, 1560 |
| IMPROVEMENT DISTRICTS— | | |
| Option to purchase | 2673 | 709 |
| Conservation | 8194 | 2350 |
| Finances | 1667-73 | 483 |
| Reclamation | 8194 | 2350 |
| Power to issue bonds | 726 | 233 |
| School, establishment | 2741 | 729 |
| Water | 7466 | 2170 |
| IMPROVEMENTS— | | |
| Homestead, On | | |
| | 3839, 5460 | 1027, 1540 |
| Lien for | 5452 | 1537 |
| Real property includes | 7146 | 2067 |
| Receiver making | 2315 | 616 |
| Trespass to try title | 7393 | 2147 |
| INCUMBRANCES— | | |
| Community property, On | | |
| | 4620-1 | 1266 |
| Defined | 1298 | 391 |
| Furniture, On family | 6164 | 1753 |
| Land, On: | | |
| Suits against non-resi- | | |
| dents | 1975 | 540 |
| Venue | 1995(14) | 544 |
| Separate property, On | 4613-6 | 1265 |
| INDEMNITY INSURANCE— | | |
| Contracts | 5024 | 1404 |
| INDEPENDENT CANDI- | | |
| DATES— | | |
| Name on ballot | 3159-62 | 873 |

| | Article. | Page. | | Article. | Page. |
|--------------------------------------|------------|-----------|-----------------------------|------------|------------|
| INDEPENDENT SCHOOL DISTRICTS— | | | INJUNCTIONS— | | |
| Assumption of control..... | 2768 | 739 | Appeals..... | 2251, 4662 | 603, 1278 |
| Consolidation..... | 2806 | 753 | Application for..... | 4647-50 | 1275 |
| Extension of city limits..... | 2803-5 | 752 | Authority to issue..... | 4642 | 1273 |
| Taxing power..... | 2784 | 743 | Bond..... | 4649 | 1275 |
| Incorporation of town..... | 2757 | 735. | Bucket shops..... | 4667 | 1276 |
| INDIGENTS— | | | Building and loan asso- | | |
| Confederate veterans..... | 6205 | 1768 | ciations..... | 868 | 266 |
| Consumptives..... | 4440 | 1183 | Commercial fertilizers..... | 104 | 34 |
| Sick..... | 4438 | 1182 | Disobedience..... | 4661 | 1277 |
| State institutions, In: | | | Disorderly houses..... | 4664-67 | 1278 |
| Children's Home..... | 3256 | 909 | Dissolution..... | 4658-60 | 1277 |
| Confederate Home..... | 3216 | 897 | Emergency issuance..... | 4643 | 1273 |
| Confederate Woman's | | | Employment agents..... | 5220 | 1464 |
| Home..... | 3218 | 898 | Execution, To stay..... | 4646 | 1274 |
| Epileptic Colony..... | 3232 | 901 | Fire escapes..... | 3972 | 1079 |
| Feeble-minded Colony..... | 3238 | 903 | Gambling..... | 4664-7 | 1278 |
| Insane Asylum..... | 3187 | 886 | Gas pipe line..... | 6051 | 1728 |
| Pasteur Hospital..... | 3198 | 893 | General provisions..... | 4642-63 | 1273 |
| Tuberculosis Sanato- | | | Grounds for..... | 4642 | 1273 |
| rium..... | 3241 | 903 | Ineligible officer..... | 2929 | 808 |
| Widow's pension..... | 6228 | 1774 | Judgment, To stay..... | 4645 | 1274 |
| INDORSEMENT— | | | Jurisdiction for trial..... | 4656 | 1276 |
| Denial, Pleading..... | 2010 | 550 | Jurisdiction to issue..... | 4642-3 | 1273 |
| Indorser: | | | Liquor..... | 4664, 5108 | 1278, 1430 |
| Liability..... | 5936, 566 | 1686, 204 | Medicine, unlawful prac- | | |
| Suit against..... | 572, 1986 | 205, 542 | tice..... | 4509 | 1231 |
| Negotiable instruments..... | 5934 | 1682 | Mine operator, Against..... | 4644 | 1274 |
| Warehouse receipt..... | 5649-56 | 1591 | Non-resident judge, By..... | 4643 | 1273 |
| INDUSTRIAL ACCIDENT BOARD— | | | Oil operator, Against..... | 4644 | 1274 |
| Appointment..... | 8307 | 2404 | Polluting water..... | 4444 | 1185 |
| Duties..... | 8306 | 2391 | Pool halls..... | 4668 | 1280 |
| Railroad pass..... | 4006 | 1087 | Proceedings..... | 4647-63 | 1275 |
| Salaries..... | 6813 | 1952 | Revenue laws..... | 4669 | 1280 |
| INDUSTRIAL COMMISSION— | | | Service..... | 4653-5 | 1276 |
| Appointment..... | 5183 | 1456 | Trade marks..... | 846, 850 | 258 |
| Labor controversies..... | 5187 | 1457 | Venue..... | 1995(17) | 544 |
| INDUSTRIAL SCHOOLS— | | | Writ, The..... | 4651 | 1275 |
| A. & M..... | 2607 | 690 | INJURIES— | | |
| C. I. A..... | 2626 | 696 | Death pending suit..... | 2086 | 562 |
| Cotton classing in..... | 2915 | 798 | Fatal..... | 4671-8 | 1281 |
| Mines..... | 2633 | 698 | Limitation..... | 5525 | 1558 |
| Technology..... | 2629 | 697 | Notice unnecessary..... | 5546 | 1562 |
| INFANTS— | | | Railroad liable..... | 6432 | 1831 |
| Defined..... | 4104 | 1113 | Railway, venue..... | 1995(25) | 544 |
| Home for neglected..... | 3257 | 910 | Workmen's insurance..... | 8306 | 2391 |
| INHERITANCES— | | | INNOCENT PURCHASER— | | |
| Aliens from..... | 2583 | 682 | Conveyances, Under fraud- | | |
| Descent and distribution..... | 2570 | 679 | ulent..... | 3996 | 1084 |
| Devise, By..... | 3314 | 925 | Execution, Under..... | 3818 | 1024 |
| Posthumous child..... | 8291 | 2387 | Freehold estates..... | 1289 | 389 |
| Tax..... | 7117 | 2060 | Negotiable instruments..... | 5935 | 1684 |
| Venue..... | 1995(11) | 544 | Pen dente Lite..... | 6640-43 | 1892 |
| Wills..... | 8281 | 2386 | Warehouse receipts..... | 5658 | 1592 |
| See sub-index to Chapter | | | Water rights..... | 7536 | 2184 |
| 5..... | 7117, etc. | 2060 | INSANE ASYLUMS— | | |
| | | | Admission to..... | 3185 | 885 |
| | | | Epileptic patient..... | 3226 | 899 |
| | | | INSANE PERSONS— | | |
| | | | Apprehension..... | 5547 | 1563 |
| | | | Disfranchised..... | 2954 | 814 |
| | | | Guardian ad litem..... | 2159 | 584 |

| | Article. | Page. |
|-------------------------------|-----------|-------|
| INSANE PERSONS—Cont'd. | | |
| Guardianship 4123, 4267 | 1117, | 1143 |
| Husband, Wife's rights | | |
| when | 4617 | 1266 |
| Limitation | 5518 | 1556 |
| Proceedings against | 5547-61 | 1563 |
| Suit by next friend | 1994 | 543 |
| INSECTS— | | |
| Nursery stock, In | 120 | 46 |
| INSOLVENCY— | | |
| Assignments for creditors | | |
| | 261-74 | 132 |
| Banks | 371 | 155 |
| City | 1024 | 308 |
| Corporations | 1379 | 416 |
| Deposits accepted during | 533 | 195 |
| Estate, decedent's | 3494 | 959 |
| Partnership, limited | 6128-30 | 1744 |
| Principal obligor, Of | 1987 | 542 |
| State judgment, sale | 4405 | 1173 |
| Tax lien | 7269 | 2111 |
| INSPECTORS— | | |
| Bank | 350 | 151 |
| Bees | 549 | 200 |
| Bollworm | 79 | 26 |
| Fire escape | 3971 | 1079 |
| Food and drug | 4467 | 1196 |
| Forest | 2613(10) | 691 |
| Fruit and vegetables | 117 | 44 |
| Gins | 5565 | 1566 |
| Health | 4425 | 1178 |
| Hide and animal | 6972 | 1996 |
| Labor | 5219 | 1464 |
| Meat | 4420 | 1177 |
| Mining | 5893 | 1668 |
| Nursery stock | 132 | 48 |
| Oil and gas | 6031 | 1723 |
| Plants | 5148 | 1445 |
| Warehouse | 5596 | 1577 |
| Weights and measures | | |
| 5705, 5724-25 | 1605, | 1609 |
| INSTRUMENTS ACT, | | |
| NEGOTIABLE— | | |
| General provisions | 5932 | 1678 |
| INSTRUMENTS, WRITTEN— | | |
| Registration authorized | 6626 | 1774 |
| Registration, mode | 6591-6662 | 1881 |
| INSURANCE— | | |
| Accident | 4716 | 1294 |
| Adjuster, tax | 7047(10) | 2021 |
| Agents: | | |
| Authority revoked | 5066 | 1416 |
| Certificate | 5065-6 | 1416 |
| Commissions | 5060 | 1414 |
| Defined | 5056 | 1413 |
| General | 5065 | 1416 |
| Ineligible | 5064 | 1415 |
| Liable for taxes | 5057 | 1413 |
| Resident | 5058 | 1414 |
| Solicitor | 5063 | 1415 |

| | Article. | Page. |
|-----------------------------|---------------|------------|
| INSURANCE—Continued. | | |
| Assessment companies | 4781-4 | 1320 |
| Automobile | 4989(7) | 1394 |
| Burglary | 4989(3), 4963 | 1394, 1382 |
| By-laws | 4712 | 1293 |
| Capital stock: | | |
| Dividends | 5036 | 1407 |
| Investments of | 4704-7 | 1292 |
| Minimum | | |
| 5037-8, 4700(4) | 1408, | 1291 |
| Oath of incorporators | 4702 | 1292 |
| Shares | 4704 | 1292 |
| Surplus | 4706, 5036 | 1292, 1407 |
| Certificate of authority: | | |
| Affidavit | 5059 | 1414 |
| Agent's | 5065 | 1416 |
| Issuance | 4701, 5059 | 1292, 1414 |
| Operating without | 5055 | 1413 |
| Publication | 5034 | 1407 |
| Revocation | 5067, 4687 | 1416, 1288 |
| Term | 4686 | 1358 |
| Commission | 4876 | 1354 |
| Commissioner | 4679 | 1284 |
| Commissions | 5060 | 1414 |
| Consolidation | 5040-2 | 1408 |
| Directors: | | |
| By-laws | 4712 | 1293 |
| Election | 4708-10 | 1293 |
| Fill vacancies | 4714 | 1293 |
| Officers, Select | 4711 | 1293 |
| Records | 4713 | 1293 |
| Dividends | | |
| Association | 8308 | 2409 |
| Foreign certificates | 4988 | 1394 |
| Reserves | 4987 | 1392 |
| Examinations | | |
| 4690-1, 5061 | 1289, | 1414 |
| Extension of power | 5038 | 1408 |
| Farmers' mutual hail | 4950-9 | 1379 |
| Fidelity companies | | |
| 5038, 4969 | 1408, | 1384 |
| Fire: | | |
| Hazard reduction | 4886 | 1358 |
| Marine, And | 4919 | 1369 |
| Mutual companies | 4860 | 1350 |
| Rate, maximum | 4879 | 1355 |
| Regulation of | 4880 | 1356 |
| Risks, insurable | 4919 | 1369 |
| Storm, And | 4933 | 1375 |
| Tax | 4902 | 1365 |
| Foreign: | | |
| Acceptance of law | 5068 | 1417 |
| Assessment companies | 4781 | 1320 |
| Capital | | |
| 4682(20), 4757 | 1285, | 1310 |
| Certificate | 4751 | 1308 |
| Charter | 4756 | 1310 |
| Deposits | 4758-9 | 1311 |
| Fraternal societies | 4842 | 1340 |
| General agent | 5065 | 1416 |
| Investments | 4762 | 1311 |
| Mutual fire companies | 4872 | 1353 |
| Mutual storm compan- | | |
| ies | 4948 | 1378 |

| | Article. | Page. | | Article. | Page. |
|-------------------------------------|-------------|------------|-----------------------------------|-----------------|------------|
| INSURANCE—Continued. | | | INSURANCE—Continued. | | |
| Policies, life | 4734 | 1302 | Indemnity contracts: | | |
| Statement | 4755 | 1309 | Attorney in fact | 5025 | 1404 |
| Surety and trust | 4982 | 1390 | Authorization | | |
| Fraternal benefit societies: | | | | 5024, 5031 | 1404, 1406 |
| Annual reports | 4848 | 1343 | Certificate of authority | 5032 | 1406 |
| Associations excepted | 4859 | 1349 | Declaration filed | 5026 | 1404 |
| Beneficiaries | 4831-3 | 1335 | Laws governing | 5033 | 1406 |
| Benefits | 4824-5 | 1332 | Report | 5030 | 1405 |
| Benefits exempt | 4847 | 1342 | Reserve | 5029 | 1405 |
| Certificate | 4834 | 1335 | Service of process | 5027 | 1405 |
| Charter | 1400 | 420 | Statement | 5028 | 1405 |
| Constitution and laws | | | Life, health and accident: | | |
| | 4846, 4848 | 1342, 1343 | Agents, certificate of | 4723 | 1297 |
| Definitions | 4820-2 | 1331 | Annual statement | 4721 | 1297 |
| Examinations | 4852-7 | 1346 | Assessment plan | 4781-3 | 1320 |
| Foreign society | 4842 | 1340 | Authority to act | | |
| Funds | 4835-7 | 1336 | | 4751, 4720 | 1308, 1296 |
| Incorporation | | | Beneficiaries, corporate | 5048 | 1410 |
| | 4838, 1399 | 1337, 420 | Beneficiary causing | | |
| Investments | 4836 | 1336 | death | 5047 | 1410 |
| Laws governing | 4823 | 1332 | Business, limited | 4738 | 1303 |
| Liability, personal | 4845 | 1342 | Capital, impairment | 4748 | 1308 |
| License | 4841 | 1340 | Certificate of authority | | |
| Mergers | 4840 | 1340 | | 4720-2 | 1296 |
| Office | 4844 | 1342 | Certificate revoked | 4737 | 1303 |
| Powers | 4839, 1401 | 1339, 420 | Charter | 4717-9 | 1295 |
| Reserves | 4827 | 1334 | Commissions | 4745 | 1307 |
| Service on | 4843 | 1341 | Co-operative companies | 4746 | 1307 |
| Statements | | | Definitions | 4716 | 1294 |
| | 4849, 4828 | 1343, 1334 | Deposit by home com- | | |
| Tax exempt | 4858 | 1349 | pany | 4777 | 1319 |
| Valuation of certificates | | | Deposits | 4739-44 | 1303 |
| | 4849-51 | 1343 | Disbursements | 4731 | 1300 |
| General casualty: | | | Dividends | 4753, 4729 | 1309, 1299 |
| Assessment companies | 4781 | 1320 | Examination | 4720 | 1296 |
| Capital | | | Foreign companies | 4755-63 | 1309 |
| 5012, 5001, 4993 | 1400, 1398, | 1396 | Funds, deposit of | 4747 | 1307 |
| Deposits | 5000, 5003 | 1398, 1399 | Gross receipts | 4769 | 1315 |
| Dividends | 5002 | 1398 | Investments, lawful | 4725-6 | 1298 |
| Fees | 5010 | 1400 | Investments required | 4765 | 1313 |
| Incorporation | 4989-91 | 1394 | Limited stock compa- | | |
| Investments | 5006-7 | 1399 | nies | 4752 | 1308 |
| Officers | 4992 | 1395 | Loan business | 4780 | 1319 |
| Powers | 4994 | 1397 | Loans on policies | 4727 | 1299 |
| Real estate | 5007-8 | 1400 | Losses, payment | 4736-7 | 1303 |
| Service of process | 5011 | 1400 | Misrepresentation by | | |
| Statement | 4995 | 1397 | company | 5052 | 1411 |
| Supervision | 4996-9 | 1398 | Misrepresentation by | | |
| Hail | 4950 | 1379 | insured | 5043-6 | 1409 |
| Incorporation: | | | Mutual companies | | |
| Affidavit | 5059 | 1414 | | 4800, 7244 | 1326, 2102 |
| By-laws | 4712 | 1293 | Policies, form | 4749-50 | 1308 |
| Capital and surplus | 4704-7 | 1292 | Policies, requisites | | |
| Capital, minimum | 4700(4) | 1291 | | 5049-51, 4732-4 | 1411, 1300 |
| Certificate of authority | 4701 | 1292 | Policies, valuation of | 4741 | 1304 |
| Certificate of examina- | | | Power of attorney | 4763 | 1311 |
| tion | 4703 | 1292 | Real estate | 4726 | 1298 |
| Charter | 4699-4700 | 1291 | Reinsurance | 4728 | 1299 |
| Directors | 4708-14 | 1293 | Renewing business | 4773 | 1317 |
| General laws govern | 4715 | 1294 | Reports | 4738-9 | 1303 |
| Meetings, quorum | 4710 | 1293 | Salaries | 4730 | 1300 |
| Oath as to capital | 4702 | 1292 | Service on | 4764, 4735 | 1312, 1303 |
| Officers | 4711 | 1293 | Suits | 4724 | 1298 |
| Records | 4713 | 1293 | | | |

| | Article. | Page. |
|-----------------------------|----------|-------|
| INSURANCE—Continued. | | |
| Taxation | | |
| 4769-71, 4754 | 1315, | 1309 |
| Texas securities | 4765 | 1313 |
| Lightning | 4933-49 | 1375 |
| Livestock companies | 5037 | 1408 |
| Lloyds: | | |
| Assets | 5017 | 1402 |
| Definitions | 5013-14 | 1401 |
| Examination | 5018 | 1403 |
| License | 5015-16 | 1401 |
| Penalty | 5022 | 1403 |
| Risks | 5020 | 1403 |
| Substitute liable | 5019 | 1403 |
| Suit on policy | 5021 | 1403 |
| Marine, Fire and: | | |
| Bond | 4925 | 1370 |
| Capital stock | 4920 | 1369 |
| Casualty companies | | |
| 4989(11) | 1394 | |
| Rates | 4880 | 1356 |
| Reinsurance | 4932 | 1374 |
| Risks, insurable | 4919 | 1369 |
| Statement | 4927 | 1371 |
| Meetings | 4708-10 | 1293 |
| Misrepresentations | 5043-6 | 1409 |
| Mutual accident: | | |
| Assessments | 4794-5 | 1320 |
| Beneficiary | 4796 | 1324 |
| By-laws | 4790 | 1322 |
| Charter | 4784-7 | 1321 |
| Defined | 4788 | 1322 |
| Examinations | 4791-2 | 1322 |
| Forfeiture of charter | 4798 | 1325 |
| Membership fund | 4794 | 1324 |
| Policies, requisites | 4797 | 1325 |
| Powers | 4789 | 1322 |
| Sick benefits | 4799 | 1325 |
| Statement | 4793 | 1323 |
| Mutual fire: | | |
| Advances to | 4870 | 1353 |
| Business authorized | 4865 | 1357 |
| Contracts with | 4867 | 1352 |
| Foreign country | 4872 | 1353 |
| Incorporation | 4860-6 | 1350 |
| Policy provisions | 4869 | 1352 |
| Reinsurance | 4874 | 1354 |
| Reserves | 4871 | 1353 |
| Taxes and fees | 4875 | 1354 |
| Vote of members | 4868 | 1352 |
| Mutual hail: | | |
| Crop insurance | 4955 | 1380 |
| Directors | 4954 | 1380 |
| Farmers' | 4950 | 1379 |
| Fees | 4959 | 1381 |
| Incorporation | | |
| 4933, 4950 | 1375, | 1379 |
| Premiums | 4956 | 1381 |
| Rates | 4957 | 1381 |
| Reports | 4958 | 1381 |
| Mutual life: | | |
| General provisions | 4800-19 | 1326 |
| Tax assessments | 7244 | 2102 |
| Mutual storm: | | |
| By-laws | 4940 | 1377 |

| | Article. | Page. |
|---------------------------------------|-----------------|------------|
| INSURANCE—Continued. | | |
| Dividends | 4943 | 1377 |
| Examination | | |
| 4944, 4936 | 1378, | 1376 |
| Expenses | 4942 | 1377 |
| Foreign companies | | |
| 4682(20), 4948 | 1285, | 1378 |
| Incorporation | 4933-5 | 1375 |
| Investments | 4941 | 1377 |
| Laws governing | 4946 | 1378 |
| Members | 4938-9 | 1377 |
| Penalty | 4947 | 1378 |
| Reserves | 4943 | 1377 |
| Statement | 4937 | 1376 |
| Taxes and fees | 4949 | 1378 |
| Unsafe conditions | 4944-5 | 1378 |
| Notices | 5035 | 1407 |
| Plate glass | 4989(7) | 1394 |
| Policies: | | |
| Joint | 5039 | 1408 |
| Level premium | 5051 | 1411 |
| Life | 5049-51, 4732-4 | 1411, 1300 |
| Photographic copies | 5049 | 1411 |
| Texas law governs | 5054 | 1412 |
| Printers' fire and storm | 4960-2 | 1382 |
| Rebates | 5053 | 1412 |
| Reserve liability | 4688 | 1288 |
| Suits: | | |
| In Federal Court | 4687 | 1288 |
| Process | 4753, 4735, | |
| 4843, 4967, 5011, 5027 | 1309, | |
| 1303, 1341, 1384, 1400, | 1405 | |
| Surety, Guaranty and: | | |
| Agents | 4977 | 1389 |
| Bond | 4970, 4974-5 | 1386, 1389 |
| Capital stock | 5038 | 1408 |
| Incorporation | 4969-73 | 1384 |
| Losses, payment | 4976 | 1389 |
| Other companies | 4982 | 1390 |
| Penalty | 4978-80 | 1390 |
| Stockholder's liability | 1344 | 408 |
| Taxation: | | |
| Adjusters | 7047(10) | 2021 |
| Agents, General | 7047(10) | 2021 |
| Assessment | 5057 | 1413 |
| Deposits, Of | 7158 | 2073 |
| Exemptions | 4754, 4858 | 1309, 1349 |
| Fire companies | 4902 | 1365 |
| Gross receipts | 7064 | 2034 |
| Life companies | 4769 | 1315 |
| Mutual companies | | |
| 4875, 4949 | 1354, | 1378 |
| Workmen's compensa- tion companies | 4906 | 1366 |
| Texas securities | 4765 | 1313 |
| Theft: | | |
| Companies authorized | 4963 | 1382 |
| Conditions of admit- tance | 4964-5 | 1382 |
| General casualty com- panies | 4989 | 1394 |
| Policy holders | 4966 | 1348 |
| Service on | 4967 | 1384 |
| Statement | 4968 | 1384 |
| Title | 4989(10) | 1394 |

| | Article. | Page. | | Article. | Page. |
|-------------------------------|------------|------------|--------------------------------|----------|-------|
| INSURANCE—Continued. | | | INTERURBAN RAILROADS— | | |
| Tornado | 4933 | 1375 | Bus lines | 6548 | 1869 |
| Trust: | | | Capital stock | 1311 | 402 |
| Corporations authorized | | | Eminent domain | 6535-46 | 1864 |
| ..... | 4982 | 1390 | Freight | 6546 | 1869 |
| Laws governing | 4986 | 1392 | Incorporation | 1302(68) | 392 |
| Powers | 4982, 4985 | 1390, 1391 | Light and power | 6541-47 | 1866 |
| Requirements | 4983 | 1391 | Merger | 6543 | 1867 |
| Stockholders' liability | 1344 | 408 | Plants and buildings | 6547 | 1869 |
| Venue | 1995(28) | 544 | Right of way | 6536-40 | 1865 |
| Workmen's compensation: | | | Sanitation | 4477(58) | 1198 |
| Compensation | 8306 | 2391 | Separate coaches | 6417 | 1825 |
| General provisions | 8309 | 2412 | Tax, gross receipts | 7067 | 2038 |
| Rates | 4907 | 1366 | | | |
| Tax | 4906 | 1366 | INTERVENTION— | | |
| INSURRECTION— | | | Costs | 2073 | 560 |
| Governor's power | 5889 | 1667 | Pleadings | 1998 | 548 |
| INTANGIBLE PROPERTY— | | | Trial | 2180 | 587 |
| Corporations taxed | 7105 | 2053 | INTESTATE— | | |
| Tax exemptions | 7163 | 2075 | Administration | 3355 | 933 |
| Tax rendition | 7162(37-8) | 2074 | Inheritance from | 2570 | 679 |
| INTANGIBLE TAX BOARD— | | | INTOXICATING LIQUORS— | | |
| Duties | 7101-16 | 2052 | Accomplice witness | 5079 | 1421 |
| Organization | 7098-7100 | 2051 | Advertising | 5098 | 1428 |
| INTERCHANGEABLE | | | Bootlegging | 5102 | 1429 |
| JURY LAW— | | | Carrier transporting | 5092-4 | 1425 |
| Drawing jurors | 2138 | 581 | Corporation offending | 5109 | 1430 |
| Operation of | 2101 | 572 | Defined | 5081 | 1421 |
| INTEREST— | | | Disorderly house enjoined | | |
| Bonds, On | 707 | 230 | ..... | 4664-7 | 1278 |
| Contracts, usurious | 6165 | 1753 | Druggist, sale by whole- | | |
| Definitions | 5069 | 1418 | sale | 5089 | 1424 |
| Foreign rate | 3733 | 1006 | Evidence: | | |
| Public deposits, On | 2539 | 667 | Accomplice witness | 5079 | 1421 |
| Rate | 5070-2 | 1418 | Incriminating testimony | | |
| Savings deposits, On | 434 | 170 | ..... | 5111 | 1431 |
| Usury suit | 5073 | 1418 | Possession, Of | 5080 | 1421 |
| INTERLOCUTORY PRO- | | | Family use | 5083 | 1421 |
| CEEDINGS— | | | Flavoring extracts, In | 5083 | 1421 |
| Appeal | 2250 | 603 | Injunction: | | |
| Audits | 2292 | 610 | Attorney's authority | 5108 | 1430 |
| Injunctions | 4642 | 1273 | Disorderly house | 4667 | 1279 |
| Mandamus | 2328 | 619 | Hotel, garage, etc. | 4664 | 1278 |
| Master in chancery | 2320 | 617 | House, boat, etc. | 5107 | 1430 |
| Motions | 2291 | 610 | Violating | 5110 | 1431 |
| Receivers | 2293 | 611 | Lawful uses | 5083 | 1421 |
| INTERMARRIAGE— | | | Manufacture and sale: | | |
| Prohibited | 4607 | 1264 | Bond | 5085 | 1423 |
| INTERNATIONAL TRAD- | | | Label | 5087 | 1424 |
| ING COMPANIES— | | | Permit | 5084-6 | 1422 |
| Powers | 1527 | 448 | Record | 5088 | 1424 |
| INTERPRETERS— | | | Uses | 5083 | 1421 |
| Appointment | 3712 | 1000 | Wholesale druggists, | | |
| Depositions, Taking | 3750 | 1010 | Sale by | 5089 | 1424 |
| Pay | 2372 | 631 | Medicinal purposes | 5077 | 1420 |
| Taxing fees | 2076 | 560 | Nuisance | 5107-8 | 1430 |
| INTERROGATORIES— | | | Percentage of alcohol | 5076 | 1420 |
| Commission | 3744 | 1009 | Permit to manufacture | 5084-6 | 1422 |
| Cross | 3743, 3758 | 1009, 1012 | Possession, evidence | 5080 | 1421 |
| Notice and service | 3739 | 1007 | Prescriptions | 5090-1 | 1425 |
| Oral depositions | 3752 | 1011 | Purchaser not accomplice | 5079 | 1421 |
| | | | Recipe or formula | 5100 | 1429 |
| | | | Sacramental use | 5086 | 1423 |
| | | | Search and seizure | 5105 | 1429 |

| | Article. | Page. |
|---------------------------------|----------|-------|
| INTOXICATING LIQUORS— | | |
| Continued. | | |
| Seizure: | | |
| Authorized | 5105 | 1429 |
| Record and report | 5114 | 1432 |
| Vehicle | 5112 | 1431 |
| Shipment and transportation: | | |
| Carrier's duty | 5092-4 | 1425 |
| Information on con- | | |
| tainer | 5104 | 1429 |
| Notice of contents | 5101 | 1429 |
| Order to deliver | 5103 | 1429 |
| Vehicle seized | 5112 | 1431 |
| Toilet preparations, In .. | 5083 | 1421 |
| Unlawful acts | 5075 | 1420 |
| Venue for sale | 5097 | 1427 |
| Wholesale druggists | 5089 | 1424 |
| Witnesses: | | |
| Must testify | 5111 | 1431 |
| Not accomplice | 5079 | 1421 |
| INVESTMENT COMPANIES— | | |
| Bonds | 696 | 228 |
| INVESTMENTS— | | |
| Federal Farm Loan Bonds | 842 | 256 |
| Sinking fund | 836 | 254 |
| Texas securities | 4766 | 1313 |
| IRRIGATION— | | |
| Application for water | 7493 | 2175 |
| Purpose | 7468 | 2171 |
| Irrigation and water pow- | | |
| er | 1526 | 447 |
| Power to issue | 803 | 247 |
| Districts | 7589 | 2196 |
| Federal contracts | 7794 | 2258 |
| Federal projects | 7584-6 | 2195 |
| Fresh water districts | 7881 | 2280 |
| Water right defined | 7542 | 2184 |
| Judgment rendered | 7706 | 2226 |
| Petition heard and elec- | | |
| tion thereof | 7733 | 2235 |
| Questions submitted | 7734 | 2236 |
| Determine validity | 7703 | 2225 |
| District dissolved, when | 7725 | 2232 |
| Purpose of election | 7729 | 2234 |
| Sinking fund invested | 7770 | 2247 |
| Sale and lease of electri- | | |
| cal energy | 7793 | 2257 |
| Districts empowered | 7656 | 2213 |
| Petition to exclude lands | 7646 | 2210 |
| Consent necessary | 7651 | 2212 |
| Unlawful to divert water | 7589 | 2296 |
| Numbers of districts | 7637 | 2208 |
| Bear name of county | 7636 | 2208 |
| Boundaries | 7618 | 2201 |
| Directors shall each make | | |
| bond | 7639 | 2208 |
| Board to lower property | | |
| value | 7767 | 2216 |
| Compensation | 7668 | 2216 |
| Directors shall each make | | |
| bond | 7639 | 2208 |
| Qualification of tax asses- | | |
| sor and collector | 7642 | 2209 |

| | Article. | Page. |
|----------------------------------|----------|-------|
| IRRIGATION—Continued. | | |
| Time—where notice is | | |
| posted | 7630 | 2206 |
| Directors levy tax | 7712 | 2228 |
| Certified copy | 7707 | 2227 |
| Purpose of construction | | |
| and maintenance fund | 7711 | 2227 |
| Expense estimated | 7752 | 2240 |
| Bridges and culverts | 7745 | 2238 |
| Supply of water for annual | | |
| rentals | 7750 | 2240 |
| Certified copy | 7707 | 2227 |
| Copy of contract recorded | 7741 | 2238 |
| Statement furnished | 7751 | 2240 |
| Contract with United | | |
| States | 7653 | 2212 |
| Penalty for permitting | | |
| waste | 7613 | 2200 |
| Extra election held | 7736 | 2236 |
| Permanent record | 7669 | 2216 |
| Direct prohibited interest | 7654 | 2213 |
| Election held within pro- | | |
| posed district, when | 7629 | 2205 |
| Engineer make inspection | | |
| and valuation | 7715 | 2229 |
| Organization of directors | 7640 | 2209 |
| Failure to fence | 7593 | 2197 |
| Board to examine assess- | | |
| ment list | 7763 | 2215 |
| Board to adjourn—serve | | |
| notice | 7666 | 2215 |
| Bond | 7742 | 2238 |
| Regular office maintained | 7759 | 2243 |
| County clerk's fees | 7771 | 2247 |
| Commissioners of A p- | | |
| praisement | 7782 | 2252 |
| Time and place of meet- | | |
| ing | 7783 | 2252 |
| Benefit basis of taxation | 7787 | 2254 |
| Co-operating with districts | | |
| of other states | 7794 | 2258 |
| Acquired title | 7592 | 2196 |
| Court declare result of | | |
| election | 7634 | 2207 |
| Waste water corporations, | | |
| purposes | 1508 | 443 |
| Wasting water | 7574-5 | 2192 |
| Water control districts | 7809 | 2264 |
| Board, appointment of | 7478 | 2173 |
| Secretary | 7485-7 | 2174 |
| IRRIGATION DISTRICTS— | | |
| Surety company bond | 7760-9 | 2244 |
| Application for permit | 7493 | 2175 |
| Improvement district fi- | | |
| nances | 1667 | 483 |
| Audits | 7638 | 2208 |
| Defined districts | 7724 | 2231 |
| Emergency fund | 7716 | 2229 |
| Employment time, limited | 7720 | 2230 |
| Emergency issue | 7735 | 2236 |
| Vacancies filled, how | 7721 | 2230 |
| Limit (bond) | 806 | 248 |
| Directors' compensation | 7722 | 2231 |

| Article. | Page. | Article. | Page. |
|--|-------|--|-------|
| IRRIGATION DISTRICTS— | | JUDGES— | |
| Continued. | | Disqualifications 15 5 | |
| Contract with United States 7789-93 2255 | | Election, Of 2939 811 | |
| Option to purchase 2673 709 | | Oaths, May administer 26 7 | |
| Contract 7741 2238 | | Practicing law 319 143 | |
| Voters have right to participate 7737 2237 | | Salaries 6819 1954 | |
| Engineers report 7740 2237 | | Special: | |
| Canvassing returns 7730 2234 | | Civil Appeals 1815 511 | |
| Right of eminent domain 7723 2231 | | County Court 1931-3 532 | |
| Conditions 7732 2235 | | Criminal Appeals 1803 509 | |
| Attorney General to tender issue 7705 2226 | | District Court 1885 524 | |
| Selection of special depository 2567 677 | | Salary 6821 1955 | |
| Federal districts 7794 2258 | | Supreme Court 1717 494 | |
| Limitation of indebtedness 806 248 | | JUDGMENTS— | |
| Notices, legal 28 7 | | Abstracts of 5447 1536 | |
| ISLANDS— | | Appeal, On 2220-1 595 | |
| Channel corporations 1483 437 | | Arrest of 2232 597 | |
| Oil and gas 5353 1509 | | Attorney's fees 2226 596 | |
| ITINERANT VENDORS— | | Certiorari 932-941 283 | |
| Tax 7047(1-5) 2021 | | Confession of 2224-5 595 | |
| J. | | Contract to waive or confess 2224 595 | |
| JAILS— | | Correction 2228-31 596 | |
| Bond issue 718 231 | | Counter claim 2215-16 594 | |
| Established 5115 1434 | | County, Against 1575 462 | |
| Federal prisoners 5117 1434 | | Default, By 2154 584 | |
| Guards 6871 1967 | | Defective 2231 597 | |
| Unsafe 5118 1434 | | Dormant 3773, 2451 1015, 645 | |
| JEWISH RABBIS— | | Enforcement 2217 594 | |
| Marriage, May perform 4602 1263 | | Exceptions to 2210 593 | |
| Sacramental wine 5086 1423 | | Execution on 3770 1015 | |
| JIM CROW LAW— | | Executors, Against 2222 595 | |
| General provisions 6417 1825 | | Federal registration 5451 1537 | |
| JITNEY LINES— | | Final, On 2211 593 | |
| Street railway powers 6548 1869 | | Foreclosure, Of 2218-9 594 | |
| JOHN TARLETON AGRICULTURAL COLLEGE— | | Foreign, limitation 5530 1559 | |
| Courses of study 2618 694 | | Fraud 2225, 2285, 1981 596, 608, 541 | |
| Eminent domain 2619 694 | | Injunction to stay 4645 1274 | |
| Government 2616 694 | | Interest on 5072 1418 | |
| Student loan fund 2617 694 | | Justice Court, default 2405, 2439, 704 639, 643, 229 | |
| JOHNSON GRASS— | | Justice Court, In 2429 642 | |
| Railroad track, Along 6401 1819 | | Lien, Constitutes 5449 1536 | |
| JOINT OWNERS— | | Lien, foreclosure 2218-9 594 | |
| Death before severance 2580 681 | | Limitation 5530, 5532 1559, 1560 | |
| Decedent's estate 3631 985 | | Loss, substitution on 6589 1880 | |
| Fences 3952-3 1070 | | Misrecitals 2229 597 | |
| Irrigation works 7537 2184 | | Ouster of 6257 1783 | |
| Partition 6082 1737 | | Partners, Against 2223 595 | |
| JOINT STOCK COMPANIES— | | Railroad, Against 6425 1829 | |
| Citation 2031, 6134 553, 1745 | | Recording 5448 1536 | |
| Execution on stock 3795, 3798 1020 | | Remittitur 2227 596 | |
| Individual liability 6137 1746 | | Rendering 2209 593 | |
| Joint liability 6136 1746 | | Rendition, prerequisites 2050 557 | |
| Judgment 6135 1746 | | Requisites 2211 593 | |
| Suits 6133 1745 | | Revival 5532, 3773 1560, 1015 | |
| | | Sale, Recording 6636 1880 | |
| | | Satisfaction 5450 1537 | |
| | | Several counts 2213 594 | |
| | | Supersedeas stays 2275 607 | |
| | | Surety, Against 6248 1780 | |
| | | Title, Passes 2214 594 | |

| Article. Page. | | Article. Page. | |
|--|--------------|----------------|--|
| JUDGMENTS—Continued. | | | |
| Tort feasons | 2212 | 593 | |
| Verdict, On faulty | 2203 | 592 | |
| JUDICIAL DISTRICTS— | | | |
| Enumeration | 199 | 77 | |
| Supreme | 198 | 76 | |
| JUDICIAL REPORTS— | | | |
| Criminal Appeals | 1810 | 510 | |
| Distribution | 4332-4 | 1154 | |
| Printing | 620-8 | 215 | |
| Supreme Court | 1725 | 496 | |
| Junior Agricultural Col- lege | 2620 | 694 | |
| JURISDICTION— | | | |
| Civil Appeals, Court of | 1819 | 512 | |
| Corporation court | 1195 | 361 | |
| County courts | 1949 | 536 | |
| District courts | 1906 | 527 | |
| Justice courts | 2385-7 | 634 | |
| Juvenile courts | 2329 | 620 | |
| Supreme Court | 1728 | 497 | |
| JURY— | | | |
| Array, challenge to | 2131-2 | 579 | |
| Asking instruction | 2198 | 591 | |
| Call of docket | 2126 | 579 | |
| Challenges: | | | |
| Array, To | 2131-2 | 579 | |
| Cause, For | 2143-4 | 582 | |
| How made | 2142 | 582 | |
| Number reduced by | 2146, 2150 | 583 | |
| Peremptory | 2147-8 | 583 | |
| Questions forbidden | 2145 | 583 | |
| Commissioners | 2104-16 | 573 | |
| Communicating with court | 2197 | 591 | |
| Court, In | 2123-51 | 578 | |
| Death during trial | 2204 | 592 | |
| Defaulting juror | 2121 | 578 | |
| Demand for | 2124-30 | 579 | |
| Discharge of | 2200 | 591 | |
| Docket | 2128 | 579 | |
| Drawing | 2111 | 575 | |
| Excuses of jurors | 2120 | 578 | |
| Fee | 2124-7 | 579 | |
| Foreman | 2192 | 590 | |
| Interchangeable | 2101-3, 2138 | 572, 581 | |
| Justice courts, In | 2413-28 | 640 | |
| List: | | | |
| Delivery | 2140 | 582 | |
| Interchangeable | 2138 | 581 | |
| Preparing | 2139 | 582 | |
| Return of | 2149 | 583 | |
| Selecting names | 2112-16 | 575 | |
| May examine papers | 2193 | 590 | |
| Misconduct | 2234 | 597 | |
| Number for trial | 2191 | 590 | |
| Pay of jurors | 2122 | 578 | |
| Polling | 2206 | 592 | |
| Re-examining witness | 2199 | 591 | |
| Right to | 2123 | 578 | |
| JURY—Continued. | | | |
| Selecting | 2110 | 575 | |
| Service: | | | |
| County suits, In | 1574 | 462 | |
| Disqualification | 2134 | 580 | |
| Exemptions | 2135-7 | 581 | |
| Qualifications | 2133 | 580 | |
| Summoning | 2117 | 577 | |
| Swearing | 2151 | 583 | |
| Talesmen | 2119, 2141 | 578, 582 | |
| Trial day | 2129 | 579 | |
| Verdict | 2202 | 592 | |
| Week, For the | 2117-22 | 577 | |
| Wheel law | 2094-2100 | 570 | |
| JUS ACCRESCENDI— | | | |
| Abolished | 2580 | 681 | |
| JUSTICE COURTS— | | | |
| Certiorari | 2460, 941 | 647, 284 | |
| Docket | 2382 | 633 | |
| Jurisdiction | 2385-7 | 634 | |
| Justice, The | 2373 | 632 | |
| Practice: | | | |
| Appeal | 2454-9 | 646 | |
| Appeal, judgments on | 2221 | 595 | |
| Appearance | 2403-6 | 639 | |
| Certiorari | 2460 | 647 | |
| Execution | 2445-53 | 644 | |
| Judgments | 2429-39 | 642 | |
| Jury | 2411-28 | 640 | |
| New trial | 2439-44 | 643 | |
| Pleadings | 2388-89 | 635 | |
| Process | 2400-2 | 638 | |
| Rules | 2381 | 633 | |
| Trial | 2403-28 | 639 | |
| Venue | 2390-8 | 636 | |
| Terms | 2380 | 633 | |
| JUSTICE OF THE PEACE— | | | |
| Collections report | 1617, 3897 | 471, 1044 | |
| Custody of books | 2383 | 634 | |
| Defined | 23 | 6 | |
| Disqualifications | 15 | 5 | |
| Distress warrant | 5227 | 1467 | |
| Docket | 2382 | 633 | |
| Election | 2373 | 632 | |
| Entry proceedings | 3973 | 1080 | |
| Estrays | 6911 | 1978 | |
| Execution for costs | 2077 | 560 | |
| Fees | 3935 | 1063 | |
| Fees, maximum | 3883 | 1039 | |
| Garnishment | 4076 | 1107 | |
| Issuing warrants | 1643 | 477 | |
| Judgments, abstracts of | 5447 | 1536 | |
| Judgments, Recording | 6637 | 1891 | |
| Nearest justice | 2395 | 637 | |
| Oaths, May administer | 26 | 7 | |
| Office in city | 2379 | 633 | |
| Powers | 2386 | 634 | |
| Precincts | 2351 | 627 | |
| Removal | 5970 | 1710 | |
| Rules governing | 2381 | 633 | |
| Sequestration | 6840 | 1960 | |
| Subpoena witnesses | 3704 | 999 | |

| Article. Page. | | Article. Page. | |
|---------------------------------|-------------|----------------|--|
| JUSTICE OF THE PEACE— | | | |
| Continued. | | | |
| Term of court..... | 2380 | 633 | |
| Trespass proceedings..... | 3948 | 1069 | |
| Trusts, evidence..... | 7439 | 2159 | |
| Unorganized county..... | 2374 | 632 | |
| Vacancy..... | 2377 | 633 | |
| JUVENILE COURTS— | | | |
| Adjudication..... | 2335 | 621 | |
| Care of delinquent child..... | 2338 | 622 | |
| Citation..... | 2332 | 620 | |
| Commitment of dependents..... | 3257-58 | 910 | |
| Custody of child..... | 2337 | 622 | |
| Disposition of child..... | 2336 | 622 | |
| Hearing..... | 2333 | 621 | |
| Judge's salary..... | 5139 | 1440 | |
| Jurisdiction..... | 2329 | 620 | |
| Jury..... | 2334 | 621 | |
| Proceedings instituted..... | 2331 | 620 | |
| JUVENILES— | | | |
| Boys Training School..... | 5119-30 | 1435 | |
| Detention home..... | 5138 | 1440 | |
| Girls Training School..... | 5132-7 | 1438 | |
| Homes for..... | 3257, 5138 | 910, 1440 | |
| Incorrigible boy..... | 5143 | 1443 | |
| Juvenile board..... | 5139 | 1440 | |
| Negro boys school..... | 5131 | 1438 | |
| Proceedings against..... | 2329-2338 | 620 | |
| K. | | | |
| KINDERGARTENS— | | | |
| Certificates to teach in..... | 2889 | 788 | |
| Free..... | 2919 | 799 | |
| L. | | | |
| LABELS— | | | |
| Baking powder..... | 4475 | 1198 | |
| Fertilizers..... | 94 | 29 | |
| Flavoring extracts..... | 4473 | 1197 | |
| Flour, self-risin g..... | 4476 | 1198 | |
| Liquor bottles..... | 5087 | 1424 | |
| Milk..... | 4474 | 1197 | |
| Rights in..... | 843-51 | 257 | |
| LABOR— | | | |
| Arbitration of disputes..... | 239-249 | 125 | |
| Blacklisting..... | 5196 | 1458 | |
| Bureau..... | 5144-51 | 1444 | |
| Child..... | 5181 | 1454 | |
| Commissioner..... | 5144 | 1444 | |
| Convict..... | 6167, 6200 | 1755, 1765 | |
| Disputes, investigation..... | 5187 | 1457 | |
| Employment agents..... | 5208-21 | 1460 | |
| Female employes..... | 5168-80 | 1450 | |
| Hours..... | 5165-70 | 1449 | |
| Industrial Accident Board..... | 8307 | 2404 | |
| Industrial Commission..... | 5183-90 | 1456 | |
| Injuries, fatal..... | 4671 | 1281 | |
| LABOR—Continued. | | | |
| Lien, laborer's..... | 5452 | 1192 | |
| Organizations..... | 5152-4 | 1446 | |
| Protection of workmen..... | 5182 | 1456 | |
| Public works..... | 5160-4 | 1447 | |
| Railroad: | | | |
| Discharge..... | 6431 | 1830 | |
| Injuries..... | 5421-43 | 1831 | |
| Hours..... | 6390 | 1815 | |
| Lien..... | 5480 | 1545 | |
| Safety appliances..... | 6388 | 1815 | |
| Shelter..... | 6389 | 1815 | |
| Venue..... | 1995 (25-6) | 544 | |
| Wage reduction..... | 6430 | 1830 | |
| Water closets..... | 6396 | 1817 | |
| Stevedores..... | 5191-5 | 1457 | |
| Unions..... | 5152-4 | 1446 | |
| Wages, payment of..... | 5155 | 1447 | |
| Workmen's insurance..... | 8306 | 2391 | |
| LABOR UNIONS— | | | |
| Organization..... | 5152 | 1446 | |
| Rights..... | 5153 | 1446 | |
| Trade name or device..... | 850 | 258 | |
| LAKES— | | | |
| Artificial..... | 7499-7502 | 2176 | |
| Fish and oysters..... | 4040-68 | 1100 | |
| Irrigation and power..... | 7489-90 | 2174 | |
| Oil and gas..... | 5338-67 | 1499 | |
| LAND— | | | |
| Adverse possession of..... | 5515 | 1555 | |
| Federal acquisition..... | 5242 | 1471 | |
| Measurement, standard of..... | 5730 | 1612 | |
| Ownership by alien..... | 166 | 55 | |
| State acquisition..... | 5240 | 1471 | |
| Suits, notice..... | 6640 | 1892 | |
| Venue..... | 1995 (14) | 544 | |
| LAND COMMISSIONER— | | | |
| Archives..... | 250 | 129 | |
| Assistants..... | 5252-60 | 1473 | |
| Audubon Society lease..... | 4030 | 1096 | |
| Bond..... | 5250 | 1473 | |
| County seat, Designating..... | 1597 | 467 | |
| Defined..... | 23 | 6 | |
| Duties..... | 5251 | 1473 | |
| Election..... | 5249 | 1473 | |
| Fees..... | 3913, 3918 | 1050, 1053 | |
| Field notes, Correcting..... | 5305 | 1484 | |
| Gulf harbor lands..... | 1485 | 438 | |
| Leases, surface..... | 5331 | 1496 | |
| Minerals..... | 5383 | 1516 | |
| Oil and gas..... | 5338 | 1499 | |
| Patents..... | 5404 | 1523 | |
| Records..... | 5261-7 | 1475 | |
| Report..... | 5253 | 1473 | |
| Salary..... | 6813 | 1952 | |
| Sales..... | 5306 | 1484 | |
| Survey county lines..... | 1582 | 463 | |
| Surveyors, May use..... | 5276 | 1478 | |
| Tax lists..... | 7194, 7338 | 2085, 2133 | |
| Tax rendition..... | 7173 | 2080 | |
| Timber..... | 5321 | 1489 | |
| University Regents, Assist..... | 2598 | 687 | |

| | Article. | Page. |
|---------------------------------------|------------|------------|
| LAND COMPANIES— | | |
| Town lots | 1363 | 412 |
| LAND OFFICE— | | |
| Archives | 250-253 | 129 |
| Copies recorded | 6634 | 1890 |
| Established | 5261 | 1475 |
| LAND SURVEYORS, BOARD OF— | | |
| Appointment | 5268 | 1476 |
| Duties | 5270 | 1477 |
| Examinations | 5271 | 1477 |
| Expenses | 5281 | 1479 |
| License | 5273-74 | 1478 |
| Organization | 5269 | 1476 |
| LAND TITLES— | | |
| Conveyances, requisites | 1288 | 389 |
| Land Office archives | 250-253 | 129 |
| Limitation | 5513 | 1555 |
| LANDLORD AND TENANT— | | |
| Builder's lien | 5238 | 1469 |
| Distress warrant | 5227 | 1467 |
| Ejectment | 3973 | 1080 |
| Exemption inapplicable | 3840 | 1027 |
| Forcible entry | 3973 | 1080 |
| Lien | 5222 | 1466 |
| Rent, amount | 5222 | 1466 |
| Rent, claim for | 3840 | 1027 |
| Subleases | 5237 | 1469 |
| Trespass to try title | 7369 | 2144 |
| LANDS, PUBLIC— | | |
| Adverse possession | 5517, 5420 | 1555, 1527 |
| Commissioner | 5249 | 1473 |
| Funds | 5416-18 | 1525 |
| Gayule | 5324 | 1491 |
| General Land Office | 5261 | 1475 |
| Inclosures, unlawful | 5419 | 1526 |
| Leases: | | |
| Mineral | 5384 | 1517 |
| Oil and gas | 5344-67 | 1505 |
| Surface | 5331-7 | 1496 |
| Minerals | 5383-5403 | 1516 |
| Navigable streams | 5302 | 1483 |
| Oil and gas | 5338-82 | 1499 |
| Patents | 5404-14 | 1523 |
| Public domain | 5415 | 1525 |
| Sales | 5306-30 | 1484 |
| Surface rights | 5306-37 | 1484 |
| Surveyors | 5268-98 | 1476 |
| Surveys | 5299-5305 | 1482 |
| Tax rendition | 7173 | 2080 |
| Timber | 5321-2 | 1489 |
| Title by limitation | 5519 | 1556 |
| Title, prior | 6628 | 1888 |
| Undisclosed lands | 5278 | 1479 |
| University lands | 2596-2603 | 686 |
| LAUNDRIES— | | |
| Hours of work in | 5169 | 1450 |
| Incorporation | 1302(44) | 392 |
| Protecting female em- ployes | 5173 | 1451 |

| | Article. | Page. |
|--------------------------------|-----------|-------|
| LAVACA BAY— | | |
| Pilots | 8279 | 2385 |
| LAW LIBRARY— | | |
| Establishment | 1697 | 491 |
| LAW REPORTS— | | |
| Criminal appeals | 1810 | 510 |
| Distribution | 4332-4 | 1154 |
| Printing | 620-08 | 215 |
| Supreme Court | 1725 | 496 |
| LAWS— | | |
| Construed, how | 10-11 | 4 |
| Session laws, sale | 4337 | 1155 |
| Special laws, passage | 2-9 | 3 |
| LAWYERS— | | |
| Licenses | 304-320 | 141 |
| LEASE— | | |
| Mineral | 5384 | 1517 |
| Oil and gas | 5344-67 | 1505 |
| Surface | 5331-37 | 1496 |
| University | 5338 | 1499 |
| LECHUGUILLA— | | |
| Sale | 5324 | 1491 |
| LEGACIES— | | |
| Right of legatee | 3450 | 950 |
| Tax, inheritance | 7117 | 2060 |
| Wills | 8281-8305 | 2386 |
| LEGAL HOLIDAYS— | | |
| Enumeration | 4591 | 1259 |
| LEGAL INTEREST— | | |
| Foreign rate | 3733 | 1006 |
| General provisions | 5069-74 | 1418 |
| LEGAL NOTICE— | | |
| Publication | 28 | 7 |
| LEGISLATURE— | | |
| Certificate of election | 3038 | 838 |
| Compensation | 6818 | 1954 |
| Convenes, when | 5422 | 1528 |
| Creation of counties | 1539 | 456 |
| Election of contest | 3063 | 844 |
| Impeachment proceedings | 5962 | 1705 |
| Library reference | 5444 | 1534 |
| Members, appointments by: | | |
| A. & M. College | 2609 | 690 |
| Prairie View Normal | 2639 | 700 |
| Sam Houston Normal | 2648 | 703 |
| Officers | 5429 | 1529 |
| Organization | 5422-9 | 1528 |
| Penitentiary inspection | 6201 | 1766 |
| Records, custody of | 5442 | 1533 |
| Report of Normals | 2647 | 701 |
| Report of University | 2605 | 689 |
| Representative districts | 195-6 | 71 |
| Senatorial districts | 193-4 | 69 |
| Speaker | 5428 | 1528 |
| Time of meeting | 5422 | 1528 |

| | Article. | Page. | | Article. | Page. |
|---------------------------------|----------|-------|------------------------------|------------|------------|
| LEGITIMACY— | | | LIBRARIES—Continued. | | |
| Divorce, On | 4639 | 1270 | Farmers' county | 1681 | 487 |
| Inheritance | 2581-2 | 681 | Law | 1697 | 491 |
| LEPERS— | | | State | 5435 | 1531 |
| Care of | 4439 | 1183 | Supreme Court | 1722 | 495 |
| Quarantine | 4477(3) | 1198 | Tax exempt | 7150(8) | 2069 |
| LEEVE DISTRICTS— | | | LIBRARY AND HISTORI- | | |
| Ad valorem plan: | | | CAL COMMISSION— | | |
| District supervisor..... | 7982 | 2301 | Appointment | 5434 | 1531 |
| Bonds | 8000 | 2310 | Archives | 5443 | 1534 |
| Conservation district | 8030 | 2324 | Assistants | 5445 | 1534 |
| Refunding bonds | 8018 | 2318 | Duties | 5436 | 1531 |
| Duty of Secretary | 7993 | 2304 | Legislative reference | 5444 | 1534 |
| Establishment | 7972 | 2297 | Librarian | 5440 | 1532 |
| Court to hear petition..... | 7978 | 2299 | Powers | 5436 | 1531 |
| District engineer—con- | | | Publications | 5542 | 1533 |
| trol | 7990 | 2303 | Purpose | 5435 | 1531 |
| Engineer's report | 8028 | 2322 | Records | 5438-9 | 1532 |
| Commissioners—limita- | | | Report | 5446 | 1535 |
| tion | 7997 | 2308 | Seal | 5437 | 1531 |
| Petition | 7974 | 2298 | LICENSED LAND SUR- | | |
| Dissolution | 8029 | 2323 | VEYORS— | | |
| Compensation of officers | | | General provisions | 5271-80 | 1477 |
| ..... | 8022 | 2320 | LICENSES— | | |
| Sale of bonds | 8011 | 2313 | Attorney at law | 304-320 | 141 |
| Auditor | 1667 | 483 | Automobiles | 6688 | 1904 |
| Continuation of former | | | Chiropody | 4571 | 1251 |
| acts | 8042 | 2328 | City | 1031 | 310 |
| Depository | 2567 | 677 | Cotton seed breeders..... | 58-67 | 17 |
| Hearing | 8032 | 2324 | Dentistry | 4545 | 1242 |
| Injuring levees | 8035 | 2326 | Embalming | 4578 | 1254 |
| Repeating | 8038 | 2327 | Employment agents | 5210 | 1461 |
| Collect on re-assessment..... | 8033 | 2325 | Ferry | 6799 | 1948 |
| Bonds: | | | Fish and oyster dealer..... | 4045 | 1102 |
| Issuance | 8000 | 2310 | Ginner's | 5667 | 1594 |
| Limit of issue | 806 | 248 | Marriage | 4604 | 1263 |
| Manner of election..... | 8001 | 2310 | Medicine | 4498 | 1225 |
| Option to purchase | 2673 | 709 | Nurses | 4518 | 1234 |
| Limitation of indebtedness..... | 806 | 248 | Occupation | 4615, 7047 | 1266, 2021 |
| Notices, legal | 28 | 7 | Optometry | 4557 | 1245 |
| Report to State Engineer..... | 7970 | 2296 | Pharmacy | 4533 | 1238 |
| LEEVES— | | | Plumbers | 1080 | 321 |
| Overflow; damages | 7577 | 2193 | Public accountants | 36-40 | 11 |
| Reclamation Engineer | 7960 | 2294 | Stevedores, contracting..... | 5194 | 1458 |
| LEVY— | | | Surveyors | 5273 | 1478 |
| Execution, Under | 3789 | 1019 | Veterinarians | 7455 | 2166 |
| LIBEL AND SLANDER— | | | LIENS— | | |
| Construction | 5433 | 1530 | Attachment | 300 | 140 |
| Costs | 2062 | 558 | Bank deposits | 433 | 170 |
| Damages | 5431 | 1530 | Bank Guaranty Fund..... | 449 | 174 |
| Definition | 5430 | 1530 | Boarding house | 4594 | 1260 |
| Limitation | 5524 | 1558 | Chattel mortgages | 5489-99 | 1548 |
| Privileged matters | 5432 | 1530 | City highway | 1210 | 364 |
| Venue | 1995(29) | 544 | City lighting system | 1234 | 370 |
| LIBRARIANS— | | | City street improvements | | |
| County | 1683 | 487 | ..... | 1090, 1099 | 324, 326 |
| State | 5440 | 1532 | Clerks | 5483-8 | 1546 |
| University | 259 | 131 | Common law | 5503-6 | 1552 |
| LIBRARIES— | | | Connecting lines | 6412 | 1823 |
| Board of Examiners..... | 1682 | 487 | Contractors | 5452-72 | 1537 |
| City, powers as to..... | 1015(33) | 301 | Corporation fines | 1372 | 414 |
| County | 1677 | 486 | Drillers | 5473-9 | 1543 |

| | Article. | Page. |
|---|------------|------------|
| LIENS—Continued. | | |
| Estate in probate..... | 3343 | 931 |
| Estate of ward..... | 4222 | 1136 |
| Factory hands..... | 5483-8 | 1546 |
| Farm hands..... | 5483-8 | 1546 |
| Fraudulent..... | 4000 | 1085 |
| Hotel..... | 4594 | 1260 |
| Irrigation, For..... | 7542 | 2184 |
| Judgment liens..... | 5447-51 | 1536 |
| Judgments against re- ceivers..... | 2302 | 613 |
| Landlord's..... | 5222, 5606 | 1466, 1579 |
| Lessor's..... | 5238 | 1469 |
| Livery stable..... | 5502-5 | 1552 |
| Lumber jacks..... | 5483-8 | 1546 |
| Mechanics and material- men..... | 5452-72 | 1530 |
| Motor vehicle registration | 6697 | 1906 |
| Newspaper employes..... | 5484 | 1547 |
| Oil operators..... | 5473-9 | 1543 |
| Public lands..... | 5327 | 1494 |
| Railroad laborers..... | 5480-2 | 1545 |
| Ship chandler's..... | 5500 | 1552 |
| Stock breeder's..... | 5501 | 1552 |
| Suits to extinguish..... | 1979 | 541 |
| Tax..... | 7172, 7267 | 2079, 2111 |
| Tax, inheritance..... | 7133 | 2065 |
| Venue..... | 1995(12) | 544 |
| Warehousemen's..... | 5638 | 1588 |
| Well, Plugging abandoned..... | 6005 | 1716 |
| LIEUTENANT GOVERNOR— | | |
| Election contest..... | 3066 | 844 |
| Election returns..... | 3036 | 838 |
| Impeachment..... | 5961 | 1705 |
| Salary..... | 6817 | 1953 |
| Trustee for Blind Insti- tute..... | 3206 | 894 |
| LIFE INSURANCE— | | |
| Corporate beneficiaries..... | 5048 | 1410 |
| General provisions..... | 4716-64 | 1294 |
| Policies..... | 4732, 5049 | 1300, 1411 |
| LIGHT COMPANIES— | | |
| City regulation..... | 1119 | 335 |
| Deposits, interest on..... | 1440 | 428 |
| Eminent domain..... | 1436 | 427 |
| Finances..... | 1437 | 427 |
| Judicial regulation..... | 1125 | 337 |
| Powers..... | 1435 | 426 |
| Reports..... | 1441 | 428 |
| Sale of properties..... | 1268 | 380 |
| Tax, Gross Receipts..... | 7060 | 2032 |
| Tax, Occupation..... | 7047(18) | 2021 |
| LIGHTING SYSTEM, AR- TIFICIAL— | | |
| City may nistall..... | 1221 | 366 |
| LIGHTNING INSURANCE— | | |
| General provisions..... | 4933-49 | 1375 |
| LIGHTNING ROD AGENTS— | | |
| Tax..... | 7047(11) | 2021 |

| | Article. | Page. |
|-----------------------------------|------------|-----------|
| LIGNITE LANDS, STATE— | | |
| Application..... | 5383 | 1516 |
| LIMITATIONS OF ACTION— | | |
| Absence, permanent..... | 5541 | 1561 |
| Absence, temporary..... | 5537 | 1561 |
| Accounts..... | 5526-7 | 1558 |
| Acknowledgment..... | 5539 | 1561 |
| Agreement, shortening..... | 5545 | 1562 |
| Assignee in bankruptcy..... | 274 | 135 |
| Bond: | | |
| Executor or guardian..... | 5528 | 1559 |
| Public contractor's wage | 5162 | 1448 |
| To convey lands..... | 5527 | 1559 |
| Breach of promise..... | 5524 | 1558 |
| Certiorari..... | 932, 941 | 283, 284 |
| Claims: | | |
| Acknowledgment of..... | 5539 | 1561 |
| Bank, Against..... | 459 | 176 |
| City, Against 1251, 1253 | 375, 376 | |
| Damages, notice..... | 5546 | 1562 |
| Estate, Against..... | 3522, 4257 | 963, 1142 |
| Immigrant, Against..... | 5542 | 1561 |
| Contracts..... | 5526-7 | 1558 |
| Conversion..... | 5526 | 1558 |
| Damages, notice..... | 5546 | 1562 |
| Death: | | |
| Actions brought after..... | 5537 | 1561 |
| Injuries, From..... | 5525 | 1558 |
| Presumed..... | 5541 | 1561 |
| Debt: | | |
| Open accounts..... | 5526 | 1558 |
| Removal after..... | 5543 | 1562 |
| Written contract..... | 5527 | 1559 |
| Disabilities: | | |
| Certiorari..... | 932, 941 | 283, 284 |
| Enumeration..... | 5518 | 1556 |
| Personal actions..... | 5535 | 1560 |
| Tacking..... | 5544 | 1562 |
| Execution officer..... | 5533 | 1560 |
| Forgery or fraud..... | 5536 | 1560 |
| Foreign judgments..... | 5530 | 1559 |
| Immigrant..... | 5542 | 1561 |
| Interest, usurious..... | 5073 | 1418 |
| Interrupted..... | 4257 | 1142 |
| Judgments: | | |
| Foreign..... | 5530 | 1559 |
| Revival..... | 5532 | 1560 |
| Lands: | | |
| Adjacent owner..... | 5512 | 1555 |
| Adverse possession..... | 5515 | 1555 |
| Bond to convey..... | 5527 | 1559 |
| Five years..... | 5509 | 1554 |
| Notes..... | 5521-2 | 1557 |
| Peaceable possession..... | 5514 | 1555 |
| Possession, title by..... | 5513-17 | 1555 |
| Power of sale..... | 5523 | 1557 |
| Purchase money..... | 5521-2 | 1557 |
| Specific performance..... | 5531 | 1560 |
| Surrounding lands..... | 5511 | 1555 |
| Ten years..... | 5510 | 1554 |
| Three years..... | 5507 | 1554 |
| Title defined..... | 5508 | 1554 |

| | Article. | Page. | | Article. | Page. |
|-------------------------------|------------|------------|----------------------------|------------|------------|
| LIMITATIONS OF ACTION— | | | LITERARY SOCIETIES— | | |
| Continued. | | | Consolidation | 1316 | 403 |
| Twenty-five years | 5519 | 1556 | Incorporation | 1302(3) | 392 |
| Vendors | 5520 | 1556 | Powers | 1396-1409 | 419 |
| Libel and slander | 5524 | 1558 | Renewal of charter | 1315 | 403 |
| Liens | 5447-5506 | 1536 | LIVE STOCK— | | |
| Malicious prosecution | 5524 | 1558 | Bills of sale | 6903-10 | 1975 |
| Open accounts | 5526 | 1558 | Brands | 6890 | 1970 |
| Other actions | 5529 | 1559 | Breeder's lien | 5501 | 1552 |
| Partnership | 5527 | 1559 | Commission merchants | 1281 | 385 |
| Personal actions: | | | Corporations | 1302(22) | 392 |
| Bond of executor | 5528 | 1559 | Dipping | 7031-2 | 2016 |
| Death from injuries | 5525 | 1558 | Diseases | 6900, 7010 | 1974, 2007 |
| Disabilities | 5535 | 1560 | Estrays | 6911 | 1978 |
| Execution, Return | 5533 | 1560 | Financing: | | |
| Foreign judgments | 5530 | 1559 | Co-operative Credit As- | | |
| Forgery or fraud | 5536 | 1560 | sociations | 2508 | 658 |
| Four years | 5527 | 1559 | Loan corporations | 2500 | 656 |
| Judgment | 5532 | 1560 | Pools | 2485 | 653 |
| One year | 5524 | 1558 | Free range | 6930 | 1983 |
| Other actions | 5529 | 1559 | Hide and animal inspec- | | |
| Specific performance | 5531 | 1560 | tion | 6972 | 1996 |
| Two years | 5526 | 1558 | Hog Law | 6947 | 1988 |
| Will contest | 5534 | 1560 | Horse Law | 6954 | 1990 |
| Personal injuries | 5525 | 1558 | Impounding | 6965 | 1994 |
| Pleading | 5540 | 1561 | Insurance companies | 5037 | 1408 |
| Probate: | | | Quarantine | 7011 | 2007 |
| Admission to | 3326 | 928 | Sanitary Commission: | | |
| Contesting | 5534 | 1560 | Appointment | 7009 | 2007 |
| Revising | 932 | 283 | Duties | 7010-40 | 2007 |
| Seduction | 5524 | 1558 | Inspectors | 7019 | 2012 |
| Shortening | 5545 | 1562 | Railroad passes | 4006 | 1087 |
| Specific performance | 5531 | 1560 | Salaries | 6813 | 1952 |
| Survival | 5525 | 1558 | Scabies | 7036 | 2018 |
| Suspension: | | | Sheep shearing | 7036 | 2018 |
| Death, After | 5538 | 1561 | Slaughter and shipment | 6903 | 1975 |
| Death from injuries | 5525 | 1558 | Tax rendition | 7155 | 8073 |
| Disabilities | 5518 | 1556 | LIVERY STABLES— | | |
| Temporary absence | 5537 | 1561 | Incorporation | 1302(65) | 392 |
| Taxes | 7298 | 2119 | Lien | 5502 | 1552 |
| Temporary absence | 5537 | 1561 | LLOYDS PLAN INSUR- | | |
| Torts | 5526 | 1558 | ANCE— | | |
| Trespass | 5526 | 1558 | Assets | 5017 | 1402 |
| Twenty-five years | 1518-19 | 445 | License | 5016 | 1402 |
| Will: | | | Risks | 5020 | 1403 |
| Contest | 5534 | 1560 | LOAN AND BROKERAGE | | |
| Forgery | 5536 | 1560 | COMPANIES— | | |
| Probate | 3326 | 899 | Examination | 1522 | 446 |
| LIMITED PARTNERSHIPS— | | | Liquidation | 1523 | 446 |
| General provisions | 6110-6132 | 1742 | Powers | 1520 | 446 |
| LINEAL STANDARDS— | | | Statements | 1521 | 446 |
| Of measure | 5730 | 1612 | LOAN BROKERS— | | |
| LIQUIDS— | | | Assignments | 6164 | 1753 |
| Standards of measure | 5732 | 1613 | Defined | 6162 | 1752 |
| LIQUORS— | | | Register | 6163 | 1752 |
| Injunction | 4664, 5107 | 1278, 1450 | Tax | 7047(14) | 2021 |
| Sale | 5075 | 1420 | Usury | 6165 | 1753 |
| Seizure of vehicle | 5112 | 1431 | LOAN COMPANIES— | | |
| LIS PENDENS— | | | Agricultural and livestock | | |
| Land suits, notice | 6640-43 | 1892 | pools | 2485 | 653 |

INDEX TO CIVIL STATUTES.

2489

| | Article. | Page. |
|--|-------------|------------|
| LOAN COMPANIES—Cont'd. | | |
| Building and loan associations | 852 | 260 |
| Co-operative savings and contract loan | 4698 | 1291 |
| Foreign, fee | 3915 | 1053 |
| Incorporation | 1302 (48-9) | 392 |
| Loan and brokerage companies | 1520 | 1403 |
| Loan brokers | 6162 | 1752 |
| Morris Plan banks | 542 | 193 |
| Mutual loan corporations | 2500 | 656 |
| Rural Credit Union | 2461 | 648 |
| LOANS— | | |
| Banks | 515-529 | 191 |
| Building and loan associations | 857 | 262 |
| Corporations generally | 1349 | 409 |
| Credit organizations | 2462-2520 | 648 |
| Fraudulent | 3999 | 1085 |
| Investments | 4180-91 | 1127 |
| Insurance companies | 4727, 4780 | 1299, 1319 |
| Loan brokers | 6262-5 | 1784 |
| Pawnbrokers | 6146-61 | 1750 |
| LOCAL LAWS— | | |
| Passage | 2-9 | 3 |
| LODGES— | | |
| Charter | 1400 | 420 |
| Incorporation | 1399 | 420 |
| Insurance benefits | 4821 | 1332 |
| Powers | 1401 | 420 |
| LOGS— | | |
| Brands | 7360 | 2142 |
| Lien for wages | 5483-8 | 1546 |
| LONGSHOREMEN— | | |
| Open Port Law | 907 | 277 |
| Wages, bond to secure | 5192 | 1457 |
| LOST RECORDS— | | |
| Certified copies admissible | 3726 | 1002 |
| County maps, etc. | 5294 | 1481 |
| Pending suit | 2289 | 609 |
| Supplied by proof | 6582 | 1878 |
| LUNACY— | | |
| Guardianship proceedings | 4267 | 1143 |
| Judicial proceedings in | 5547 | 1563 |
| Jury, No interchangeable | 2101 | 572 |
| LUNATIC ASYLUMS— | | |
| Admission | 3185 | 885 |
| Discharge | 3193 | 887 |
| Escape | 3196 | 893 |
| Private patients | 3189 | 886 |
| Transfer of patients | 3226 | 899 |
| M. | | |
| MACHINERY— | | |
| Lien on | 5498, 5452 | 1550, 1537 |

| | Article. | Page. |
|---------------------------------|-----------|-------|
| MAIL— | | |
| Railroads carrying | 6392 | 1816 |
| Unlawful use of | 591 | 209 |
| MALICIOUS PROSECUTION— | | |
| Limitation | 5524 | 1558 |
| MALPRACTICE— | | |
| Attorneys | 313 | 143 |
| Doctors | 4512 | 1232 |
| Osteopaths | 4512 | 1232 |
| MANDAMUS— | | |
| Election officers | 3142 | 869 |
| Ex parte hearing, On | 2328 | 619 |
| Heads of departments | 1735 | 498 |
| Issuance: | | |
| County courts | 1957 | 537 |
| District courts | 1914 | 529 |
| Supreme Court | 1733-5 | 498 |
| Revival against successor | 2269 | 606 |
| MANDATE— | | |
| Awaiting | 2284 | 608 |
| Civil Appeals | 1864 | 520 |
| Return | 2285 | 608 |
| Supreme Court | 1773 | 504 |
| MANUFACTURING— | | |
| Child labor | 5181 | 1454 |
| Corporations | 1302 (34) | 392 |
| Female employes | 5168-80 | 1450 |
| Inspection of plants | 5148 | 1445 |
| Water power | 7490 | 2174 |
| MANUSCRIPT BONDS— | | |
| Issuance | 2606 | 689 |
| MAPS— | | |
| Archives | 250 | 129 |
| County | 5291-2 | 1481 |
| County lines | 1592 | 465 |
| Land Office | 5259 | 1475 |
| Public lands | 5299 | 1482 |
| MARINE INSURANCE— | | |
| Bond | 4925 | 1370 |
| Capital stock | 4920 | 1369 |
| Reinsurance | 4932 | 1374 |
| Risks, insurable | 4919 | 1369 |
| Statement | 4927 | 1371 |
| MARINE LIFE— | | |
| Conservation | 4040 | 1100 |
| MARK— | | |
| Proof for registration | 6614 | 1886 |
| "Signature" includes | 23 | 6 |
| Trade mark | 843 | 257 |
| MARKET HOUSES— | | |
| City's powers | 1015 (31) | 301 |
| Incorporation | 1302 (43) | 392 |
| Tax exemptions | 7150 (9) | 2069 |
| MARKETING ASSOCIATIONS— | | |
| Bond | 5757 | 1622 |
| By-laws | 5746 | 1618 |

| | Article. | Page. | | Article. | Page. |
|--|------------|------------|--------------------------------------|------------|------------|
| MARKETING ASSOCIATIONS— | | | MARRIED WOMEN—Cont'd. | | |
| Continued. | | | Death of husband.....3678 399 | | |
| Charter | 5744-5 | 1617 | Insane husband | 3678 | 399 |
| Contracts | 5753, 5759 | 1621, 1323 | Limitation | 5518, 5535 | 1556, 1560 |
| Dabages against | 5761 | 1624 | Registration of property..... | 6647-51 | 1894 |
| Definitions | 5738 | 1615 | Rights of | 4613-27 | 1265 |
| Directors | 5747-57 | 1619 | Suits against: | | |
| Existing association | 5760 | 1623 | Debt, separate | 1985 | 542 |
| Fees | 5764 | 1624 | Necessaries | 1984 | 542 |
| Inspection | 5565 | 1566 | Venue | 1995(1) | 544 |
| Interest in others..... | 5758 | 1623 | Suits by | 1983 | 542 |
| Laws governing | 5763 | 1624 | MARSHAL— | | |
| Meetings | 5747 | 1619 | City | 999 | 297 |
| Members | 5739, 5743 | 1616, 1617 | Town | 1147 | 343 |
| Monopoly | 5762 | 1624 | United State..... | 4006, 5117 | 1087, 1434 |
| Officers | 5749-57 | 1623 | MARTIAL LAW— | | |
| Organization | 5739-52 | 1616 | Open Port Law..... | 911 | 278 |
| Powers | 5742 | 1616 | Proclamation | 5889 | 1667 |
| Purchasing other business..... | 5754 | 1622 | MASTER IN CHANCERY— | | |
| Purposes | 5740 | 1616 | Appointment | 2320 | 617 |
| Referendum | 5752 | 1621 | MATAGORDA BAY— | | |
| Reports | 5755 | 1622 | Pilots | 8279 | 2385 |
| Stock certificates | 5750 | 1620 | MATERIALMEN— | | |
| MARKETS AND WARE- HOUSES— | | | Bond to secure..... | 5160 | 1447 |
| Bond | 5569 | 1567 | Lien | 5452 | 1537 |
| Commissioner | 5562 | 1566 | MATERNITY HOMES— | | |
| Corporations | 5578-5611 | 1570 | Control | 4442 | 1183 |
| Cotton under lien..... | 5571 | 1568 | MAYORS— | | |
| Defined | 5568 | 1567 | Duties | 994 | 296 |
| Delivery | 5573-4 | 1569 | Election | 977 | 292 |
| Liability | 5575 | 1569 | Pro tem | 991 | 295 |
| Private | 5577 | 1570 | Removal | 5991-93 | 1713 |
| Public weighers | 5680 | 1598 | Riot, impending | 5831 | 1643 |
| Receipts | 5612-65 | 1582 | MEASURES— | | |
| Warehousemen | 5568-77 | 1567 | False | 5717 | 1607 |
| Weights and measures..... | 5705-36 | 1605 | Inspection | 5724-25 | 1609 |
| Duty of Commissioner transferred to Commis- sioner of Agriculture, Acts 39th Legislature..... | | 35 | Sale | 5728 | 1612 |
| MARRIAGE— | | | Standards | 5730-34 | 1612 |
| Annulment | 4628 | 1268 | Tests | 5726 | 1610 |
| Bond, by | 4608 | 1264 | MEATS AND PACKING— | | |
| Breach of promise..... | 5524 | 1558 | City regulation | 1015(5-9) | 301 |
| By whom | 4602 | 1263 | Corporations | 1302(24) | 392 |
| Celebration | 4602 | 1263 | Quarantine | 447 | 174 |
| City registration | 1015(13) | 301 | State inspection | 4420 | 1177 |
| Consent | 4605 | 1263 | MECHANICS' LIENS— | | |
| Contracts | 4610 | 1264 | Builder's fund | 5469 | 1542 |
| Divorce | 4629 | 1268 | Lien prescribed | 5452 | 1537 |
| Intermarriage | 4607 | 1264 | Securing | 5453 | 1538 |
| License | 4604 | 1263 | Waiver on schools..... | 2752 | 734 |
| Minor | 4603 | 1263 | MEDICAL EXAMINERS, BOARD— | | |
| Re-marriage | 4640 | 1270 | Chiroprody Board, Select..... | 4568 | 1250 |
| Void, Issue of..... | 2581 | 681 | General duties | 4495-4512 | 1224 |
| MARRIED WOMEN— | | | MEDICAL SCHOOLS— | | |
| Acknowledgments | 6605, 6608 | 1884, 1884 | Anatomical Board | 4583-90 | 1255 |
| Conveyances | 1299-1300 | 391 | Graduates' license | 4500 | 1226 |
| Corporate stockholders | 1306 | 401 | | | |

INDEX TO CIVIL STATUTES.

2491

| | Article. | Page. | | Article. | Page. |
|--|------------|----------|---------------------------|------------|------------|
| MEDICINE— | | | MILITIA—Continued. | | |
| Alcoholic prescriptions | | | Commissioned officers | 5800-18 | 1636 |
| Anatomical Board | 5090-91 | 1425 | Courts martial | 5859-84 | 1660 |
| Board of Examiners | 4583 | 1255 | Drafts | 5774-7 | 1628 |
| Definitions | 4495-7 | 1224 | Enlistments | 5819-29 | 1641 |
| Examination | 4510-11 | 1232 | Enrollment | 5771-3 | 1627 |
| Foreign practitioners | 4501-3 | 1227 | Exemptions | 5840-7 | 1645 |
| Ineligible to practice | 4500 | 1226 | Foreign troops | 5890 | 1667 |
| Injunction | 4505 | 1230 | Gambling | 5888 | 1667 |
| License: | 4509 | 1231 | General provisions | 5765-9 | 1625 |
| Cancellation | 4507 | 1230 | Governor's power | | |
| Examination for | 4501-3 | 1227 | 5768, 5778 | 1626, 1629 | |
| Fee | 4500 | 1726 | Home guard | 6144 | 1748 |
| Registration | 4499 | 1225 | Insurrection | 5889 | 1667 |
| Revocation | 4506 | 1230 | Military duty: | | |
| Suspension | 4512 | 1232 | Drafts | 5774-7 | 1628 |
| Malpractice | 4512 | 1232 | Enrollment | 5771-3 | 1627 |
| Nurses | 4513-28 | 1233 | Exemptions | 5767 | 1625 |
| Patent medicine, tax | 7047(2) | 2021 | Liable to | 5766 | 1625 |
| Pharmacy | 4529-42 | 1237 | Mobilization | 5832 | 1643 |
| Physicians to register | 4498 | 1225 | Muster | 5779 | 1629 |
| Register of physicians | 4498-9 | 1225 | National Guard | 5830 | 1642 |
| Shows, tax | 7049(29) | 2028 | Reserve | 5770 | 1626 |
| Veterinary | 7448 | 2164 | Riot, etc. | 5778, 5831 | 1629, 1643 |
| MENAGERIES— | | | Mobilization | 5832 | 1543 |
| Tax | 7047(25) | 2021 | Muster | 5779 | 1629 |
| MERCHANTS— | | | National Guard | 5780-5890 | 1629 |
| Bankrupt, tax levy | 7048 | 2027 | Naval | 5891 | 1667 |
| Bulk sales | 4001 | 1085 | Non-coms | 5819-29 | 1641 |
| Commission | 1274 | 383 | Pay | 5829, 5838 | 1642, 1644 |
| License | 1615 | 471 | Privileges | 5840-7 | 1645 |
| Live Stock Commission | 1281 | 385 | Quartermaster General | 5799 | 1635 |
| Occupation taxes | 7047 | 2021 | Reserve | 5770-9 | 1626 |
| MERGER— | | | Riot | 5831 | 1643 |
| Anti-trust law | 7426 | 2154 | Stores | 5798 | 1634 |
| Blue Sky Law | 593 | 210 | Uniform | 5857 | 1648 |
| Cities | 1193, 2803 | 360, 752 | MILK— | | |
| Corporations | 593 | 210 | Adulteration of | 4474 | 1197 |
| Interurbans | 6543 | 1867 | Dairy companies | 1302(21) | 392 |
| School districts election to consolidate | 2806 | 753 | Dairy trade marks | 844 | 257 |
| MERRY-GO-ROUND— | | | Ice company powers | 1528 | 448 |
| Tax | 7047(37) | 2021 | Sale regulated | 4474 | 1197 |
| METALLURGY— | | | MILL PRODUCTS— | | |
| School of | 2633 | 698 | Feeding stuff | 3872-81 | 1036 |
| MEXICO— | | | MILLS— | | |
| Cattle and hides | 6987-94 | 2000 | Capital stock | 1311 | 402 |
| Game, wild | 4036 | 1099 | Incorporation | 1302(15) | 392 |
| MIDWIVES— | | | Inspection | 5148 | 1445 |
| Birth precautions | 4441 | 1183 | Railway lines to | 6550 | 1870 |
| MILE POSTS— | | | MINERAL LANDS— | | |
| County roads | 6732 | 1928 | Coal and lignite | 5383-7 | 1516 |
| MILITIA— | | | Other minerals | 5388 | 1519 |
| Active | 5765 | 1625 | University | 5338 | 1499 |
| Adjutant General | 5787-98 | 1631 | MINES AND MINING— | | |
| Appropriations | 5885 | 1666 | Board, State | 5892 | 1668 |
| Arms | 5848-57 | 1647 | Contractor's lien | 5473 | 1543 |
| Articles of war | 5858 | 1649 | Hydraulic | 7490 | 2174 |
| | | | Injunction | 4644 | 1274 |
| | | | Inspector | 5893 | 1668 |
| | | | Lien | 5473 | 1543 |
| | | | Public lands | 5383-88 | 1516 |

| | Article. | Page. | | Article. | Page. |
|-------------------------------|----------|-------|-------------------------------|------------|------------|
| MINES AND MINING— | | | MONEY LENDERS— | | |
| Continued. | | | Loan brokers | 6162 | 1752 |
| Railway lines to | 6550 | 1870 | Pawnbrokers | 6146 | 1750 |
| Regulations | 5901-20 | 1669 | Tax | 7047(15) | 2021 |
| School of Mines | 2633 | 698 | MONOPOLIES— | | |
| Water right | 7498 | 2176 | Anti-trust law | 7427 | 2155 |
| MINISTERS— | | | MONTH— | | |
| Exemptions: | | | Defined | 23 | 6 |
| Jury service | 2135(4) | 581 | School | 2906 | 796 |
| Military duty | 5767(8) | 1625 | MORRIS PLAN BANKS— | | |
| Road duty | 6723(1) | 1926 | Incorporation | 542-548 | 198 |
| Marriage celebration | 4602 | 1263 | MORTGAGES— | | |
| Passes, free | 4006 | 1087 | Acknowledgment | 6602 | 1883 |
| Sacramental wine | 5086 | 1423 | Banks, powers | 396 | 160 |
| MINORS— | | | Chattel mortgages | 5489-99 | 1548 |
| Adoption | 42-46 | 13 | City utilities, On | 1111 | 333 |
| Apprenticing | 201-223 | 109 | Corporations | 1321, 1533 | 405, 450 |
| Becoming of age | 2969 | 821 | Dec dent's estate: | | |
| Cattle brands | 6895 | 1974 | Proceeds of sale | 3536 | 966 |
| Commitment | 3257 | 910 | Release | 3430 | 947 |
| Defined | 4104 | 1113 | Sale to satisfy | 3564 | 971 |
| Delinquent | 2338 | 622 | Security for sale | 3587-9 | 976 |
| Dependent and neglected | 2330 | 620 | Execution on mortgaged | | |
| Disabilities removed | 5921 | 1675 | property | 3797 | 1020 |
| Estate, proceedings re- | | | Foreclosure: | | |
| vised | 932 | 283 | Judgment | 2218 | 594 |
| Executors named | 3361 | 934 | Sequestration | 6840(3) | 1960 |
| Guardian ad litem | 2159 | 584 | Venue | 1995(12) | 544 |
| Guardians | 4113 | 1115 | Writ of possession | 2219 | 595 |
| Limitation interrupted | 5518 | 1556 | Fraudulent | 4000 | 1085 |
| Marriage | 4603 | 1263 | Furniture, On | 6164 | 1753 |
| Name, Changing | 5929 | 1677 | Homestead, On | 1300 | 391 |
| Railroad fare | 6416 | 1824 | Insurance companies: | | |
| Savings bank deposits | 409 | 164 | Casualty | 5006-7 | 1399 |
| Street car fare | 6544 | 1867 | Farmers' hail | 4956 | 1381 |
| Suits by next friend | 1994 | 543 | Fire insurance contract | 4931 | 1373 |
| Tax rendition | 7152(3) | 2072 | Life | 4725-6 | 1298 |
| Wills, Attesting | 8283 | 2386 | Mutual fire | 4941 | 1377 |
| MISNOMER— | | | Land notes extended | 5522 | 1567 |
| Of corporation | 1357 | 411 | Limitation | 5522-3 | 1567 |
| MISREPRESENTATION— | | | Loss, proof of | 6582 | 1878 |
| Actionable | 4004 | 1086 | Power of sale under | 5523 | 1567 |
| Insurance policies | 5043-52 | 1409 | Railroads: | | |
| MISSIONARY SOCIETIES— | | | Amount | 6521 | 1859 |
| Consolidation | 1316 | 403 | Create, May | 6345-6 | 1803 |
| Incorporation | 1302(2) | 392 | Resolution to create | 6346 | 1803 |
| Powers | 1396 | 419 | Sale to satisfy | 6421-7 | 1826 |
| Renewal of charter | 1315 | 403 | Receiver creating | 2306 | 614 |
| MISTAKES— | | | Registration | 6645 | 1893 |
| Citation, In return | 2048 | 557 | State, In favor of | 4346 | 1158 |
| Judgments, In | 2228 | 596 | Trust companies | 396 | 149 |
| Probate, In | 3238 | 920 | Ward's estate: | | |
| Verdict, In | 2207 | 592 | Discharge | 4211 | 1134 |
| MOBS— | | | Sale to satisfy | 4209-10 | 1134 |
| Jail guards, extra | 6871 | 1967 | Security for loan | 4181 | 1127 |
| Militia used | 5831 | 1643 | Security for sale | 4204, 4220 | 1133, 1136 |
| Rangers used | 910 | 278 | MOTHERS' PENSIONS— | | |
| MONEY— | | | Application | 6228 | 1774 |
| Defined | 7149 | 2068 | MOTIONS— | | |
| Public deposits | 2525 | 662 | Appearance by | 2048 | 557 |
| Tax, subject to | 7175 | 2081 | Arrest of judgment | 2232 | 597 |

| | Article. | Page. |
|------------------------------------|------------|----------|
| MOTIONS—Continued. | | |
| Certiorari to dismiss | 953 | 285 |
| Costs | 2058, 2068 | 558, 559 |
| Death of judge | 2288 | 609 |
| Determination | 2291 | 610 |
| Docket | 2291 | 610 |
| Execution, For return of | 5533 | 1560 |
| Injunction, To dissolve | 4658 | 1277 |
| Lost papers | 2289 | 609 |
| New trial, For | 2232 | 597 |
| Notice of | 2291 | 610 |
| Officers, Against: | | |
| Attorney withholding money | 317 | 143 |
| County court, In | 1954 | 536 |
| District court, In | 1910 | 528 |
| Execution, To return | 5533 | 1560 |
| Revival against successor | 2269 | 606 |
| Receiver, Appealing appointment of | 2250 | 603 |
| Rehearing, For: | | |
| Civil Appeals | 1877-80 | 522 |
| Supreme Court | 1762 | 503 |
| Revival of suit | 2269 | 606 |
| MOTOR VEHICLES— | | |
| Bus lines | 6548 | 1869 |
| Liquor in | 5112 | 1431 |
| Registration: | | |
| Chauffer | 6687 | 1904 |
| Dealer | 6686 | 1904 |
| Delinquent | 6697 | 1906 |
| License and seal | 6688-90 | 1904 |
| Passenger | 6678 | 1901 |
| Tractors | 6681 | 1902 |
| Transfer fee | 6685 | 1903 |
| Trucks | 6679 | 1902 |
| When | 6677 | 1901 |
| Where | 6675 | 1901 |
| Unsafe | 6696 | 1906 |
| MOVING PICTURES— | | |
| Rights | 178-9 | 58 |
| Tax | 7047(22) | 2021 |
| MULES— | | |
| Free range election | 6954 | 1990 |
| Importing from Mexico | 6990 | 2001 |
| Injuring in free range | 6943 | 1987 |
| MUNICIPAL BONDS— | | |
| General provisions | 823-835 | 251 |
| Issuance, rules | 701-717 | 229 |
| MUNICIPAL CORPORATIONS— | | |
| General powers | 1015 | 301 |
| Incorporation | 966 | 288 |
| Officers | 977 | 292 |
| MURDER— | | |
| By beneficiary | 5047 | 1410 |
| MUSEUMS— | | |
| Tax | 7047(25) | 2021 |
| MUSIC— | | |
| Corporations | 1302(3) | 392 |

| | Article. | Page. |
|--------------------------------------|----------|----------|
| MUTUAL INSURANCE— | | |
| Assessment | 4784 | 1321 |
| Fire | 4860-75 | 1350 |
| Fraternal benefit | 4820-59 | 1331 |
| Hail | 4950-9 | 1379 |
| Life | 4800-19 | 1326 |
| Storm | 4933-49 | 1375 |
| MUTUAL LOAN CORPORATIONS— | | |
| Capital | 2502-3 | 657 |
| Charter | 2504 | 657 |
| Charter fees | 3914 | 1051 |
| Liability | 2506 | 657 |
| Loans: | | |
| Amount | 2503 | 657 |
| Interest on | 2507 | 658 |
| Powers | 2501 | 656 |
| Powers | 2501 | 656 |
| Purpose | 2500 | 656 |
| Report | 2505 | 657 |
| N. | | |
| NAME— | | |
| Assumed | 5924 | 1676 |
| Banks | 376, 491 | 156, 183 |
| Change of | 5928 | 1677 |
| Change of on divorce | 5931 | 1677 |
| Change of State institution, name of | 3185 | 885 |
| Firm, on incorporation | 1307 | 401 |
| Misnomer of corporation | 1357 | 411 |
| Partnership, limited | 6122 | 1744 |
| Trade | 843-51 | 257 |
| NATIONAL BANKS— | | |
| Agricultural pools | 2485 | 653 |
| Bond security system | 483 | 180 |
| Conversion of State Bank | 502 | 187 |
| Depositories | 2526-69 | 662 |
| Notes taxable | 7175-6 | 2081 |
| Permission to operate | 490 | 183 |
| Political contributions | 1352 | 410 |
| Protection of deposits | 441-442 | 172 |
| Tax rendition | 7165-6 | 2076 |
| NATIONAL CONVENTION— | | |
| Delegates selected | 3167 | 876 |
| NATIONAL GUARD— | | |
| Adjutant General | 5787 | 1631 |
| Arms | 5848 | 1647 |
| Articles of war | 5858 | 1649 |
| Commissioned officers | 5800 | 1636 |
| Courts martial | 5859 | 1660 |
| Defined | 5765 | 1625 |
| Enlisted men | 5819 | 1641 |
| General provisions | 5885 | 1666 |
| Military duty | 5766 | 1625 |
| Non-coms | 5819 | 1641 |
| Organization | 5780-86 | 1629 |
| Pay | 5838 | 1644 |
| Quartermaster General | 5799 | 1635 |
| Service | 5830 | 1642 |
| Uniform | 5857 | 1648 |

| | Article. | Page. | | Article. | Page. |
|---|------------|------------|--------------------------------------|-------------|------------|
| NATURAL GAS— | | | NAVIGATION DISTRICTS— | | |
| Confining | 6008 | 1717 | Continued. | | |
| Corporations | 1495 | 440 | Special powers: | | |
| Illumination by | 6006 | 1717 | Bonds | 8236 | 2361 |
| Operators | 6050 | 1727 | Franchises | 8240-3 | 2362 |
| Pipe line | 6051 | 1728 | Governing Board | 8235 | 2360 |
| Public lands, In | 5338 | 1499 | Lands | 8238-9 | 2361 |
| Regulation | 6053 | 1728 | Pilots | 8248 | 2363 |
| Tax | 6060 | 1731 | Port facilities | 8229 | 2359 |
| NAVIGABLE STREAM— | | | Taxes | 8222-4 | 2357 |
| Cities on | 1183 | 358 | Treasurer | 8220 | 2356 |
| Defined | 5302 | 1483 | NAVY— | | |
| Surveys on | 5302 | 1483 | State | 5891 | 1667 |
| NAVIGATION— | | | NECESSARIES, FAMILY— | | |
| Channel and dock com- panies, purposes | 1478 | 434 | Property liable for | 4623 | 1267 |
| City's powers: | | | Suit for debt | 1984 | 542 |
| Bonds, harbor | 835 | 254 | NEGLECTED CHILDREN— | | |
| Regulation | 1186 | 359 | Commitment | 3257 | 910 |
| Extension of limits | 1183 | 358 | Custody | 2337 | 622 |
| Improvement districts | 1179 | 357 | Defined | 2330 | 620 |
| Powers | 1184 | 358 | Disposition | 2336 | 622 |
| Pilots | 8248 | 2363 | Home for | 3255 | 909 |
| Port facilities | 8229 | 2359 | Proceedings against | 2331 | 620 |
| Deep water corporations, powers | 1483 | 437 | NEGLIGENCE— | | |
| Pilots | 8248-79 | 2363 | Death, Causing | 4671 | 1281 |
| NAVIGATION DISTRICTS— | | | Doctor guilty of | 4512 | 1232 |
| Attorney | 8227 | 2358 | Executor removed for | 3466-7 | 953 |
| Improvement district fi- nances | 1667 | 483 | Officers removed for | 5964-97 | 1708 |
| Bonds: | | | Railroad employees | | |
| Additional issue | 8214 | 2355 | ..... | 6388, 6432 | 1815, 1831 |
| Issuance | 8213-18 | 2355 | NEGOTIABLE INSTRU- MENTS— | | |
| Limit | 8215, 806 | 2355, 248 | Ambiguous language | | |
| Option to purchase | 2673 | 709 | ..... | 5932(17) | 1678 |
| Requisites | 8216 | 2355 | Bills and notes | 566-578 | 204 |
| Special powers | 8236 | 2361 | Bills of exchange | 5940-6 | 1694 |
| Cities in: | | | Blank indorsement | 5934(33-5) | 1682 |
| Board, Navigation | 8203 | 2352 | Blanks, Filling in | 5932(13-14) | 1678 |
| Bonds | 8236 | 2361 | Certified copy filed | 3730 | 1005 |
| Create districts, May | 1179 | 357 | Checks | 5947 | 1700 |
| Pilots | 8248 | 2363 | Consideration | 5933 | 1682 |
| Police powers | 8247 | 2363 | Definitions | 5948 | 1700 |
| Port facilities | 8229 | 2359 | Delay in negotiation | | |
| Commissioners | 8209-12 | 2354 | ..... | 5935(53) | 1684 |
| Contracts | 8246, | 2363 | Delivery | 5932(16) | 1678 |
| Depository | 8244, 2567 | 2363, 677 | Demand, payable on | 5932(7) | 1678 |
| Eminent domain | | | Diligence, Waiver | 570 | 204 |
| ..... | 8225, 8238 | 2358, 2361 | Discharge | 5939 | 1692 |
| Employes | 8227 | 2358 | Dishonor | 5938 | 1689 |
| Establishment | 8198-8212 | 2351 | Evidence | 3730, 3734 | 1005, 1006 |
| Franchises | 8240-3 | 2362 | Execution presumed | 3734 | 1006 |
| Lands: | | | Forgery | 5932(23) | 1678 |
| Acquisition | 8225-8239 | 2358 | Form | 5932(1-10) | 1678 |
| Condemnation | 8238 | 2361 | General provisions | 5932-48 | 1678 |
| Entry | 8226 | 2358 | Holder's rights | 5935 | 1684 |
| Laws applicable | 8224 | 2358 | Interpretation | 5932 | 1678 |
| Maintenance fund | 8219 | 2356 | Liability of parties | 5936 | 1686 |
| Notices, legal | 28 | 7 | Negotiation | 5934 | 1682 |
| Petition | 8200-1 | 2351 | Notice of dishonor | 5938 | 1689 |
| Pilots | 8248 | 2363 | Omissions | 5932(13-14) | 1678 |
| Port facilities | 8229 | 2359 | Order, payable on | 5932(8) | 1678 |

| Article. | Page. | Article. | Page. |
|--|------------------|---------------------------------|-------------------------|
| NEGOTIABLE INSTRUMENTS—Continued. | | NOMINATIONS— | |
| Post-dating | 5932(12) 1678 | Primary elections | 3100 856 |
| Presentment for payment | 5937 1687 | NON-PARTISAN CANDIDATES— | |
| Promissory notes | 5947 1700 | Nomination | 3159 873 |
| Requisites | 5932(1) 1678 | NON-RESIDENTS— | |
| Signature | 5932(18-23) 1678 | Attachment | 275 136 |
| Suits on, discontinuance | 2088 562 | Citation by publication | 2039 555 |
| Suits on, parties | 1986-7 542 | Condemnation of lands of | |
| Sureties, rights of | 6252 1781 | | 3264(8) 912 |
| Validity | 5932(6) 1678 | Detectives | 5207 1460 |
| Venue | 1995(4) 544 | Guardians | 4132, 4285 1119, 1146 |
| Waiver of diligence | 570 204 | Insurance agents | 5058-60 1414 |
| Warehouse receipts | 5612 1582 | Perpetuating testimony | 3742 1008 |
| Words used | 5932(10) 1678 | Principal obligor | 1987 542 |
| NEGROES— | | Receivers | 2294-5 611 |
| Adoptions by | 46 13 | Special laws, enactment | 6 4 |
| College for | 2638 699 | Strikebreakers | 5207 1460 |
| Deaf, Dumb and Blind | | Suits against | 1975-79 540 |
| Asylum | 3221 901 | Tax suits, citation | 7342 2135 |
| Intermarriage | 4607 1264 | Taxes, payment | 7265 2110 |
| Libraries, Fee | 1688 488 | Venue | 1995(3) 544 |
| Separate coaches | 6417 1825 | Wards | 4132, 4285 1119, 1146 |
| Separate schools | 2900 795 | NON-SUIT— | |
| Training school, Boys | 5131 1438 | Taking | 2182 608 |
| Voting in primary | 3104 830 | NORMAL COLLEGES— | |
| Witness, Competent | 3714 1000 | Board of regents | 2647 701 |
| NEIGHBORHOOD ROADS— | | Certificates | 2646, 2888 701, 785 |
| Establishment | 6711 1922 | Control of | 2644 701 |
| NEPOTISM— | | Cotton classing | 2917 799 |
| Penalty | 5996 1714 | North Texas | 2651 704 |
| NEWSPAPERS— | | Prairie View | 2638 699 |
| Employee's lien | 5484 1714 | Sam Houston | 2648 703 |
| Legal notices | 28 7 | Southwest Texas | 2654 705 |
| Official city paper | 1025 308 | Subjects prescribed | 2645 701 |
| Official publications in | 29 8 | NOTARIES PUBLIC— | |
| Publishers, jury service | 2135 581 | Acknowledgments | 6602 1883 |
| NEW TRIAL— | | Appointment | 5949 1702 |
| Appeal from order granting | 2232 597 | Authority | 5954 1703 |
| Assignment of error | 1844 516 | Bond and oath | 5953 1702 |
| Certain districts, In | | Commission | 5951-2 1702 |
| | 2092(28-9) 563 | Copies | 5956 1703 |
| Citation by publication | 2236 598 | Death certified | 2926 807 |
| Costs | 2063 559 | Fee list | 3910 1049 |
| Damages, For inequitable | 2235 598 | Fees | 3945 1067 |
| Equity | 2235 598 | Oaths, May administer | 26 7 |
| Justice courts, In | 2440-4 643 | Record | 5955 1703 |
| Misconduct, For | 2234 597 | Removal | 5957-8, 5988 1703, 1713 |
| Motion | 2232 597 | Seal | 5960 1704 |
| Number | 2233 597 | Vacancy | 5959 1703 |
| Pleadings amended | 2001 548 | NOTES— | |
| Reversal, On | 2285 608 | Bills and notes | 566-578 204 |
| Review, Bill of | 2236 598 | Evidence, Copy as | 3730 1005 |
| NEXT FRIEND— | | Execution presumed | 3734 1006 |
| Suits by | 1994 543 | Land, limitation | 5521-22 1557 |
| NOMINAL PLAINTIFF— | | Promissory | 5947 1700 |
| Death pending execution | 3777 1016 | Waiver of diligence | 570 204 |
| Death pending suit | 2085 562 | NOTICE— | |
| | | Appeal, Of | 2253 603 |
| | | Bank, insolvent | 451 174 |

| | Article. | Page. |
|---------------------------|-----------------|-----------|
| NOTICE—Continued. | | |
| Conveyance without | 1289 | 389 |
| Damage claims, Of | 5546 | 1562 |
| Depositions, To take | 3739-41 | 1007 |
| Dishonor, Of | 5938 | 1687 |
| Election, Of | 2946-50 | 813 |
| Escheat | 3274-5 | 918 |
| Filing copies in suit | 3730 | 1005 |
| Firm incorporating | 1307 | 401 |
| Homestead set apart | 3845 | 1028 |
| Injunction | 4653-5 | 1276 |
| Land suits | 6640-3 | 1892 |
| Legal publications | 28 | 7 |
| Lis pendens | 6640-3 | 1892 |
| Motions, Of | 2291 | 610 |
| Official publications | 29 | 8 |
| Sales: | | |
| Decedent's estate | 3573 | 973 |
| Execution, Under | 3808-12 | 1021 |
| Pawnbrokers | 6151-2 | 1750 |
| Tax | 7276-7 | 2113 |
| Ward's estate | 4203 | 1132 |
| Special laws | 2-9 | 3 |
| NUISANCES— | | |
| City, Abatement by | 1015(11) | 301 |
| Fire hazards | 1067 | 317 |
| Infected shrubs | 121 | 46 |
| Injunction | 4664 | 1278 |
| Water, Washing | 7574-5 | 2192 |
| Well, Artisan | 7580 | 2194 |
| NUNCUPATIVE WILLS— | | |
| Application to probate | 3331 | 929 |
| Proof of | 3346-47, 8288-9 | 932, 2387 |
| Requisites | 8286-90 | 2386 |
| NURSERY STOCK— | | |
| Control | 119 | 45 |
| Infected shrubs | 121 | 46 |
| Tax rendition | 7152(11) | 2072 |
| NURSES— | | |
| Certificate: | | |
| Examination | 4519 | 1234 |
| Fee | 4519 | 1234 |
| Foreign | 4521 | 1235 |
| Registration | 5424 | 1235 |
| Re-registration | 4526 | 1236 |
| Revocation | 4525 | 1235 |
| Temporary | 4523 | 1235 |
| Examination | 4519-20 | 1235 |
| Examiners, Board of | 4513-7 | 1233 |
| Eyes of new-born | 4441 | 1183 |
| Foreign | 4521 | 1235 |
| Qualifications | 4518 | 1234 |
| "R. N." | 4522 | 1235 |
| Sanitary Code | 4477 | 1198 |
| O. | | |
| OATHS— | | |
| By whom administered | 26 | 7 |
| Constitutional oath | 16 | 5 |
| Form | 25 | 7 |
| Forms: | | |
| Arbitrators | 228 | 123 |
| Attorney at law | 309 | 142 |

| | Article. | Page. |
|---------------------------|------------|------------|
| OATHS—Continued. | | |
| County auditor | 1649 | 479 |
| Election officers | 2998 | 827 |
| Equalization board | 7215 | 2094 |
| Jury | 2179 | 587 |
| Jury clerk | 2113 | 576 |
| Jury commissioners | 2106, 2109 | 574, 575 |
| Jury summons | 2119 | 578 |
| Non-partisan candidate | 3160 | 874 |
| Sheriff summoning tales- | | |
| men | 2119 | 578 |
| Tax assessor | 7214 | 2094 |
| Tax rendition | 7184 | 2083 |
| Tax rolls | 7222 | 2096 |
| Voter, district | 7610 | 2200 |
| Official oath | 23 | 6 |
| Pleadings under | 2004 | 549 |
| OCCUPANCY— | | |
| Title by | 5513 | 1555 |
| OCCUPATION TAXES— | | |
| Employment agents | 5210 | 1411 |
| Enumeration | 7047 | 2021 |
| License issued | 1615 | 471 |
| License transferred | 7055 | 2030 |
| On what occupations | 7047 | 2021 |
| Payment | 7052 | 2029 |
| Stevadores, Contracting | 5194 | 1458 |
| OFFICERS— | | |
| Bonds, official | 5998 | 1715 |
| Commissioner of deeds | 1270 | 382 |
| Commissions | 3882, 3914 | 1037, 1051 |
| Date to qualify | 17 | 5 |
| Death certified | 5926 | 1676 |
| Fees | 3882-3946 | 1037 |
| Impeachment | 5961 | 1705 |
| Ineligibility | 2927 | 807 |
| Mandamus | 1735 | 498 |
| Military | 5800 | 1636 |
| Municipal, election | 977 | 292 |
| Nepotism | 5996 | 1714 |
| Official oath | 16 | 5 |
| Police | 998 | 297 |
| Practicing law prohibited | 319 | 143 |
| Probation | 5142 | 1442 |
| Removal: | | |
| General provisions | 5961-97 | 1705 |
| Prison commissioners | 6180 | 1755 |
| School trustees | 2747 | 733 |
| Revival against successor | 2269 | 606 |
| School attendance | 2895 | 793 |
| State, defined | 22 | 6 |
| State, reports of | 13 | 5 |
| Term of | 18 | 5 |
| Vacancies | 19-21 | 6 |
| OFFICIAL BONDS— | | |
| Depository of | 5999 | 1750 |
| New bond | 6002 | 1715 |
| Recording | 6000 | 1715 |
| Suit on, recovery | 6003 | 1715 |

INDEX TO CIVIL STATUTES.

2497

| | Article. | Page. |
|-----------------------------------|------------|------------|
| OFFICIAL BONDS—Continued. | | |
| Suits on, parties | 1989 | 542 |
| Sureties on | 5998 | 1750 |
| Sureties relieved | 6001 | 1715 |
| Sureties, rights of | 6244 | 1780 |
| Surety companies | 4969 | 1384 |
| OFFICIAL COURT RE-PORTERS— | | |
| Appointment | 2321 | 617 |
| Compensation | 2325-6 | 618 |
| Transcript | 2238 | 599 |
| OFFICIAL MISCONDUCT— | | |
| Defined | 5973 | 1710 |
| OFFICIAL OATH— | | |
| Defined | 23 | 6 |
| When taken | 16 | 5 |
| OIL AND GAS— | | |
| Companies | 1495 | 440 |
| Drilling regulations | 6004-17 | 1716 |
| Pipe lines, gas: | | |
| Appeal from orders | 6058-9 | 1730 |
| Definitions | 6050 | 1727 |
| Discrimination | 6057 | 1729 |
| Injunction | 6051 | 1728 |
| Office of company | 6052 | 1728 |
| Railroad Commission's powers | 6053-63 | 1728 |
| Receiver | 6063 | 1731 |
| Regulations | 6053-63 | 1728 |
| Reports | 6056 | 1729 |
| Tax | 6060 | 1731 |
| Utility defined | 6050 | 1727 |
| Pipe lines, oil: | | |
| Books and records | 6034 | 1724 |
| Control | 6019 | 1720 |
| Defined | 6018 | 1719 |
| Discrimination | 6045 | 1726 |
| Eminent domain | 6021-2 | 1720 |
| Exchange of facilities | 6041-1 | 1725 |
| Jurisdiction over | 6023 | 1721 |
| Powers | 6020-2 | 1720 |
| Railroad Commission's powers | 6023-49 | 1721 |
| Rates | 6037-9 | 1724 |
| Reports | 6035, 6044 | 1724, 1726 |
| Rules | 6029 | 1723 |
| Tax | 6032 | 1723 |
| Transport, duty to | 6048 | 1727 |
| Waste | 6046 | 1726 |
| Public lands, In | 5338 | 1499 |
| Tax, Gross receipts | 6060 | 1731 |
| Tax, Production | 6032, 7071 | 1723, 2040 |
| Waste | 6013-70 | 1718 |
| Wells: | | |
| Abandoned | 6005 | 1716 |
| Casing | 6004 | 1716 |
| Contractor's lien | 5473 | 1543 |
| Drilling regulations | 6004-17 | 1716 |
| Gas in | 6016 | 1719 |
| Injunction | 4644 | 1274 |
| Waste | 6014 | 1718 |

| | Article. | Page. |
|-------------------------------|------------|------------|
| OIL AND GAS—Continued. | | |
| Waste water from | 1508 | 443 |
| Water in | 6010 | 1717 |
| OIL COMPANIES— | | |
| Drilling regulations | 6004-17 | 1716 |
| Eminent domain | 1497 | 440* |
| Foreign business | 1502 | 442* |
| Gas regulations | 6053-63 | 1728* |
| Guardian's lease | 4192 | 1129* |
| Incorporation | 1302(37) | 392* |
| Office | 6052 | 1723* |
| Pipe line corporations | 1500 | 441* |
| Pipe line regulations | 6019-63 | 1720 |
| Powers | 1499, 1506 | 441, 442 |
| Private pipe line | 1503 | 442 |
| Records | 6034 | 1724 |
| Reports | 6035, 6056 | 1724, 1729 |
| Salt water disposal | 1512 | 444 |
| Tax, Gasoline | 7065 | 2035 |
| Tax, Gross receipts | 6060 | 1731 |
| Tax, Production | 6032, 7071 | 1723, 2040 |
| OPEN ACCOUNTS— | | |
| Evidence | 3736 | 1006 |
| Interest on | 5070 | 1418 |
| Limitation | 5526 | 1558 |
| OPEN PORT LAW— | | |
| Protecting carriers | 907 | 277 |
| OPERA— | | |
| Leases | 179 | 58 |
| OPINIONS— | | |
| Attorney General | 4399 | 1171 |
| Criminal Appeals | 1810 | 510 |
| District and county attorneys | 334 | 148 |
| Religious, of witness | 3717 | 1001 |
| Supreme Court | 1725 | 496 |
| OPTOMETRY— | | |
| Board of examiners | 4553-6 | 1244 |
| Defined | 4552 | 1244 |
| Duty of optometrist | 4564 | 1247 |
| Examinations | 4558-9 | 1245 |
| Foreign optometrists | 4560 | 1246 |
| License: | | |
| Application | 4557 | 1245 |
| Display, To | 4564 | 1247 |
| Examination | 4558-9 | 1245 |
| Fee | 4565 | 1247 |
| Registration | 4561 | 1246 |
| Revocation | 4563 | 1247 |
| Register | 4562 | 1247 |
| ORCHARDS— | | |
| Inspection | 119 | 45 |
| ORDINANCES— | | |
| Publication | 1013, 1152 | 300, 344 |
| Style | 1012 | 300 |
| ORPHANS— | | |
| Admission to Home | 3211 | 895 |
| Guardians | 4120 | 1110 |

| | Article. | Page. | | Article. | Page. |
|--------------------------------|------------|-----------|--------------------------------|-----------|-------|
| OSTEOPATHISTS— | | | PARTIES— | | |
| Malpractice | 4512 | 1232 | Additional | 1992 | 543 |
| OUSTER— | | | Attorney representing | 1993 | 543 |
| Judgments of | 6257 | 1783 | Citation of | 2021 | 552 |
| Quo warranto, By | 6257 | 1783 | Constable | 1988 | 542 |
| OVERFLOW— | | | Costs, liable for | 2051 | 557 |
| Damage suit | 7577 | 2193 | Counties | 1980 | 541 |
| Lands reclaimed | 7962 | 2295 | County officer | 1989 | 542 |
| OYSTERS— | | | Death: | | |
| May take brood fish | 4050 | 1104 | Execution, After | 3829-30 | 1025 |
| Rental on location | 4041 | 1100 | Execution, Before | 3775-9 | 1016 |
| Seining, etc., in closed | | | Pending suit | 2078-86 | 561 |
| waters | 4045 | 1102 | Depositions of | 3768-9 | 1013 |
| Permit to use seine | 4044 | 1101 | District officers | 1989 | 542 |
| Limiting location | 4039 | 1100 | Executors | 1981-2 | 541 |
| PACKING COMPANIES— | | | Husband and wife | 1983-5 | 542 |
| City regulation | 1015(5-9) | 301 | Intervenor | 1998 | 548 |
| Incorporation | 1302(24) | 392 | Next friend representing | 1994 | 543 |
| State inspection | 4420 | 1177 | Obligor | 1986 | 542 |
| PANORAMAS— | | | Pleadings of | 1997 | 547 |
| Tax | 7047(23) | 2021 | Sheriff | 1988 | 542 |
| PAPERS— | | | Statej | 1991 | 543 |
| Archives | 250-260 | 129 | State officers | 1990 | 543 |
| Attorney may inspect | 318 | 143 | Suit on note, etc. | 572 | 205 |
| Corporate, examination | 1366 | 413 | Sureties | 1987-90 | 542 |
| Jury may examine | 2193 | 590 | Witnesses, As | 3711 | 1000 |
| Loss | 6582, 2289 | 1878, 609 | PARTITION— | | |
| PARDON— | | | Costs | 6108-9 | 1741 |
| Board, Pardon | 6203 | 1766 | Decedent's estate | 3598 | 979 |
| Good behavior | 6194 | 1764 | Equity, rules of | 6106 | 1741 |
| Juveniles | 5126-37 | 1436 | General provisions | 6082-6109 | 1137 |
| Meritorious conduct | 6194 | 1764 | Pending probate | 3460 | 952 |
| Militia | 5858(72) | 1649 | Personal property, Of | 6101-5 | 1740 |
| PARENT AND CHILD— | | | Pleading | 6107 | 1741 |
| Adoption | 42 | 13 | Real estate, of | 6082-6100 | 1737 |
| Descent and distribution | 2570 | 679 | Recorded, where | 6638 | 1891 |
| Divorce, custody | 4639 | 1270 | Venue | 1995(13) | 544 |
| Guardian, natural | 4118 | 1116 | PARTNERSHIP— | | |
| Neglect of child | 2330 | 620 | Execution against | 3796 | 1020 |
| PARKS— | | | Incorporation | 1307 | 401 |
| City: | | | Judgment against | 2223 | 595 |
| Concessions | 6081 | 1736 | Limitation | 5527 | 1559 |
| Powers | 1015(32) | 301 | Limited | 6110-32 | 1747 |
| Sale | 1017 | 307 | Service on | 2033 | 554 |
| Tax | 6080 | 1736 | PASS BOOKS— | | |
| County | 6078 | 1735 | Savings banks | 408 | 164 |
| Gonzales | 6074 | 1734 | PASS LAW, FREE— | | |
| San Jacinto | 6071 | 1734 | Passes prohibited | 4005 | 1087 |
| State Board | 6067 | 1733 | Venue | 6477 | 1845 |
| State—control of | 677 | 223 | PASSENGERS— | | |
| Washington | 6076 | 1735 | Depots | 6395 | 1817 |
| PAROL PROOF— | | | Railway fare | 6416 | 1825 |
| Lost records | 6582 | 1878 | Refusal to transport | 6360 | 1808 |
| PAROLE— | | | Separate coaches | 6417 | 1825 |
| Convicts | 6194 | 1764 | Street car fare | 6544 | 1867 |
| Delinquent juveniles | 5126 | 1436 | Water closet | 6396-7 | 1817 |
| Pupil | 2898 | 794 | PASTEUR HOSPITAL— | | |
| | | | Admission | 3197 | 893 |
| | | | PATENT MEDICINE— | | |
| | | | Traveling vendor's tax | 7047(2) | 2021 |

| | Article. | Page. |
|----------------------------|-----------|-------|
| PATENT RIGHTS— | | |
| Notes and lines..... | 578 | 206 |
| Sale of stock in..... | 585 | 208 |
| PATENTS— | | |
| Fractional tracts, on..... | 5329 | 1494 |
| Issuance..... | 5413 | 1524 |
| Mineral.....5385, 5398 | 1518, | 1521 |
| Purchaser's option..... | 5329 | 1494 |
| Registration..... | 6624 | 1888 |
| Requisites..... | 5404 | 1523 |
| Town sites..... | 5330 | 1496 |
| PATRIOTISM— | | |
| Flag, the..... | 6139 | 1747 |
| Historical Board..... | 6145 | 1748 |
| State tree,..... | 6143 | 1748 |
| PAUPERS— | | |
| Attorneys for...1917, 1958 | 529, | 537 |
| Institutions for..... | 3184-3248 | 885 |
| Oath of inability..... | 2070 | 559 |
| Support..... | 2351(11) | 627 |
| PAWNBROKERS— | | |
| Bond..... | 6147 | 1750 |
| Common law..... | 6161 | 1752 |
| Defined..... | 6146 | 1750 |
| Officer failing..... | 6160 | 1752 |
| Pawn ticket..... | 6149 | 1750 |
| Register..... | 6148 | 1750 |
| Sales by..... | 6150-8 | 1750 |
| Suit on bond..... | 6159 | 1752 |
| Tax..... | 7047(13) | 2021 |
| PEACE OFFICERS— | | |
| Guarding election..... | 3002 | 830 |
| Rangers..... | 6570 | 1875 |
| PEDDLERS— | | |
| Tax..... | 7047(1-5) | 2021 |
| Pen dente Lite..... | 6640-43 | 1892 |
| PENITENTIARY— | | |
| Defined..... | 6166 | 1754 |
| Employes..... | 6173 | 1755 |
| Escape from..... | 6198 | 1765 |
| Female convicts..... | 6185 | 1761 |
| Guards..... | 6173 | 1755 |
| Insane convicts..... | 3186 | 885 |
| Military commitment..... | 5876 | 1648 |
| Pardon Board..... | 6203 | 1766 |
| Policy..... | 6167 | 1757 |
| Prison Commission: | | |
| Accounts..... | 6176 | 1756 |
| Appointment..... | 6168 | 1754 |
| Auditor..... | 6177 | 1757 |
| Bond and oath..... | 6169 | 1754 |
| Expenditures, account | | |
| of..... | 688 | 225 |
| Inventories..... | 6175 | 1756 |
| Powers..... | 6171-4 | 1755 |
| Removal..... | 6180 | 1757 |
| Rules..... | 6182 | 1759 |
| Salary..... | 6170 | 1754 |
| School for negro boys..... | 5131 | 1438 |
| Suits by..... | 6179 | 1757 |
| Railroad to..... | 5241 | 1471 |

| | Article. | Page. |
|------------------------------------|------------|-------|
| PENITENTIARY—Continued. | | |
| Regulations..... | 6181-6201 | 1758 |
| Supervisory Board..... | 6202 | 1766 |
| Tax rendition..... | 7150(4) | 2069 |
| Visitors..... | 6201 | 1766 |
| PENSIONS— | | |
| Accounts..... | 4382-3 | 1168 |
| City..... | 6229-43 | 1775 |
| Confederate..... | 6204-27 | 1768 |
| County..... | 6228 | 1774 |
| Firemen's..... | 6229-43 | 1775 |
| Mother's..... | 6228 | 1774 |
| Police..... | 6229-43 | 1775 |
| Tax exempt..... | 7150(12) | 2069 |
| Warrants..... | 4360 | 1162 |
| PER CAPITA AND PER STRIPES— | | |
| Inheritance by..... | 2577 | 681 |
| PEREMPTORY CHALLENGES— | | |
| Justice court, in..... | 2423 | 641 |
| Making..... | 2147 | 583 |
| PERISHABLE PROPERTY— | | |
| Attachment..... | 293 | 139 |
| Carrier may sell..... | 903 | 275 |
| Cars for shipment..... | 6493 | 1552 |
| Estate of decedent..... | 3560 | 971 |
| Estate of ward..... | 4193 | 1130 |
| Landlord, sale for..... | 5233 | 1469 |
| Sequestration..... | 6859 | 1964 |
| Unclaimed shipment..... | 903 | 275 |
| PERMANENT SCHOOL FUND— | | |
| Established..... | 5416 | 1525 |
| Investment..... | 2669 | 708 |
| PERMITS— | | |
| To use water..... | 7518 | 2180 |
| Lignite..... | 5383 | 1516 |
| Oil and gas..... | 5338 | 1499 |
| Minerals..... | 5388 | 1519 |
| Water..... | 7493 | 2175 |
| To use seine..... | 4044 | 1101 |
| To use shrimp seine..... | 4047 | 1103 |
| PERPETUATION OF TESTIMONY— | | |
| Depositions..... | 3742 | 1008 |
| PERQUISITES— | | |
| Prison Commissioners..... | 6168, 6170 | 1754 |
| State officers, other..... | 6816 | 1953 |
| PERSON— | | |
| Defined..... | 23 | 6 |
| PERSONAL INJURIES— | | |
| Fatal..... | 4671-8 | 1281 |
| Limitation..... | 5525 | 1558 |
| Notice..... | 5546 | 1562 |
| Railroad's liability..... | 6432 | 1831 |
| Suit, Death pending..... | 2086 | 562 |
| Workmen's compensation..... | 8306 | 2391 |

| | Article. | Page. | | Article. | Page. |
|-------------------------------|------------|------------|---------------------------------|------------|------------|
| PERSONAL PROPERTY— | | | PIPE LINES—Continued. | | |
| Attachment | 290 | 138 | Corporations | 1500 | 441 |
| "Effects" includes | 23 | 6 | Crude petroleum | 6048 | 1727 |
| Execution | 3859, 3793 | 1031, 1019 | Discrimination | 6045 | 1726 |
| Lien on | 5491 | 1549 | Eminent domain | 6022 | 1721 |
| Partition | 6101 | 1740 | Exchange facilities | 6040 | 1725 |
| Recorded where, Title | 6645 | 1893 | Fuller's earth | 1507 | 443 |
| Trial of right to | 7402 | 2150 | Gas | 6051 | 1728 |
| Venue | 1995(10) | 544 | Grades of oil | 6041 | 1725 |
| PESTILENTIAL DISEASES— | | | Incorporation | 1302(36) | 392 |
| Rules, Sanitary | 4477 | 1198 | Penalty | 6047 | 1726 |
| PETITION— | | | Publish tariffs | 6043 | 1725 |
| Form | 1997 | 547 | Rates | 6037-39 | 1724 |
| Requisites | 2003 | 548 | Regulation | 6023 | 1721 |
| Suits commenced by | 1971 | 540 | Reports | 6044 | 1726 |
| PETROLEUM— | | | Right of way | 6021-22 | 1720 |
| Drilling regulations | 6004-16 | 1716 | Tax | 6060 | 1731 |
| Public lands, in | 5338-82 | 1499 | Telegraph lines | 6020 | 1720 |
| Tax, Production | 6032, 7071 | 1723, 2040 | PISTOLS— | | |
| Transportation by pipe | | | Tax | 7068 | 2039 |
| line | 6041-8 | 1725 | PLAINTIFF— | | |
| PHARMACY— | | | Costs | 2051 | 557 |
| Board of Examiners | 4529-32 | 1237 | Death pending execution | | |
| License | 4533-41 | 1238 | ..... | 3775, 3830 | 1016, 1025 |
| Liquor sales | 5089 | 1424 | Death pending suit | 2078 | 561 |
| Qualifications of pharma- | | | Pleadings | 2003 | 548 |
| cist | 4534 | 1239 | PLANTS— | | |
| Venereal diseases | 4445 | 1186 | Protection from disease | 119 | 45 |
| PHYSICIANS AND SUR- | | | PLATFORM DEMANDS— | | |
| GEONS— | | | Referendum on | 3133 | 865 |
| Alcoholic prescriptions | 5090-91 | 1425 | PLAY HOUSES— | | |
| Defined | 4510-11 | 1232 | Leases | 179 | 58 |
| Eyes of new-born | 4441 | 1183 | Tax, Occupation | 7047(22) | 2021 |
| Malpractice | 4512 | 1232 | PLEADING— | | |
| Registration | 4498 | 1225 | Agreed statement on ap- | | |
| Sanitary Code | 4477 | 1198 | peal | 2244 | 601 |
| Traveling, tax | 7047(3) | 2021 | Amendments | 2001 | 548 |
| Venereal diseases | 4445 | 1186 | Answer | 2006-10 | 549 |
| PICTURES, MOVING— | | | Bill of discovery | 2002 | 548 |
| Leases | 179 | 58 | Bill of review | 2236 | 598 |
| Rights of | 178 | 58 | Certiorari | 958 | 285 |
| Tax, Occupation | 7047(22) | 2021 | Corporation, Alleging a | 1999 | 548 |
| PILOTS— | | | Costs | 2051 | 557 |
| Appointment | 8270 | 2383 | Counter claim | 2014-17 | 551 |
| Board, Pilot | 8264, 8313 | 2381, 2416 | Counts, several | 2213 | 594 |
| Bond and oath | 8271 | 2383 | Defendant, of | 2006-20 | 549 |
| Brazos River | 8278 | 2384 | Dilatory pleas determined | 2166 | 585 |
| Lavaca Bay | 8279 | 2385 | Exceptions to, costs | 2059 | 558 |
| Matagorda Bay | 8279 | 2385 | Filing | 1971-4 | 540 |
| Navigation district | 8248 | 2363 | Forged instruments | 573 | 205 |
| Pilotage | 8274 | 2383 | General denial | 2011 | 550 |
| PINK BOLL WORM— | | | General provisions | 1997-2020 | 547 |
| Eradication | 68-82 | 20 | Injunction | 4647-57 | 1275 |
| PIPE LINES— | | | Intervenor | 1998 | 548 |
| Carriers, declared | 6018 | 1719 | Justice courts, in | 2388-9 | 635 |
| Contractor's lien | 5473 | 1543 | Limitation | 5540 | 1561 |
| Control | 6019 | 1720 | Partition | 6083 | 1737 |
| Corporation powers | 1496-7 | 440 | Plaintiff, of: | | |
| | | | Defensive matters | 2004-5 | 549 |
| | | | Filing | 1971-4 | 540 |
| | | | Petition | 2003 | 548 |

| | Article. | Page. |
|---------------------------------|------------------|------------|
| PLEADING—Continued. | | |
| Special defenses | 2005 | 549 |
| Privilege, plea of | | |
| | 2007-8, 2018-20, | 549, 551 |
| Requisites | 1997 | 547 |
| Set-off | 2017 | 551 |
| Special law | 2000 | 548 |
| Trespass to try title | 7364-89 | 2143 |
| Trial, Reading on | 2180 | 587 |
| Usury | 5074 | 1419 |
| Verified | 2010 | 550 |
| PLEA OF PRIVILEGE— | | |
| Appeal | 2008 | 549 |
| Certain districts, in | 2092(14) | 563 |
| Hearing on | 2008 | 549 |
| Not waived | 2018 | 551 |
| Record transmitted | 2020 | 552 |
| Requisites | 2007 | 549 |
| Transference | 2019 | 551 |
| PLEDGE— | | |
| Party | 3110 | 859 |
| Pawnbroker's | 6150 | 1750 |
| Plugging | 6005 | 1716 |
| PLUMBERS— | | |
| Board of, City | 1078 | 321 |
| License, City | 1080 | 321 |
| POISON— | | |
| Destruction of animals | 190 | 61 |
| POLICE— | | |
| City control of | 1015(18) | 301 |
| City officer | 998 | 297 |
| Hours of | 5167 | 1450 |
| Passes, Free | 4006 | 1087 |
| Pensions | 6230 | 1776 |
| Special city force | 995 | 296 |
| POLICIES, INSURANCE— | | |
| General provisions | 5049-52 | 1411 |
| Requisites | 4732-34 | 1300 |
| Venue | 1995(28) | 544 |
| POLITICAL CONTRIBUTIONS— | | |
| By corporations | 1350 | 410 |
| Limited | 3170 | 878 |
| Unlawful | 3171 | 880 |
| POLITICAL PARTIES— | | |
| Election officers | 2937 | 810 |
| Primaries | 3100-3167 | 856 |
| Supervisors of election | 2941 | 811 |
| POLITICAL SUBDIVISIONS— | | |
| Conservation districts | 8194 | 2350 |
| Counties legislature may create | 1539 | 456 |
| Drainage districts | 8097 | 2328 |
| Fresh water supply districts | 7881 | 2280 |
| Irrigation districts | 7589 | 2196 |
| Levee improvement districts | 7982, 8031 | 2301, 2324 |
| Navigation districts | 8198 | 2351 |

| | Article. | Page. |
|--|----------|-------|
| POLITICAL SUBDIVISIONS— | | |
| Continued. | | |
| Reclamation districts | 8194 | 2350 |
| Road districts, power to issue bonds, etc. | 726-769 | 233 |
| School districts, establishment of | 2741 | 729 |
| Water control and preservation districts | 7808 | 2264 |
| Water improvement districts | 7589 | 2196 |
| POLL TAX— | | |
| Exemption certificate | 2968 | 820 |
| Exemptions | 2960 | 818 |
| Levy | 7046 | 2021 |
| Liable to | 2959 | 818 |
| Loss of receipt | 3004 | 830 |
| Minor | 2969 | 821 |
| Paying | 2961 | 818 |
| Paying another's | 2964 | 819 |
| Receipt | 2965 | 819 |
| POLLUTION— | | |
| Disposal of waste | 1508 | 443 |
| Injunction | 4444 | 1185 |
| Preventing | 5366 | 1512 |
| POOL HALLS— | | |
| Injunction | 4668 | 1280 |
| POOLS— | | |
| Agricultural and livestock | 2485 | 653 |
| POOR HOUSES— | | |
| County bond issue | 718 | 231 |
| Tax exempt | 7150(6) | 2069 |
| PORTS— | | |
| City's powers | 1183 | 358 |
| Navigation district | 8229 | 2359 |
| Open Port Law | 907 | 277 |
| Pilots | 8270 | 2383 |
| POSSE COMITATUS— | | |
| Constable may summon | 6886 | 1970 |
| Sheriff may summon | 6876 | 1968 |
| POSSESSION— | | |
| "Adverse" | 5515 | 1555 |
| Forcible entry and detainer | 3973 | 1080 |
| Sequestration | 6840 | 1960 |
| Trespass and ejection | 7366 | 2143 |
| Writ of, foreclosing lien | 2219 | 595 |
| POSTHUMOUS CHILDREN— | | |
| Inheritance | 8291 | 2387 |
| POULTRY— | | |
| Care of | 181 | 59 |
| Unclaimed shipment | 902 | 275 |
| POWER COMPANIES— | | |
| Deposits, interest on | 1440 | 428 |
| Eminent domain | 1436 | 427 |
| Finances | 1437 | 427 |

| | Article. | Page. | | Article. | Page. |
|--------------------------------|------------|----------|---------------------------------|-----------|-------|
| POWER COMPANIES—Cont'd. | | | PRACTICE IN DISTRICT AND | | |
| Judicial regulation | 1125 | 337 | COUNTY COURTS—Cont'd. | | |
| Powers | 1435 | 426 | Pleading | 1997-2020 | 547 |
| Reports | 1441 | 428 | Process | 2021-50 | 552 |
| Tax, Gross receipts | 7060 | 2032 | Receivers | 2293-2320 | 611 |
| POWER OF SALE— | | | Remittitur | 2227-31 | 596 |
| Limitation | 5523 | 1557 | Statement of facts | 2238-48 | 599 |
| POWER, WATER— | | | Trial, The | 2152-2210 | 583 |
| Authorized uses | 7490 | 2174 | Venue | 1995-6 | 544 |
| PRACTICE— | | | Venue, Change of | 2169-74 | 586 |
| Civil Appeals, Court of | | | Verdict | 2202-7 | 592 |
| | 1837-50 | 515 | Witnesses | 3704-17 | 999 |
| Commission of Appeals | | | Writ of error | 2249-85 | 602 |
| | 1786-1799 | 507 | Written instruments, fil- | | |
| Corporation courts | 1195 | 361 | ing | 3726 | 1002 |
| District and county courts | | | PRACTICE IN JUSTICE | | |
| | 1971-2328 | 540 | COURTS— | | |
| Justice courts | 2390-2460 | 636 | Appeal | 2454-60 | 646 |
| Juvenile courts | 2331-36 | 620 | Appearance and trial | 2403-28 | 629 |
| Supreme Court | 1755-80 | 501 | Certiorari | 2460 | 647 |
| PRACTICE IN DISTRICT | | | Execution | 2445-53 | 644 |
| AND COUNTY COURTS— | | | Judgment | 2429-38 | 642 |
| Abatement | 2078-86 | 561 | New trial | 2439-44 | 643 |
| Appeal | 2237-85 | 598 | Pleadings | 2388-89 | 635 |
| Appearance | 2152-8 | 583 | Process | 2400-2 | 638 |
| Audit | 2292 | 610 | Rules | 2381 | 633 |
| Bill of discovery | 2002 | 548 | Venue | 2390-9 | 636 |
| Bills of exception | 2237 | 598 | Witnesses | 3704-17 | 999 |
| Bills of review | 2236 | 598 | PRAIRIE DOGS— | | |
| Certain district courts | 2092-3 | 563 | Destruction | 190-191 | 61 |
| Challenging jury | 2131-50 | 679 | PRAIRIE VIEW NORMAL— | | |
| Change of venue | 2169-74 | 585 | Courses | 2642 | 700 |
| Charges of court | 2184-90 | 588 | Management | 2638 | 699 |
| Citation | 2021-50 | 552 | PRECINCTS— | | |
| Commencement of suit | 1971-4 | 540 | Commissioners | 2339 | 624 |
| Continuance | 2167-8 | 585 | Election | 2933-5 | 809 |
| Costs | 2051-77 | 557 | Justices | 2351 | 627 |
| Counter claim | 2014-7 | 551 | Road | 6717 | 1924 |
| Death of judge | 2288 | 609 | PREDATORY ANIMALS— | | |
| Death of parties | 2078-86 | 561 | Destruction and bounties | | |
| Depositions | 3738-69 | 1007 | | 190-192 | 61 |
| Deposits | 2290 | 610 | PRESCRIPTIONS, ALCO- | | |
| Discontinuance | 2097-91 | 562 | HOLIC— | | |
| Evidence | 3718-37 | 1001 | By physicians | 5090-91 | 1425 |
| Findings by court | 2208-10 | 593 | PRESENTMENT— | | |
| Interpreters | 3712 | 1000 | Acceptance, For | 5942 | 1695 |
| Intervention | 1998 | 548 | Payment, For | 5937 | 1687 |
| Judgment | 2211-36 | 593 | PRESIDENTIAL ELECTORS— | | |
| Jurisdiction | 1906, 1949 | 527, 536 | Election | 3079 | 849 |
| Jury, the | 2094-2151 | 570 | Meeting | 3084 | 850 |
| Land suits, notice | 6640-43 | 1892 | Pay | 3085 | 851 |
| Lost papers | 2289 | 609 | Returns | 3081 | 850 |
| Mandamus | 2328 | 619 | PRESUMPTIONS— | | |
| Master in chancery | 2320 | 617 | Appearance | 2049 | 557 |
| Miscellaneous provisions | | | Chattel mortgage | 5499 | 1551 |
| | 2286-92 | 609 | Community property | 4619 | 1266 |
| Motions | 2291 | 610 | Death, Of | 5541 | 1561 |
| New trials | 2232-6 | 597 | Execution of note, etc. | 3734 | 1006 |
| Non-residents, suits against | | | Foreign interest rate | 3733 | 1006 |
| | 1975-9 | 540 | Notice, Of | 5546 | 1562 |
| Parties | 1980-94 | 541 | Payment, Of | 5521 | 1557 |
| Plea of privilege | 2007-8 | 549 | | | |

INDEX TO CIVIL STATUTES.

2503

| | Article. | Page. | | Article. | Page. |
|------------------------------|--------------|------------|---|------------|----------|
| PRIMARY ELECTIONS— | | | PROBATION OFFICER— | | |
| Ballots | 2978 | 824 | Powers and duties | 5142 | 1442 |
| Defined | 3100 | 856 | School attendance officer | 2895 | 793 |
| Independents | 3159-62 | 873 | PROCEDURE— | | |
| Major parties | 3101-3153 | 856 | (See "Practice in District and County Courts.") | | |
| Minor parties | 3154-58 | 872 | General provisions | 1971-2328 | 540 |
| Others | 3163 | 874 | PROCESS— | | |
| United States Senator | 3092 | 852 | Acceptance | 2045, 2224 | 556, 595 |
| PRINCIPAL AND SURETY— | | | Alias | 2035 | 554 |
| Discontinuance | 2088 | 562 | Appeal, On | 2259 | 604 |
| Execution | 3786, 6247-9 | 1018, 1780 | Appearance | 2046-9 | 556 |
| Officer's rights | 6250 | 1781 | Citation in error | 2259-64 | 604 |
| Parties to suits | 1986-7 | 542 | Commissioners courts | 2346 | 625 |
| Rights of surety | 6244-52 | 1780 | Escheat proceedings | 3272-83 | 917 |
| "Surety" | 6252 | 1781 | Executed immediately | 3911 | 1050 |
| Surety companies | 4969-86 | 1384 | Execution | 3770-3831 | 1015 |
| PRINCIPAL OFFICE— | | | Execution by sheriff | 6873 | 1967 |
| Corporations generally | 1358 | 411 | Faulty service | 2087-90 | 562 |
| Railroads | 6275 | 1788 | Fee for executing | 3911 | 1050 |
| PRINTERS INSURANCE— | | | Forcible entry and de- | | |
| Incorporation | 4960 | 1382 | tainer | 3977-80 | 1081 |
| PRINTING, PUBLIC— | | | General provisions | 2021-50 | 552 |
| At asylums | 3204 | 894 | Interpreters | 3712 | 1000 |
| Contracts | 607-30 | 213 | Issuance | 2021 | 552 |
| PRIORITIES— | | | Justice courts | 2400-2 | 638 |
| Causeway locations | 1468 | 433 | Non-resident | 2037 | 554 |
| Dam owner | 7499 | 2176 | Partition proceedings | 6084-5 | 1737 |
| Mining claim | 5393 | 1520 | Probate proceedings | 3310-11 | 924 |
| Reservoir | 7502 | 2177 | Publication | 2039, 2158 | 555, 584 |
| Riparian owner | 7498 | 2176 | Quo warranto proceedings | | |
| Water appropriations | 7501 | 2177 | Requisites | 6255 | 1782 |
| PRISON, STATE— | | | Return | 2022, 2286 | 552, 609 |
| General provisions | 6166 | 1754 | Service | 2034 | 554 |
| PRIVATE BANKS— | | | Service on: | 2026 | 553 |
| Incorporation, notice | 1307 | 401 | Cities | 2028 | 553 |
| Prohibited | 541 | 197 | Corporations | 2029 | 553 |
| Protection of deposits | 483 | 180 | Counties | 2027 | 553 |
| PRIVILEGE, PLEA OF— | | | Foreign corporations | 2031-2 | 553 |
| Appeal | 2008 | 549 | Insurance companies | 4735 | 1303 |
| Hearing on | 2008 | 549 | Non-residents | 2037-9 | 554 |
| Not waived | 2018 | 551 | Partners | 2033 | 554 |
| Record transmitted | 2020 | 552 | Railroad receivers | 2030 | 553 |
| Requisites | 2007 | 549 | Unknown stockholders | 2040 | 555 |
| Transference | 2019 | 551 | Style | 2286 | 609 |
| PRIVILEGED COMMUNI- | | | Subpoena duces tecum | 7103-4 | 2053 |
| CATIONS— | | | Time of service | 2036 | 554 |
| Enumeration | 5432 | 1530 | Waiver | 2045, 2224 | 556, 595 |
| PROBATE— | | | Witness, For | 3704-6 | 999 |
| Appeals | 3698 | 997 | Writ of error, citation | 2259-64 | 604 |
| Application | 3325, 3339 | 929, 930 | PROCLAMATIONS— | | |
| Inheritance tax | 7126-35 | 2063 | Election notice by | 2946 | 813 |
| Jurisdiction | 3290 | 921 | Impeachment proceedings | | |
| Limitation | 3326 | 928 | | 5962 | 1705 |
| Mistake in | 3288 | 920 | Insurrection | 5889 | 1667 |
| Proof of will | 3344-50 | 931 | Labor disputes | 5186 | 1457 |
| Review on escheat | 3288 | 920 | Livestock regulation | 7017 | 2011 |
| Revision, mode | 932 | 283 | Martial law | 5889 | 1667 |
| Venue | 3293 | 921 | Open Port Law | 907 | 277 |
| Venue for revision | 1995(18) | 544 | Presidential electors | 3080 | 850 |
| Void | 3292 | 921 | Publication | 29 | 8 |
| | | | Quarantine | 4449 | 1191 |

| | Article. | Page. | | Article. | Page. |
|------------------------------|-----------|-----------|------------------------------|------------|------------|
| PROGENY— | | | PUBLIC BUILDINGS AND | | |
| Breeder's lien | 5501 | 1552 | GROUND—Continued. | | |
| PROMISE— | | | Control of State's | 665-678 | 221 |
| Breach of marriage | 5524 | 1558 | County | 2351(7) | 627 |
| False | 4004 | 1086 | Courthouse, Control of | 6872 | 1967 |
| Writing required | 3995 | 1084 | Exemptions | 3837 | 1027 |
| PROMISSORY NOTES— | | | •PUBLIC CONTRACTORS— | | |
| Assessing damages on | 2156 | 584 | Bond to secure wages | 5160 | 1442 |
| Execution presumed | 3734 | 1006 | PUBLIC CORPORATIONS— | | |
| General provisions | 556, 5947 | 204, 1700 | Defined | 1319 | 404 |
| Limitation | 5527 | 1559 | PUBLIC DOCUMENTS— | | |
| Waiver of diligence | 570 | 204 | Archives | 250-60 | 129 |
| PROMOTION— | | | Land Office, In | 5262 | 1475 |
| Blue Sky Law | 579-600 | 207 | Secretary of State, duty | 4331(6) | 1153 |
| PROOF OF INSTRUMENTS— | | | State Library, In | 5438 | 1532 |
| Judgment of | 6656 | 1896 | PUBLIC DOMAIN— | | |
| Mode | 6609-18 | 1884 | Lands included | 5415 | 1525 |
| PROPERTY— | | | PUBLIC EDUCATION— | | |
| Alien ownership | 166, 177 | 55, 57 | (Indexed fully under | | |
| Community | 4617-24 | 1266 | "Schools, Public.") | | |
| Conveyances of | 1288 | 389 | Colleges | 2584-2654 | 683 |
| Defined | 23 | 6 | Compulsory education | 2892-8 | 792 |
| Registration of title | 6630 | 1889 | County schools: | | |
| Separate | 4613-17 | 1265 | Board of examiners | 2878 | 780 |
| State's custody | 665 | 221 | Common school districts | | |
| Taxation | 7145 | 2067 | _____ | 2741 | 729 |
| Trial of right of | 7402 | 2150 | Funds and lands | 2826 | 760 |
| PROTEST— | | | Superintendent of | 2688 | 714 |
| Bills of exchange | 5943 | 1562 | Trustees, county | 2676 | 710 |
| Evidence | 3723 | 1001 | Unit system | 2702 | 719 |
| Fee | 3945 | 1067 | District schools | 2741-2815 | 729 |
| Holidays, no protest on | 4591 | 1259 | Funds | 2823-38 | 759 |
| Negotiable instruments | 575-577 | 205 | Miscellaneous provisions | 2899-2922 | 795 |
| PUBLIC ACCOUNTANTS— | | | Normal schools | 2644 | 701 |
| Board of | 31 | 10 | Scholastic census | 2816-22 | 756 |
| Certificate of authority | 36-40 | 11 | State Department | 2655 | 705 |
| Qualifications | 32 | 10 | Subjects prescribed | 2843, 2911 | 766, 799 |
| PUBLIC AMUSEMENTS— | | | Teachers' certificates | 2877-91 | 780 |
| Defined | 178-179 | 58 | Textbooks, free | 2839-76 | 764 |
| Leases | 179 | 58 | University of Texas | 2584 | 683 |
| Rights of | 178 | 58 | PUBLIC HEALTH— | | |
| PUBLICATION— | | | Sanitary Code | 4477 | 1198 |
| Bank statement | 496 | 185 | State Board of | 4419 | 1176 |
| Citation by | 2039 | 555 | PUBLIC IMPROVEMENTS— | | |
| County financial statement | 1609 | 469 | City lighting system | 1221 | 366 |
| Delinquent tax list | 7323 | 2125 | City streets | 1036 | 323 |
| Legal notices | 28 | 7 | Condemnation by city | 1202 | 362 |
| Libelous | 5430 | 1530 | Drainage districts | 8097 | 2328 |
| Official notices | 29 | 8 | Finances, supervision | 1667 | 483 |
| Opinions | 620 | 215 | Indebtedness | 8197 | 2350 |
| Ordinances | 1013 | 300 | Irrigation districts | 7589 | 2196 |
| PUBLIC BUILDINGS AND | | | Levee districts | 7972, 8031 | 2297, 2324 |
| GROUND— | | | Navigation districts | 8198 | 2351 |
| Acquisition of land | 5240 | 1471 | Road districts | 726 | 233 |
| City | 1015(32) | 301 | State's resources | 7466 | 2170 |
| Contractor's wage bond | 5160 | 1442 | Water control districts | 7808 | 2264 |
| | | | Water supply districts | 7881 | 2280 |

INDEX TO CIVIL STATUTES.

2505

| | Article. | Page. |
|-------------------------|--------------|-----------|
| PUBLIC LANDS— | | |
| Acquisition by State | 5240-1 | 1471 |
| Application to purchase | 5312 | 1487 |
| Archives | 250 | 129 |
| Asylum lands: | | |
| Fund | 5418 | 1526 |
| Minerals | 5383-8 | 1516 |
| Oil and gas | 5338 | 1499 |
| Sale | 5309 | 1485 |
| Sold, lease by agent | 5367 | 1512 |
| Coal | 5383 | 1516 |
| Commissioner, Land | 5249 | 1473 |
| Field notes | 5300 | 1482 |
| Filing fees | 3918 | 1053 |
| Forfeiture | 5326 | 1492 |
| Funds | 5416-8 | 1525 |
| Gayule | 5324 | 1491 |
| General Land Office | 5261 | 1475 |
| Gulf lands | 5353 | 1509 |
| Inclosing | 5419 | 1526 |
| Leases: | | |
| Gulf lands | 5353 | 1509 |
| Mineral | 5384-5403 | 1517 |
| Oil and gas | 5338-82 | 1499 |
| Surface | 5331 | 1496 |
| University lands | 5344 | 1505 |
| Lechuguilla | 5324 | 1491 |
| Lignite | 5383 | 1516 |
| Minerals: | | |
| Claim | 5389 | 1519 |
| Coal and lignite | 5383 | 1516 |
| Gayule and lechuguilla | 5324 | 1491 |
| Oil and gas | 5338 | 1499 |
| Other minerals | 5388 | 1519 |
| Suits for | 5421 | 1527 |
| Unlawful use of | 5325 | 1492 |
| “Navigable streams” | 5302 | 1483 |
| Oil and gas | 5338-82 | 1499 |
| Patents: | | |
| Coal lands | 5385 | 1518 |
| Fees | 3918 | 1053 |
| General provisions | 5404-14 | 1523 |
| Mineral lands | 5398 | 1521 |
| Purchaser's option | 5329 | 1494 |
| Town site, On | 5330 | 1496 |
| Public domain | 5415 | 1525 |
| Purchase | 5312 | 1487 |
| Records affecting | 5262 | 1475 |
| Sale of | 5309 | 1485 |
| School lands: | | |
| Funds | 2823-6, 5416 | 759, 1525 |
| Inclosed | 5288 | 1481 |
| Minerals | 5383 | 1516 |
| Oil and gas | 5338 | 1499 |
| Sale of | 5309 | 1485 |
| Sold, lease by agent | 5367 | 1512 |
| Unsurveyed | 5323 | 1490 |
| Suits to cover | 5420-1 | 1527 |
| Surface rights | 5306-37 | 1484 |
| Surveyors | 5268-5298 | 1476 |
| Surveys | 5299-5305 | 1488 |
| Taxation | 7173 | 2080 |
| Timber | 5321-2 | 1489 |
| Transfers | 5328-9 | 1494 |

| | Article. | Page. |
|-----------------------------------|------------------|-----------------|
| PUBLIC LANDS—Cont'd. | | |
| Undisclosed | 5278 | 1479 |
| United States, sale to | 5245 | 1472 |
| University lands: | | |
| Control of | 2596-7 | 686 |
| Funds | 5417 | 1526 |
| Oil and gas permits | 5338 | 1499 |
| Sales to railroads | 2599 | 687 |
| Unsurveyed school lands | 5323 | 1490 |
| PUBLIC LIBRARIES— | | |
| Exemptions | 3838 | 1027 |
| Tax exemptions | 7150(8) | 2069 |
| PUBLIC OFFICE— | | |
| Ineligibility | 2927 | 807 |
| PUBLIC PRINTING— | | |
| At asylums | 3204 | 894 |
| Contracts for | 608 | 213 |
| PUBLIC PROPERTY— | | |
| Tax exemptions | 7150(4) | 2069 |
| PUBLIC ROADS— | | |
| Bond issue | 726 | 233 |
| County | 6703 | 1919 |
| State | 6673 | 1900 |
| PUBLIC SCHOOLS— | | |
| (Indexed fully under | | |
| “Schools, Public.”) | | |
| General provisions | 2676-2922 | 710 |
| PUBLIC UTILITIES— | | |
| City owned: | | |
| Eminent domain | 1107 | 328 |
| Encumbering | 1111-8 | 333 |
| Powers | 1108, 1123 | 299, 337 |
| Revenues | 1106 | 328 |
| Waterworks | 1109 | 329 |
| Waterworks, condemna- tion for | 1110, 7491, 7533 | 333, 2174, 2183 |
| City regulations: | | |
| City owned plants | 1123 | 337 |
| Ordinances | 1120 | 336 |
| Penalties | 1122 | 336 |
| Rates | 1119, 1124 | 335 |
| Reports | 1121 | 336 |
| Suits, punitive | 1132 | 339 |
| Deposits | 1440 | 428 |
| Injuries fatal, liability | 4671 | 1281 |
| Judicial control: | | |
| Appeal | 1120 | 339 |
| Complaint | 1126 | 338 |
| Corporations affected | 1131 | 339 |
| Enforcement | 1130 | 339 |
| Excessive rates | 1125 | 337 |
| Suit | 1127 | 338 |
| Trial | 1128 | 338 |
| Natural gas | 6050 | 1727 |
| Reports | 1441, 1121 | 428, 336 |
| Sale of properties | 1268 | 380 |
| Taxation | 7047(17-21) | 2021 |

| Article. Page. | | Article. Page. | |
|--|------------|----------------|--|
| PUBLIC WAREHOUSES— | | | |
| Bond | 5569 | 1567 | |
| Cotton storage | 5678 | 1597 | |
| Defined | 5568 | 1567 | |
| Liability | 5575 | 1569 | |
| Receipts | 5570 | 1568 | |
| PUBLIC WEIGHERS— | | | |
| Appointment | 5681 | 1598 | |
| Bond | 5687-8 | 1600 | |
| Defined | 5680 | 1598 | |
| Deputy | 5691 | 1602 | |
| Duties | 5693-5702 | 1602 | |
| Election | 5683 | 1598 | |
| Fees | 3946 | 1068 | |
| Qualifications | 5684 | 1600 | |
| Removal | 5685, 5989 | 1600, 1713 | |
| Special | 5692 | 1601 | |
| Weights, standard of | 5731-34 | 1613 | |
| PUBLIC WORKS— | | | |
| Contractor's bond | 5160 | 1447 | |
| Convict labor on | 6200 | 1765 | |
| Hours of labor on | 5165 | 1449 | |
| Wages, payment of | 5155 | 1447 | |
| PUBLISHING COMPANIES— | | | |
| Incorporation | 1302(42) | 392 | |
| Tax | 7069 | 2039 | |
| PULLMAN CARS— | | | |
| Sanitation | 4477(66) | 1198 | |
| Tax | 7063 | 2033 | |
| PUNCTUATION— | | | |
| Statutory construction | 10-11 | 4 | |
| PURCHASE NOTES— | | | |
| Extension | 5522 | 1557 | |
| Payment presumed | 5521 | 1557 | |
| PURCHASER— | | | |
| Conveyances | 1288-1301 | 389 | |
| Defrauding | 3995-4004 | 1084 | |
| Execution sales | 3804-18 | 1021 | |
| Innocent | 3996 | 1084 | |
| Registration of conveyances | 6627 | 1888 | |
| Tax sales | 7280-1 | 2114 | |
| PURE FOOD— | | | |
| Regulations | 4465-76 | 1195 | |
| Q. | | | |
| QUARANTINE— | | | |
| Charbon and anthrax | 4447 | 1189 | |
| City, powers as to | 1015 | 301 | |
| Coast | 4448-64 | 1191 | |
| Diseased bees | 555-556 | 201 | |
| Disinfection | 4477(5) | 1198 | |
| Governor's proclamation | 4448 | 1191 | |
| Livestock | 7010 | 2007 | |
| Local | 4450-1 | 1191 | |
| Shipping | 4452-64 | 1192 | |
| Special | 4448 | 1191 | |
| State | 4448-51 | 1191 | |
| Stations | 4454 | 1192 | |
| Venereal diseases | 4445 | 1186 | |
| Vessels, Of | 4452-64 | 1192 | |
| QUARRIES— | | | |
| Child labor | 5181 | 1454 | |
| Lien | 5473 | 1543 | |
| Railroads to | 6550 | 1870 | |
| Taxable value | 7174 | 2080 | |
| Wages, payment of | 5155 | 1447 | |
| QUARTERMASTER GENERAL— | | | |
| Appointment | 5799 | 1635 | |
| Salary | 6813 | 1952 | |
| QUORUM— | | | |
| Defined | 14 | 5 | |
| QUO WARRANTO— | | | |
| Anti-trust suits | 7431 | 2156 | |
| General provisions | 6253-8 | 1782 | |
| Issuance | 6253-8 | 1782 | |
| Issuance by Supreme Courts | 1733 | 498 | |
| To forfeit charter | 2295 | 612 | |
| To remove officers | 5996-7 | 1714 | |
| R. | | | |
| RACE TRACKS— | | | |
| Tax | 7047(33) | 2021 | |
| RAILROAD COMMISSION— | | | |
| Bills of lading, forms | 899 | 275 | |
| Causeway leases | 1471-2 | 433 | |
| Election | 6447 | 1835 | |
| Express companies | 3861-3 | 1032 | |
| Fees | 3922 | 1055 | |
| Harbor corporations | 1490-91 | 439 | |
| Oil and gas: | | | |
| Employee | 6030, 6065 | 1723, 1732 | |
| Expert | 6049 | 1727 | |
| Gas utilities | 6050 | 1727 | |
| General provisions | 6004-66 | 1716 | |
| Rules | 6029 | 1723 | |
| Supervisor | 6031 | 1723 | |
| Waste | 6017 | 1719 | |
| Organization: | | | |
| Oil and Gas Division | 5004-66 | 1716 | |
| Pipe line expert | 6064 | 1732 | |
| Railroad Division | 6447 | 1835 | |
| Supervisor of Oil and Gas Division | 6030 | 1723 | |
| Pipe lines, gas: | | | |
| Appeal from city | 6058 | 1730 | |
| Discrimination | 6057 | 1739 | |
| Employee | 6065 | 1732 | |
| Expenditures | 6066 | 1732 | |
| Expert | 6064 | 1732 | |
| Injunction | 6051 | 1728 | |
| Inspection | 6052 | 1728 | |
| Jurisdiction | 6050 | 1727 | |
| Operator's report | 6056 | 1729 | |
| Receiver | 6063 | 1731 | |
| Report | 6061 | 1731 | |
| Review orders | 6054 | 1729 | |
| Rules | 6053 | 1728 | |
| Tax | 6060 | 1731 | |

| | Article. | Page. |
|--------------------------------|------------|------------|
| RAILROAD COMMISSION— | | |
| Continued. | | |
| Pipe lines, oil: | | |
| Acceptance, Filing | 6020 | 1720 |
| Control | 6019 | 1720 |
| Discrimination | 6045 | 1726 |
| Exchange facilities | 6040 | 1725 |
| Grades of oil | 6041 | 1725 |
| Hearing | 6038 | 1725 |
| Inspection | 6034 | 1724 |
| Jurisdiction | 6023 | 1723 |
| Operator's report | | |
| ..... | 6035, 6044 | 1724, 1726 |
| Powers | 6024, 6042 | 1722, 1725 |
| Publish tariff | 6043 | 1725 |
| Rates | 6037 | 1724 |
| Rules | 6029, 6046 | 1723, 1826 |
| Salaries | 6030, 6049 | 1723, 1727 |
| Supervisor | 6030 | 1723 |
| Tax | 6032 | 1723 |
| Waste | 6046 | 1726 |
| Witnesses | 6025 | 1722 |
| Witness fees | 6027 | 1722 |
| Powers | 6445 | 1834 |
| Railroads: | | |
| Abandonment | | |
| ..... | 6358, 6336 | 1807, 1810 |
| Complaints | 6460 | 1840 |
| Connecting lines | 6406 | 1820 |
| Consolidation | 6404 | 1819 |
| General provisions | | |
| ..... | 6444-6519 | 1834 |
| Hearings | 6450-68 | 1837 |
| Interurbans | 6545-6 | 1868 |
| Maps | 6405 | 1820 |
| Mine | 6550 | 1870 |
| Offices | 6286, 6278 | 1791, 1788 |
| Power over | 6445-6519 | 1834 |
| Rates | 6445-59 | 1834 |
| Relocation | 6349, 6353 | 1804, 1805 |
| Safety appliances | 6382 | 1813 |
| Sale | 6421-2 | 1826 |
| Stocks and bonds | 6520-34 | 1859 |
| Terminals | 6549 | 1870 |
| Train regulations | 6357 | 1807 |
| Union depot corporations | 6551 | 1871 |
| Salaries | 6813 | 1952 |
| Suits by, security | 2276 | 607 |
| RAILROADS— | | |
| Abandonment: | | |
| Action on | 6358 | 1807 |
| Adjacent to city | 6349 | 1804 |
| City, In | 6350 | 1804 |
| Sminent domain | 6351 | 1805 |
| Hearing | 6353 | 1805 |
| Terminus on coast | 6348 | 1803 |
| Train service, Of | 6357 | 1807 |
| Assumed risk | 6437 | 1832 |
| Badge, employe's | 6368 | 1810 |
| Baggage: | | |
| Allowance | 6416 | 1824 |
| Check | 6369 | 1810 |
| Bell | 6371 | 1810 |

| | Article. | Page. |
|-----------------------------------|--------------|------------|
| RAILROADS—Continued. | | |
| Bills of lading | 890 | 272 |
| Bonds: | | |
| Branch lines, For | 6533 | 1863 |
| Causeway, For | 1472 | 433 |
| Double tracks, For | 6534 | 1864 |
| Improvements | 6508 | 1856 |
| Issuance, powers | | |
| ..... | 6525, 6345 | 1860, 1803 |
| Limit of issue | 6521 | 1859 |
| Payment with stock | 6347 | 1803 |
| Registration | 6528 | 1862 |
| Regulation, State | 6521-34 | 1859 |
| Requisites | 6527-30 | 1862 |
| Books and records: | | |
| Inspection | 6283 | 1790 |
| Railroad Commission's power | 6464-5 | 1841 |
| Requirements | 6281 | 1790 |
| Stockholders may examine | 6297 | 1793 |
| Brakemen | 6378 | 1812 |
| Brakes | 6378-9, 6382 | 1812, 1813 |
| Branch line: | | |
| Bond issue | 6533 | 1863 |
| Construction | 6274 | 1788 |
| Powers | 6273-4 | 1787 |
| Buildings: | | |
| Authority to erect | 6344 | 1803 |
| Condemn lands for | 6336 | 1800 |
| Location | 6275-6 | 1788 |
| Shops | 6277 | 1788 |
| By-laws | 6293 | 1793 |
| Capital stock | 6271 | 1787 |
| Carrier, liability as | 882 | 271 |
| Cars, To furnish | 6481-97 | 1846 |
| Cattle-guards | 6400 | 1818 |
| Causeways | 1471-2 | 433 |
| Charter | 6272 | 1787 |
| Chattel mortgages | | |
| ..... | 5490, 6488 | 1548, 1848 |
| Cities, In: | | |
| Change or abandonment | 6350-3 | 1804 |
| City control | 1015(27) | 301 |
| Crossings in towns | 1151 | 313 |
| Offices | 6275-6 | 1788 |
| Right of way | 6330 | 1799 |
| Shops | 6277 | 1788 |
| Streets, use of | 1018 | 307 |
| Viaducts | 6555 | 1872 |
| Connecting lines: | | |
| Brakes | 6385 | 1814 |
| Contract | 6406 | 1820 |
| Defined | 6408, 905 | 1821, 276 |
| Interchange refused | | |
| ..... | 6385, 6413 | 1814, 1823 |
| Interchanges | 6407 | 1820 |
| Liability | 906 | 277 |
| Lien | 6412 | 1823 |
| Terms | 6409 | 1821 |
| Consolidation | 6404 | 1819 |
| Construction of lines: | | |
| Authorization | 6316 | 1797 |
| Branch lines | 6274 | 1788 |

| | Article. | Page. | | Article. | Page. |
|-----------------------------|------------|------------|-----------------------------|--------------|------------|
| RAILROADS—Continued. | | | RAILROADS—Continued. | | |
| County seat, Through | 6354 | 1806 | Double-header trains | | |
| Failure to build | 6418 | 1826 | _____ | 6438, 6503 | 1832, 1855 |
| Maintenance | 6506 | 1856 | Double tracks | | 6534 1864 |
| Map and profile | 6405 | 1820 | Duties | 6354, 6419 | 1806, 1826 |
| Mileage | 6356 | 1807 | Electric railroads | 6535-48 | 1864 |
| Survey | 6355 | 1806 | Eminent domain: | | |
| Contributory negligence | | | Electric railroads | 6535 | 1864 |
| _____ | 6388, 6440 | 1815, 1833 | Powers | 6341 | 1802 |
| Cotton shipments | 5678 | 1597 | Procedure | 3264 | 912 |
| County seat | 6354, 6479 | 1806, 1846 | Purposes authorized | 6336 | 1800 |
| Couplers | 6383 | 1814 | Relocation, On | 6351 | 1805 |
| Crew: | | | Right of way | 6336 | 1800 |
| Badge | 6368 | 1810 | Employees: | | |
| Full crew | 6380 | 1812 | Badge | 6368 | 1810 |
| Hours | 6390-1 | 1815 | Discharge | 6431 | 1830 |
| Crossings: | | | Female | 5168 | 1450 |
| Flagman | 6371 | 1810 | Hours | 6390-1 | 1815 |
| Right of way | 6321-33 | 1798 | Injuries | 6432-43 | 1831 |
| Safety devices | | | Injuries, venue | 1995(25) | 544 |
| _____ | 6371, 6502 | 1810, 1855 | Lien | 5480 | 1545 |
| Signs | 6370 | 1810 | Passes | 4005 | 1087 |
| Warning whistle | 6371 | 1810 | Safety appliances | 6388 | 1815 |
| Culverts | 6328 | 1799 | Shelter | 6389 | 1815 |
| Daily train service | 6479 | 1846 | Wage reduction | 6430 | 1830 |
| Damages: | | | Wages, venue | 1995(26) | 544 |
| Employes, rights | 6431-43 | 1830 | Water closets | 6396 | 1817 |
| Injuries, fatal | 4671 | 1281 | Engines: | | |
| Penalty | 6475-6 | 1844 | Ash pans | 6381 | 1813 |
| Right of way | 6338 | 1801 | Bell and whistle | 6371 | 1810 |
| Suits by State | 6477 | 1845 | Double-header | | |
| Dead body shipment | 4477(77) | 1198 | _____ | 6438, 6503 | 1832, 1855 |
| Debts: | | | Drawbar | 6384 | 1814 |
| Excessive | 6521 | 1859 | Headlights | 6372 | 1811 |
| Execution for | 6420 | 1826 | Equipment contracts | 5490 | 1849 |
| Loans and interest | 6304 | 1795 | Execution against | 6420 | 1826 |
| Power to incur | 6345 | 1803 | Experiment farms | 165 | 54 |
| Regulation, State | 6520 | 1859 | Express business | 6414 | 1824 |
| Depots: | | | Extortion | 6473 | 1842 |
| Freight | 6393 | 1817 | Facilities, adequate | 6488-90 | 1848 |
| Passenger | 6395 | 1817 | False dividends | 6291 | 1792 |
| Sanitation | 4477(63) | 1198 | Fare, passenger | 6416 | 1824 |
| Suitable | 6498 | 1853 | Fee passes | 4006 | 1087 |
| Union | 6551, 6499 | 1871, 1854 | Freight: | | |
| Derailing devices | 6374-5 | 1811 | Bills of lading | 890 | 272 |
| Directors and officers: | | | Confiscating | 6366-7 | 1809 |
| By-laws | 6293 | 1793 | Connecting lines, From | | |
| Directors | 6288-9 | 1791 | _____ | 6407 | 1820 |
| Election of | 6289-90 | 1791 | Cotton | 5678 | 1597 |
| False dividend | 6291 | 1792 | Delivery | 6484, 6364-5 | 1847, 1809 |
| Meetings | 6309 | 1796 | Depots | 6393 | 1817 |
| Misrepresentation by | 6292 | 1792 | Furnish cars, To | 6481-7 | 1846 |
| Offices in State | 6278 | 1788 | Overcharge | 6363 | 1809 |
| President's report | 6282 | 1790 | Refusal to transport | 6360 | 1808 |
| Removal | 6305 | 1795 | Storage | 6394 | 1817 |
| Sale of road, trustees | 6427 | 1829 | Water craft | 6410 | 1822 |
| Statement, To make | 6303 | 1795 | Full crew | 6380 | 1812 |
| Discrimination | 6474 | 1842 | General offices | 6275 | 1788 |
| Dividends: | | | Hand holds on cars | 6386 | 1814 |
| False | 6291 | 1792 | Harbor | 1491 | 439 |
| Fictitious | 6307 | 1795 | Headlights | 6372 | 1811 |
| Domicile | 6287 | 1791 | Hours of employes | 6390-1 | 1815 |
| Double-decked cars | 6361-2 | 1808 | Improvements | 6508 | 1856 |

| | Article. | Page. |
|-----------------------------|---------------|------------|
| RAILROADS—Continued. | | |
| Incorporation: | | |
| Amendments to charter | | |
| ..... | 6271-4 | 1787 |
| Authorization | 6259-60 | 1784 |
| Capital stock | 6261 | 1784 |
| Charter | 6262-6 | 1784 |
| Duration | 6267 | 1785 |
| Fee, Charter | 3914 | 1051 |
| Renewal | 6268 | 1785 |
| Sale, new corporation | | |
| ..... | 6422, 6269-70 | 1827, 1786 |
| Injuries: | | |
| Assumed risk | 6437 | 1832 |
| Contributory negligence | | |
| ..... | 6388, 6440 | 1815, 1833 |
| Employes, To | 6432-43 | 1831 |
| Fatal, liability | 4671 | 1281 |
| Fellow servants | 6434 | 1831 |
| Interchange of business | | |
| ..... | 6413, 6490 | 1823, 1849 |
| Interlocking devices | | |
| ..... | 6371, 6502 | 1810, 1855 |
| Intersections | 6333 | 1800 |
| Interurban railways: | | |
| Bus lines | 6548 | 1869 |
| Capital stock | 1311 | 402 |
| Eminent domain | | |
| ..... | 6535, 6546 | 1864, 1869 |
| Freight | 6546 | 1869 |
| Incorporation | 1302 (68) | 392 |
| Light and power | | |
| ..... | 6541, 6547 | 1866, 1869 |
| Merger | 6543 | 1867 |
| Plants and buildings | 6547 | 1869 |
| Right of way | 6536-40 | 1865 |
| Sanitation | 4477 (58) | 1198 |
| Separate coaches | 6417 | 1825 |
| Tax | 7067 | 2038 |
| Irrigation works | 7643 | 2210 |
| Johnson grass | 6401 | 1819 |
| Junctions | 6491 | 1850 |
| Laborer's lien | 5480 | 1545 |
| Lands: | | |
| Alienation | 6342 | 1802 |
| Condemnation | 6336 | 1800 |
| Power to hold | 6341 | 1802 |
| State grants | | |
| ..... | 6317, 6340 | 1797, 1801 |
| State, purchase | 2599 | 687 |
| Venue for forfeiture | | |
| ..... | 1995 (22) | 544 |
| Lease of causeways | 1471-2 | 433 |
| Lease of other road | 6501 | 1854 |
| Lights | 6372-5 | 1811 |
| Liquor shipments | 5092 | 1425 |
| Livestock: | | |
| Cattle-guards | 6400 | 1818 |
| Cattle register | 6907 | 1976 |
| Double-decked cars | 6361-2 | 1808 |
| Killing | 6402-3 | 1819 |
| Sheep imports | 7038 | 2018 |
| Stock cars | 7040 | 2018 |

| | Article. | Page. |
|-------------------------------|------------|------------|
| RAILROADS—Continued. | | |
| Loans to: | | |
| Amount and interest | 6304 | 1795 |
| Authority to borrow | 6345 | 1803 |
| Mortgages | 6346 | 1803 |
| Mail, Carrying | 6392 | 1816 |
| Maintenance | 6506 | 1856 |
| Map and profile | 6405 | 1820 |
| Meetings, stockholders' | 6309 | 1796 |
| Misrepresentations | 6292 | 1792 |
| Mortgages: | | |
| Approval | 6488 | 1848 |
| Authority | 6345 | 1803 |
| Chattel | 5490, 6488 | 1548, 1848 |
| Regulation, State | 6520-1 | 1859 |
| Validity | 6346 | 1803 |
| Offices: | | |
| Chance | 6286 | 1791 |
| Domicile | 6287 | 1791 |
| General | 6275-6 | 1788 |
| Location | 6275-6 | 1788 |
| Officers, Of | 6278 | 1788 |
| Shops | 6277 | 1788 |
| Overcharge | 6363 | 1809 |
| Passengers: | | |
| Baggage allowance | 6416 | 1824 |
| Connecting lines, From | | |
| ..... | 6407 | 1820 |
| Daily trains | 6479 | 1846 |
| Depots | 6395 | 1817 |
| Fare | 6416 | 1824 |
| Passes | 4005 | 1087 |
| Refusal to transport | 6360 | 1808 |
| Separate coaches | 6417 | 1825 |
| Sufficient cars for | 6487 | 1848 |
| Trains, Forming | 6377 | 1812 |
| Water closets | 6396 | 1817 |
| Passes | 4005 | 1087 |
| Penalties | 6476 | 1845 |
| Penitentiary | 5241 | 1471 |
| Poultry shipments | 181 | 59 |
| Powers | 6341-53 | 1802 |
| Proxy | 6314 | 1797 |
| Railroad Commission | | |
| ..... | 6444-6519 | 1834 |
| Rates: | | |
| Appeal from orders | 6453-4 | 1838 |
| Emergency freight | 6458 | 1839 |
| Freight | 6448-59 | 1836 |
| Hearing | 6450-1 | 1837 |
| Notice | 6449 | 1837 |
| Overcharge | 6363 | 1809 |
| Passenger | 6416 | 1824 |
| Posting | 6456 | 1839 |
| Schedule | 6455-6 | 1839 |
| Temporary | 6459 | 1839 |
| Through freight | 6470 | 1842 |
| Receivers: | | |
| Appointment | 2293 | 611 |
| Appointment on aban- | | |
| donment | 6358 | 1807 |
| Funds | 2309 | 615 |
| General provisions | | |
| ..... | 2293-2320 | 611 |

| | Article. | Page. |
|-----------------------------|--------------|------------|
| RAILROADS—Continued. | | |
| Master in chancery | 2320 | 617 |
| Sale of road by | 6421 | 1826 |
| Service on | 2030 | 553 |
| Re-location | | |
| 6349-53, 6518 | 1804, | 1805 |
| Repair work: | | |
| In State | 6280 | 1790 |
| Shelter for employes | 6389 | 1815 |
| Using tracks for | 6376 | 1812 |
| Reports: | | |
| Annual | 6469 | 1842 |
| Failure to make | 6419 | 1826 |
| President's | 6282 | 1790 |
| Right of way: | | |
| Authority | 6316 | 1797 |
| City, In | 6330 | 1799 |
| Condemnation | 6336 | 1800 |
| Crossings | 6321-33 | 1798 |
| Damages | 6338 | 1801 |
| Intersections | 6332-23 | 1800 |
| Interurban | 6536 | 1865 |
| Material | 6334-5 | 1800 |
| Navigable waters | 6329 | 1799 |
| Purchase from State | 2599 | 687 |
| Road, Over | 6327 | 1799 |
| State grants | | |
| 6317, 6340 | 1797, | 1801 |
| Streams | 6320 | 1798 |
| Survey | 6318 | 1797 |
| Title in | 6339 | 1801 |
| Width | 6319 | 1798 |
| Roadbed | 6506 | 1856 |
| Rolling stock: | | |
| Brakes | 6378-9, 6382 | 1812, 1813 |
| Chattel mortgage on | 5490 | 1548 |
| Double-decked cars | 6361-2 | 1808 |
| Execution on | 6420 | 1826 |
| Purchase | 5490, 6488 | 1548, 1848 |
| Repair work | 6280 | 1790 |
| Safety devices | 6382-8 | 1813 |
| Sanitation | 4477(58) | 1198 |
| Separate coaches | 6417 | 1825 |
| Sufficient | 6487-9 | 1848 |
| Tax on | 7062 | 2033 |
| Safety devices: | | |
| Ash pans | 6381 | 1813 |
| Bell and whistle | 6371 | 1810 |
| Brakes | 6378-9, 6382 | 1812, 1813 |
| Cattle guards | 6400 | 1818 |
| Couplers | 6383 | 1814 |
| Crossing signs | 6370 | 1810 |
| Crossings | 6502 | 1855 |
| Derailing devices | 6374-6 | 1811 |
| Forming trains | 6377 | 1812 |
| Hand holds | 6386 | 1814 |
| Headlights | 6372 | 1811 |
| Interlocking devices | 6502 | 1855 |
| Stirrups | 6386 | 1814 |
| Switch lights | 6373-5 | 1811 |
| Sale: | | |
| Deed of trust, Under | 6424 | 1828 |
| Effect of | 6523 | 1860 |
| Execution, Under | 6421-9 | 1826 |
| New bonds | 6524 | 1860 |

| | Article. | Page. |
|-----------------------------|----------|-------|
| RAILROADS—Continued. | | |
| Voluntary | 6269-70 | 1786 |
| Sanitation | 4477(58) | 1198 |
| Schedule: | | |
| Rate | 6455-6 | 1839 |
| Train | 6357 | 1807 |
| Seal | 6341 | 1802 |
| Separate coaches | 6417 | 1825 |
| Sheep imports | 7038 | 2018 |
| Shops, location | 6277 | 1788 |
| Sidings: | | |
| Cars furnished at | | |
| 6490, 6399 | 1849, | 1818 |
| Derailing switches | 6374-5 | 1811 |
| Private | 6514-5 | 1858 |
| Sufficient | 6509 | 1857 |
| State lands, purchase of | 2599 | 687 |
| Stock: | | |
| Tmount | 6271 | 1787 |
| Bonds paid with | 6347 | 1803 |
| Branch lines, For | 6533 | 1863 |
| Certificates | 6526 | 1861 |
| Decreasing | 6302 | 1795 |
| Double tracks, For | 6534 | 1864 |
| Increasing | 6301 | 1794 |
| Issuance | 6306 | 1795 |
| Payment | 6295-6 | 1793 |
| Purchasing own | 6298 | 1794 |
| Regulation, State | 6520-2 | 1859 |
| Sale of road | 6426 | 1829 |
| Status | 6294 | 1793 |
| Unpaid | 6296 | 1793 |
| Void | 6530 | 1863 |
| Vote, Entitled to | 6315 | 1797 |
| Stockholders: | | |
| Access to books | 6297 | 1793 |
| By-laws | 6293 | 1792 |
| Directors must be | 6288 | 1791 |
| Election of directors | 6289 | 1791 |
| Liability | 6299 | 1794 |
| Meetings | 6310-5 | 1796 |
| Proxy | 6314 | 1797 |
| Removal of officers | 6305 | 1795 |
| Statement to | 6303 | 1795 |
| Unpaid stock | 6296 | 1793 |
| Vote, Entitled to | 6315 | 1797 |
| Storage of freight | 6394 | 1817 |
| Street railways: | | |
| Bus lines | 6548 | 1869 |
| Capital stock | 1311 | 402 |
| City regulation | 1015(26) | 301 |
| City tax | 1015(34) | 301 |
| Employes, injuries to | 6432 | 1831 |
| Fare, half | 6544 | 1867 |
| Incorporation | 1302(67) | 392 |
| Interurbans using tracks | | |
| 6540 | 1866 | |
| Merger | 6543 | 1867 |
| Passes prohibited | 4005 | 1087 |
| Powers | 6545 | 1868 |
| Reports | 1441 | 428 |
| Sale of properties | 1268 | 380 |
| Sanitation | 4477(58) | 1198 |
| Separate coaches | 6417 | 1825 |
| Tax, Gross receipts | 7067 | 2038 |

INDEX TO CIVIL STATUTES.

2511

| Article. Page. | | Article. Page. | |
|-----------------------------|-----------------------|-------------------------------|-----------------|
| RAILROADS—Continued. | | RANGERS, STATE—Cont'd. | |
| Tax, Occupation | 7047(21) 2021 | Railroad passes | 4006 1087 |
| Suburban railways: | | Term of service | 6565 1874 |
| Capital stock | 1311 402 | RATE MAKING BOARD— | |
| Incorporation | | Appointment | 2540 668 |
| 1302(67), 6262(2) | 392, 1784 | RATES— | |
| Powers | 6545 1868 | Ferriage | 6801 1949 |
| Suits: | | Freight | 6445-59 1834 |
| Abatement | 6428 1829 | Insurance, fire | 4878 1355 |
| Citation | 2029-32 553 | Interest | 5069 1418 |
| Penalties, For | 6477 1845 | Pipe line | 6037-39 1724 |
| Receiver | 2293 611 | Public utilities, regulation | |
| Venue | 1995(22-27) 544 | | 1125 337 |
| Switches: | | Railway passenger | 6416 1824 |
| Cars furnished at | | Street car | 6544 1867 |
| | 6490, 6399 1849, 1818 | Water | 7541 2184 |
| Connections at | 6511-2 1857 | RATS— | |
| Derailing | 6374-5 1811 | Destruction | 190 61 |
| Interlocking | | REAL ESTATE— | |
| | 6371, 6502 1810, 1855 | Alien ownership | 166-177 55 |
| Lights at | 6373 1811 | Bank may own | 514 190 |
| Taxation: | | City tax sale | 1058-9 315 |
| Assessments | 7168 2077 | Companies | 1362-3 412 |
| Intangible assets | 7105 2053 | Condemnation proceedings | |
| Rendition | 7159 2073 | | 3264 912 |
| Rolling stock | 7062 2033 | Conveyance of | 1288 389 |
| Sworn statement | 7169 2078 | County, sale of | 1577 462 |
| Terminal railways: | | Decedent's estate | 3545-52 968 |
| Capital stock | 1311 402 | Escheat | 3272 917 |
| Incorporation | 1302(72) 392 | Execution sales | 3804 1021 |
| Powers | 6549 1870 | Forcible entry and de- | |
| Tax | 7072 2042 | tainer | 3973 1080 |
| Terminus on coast | 6348 1803 | Fraudulent conveyances | |
| Ticket agent | 6415 1824 | | 3995-7 1084 |
| Ticket office | 6416 1824 | Lien, landlord's | 5222 1466 |
| Trains: | | Lien on fixtures | 5498 1550 |
| Brakes | 6378-9 1812 | Liens on | 5449-52 1536 |
| Crew, Full | 6380 1812 | Limitations | 5507 1554 |
| Daily | 6479 1846 | Lis pendens | 6640-3 1892 |
| Double-header | | Partition | 6082 1737 |
| | 6438, 6503 1832, 1855 | "Real property" defined | 7146 2067 |
| Forming | 6377 1812 | Tax rendition | 7164 2075 |
| Schedule | 6357 1807 | Tax sales | 7275-81 2113 |
| Union depots | 6499, 6551 1854, 1871 | Town lot corporations | 1363 412 |
| Venue | 1995(24-26) 494 | Trespass to try title | 7364 2143 |
| Viaducts | 6555-9 1872 | Venue of suits affecting | |
| Wage reduction | 6430 1830 | | 1995(11-15) 544 |
| Water closets | 6396-9 1817 | Ward's estate | 4174 1126 |
| Water craft freight | 6410 1822 | REBATES— | |
| Whistle | 6371 1810 | Fire insurance | 4894 1362 |
| RAIN WATERS— | | Transportation rates | 4013 1090 |
| Use | 7548 2186 | RECEIPTS— | |
| RANGERS, STATE— | | Poll tax | 3965 819 |
| Arrests | 6571 1875 | Tax | 7257 2105 |
| Companies | 6561 1873 | Warehouse | 5612-65 1582 |
| Equipment | 6567-8 1874 | RECEIVERS— | |
| Governor in command | 6564 1874 | Appointment | 2293 611 |
| Liquor seizures | 5112 1431 | Appointment, Contesting | 2250 603 |
| Organization | 6560 1873 | Bank | 371 155 |
| Pay | 6562 1873 | Betterments | 2315 616 |
| Peace officers | 6570 1875 | Bond | 2296 612 |
| Protecting commerce | 910 278 | | |
| Qualifications | 6573 1876 | | |

| | Article. | Page. | | Article. | Page. |
|--|------------|----------|--------------------------------|------------|------------|
| RECEIVERS—Continued. | | | REDEMPTION—Continued. | | |
| Bond on appeal..... | 2308 | 614 | State tax sales..... | 7283, 7289 | 2115, 2117 |
| City compromising debts..... | 1024 | 308 | | | |
| Claims: | | | REFERENDUM— | | |
| Preference..... | 2316 | 616 | Platform demands..... | 3133 | 865 |
| Priority..... | 2299 | 612 | | | |
| Unpaid at discharge..... | 2306 | 614 | REFORMATORIES— | | |
| Discharge..... | 2300-4 | 613 | Boys' Training School..... | 5119-30 | 1435 |
| Dissolution of city..... | 1244 | 374 | Girls' Training School..... | 5132-7 | 1438 |
| Dissolved corporation..... | | | Negro boys..... | 5131 | 1438 |
| | 1375, 1381 | 415, 416 | | | |
| Gas pipe line..... | 6063 | 1731 | REFRIGERATION— | | |
| General provisions..... | 2293-2320 | 611 | Ice corporations..... | 1528 | 448 |
| Insolvent banks..... | 371 | 155 | | | |
| Insolvent corporation..... | 1381-85 | 416 | REFUNDING BONDS— | | |
| Inventory..... | 2314 | 615 | Storms, In case of..... | 796 | 245 |
| Joint stock company..... | 2318 | 616 | | | |
| Master in chancery..... | 2320 | 617 | REGENTS— | | |
| Oath and bond..... | 2296 | 612 | A. & M..... | 2610 | 690 |
| Partnership..... | 2318 | 616 | Appointment..... | 2907 | 796 |
| Powers..... | 2297 | 612 | Normals..... | 2647 | 701 |
| Qualifications..... | 2294 | 611 | Technological..... | 2630 | 697 |
| Railroad..... | 6358 | 1807 | University..... | 2584, 3261 | 683, 911 |
| Railroad funds..... | 2309 | 615 | REGISTER— | | |
| Suits..... | 2310 | 615 | Attorney General..... | 4406 | 1173 |
| Tax renditions..... | 7152(7) | 2072 | Bond..... | 4361 | 1162 |
| Term of receivership..... | 2317 | 616 | Claim, county..... | 1625 | 473 |
| Venue..... | 2311-12 | 615 | Claim, State..... | 4344(12) | 1156 |
| Ward's estate..... | 4129 | 1118 | Comptroller..... | 4359-61 | 1162 |
| | | | Convicts..... | 6197 | 1765 |
| RECLAMATION— | | | Loan broker..... | 6163 | 1752 |
| Power to issue..... | 803 | 247 | Medical..... | 4499 | 1225 |
| Limitation of indebtedness..... | 806 | 248 | Nurses..... | 4524 | 1235 |
| State Engineer..... | 7960 | 2294 | Optometry..... | 4562 | 1247 |
| State's resources..... | 7466 | 2170 | Pawnbroker's..... | 6148 | 1750 |
| | | | Pharmacists..... | 4541 | 1241 |
| RECORDERS— | | | Prison..... | 6197 | 1765 |
| Of instruments..... | 6591 | 1881 | Securities..... | 4393 | 1170 |
| | | | Teachers'..... | 2912 | 797 |
| RECORDERS COURTS— | | | Treasury registers..... | 4380-93 | 1168 |
| Creation..... | 1194 | 360 | Veterinary..... | 7453 | 2165 |
| | | | Warrants..... | 4359 | 1162 |
| RECORDS— | | | REGISTERED MAIL— | | |
| Appeal, transcript on..... | 2278 | 607 | Insurance..... | 4963 | 1382 |
| Archives..... | 250-260 | 129 | | | |
| Certified copies..... | 6590 | 1880 | REGISTRATION— | | |
| Copies, evidence..... | 3720-31 | 1001 | Abstracts of judgments..... | | |
| Corporate, examination..... | 1366 | 413 | | 5448, 6635 | 1536, 1890 |
| Evidence, copies as..... | 3720-31 | 1001 | Acknowledgments: | | |
| Loss pending suit..... | 2289 | 609 | Authority to take..... | 6602 | 1883 |
| Lost, substitution..... | 6582-9 | 1878 | Certificate..... | 6606-11 | 1884 |
| New county, Of..... | 6578 | 1877 | Forms..... | 6607-8 | 1884 |
| Old, transcribing..... | 6574 | 1877 | Married woman..... | 6605, 6608 | 1884 |
| Record book of acknowl- edgments..... | 6619 | 1887 | Mode of making..... | 6603 | 1883 |
| Soldiers and sailors..... | 1939 | 534 | Proof..... | 6609-18 | 1884 |
| State, custody: | | | Record of..... | 6619-23 | 1887 |
| Land Office..... | 5262 | 1475 | Requisites..... | 6608 | 1884 |
| Library, State..... | 5438 | 1532 | Adoption..... | 42 | 13 |
| State Department..... | 4331(6) | 1151 | Archives, copies..... | 6625 | 1888 |
| Substitution of lost..... | 6582-9 | 1878 | Assignments for creditors..... | 262 | 132 |
| Transcribing..... | 6574-9 | 1877 | Attachments..... | 6662 | 1897 |
| Translation..... | 6580-1 | 1878 | Authorized..... | 6626 | 1888 |
| | | | Automobiles..... | 6675 | 1901 |
| REDEMPTION— | | | Bonds..... | 710-11 | 230 |
| City tax sales..... | 1064-5 | 317 | Bonds, official..... | 6000 | 1715 |
| Delinquent tax sales..... | 7339-40 | 2134 | | | |

INDEX TO CIVIL STATUTES.

2513

| | Article. | Page. |
|--------------------------------|------------|------------|
| REGISTRATION—Continued. | | |
| Of bonds | 4361 | 1162 |
| Chattel mortgages | 6645 | 1893 |
| Conveyances: | | |
| Notice | 1289 | 389 |
| Place | 6630, 6645 | 1889, 1893 |
| County clerk's duties | | |
| | 6591-6601 | 1881 |
| Deeds, etc. | 6630 | 1889 |
| Defective certificate | 6655 | 1895 |
| English language used | 6629 | 1889 |
| Evidence | 6658-60 | 1896 |
| Failure of clerk | 6652 | 1895 |
| Federal lien record | 6644 | 1893 |
| Filing for record | 6594-6 | 1881 |
| Foreign will | 8301 | 2389 |
| Forms of acknowledgment | 6606-11 | 1884 |
| General provisions | 6652-62 | 1895 |
| Homestead designation | | |
| | 3848-57 | 1029 |
| Judgments | 6635-7 | 1890 |
| Land Office copies | 6634 | 1890 |
| Liens | 5453 | 1538 |
| Lis pendens record | 6640-3 | 1892 |
| Log brands | 7361 | 2142 |
| Marriage contract | 6632 | 1890 |
| Marriage license | 4606 | 1263 |
| Married woman: | | |
| Acknowledgment by | | |
| | 6605, 6608 | 1884 |
| Separate property | 6647-51 | 1894 |
| Motor vehicles | 6675 | 1901 |
| New counties, In | 6661 | 1897 |
| Partition decree | 6638-9 | 1891 |
| Patents | 6624 | 1888 |
| Personal property trans- | | |
| fers | 6645 | 1893 |
| Place of | 6630, 6645 | 1889, 1893 |
| Proof of execution | 6612-18 | 1885 |
| Real property convey- | | |
| ances | 6630 | 1889 |
| Recorders | 6591-6601 | 1881 |
| Required | 6627 | 1888 |
| Separate property | 6647-51 | 1894 |
| Takes effect when | 6596 | 1881 |
| Tax receipts | 7258 | 2106 |
| Trade mark | 843 | 257 |
| Unorganized counties, In | 6630 | 1889 |
| Vital statistics | 4477 (36) | 1198 |
| Water right | 7519 | 2180 |
| Where recorded | | |
| | 6630, 6645 | 1889, 1893 |
| Wills | 8300-02 | 2389 |
| REHEARING— | | |
| Civil Appeals | 1877-80 | 522 |
| Supreme Court | 1762 | 503 |
| RELATIONSHIP— | | |
| Judges | 15 | 5 |
| Juror | 2134 | 580 |
| RELEASE OF ERRORS— | | |
| Confession of judgment | 2225 | 596 |

| | Article. | Page. |
|---------------------------------|----------|-------|
| RELIGION— | | |
| In public schools | 2899 | 795 |
| RELIGIOUS OPINIONS— | | |
| University students and faculty | 2604 | 689 |
| Witnesses | 3717 | 1001 |
| RELIGIOUS SOCIETIES— | | |
| Incorporation | 1396 | 419 |
| Property rights | 1409 | 421 |
| REMAINDERS— | | |
| Conveyance of | 1290 | 389 |
| Partition affecting | 6098 | 1740 |
| Title of, trespass suit | 7371 | 2144 |
| REMISSION— | | |
| City fines | 1014 | 301 |
| Fees by officers | 3894 | 1044 |
| REMITTITUR— | | |
| In Civil Appeals | 1861 | 520 |
| In trial courts | 2227 | 596 |
| REMOVAL— | | |
| City officers | 1006 | 299 |
| County auditor | 1676 | 485 |
| Debts incurred prior to | 5543 | 1562 |
| Executor or administrator | | |
| | 3466 | 953 |
| Guardian | 5233-5 | 1469 |
| Health officers | 4428-31 | 1179 |
| Officers, State and County | | |
| | 5961-97 | 1705 |
| Prison Commissioners | 6180 | 1757 |
| School trustees | 2747 | 733 |
| RENT— | | |
| Amount | 5222 | 1466 |
| Exemption inapplicable | 3840 | 1027 |
| Landlord's lien for | 5222 | 1466 |
| Sequestration, bond to se- | | |
| cure | 6851-8 | 1962 |
| Suit for in forcible entry | 3976 | 1081 |
| REPAIRS— | | |
| Lien for | 5503-5 | 1552 |
| Railroad | 6280 | 1790 |
| REPLEVY— | | |
| Attached property | 292 | 138 |
| Garnishment | 4084 | 1109 |
| Sequestration | 6849 | 1962 |
| Tenant may | 5231 | 1468 |
| REPORTERS | | |
| Criminal Appeals | 1810 | 510 |
| Official court | 2321 | 617 |
| Stationery | 619 | 215 |
| Supreme Court | 1724 | 496 |
| REPORTS— | | |
| Adjutant General | 5794 | 1633 |
| Alien ownership | 176 | 56 |
| Attorney General | 4413 | 1174 |
| Attorneys, district and county | 333 | 148 |
| Banking Commissioner | 375 | 156 |

| | Article. | Page. | | Article. | Page. |
|---|----------|--------|--------------------------------------|-----------|-------|
| REPORTS—Continued. | | | RESERVES—Continued. | | |
| Blue Sky permits..... | 595 | 210 | General casualty compa- nies..... | 4993 | 1396 |
| Commissioner of Agricul- ture..... | 53, 89 | 16, 23 | Life insurance companies..... | 4768 | 1315 |
| Comptroller..... | 4348 | 1158 | Mutual fire companies..... | 4871 | 1353 |
| County officers..... | 1617 | 471 | Mutual life companies..... | 4810 | 1328 |
| Court of Criminal Appeals | 1810 | 510 | Savings banks..... | 417 | 166 |
| Court reports, distribu- tion of..... | 4332-34 | 1154 | State banks..... | 522 | 193 |
| Court reports, printing of | 620 | 215 | Storm insurance..... | 4943 | 1377 |
| Experiment stations..... | 147 | 51 | Workmen's insurance..... | 4914 | 1368 |
| Game Commissioner..... | 4019 | 1093 | RESERVOIRS— | | |
| Gas utility..... | 6056 | 1729 | Flood waters..... | 7502 | 2177 |
| Gross receipts..... | 7074 | 2042 | RESIDENCE— | | |
| Humane Society..... | 4600 | 1262 | Candidates..... | 2927 | 807 |
| Insurance Department..... | 4697 | 1291 | County attorney..... | 332 | 148 |
| Labor Bureau..... | 5145 | 1444 | County school trustees..... | 2677 | 711 |
| Library and Historical Commission..... | 5446 | 1536 | Defined..... | 2958 | 817 |
| Oil operators..... | 6035 | 1724 | District attorney..... | 332 | 148 |
| Penitentiary audit..... | 6177 | 1757 | District judge..... | 1884 | 524 |
| Pipe line..... | 6044 | 1726 | District school trustees..... | 2745 | 731 |
| Public utility companies..... | 1441 | 428 | Divorce suit, plaintiff..... | 4631 | 1269 |
| Railroad Commission..... | 6061 | 1731 | Election officers..... | 2939 | 811 |
| Railroads..... | 6282 | 1790 | Elective officers..... | 2927 | 807 |
| School funds..... | 2333-8 | 762 | Medical examiners, Board of..... | 4495 | 1224 |
| School officers..... | 2660-2 | 706 | Petition shall state..... | 2003 | 548 |
| State officers..... | 13 | 5 | Plaintiff in divorce suit..... | 4631 | 1269 |
| State Superintendent of Education..... | 2660 | 706 | Prison Commission..... | 6168 | 1754 |
| State Treasurer..... | 4373 | 1166 | Receiver..... | 2294 | 611 |
| Supreme Court..... | 1725 | 496 | Unknown, citation..... | 2039 | 555 |
| University regents..... | 2588 | 683 | Venue, Affecting..... | 1995 | 544 |
| Water Engineers, Board of..... | 7480 | 2173 | Voter..... | 2955 | 815 |
| REPRESENTATIVE DIS- TRICTS— | | | RESIGNATION— | | |
| Enumeration..... | 195-196 | 71 | Administrator or executor | 3470 | 954 |
| REPRESENTATIVES— | | | City officers..... | 1005 | 299 |
| Appointments to A. & M..... | 2609 | 690 | Guardian..... | 4229 | 1138 |
| Appointments to Normal..... | 2648 | 743 | RESTAURANTS— | | |
| Appointments to Prairie View..... | 2639 | 700 | Impure food..... | 4470 | 1196 |
| Certificates of election..... | 3038 | 838 | Inspection, State..... | 4420 | 1177 |
| Organization..... | 5422 | 1528 | RESTITUTION— | | |
| REPUBLIC OF TEXAS— | | | Writ of..... | 3993 | 1083 |
| Archives of..... | 250-255 | 129 | RESTRAINT OF TRADE— | | |
| Cities of, powers..... | 967 | 289 | Anti-trust laws..... | 7426 | 2154 |
| Pleading laws of..... | 2000 | 548 | Open Port Law..... | 907 | 277 |
| REPUTATION— | | | REST ROOMS— | | |
| Libel..... | 5430 | 1530 | County..... | 2371 | 631 |
| RESERVE BANKS— | | | RETURNS— | | |
| Examination of..... | 359 | 153 | Attachment..... | 296-8 | 139 |
| Insolvency..... | 373 | 156 | Citation..... | 2034 | 554 |
| Regulation..... | 518-521 | 192 | Execution..... | 3784-5 | 1018 |
| RESERVES— | | | Garnishment..... | 4083 | 1109 |
| Employers' liability insur- ance..... | 4987 | 1392 | General elections..... | 3026-37 | 835 |
| Federal Reserve Banks..... | 521 | 277 | Representatives..... | 196 | 74 |
| Fraternal benefit societies | 4827 | 1334 | Senators, State..... | 194 | 70 |
| | | | REVENUE LAWS— | | |
| | | | General provisions..... | 7041-7359 | 2019 |
| | | | Injunction to enforce..... | 4669 | 1280 |
| | | | Jurisdiction, appellate..... | 1728(4) | 497 |

INDEX TO CIVIL STATUTES.

2515

| | Article. | Page. |
|--------------------------------------|-----------|----------|
| REVIEW, BILL OF— | | |
| New trial on | 2236 | 598 |
| REVISED STATUTES— | | |
| Cited, how | 30 | 9 |
| REVIVAL— | | |
| Against successor | 2269 | 606 |
| Probate | 932 | 283 |
| REWARD— | | |
| Escaped convict | 6198 | 1765 |
| RICE— | | |
| Companies | 1302(28) | 392 |
| RIGHT OF WAY— | | |
| Condemnation | 3264 | 912 |
| Drainage ditches | 8151-2 | 2340 |
| Irrigation canals | 7642-5 | 2209 |
| Pipe line | 6021-2 | 1720 |
| Railroad | 6316 | 1797 |
| RIOTS— | | |
| City, in | 995 | 296 |
| Impending | 5831 | 1643 |
| Militia used | 5778 | 1629 |
| RIPARIAN RIGHTS— | | |
| Condemnation by city 1109(2) | 329 | |
| Condemnation prohibited 7491 | 2174 | |
| Ferries | 6798 | 1948 |
| Hydraulic mining | 7498 | 2176 |
| Oyster permit | 4042 | 1100 |
| RIVERS AND STREAMS— | | |
| Dams across | 7499 | 2176 |
| Diversion | 7496 | 2176 |
| Diversion, damages | 7577 | 2193 |
| Irrigation | 7591 | 2196 |
| Navigable | 5302 | 1483 |
| Obstructing | 7577 | 2193 |
| Polluting public body of water | 4444 | 1185 |
| Property of State | 7489 | 2174 |
| Purifying | 7809 | 2264 |
| State boundaries | 7489 | 2174 |
| Supplying | 7881 | 2280 |
| Uses, lawful | 7490 | 2174 |
| ROADS— | | |
| Alteration | 6703 | 1919 |
| Bonds | 726-84 | 233 |
| Bridges | 6794 | 1947 |
| Classes of | 6704 | 1920 |
| Closing | 6716 | 1923 |
| Commissioners | 6737-42 | 1930 |
| Commissioners court's powers | 6703 | 1919 |
| Compensation bonds | 753 | 236 |
| Consolidated districts | 768 | 239 |
| Control of | 6673 | 1900 |
| County bond issue | 718 | 231 |
| Damaging | 6716 | 1923 |
| District auditor | 1667 | 483 |
| District bond issue | 726, 2673 | 233, 709 |
| Drainage | 6771 | 1938 |
| Establishment | 6702 | 1919 |

| | Article. | Page. |
|--------------------------------------|----------|-------|
| ROADS—Continued. | | |
| Ferries | 6798 | 1948 |
| Funds | 6736 | 1929 |
| Gates across | 6712 | 1922 |
| Hands | 6723-6 | 1926 |
| Highway Department | 6663 | 1898 |
| Indebtedness, limited | 773 | 240 |
| Maintenance | 6717-89 | 1924 |
| Maintenance warrants | 777 | 242 |
| Map | 6670 | 1900 |
| Material: | | |
| Condemnation | 6729 | 1927 |
| Payment | 6728 | 1927 |
| Motor registration | 6675 | 1901 |
| Neighborhood | 6711 | 1922 |
| Optional road law | 6762 | 1936 |
| Overseers | 6717-36 | 1924 |
| Railroad crossings | 6327 | 1799 |
| Road companies | 1447 | 429 |
| Road duty | 6723 | 1926 |
| Road superintendent | 750 | 236 |
| Signs | 6732 | 1928 |
| State highways | 6662-73 | 1898 |
| Superintendent | 6743-61 | 1931 |
| Tax | 2352 | 628 |
| Tax, special | 6790 | 1945 |
| Toll road companies | 1448 | 430 |
| Traffic officers | 6699 | 1907 |
| ROBBERY INSURANCE— | | |
| Casualty companies | 4989 | 1394 |
| Mutual companies | 4963 | 1382 |
| RULES— | | |
| Construction of statutes 10-11 | 4 | |
| Descent and distribution 2570 | 679 | |
| Military | 5858 | 1649 |
| Mine | 5901 | 1669 |
| Oil conservation | 6004 | 1716 |
| Prison | 6182 | 1759 |
| Sanitary Code | 4477 | 1198 |
| Supreme Court | 1730-1 | 497 |
| RURAL CREDIT UNIONS— | | |
| Audit | 2480 | 652 |
| By-laws | 2466-7 | 649 |
| Capital stock | 2473 | 651 |
| Defined | 2461 | 648 |
| Directors | 2469 | 650 |
| Dissolution | 2483 | 653 |
| Dividend | 2481 | 652 |
| Incorporation | 2463 | 648 |
| Loans: | | |
| Amount and interest | 2462 | 648 |
| Conditions | 2477 | 651 |
| Repaying | 2476 | 651 |
| Meetings | 2468 | 649 |
| Officers | 2470 | 650 |
| Report | 2484 | 653 |
| RURAL SCHOOLS— | | |
| Common school districts | 2741 | 729 |
| Superintendent | 2688 | 714 |
| Trustees | 2676 | 710 |
| Unit system | 2702 | 719 |

| S. | Article. | Page. | Article. | Page. |
|-------------------------------|------------|------------|-----------------------------|-----------------------|
| SAFETY DEPOSIT VAULTS— | | | SALT COMPANIES— | |
| Powers of bank | 413 | 165 | Powers | 1496 440 |
| Savings banks | 411 | 164 | SALT WATER— | |
| SAILORS— | | | Disposal companies | 1508 443 |
| Discrimination against | 5887 | 1666 | Gulf breakwaters | 7578 2193 |
| Limitation of actions | 5518 | 1556 | Sweetening | 7490, 7809 2174, 2264 |
| Recording discharge | 1939 | 534 | SALVAGE— | |
| Vote, May not | 2954 | 814 | Cotton | 8319-24 2417 |
| Wills | 8290 | 2387 | Wrecks | 8310-24 2416 |
| SALARIES— | | | SAM HOUSTON NORMAL— | |
| Bank examiners | 351 | 151 | Admission of students | 2648 703 |
| Change | 6824 | 1955 | Control | 2644 701 |
| City officers | 1010, 1269 | 300, 381 | SAND— | |
| County auditor | 1645 | 478 | Corporations | 1495 440 |
| County commissioners | 2350 | 625 | SANTARIUMS— | |
| County officers | 3883-8 | 1039 | American Legion Tubercu- | |
| County superintendent | 2700 | 718 | culosis | 3252 908 |
| Courts | 6819-21 | 1954 | Corporations | 1302(6) 392 |
| Eleemosynary institutions | | | State Tuberculosis | 3239 903 |
| Enumeration | 6815 | 1953 | SANITARY CODE— | |
| Game, Fish and Oyster | 6813 | 1952 | Rules | 4477 1198 |
| Department | 4024 | 1095 | SAVINGS BANKS— | |
| General provisions | 6813-29 | 1952 | Capital stock | 412 165 |
| Heads of departments | 6813 | 1952 | Examination | 360 153 |
| Judges | 6819-21 | 1954 | General powers | 413-429 165 |
| Juvenile Board | 5139 | 1440 | Incorporation | 376 156 |
| Labor Bureau | 6814 | 1953 | Liquidation | 374 156 |
| Legislators | 6818 | 1954 | Organization | 397 162 |
| Lieutenant Governor | 6817 | 1953 | SAVINGS DEPARTMENTS— | |
| National Guard | 5839 | 1644 | Adoption by bank | 430 169 |
| Official court reporter | 2326 | 618 | Earnings | 435 170 |
| Payment | 6826 | 1956 | Interest | 434 170 |
| Perquisites | 6816 | 1953 | Reserves | 432 170 |
| Prison Commissioners | 6170 | 1754 | Rules | 431 170 |
| Prison guards | 6173 | 1755 | Statement | 436 170 |
| Rangers | 6562, 6569 | 1873, 1874 | SCALES— | |
| School superintendent | 2700 | 718 | Coal mine | 5912 1672 |
| State officers | 6813 | 1952 | False, condemnation | 5717 1607 |
| Teachers | 2883 | 782 | Inspection | 3724-25 1002 |
| SALES— | | | Public weighers | 5695 1602 |
| Bonds | 708 | 230 | Sale | 5728 1612 |
| Bulk | 4001 | 1085 | Tests | 5726 1610 |
| Capital stock | 580 | 207 | SCHOLASTIC AGE— | |
| Carriers | 901-2 | 275 | Prescribed | 2902 795 |
| Conveyances | 1288 | 389 | SCHOLASTIC CENSUS— | |
| Estrays | 6917 | 1980 | Scholastic year | 2903 796 |
| Execution, Under | 3804-12 | 1021 | Taking | 2816-2822 756 |
| Executors and adminis- | | | SCHOOL OF MINES AND | |
| trators | 3552, 3583 | 969, 975 | METALLURGY— | |
| Fraudulent | 4001 | 1085 | Faculty | 2635 699 |
| Garnishment proceedings | 4092 | 1111 | Government | 2633 698 |
| Guardians | 4193 | 1130 | Purpose | 2634 698 |
| Lands, public | 5306-09 | 1484 | Reports | 2637 699 |
| Livestock | 6903 | 1975 | Tuition | 2636 699 |
| Misrepresentation in | 4004 | 1086 | SCHOOLS, MEDICAL— | |
| Partition proceedings | 6096 | 1739 | Anatomical Board | 4583-90 1255 |
| Pawnbrokers | 6150 | 1750 | | |
| Public utility properties | 1268 | 380 | | |
| Registration | 6627 | 1888 | | |
| Sequestration | 6859 | 1964 | | |
| Tax, city | 1058 | 315 | | |
| Tax, State | 7280 | 2114 | | |

| | Article. | Page. | | Article. | Page. |
|----------------------------|-----------------|-------|--------------------------------|-----------------|-------|
| SCHOOLS, PUBLIC— | | | SCHOOLS, PUBLIC—Cont'd. | | |
| Admission of pupils | 2902 | 795 | County school trustees: | | |
| Appeals: | | | Allowance for superin- | | |
| Certificates, cancellation | | | tendent | 2700 | 718 |
| of | 2884 | 782 | Appeals | 2686 | 714 |
| Consolidated districts, | | | Apportion funds | 2685 | 714 |
| From | 2814 | 756 | Attendance officer | 2895 | 793 |
| County officers, From | 2686 | 714 | Ballots, Prescribe | 2983 | 826 |
| Independent districts, | | | Classify schools | 2678 | 711 |
| From | 2690 | 715 | Consolidation of dis- | | |
| State Superintendent, | | | tricts | 2808 | 754 |
| From | 2656 | 705 | County line districts | 2743 | 730 |
| Attendance: | | | Districts, Create | 2681 | 712 |
| Compulsory | 2892-8 | 792 | Duties | 2678-87 | 711 |
| Officer | 2895, 2700 793, | 718 | Election | 2676 | 710 |
| Transfers | 2695-9 | 716 | Eminent domain | 2905 | 796 |
| When | 2903 | 796 | High schools, Classifica- | | |
| Where | 2901 | 795 | tion of | 2679-80 | 712 |
| Buildings: | | | Meetings | 2687 | 714 |
| Eminent domain | 2905 | 796 | Organization | 2684 | 713 |
| Fire escapes | 3960 | 1070 | Powers | 2905, 2683 796, | 713 |
| Specifications | 2920 | 799 | Qualifications | 2677 | 711 |
| Census | 2816-22 | 756 | Salary | 2687 | 714 |
| Certificates: | | | Teachers' salaries | | |
| Applicant's requisites | 2880 | 781 | 2883, 2912 | 782, 797 | |
| Building | 2887 | 784 | Transfers | 2681 | 712 |
| Cancellation | | | County superintendent: | | |
| 2691, 2884 | 715, 782 | | Appoint examiners | 2878 | 780 |
| City | 2891 | 791 | Apportion funds | 2692 | 716 |
| Classes of | 12885 | 783 | Bond | 2689 | 715 |
| College | 2888-9 | 783 | Census | 2816 | 756 |
| Examinations | 2878-89 | 783 | Duties, general | 2693 | 716 |
| Kindergarten | 2889 | 788 | Election | 2688 | 714 |
| Special | 2889 | 788 | Ex-officio | 2701 | 719 |
| Children, Consumptive | 4482 | 1218 | Fire escapes, Provide | 3960 | 1070 |
| Common school districts: | | | List of pupils | 2897 | 794 |
| Building contracts | 2752 | 734 | Oaths | 2694 | 716 |
| Election to consolidate | 2806 | 753 | Record of boundary | | |
| County line districts | 2743-4 | 730 | changes | 2681 | 712 |
| Establishment | | | Removal of trustee | 2747 | 733 |
| 2681, 2741 | 712, 729 | | Salary | 2700 | 718 |
| Sale of property | 2753 | 735 | Supervision of schools | 2690 | 715 |
| Taxes and bonds | 2784-97 | 743 | Teachers' institutes | 2691 | 715 |
| Teachers' contracts | 2750 | 734 | Text books | 2868 | 775 |
| Trustees | 2745-50 | 731 | Transfers | 2695-9 | 716 |
| Consolidated districts | | | County unit system: | | |
| 775a-775f | 241 | | Abolition | 2740 | 729 |
| Dissolution | 2815 | 756 | Adoption | 2702 | 719 |
| Election to consolidate | 2806 | 752 | County superintendent | 2706 | 721 |
| Elementary schools | 2811 | 755 | County trustees | 2703 | 720 |
| High schools | 2812 | 755 | Date of opening | 2715 | 722 |
| Laws applicable | 2814 | 756 | District trustees | 2730 | 727 |
| Outstanding bonds | 2807 | 754 | Grades and courses | 2714 | 722 |
| Superintendent | 2810 | 755 | Loans | 2721 | 724 |
| Teachers | 2809 | 755 | Property, acquisition | 2722 | 724 |
| Transportation | 2813 | 756 | Revenue | 2724-6 | 724 |
| Trustees | 2808 | 754 | Teachers | 2713, 2732 722, | 728 |
| County line districts: | | | Districts, general provi- | | |
| Census | 2818 | 757 | sions: | | |
| County unit system | 2712 | 722 | Additions to | 2803-5 | 752 |
| Creation | 2743 | 730 | Admission of pupils | 2901-4 | 795 |
| Powers | 2744 | 730 | Attendance officer | 2895 | 793 |
| | | | Building specifications | | |
| | | | 2920-2 | 799 | |

| | Article. | Page. | | Article. | Page. |
|---------------------------------|--------------|----------|--------------------------------|--------------------|---------------|
| SCHOOLS, PUBLIC—Cont'd. | | | SCHOOLS, PUBLIC—Cont'd. | | |
| Election to consolidate | | | In several counties | 2764 | 738 |
| _____ | 2806-15 | 753 | Incorporation | 2757 | 735 |
| Custody of bonds | 4378 | 1167 | Small districts | | |
| Eleemosynary institu- | | | _____ | 2690, 2763 | 715, 738 |
| tions, At | 2666 | 708 | Taxes and bonds | 2784-97 | 343 |
| Eminent domain | 2905 | 796 | Trustees | 2758 | 736 |
| Kindergartens | 2919 | 799 | Kindergartens: | | |
| Sinking fund invest- | | | Certificates | 2889 | 788 |
| ments | 836 | 254 | Free | 2919 | 799 |
| Sites, patent | 5406 | 1523 | Miscellaneous provisions | | |
| Tax collections | 7343 | 2136 | _____ | 2899-2922 | 795 |
| Taxes and bonds | 2784-2802 | 743 | Non-sectarian | 2899 | 795 |
| Textbooks | 2866 | 775 | Reports: | | |
| Free textbooks | 2839-76 | 764 | Attendance | 2897 | 794 |
| Funds: | | | Census | 2817 | 757 |
| Apportionment | | | County superintendent | 2693 | 716 |
| _____ | 2685, 2692 | 714, 716 | County unit system | 2717-8 | 723 |
| Available school fund | 2823 | 759 | Funds, Of | 2830-8 | 761 |
| Comptroller's duties | 2834-6 | 763 | School officers | 2661 | 706 |
| Depositories | 2828-33 | 761 | State Superintendent | 2660 | 706 |
| Distribution | 2663 | 707 | Teachers | 2912 | 797 |
| Expenditures | 2827 | 760 | Text book requisitions | 2868 | 725 |
| Investment | 2673, 2669 | 709, 708 | Rural: | | |
| Permanent | 5416 | 1525 | Common school districts | | |
| Transferring apportion- | | | _____ | 2741 | 729 |
| ment | 2698-9 | 717 | Superintendent | 2688 | 714 |
| Treasurer's duties | 2837-8 | 763 | Trustees | 2676 | 710 |
| High schools: | | | Unit system | 2702 | 719 |
| Classification of | 2679 | 712 | Rural High Schools | 2922a | 801 |
| In consolidated districts | | | Scholastic age | 2902 | 795 |
| _____ | 2812 | 755 | Scholastic year | 2903 | 796 |
| Subjects in | 2680 | 712 | Separate schools | 2900 | 795 |
| Teachers' certificates, | | | State Superintendent | 2655 | 705 |
| kinds | 2885 | 783 | Subjects: | | |
| Independent districts in | | | Agriculture | 2914 | 798 |
| cities: | | | Cotton classing | 2915 | 798 |
| Assumption of control | 2768 | 739 | Prescribed courses | 2911 | 797 |
| Bonds | 823 | 251 | Standard texts | 2843 | 766 |
| Buildings and grounds | 2905 | 796 | Tax exempt | 7150 | 2069 |
| Census | 2822 | 759 | Teachers: | | |
| Cities exempt | 2782 | 743 | Age | 2880 | 781 |
| Election to consolidate | 2806 | 753 | Certificates | 2879 | 781 |
| Courses | 2783 | 743 | Contracts | | |
| Depository | 2832-3 | 762 | _____ | 2692-3, 2750, 2882 | 716, 734, 782 |
| Extending limits | | | Consolidated districts, | | |
| _____ | 2759, 2803-5 | 736, 752 | In | 2809 | 755 |
| Kindergartens | 2919 | 799 | Dismissal | 2749 | 734 |
| Laws governing | 2771 | 740 | Homes for | 2797 | 750 |
| Property | 2772-3 | 740 | Institutes | 2691 | 715 |
| Taxes | 2798-2802 | 750, 751 | Reports and registers | 2912 | 797 |
| Teachers' certificates | 2891 | 791 | Salaries | 2883, 2912 | 782, 797 |
| Teachers' contracts | 2781 | 743 | Salary check | 2751 | 734 |
| Trustees | 2774-80 | 741 | Summer schools | 2913 | 798 |
| Independent districts in | | | Textbook requisitions | 2868 | 775 |
| towns: | | | Textbooks: | | |
| Abolishment | 2767 | 739 | Care | 2871 | 776 |
| Boundaries | 2765-7 | 738 | Commission, The | 2839 | 764 |
| Buildings and grounds | 2905 | 796 | Complaints | 2876 | 778 |
| City control of | | | Contracts | 2842-60 | 765 |
| _____ | 2759, 2803 | 736, 752 | Custody of | 2866-7 | 775 |
| Election to consolidate | 2806 | 753 | Depositories | 2865 | 774 |
| Depository | 2832-3 | 762 | Distribution | 2864 | 774 |
| Extension of limits | 2765 | 738 | Exchanges | 2845 | 768 |

| | Article. | Page. |
|--------------------------------|----------|--------|
| SCHOOLS, PUBLIC—Cont'd. | | |
| Exclusive use of | 2858 | 773 |
| Inspection | 2872 | 776 |
| Old | 2875 | 777 |
| Payment | 2870 | 775 |
| Price marked on | 2857 | 772 |
| Purchase | 2862 | 774 |
| Requisitions | 2868-9 | 775 |
| Revision | 2846 | 768 |
| Sale | 2874 | 775 |
| Subjects prescribed | 2843 | 766 |
| Supplementary | 2844 | 767 |
| Transfers: | | |
| Adjoining county, To | 2697 | 717 |
| Agreement of trustees, | | |
| By | 2699 | 718 |
| Application | 2696 | 717 |
| County school trustees, | | |
| By | 2681 | 712 |
| County superintendent, | | |
| By | 2695 | 716 |
| Emergency | 2698 | 717 |
| SCIRE FACIAS— | | |
| Issuance | 2079 | 561 |
| Judgment revived by | 5532 | 1560 |
| Requisites | 2091 | 563 |
| SEAL— | | |
| Acknowledgments | | |
| 6603, 6606 | 1883, | 1884 |
| Boards and commissions | 27 | 7 |
| Commissioners courts | 2344 | 624 |
| Corporate | 27, 1320 | 7, 405 |
| County court | 1948 | 535 |
| Court of Criminal Appeals | | |
| 1805 | 509 | |
| Courts of Civil Appeals | 1830 | 514 |
| District court | 1905 | 527 |
| Inspector of Hides | 6974 | 1997 |
| Instruments, On | 27 | 7 |
| Notary public | 5960 | 1704 |
| Patents | 5404 | 1523 |
| Process | 2286 | 609 |
| Public weigher | 5697 | 1603 |
| State Library | 5437 | 1531 |
| Supreme Court | 1720 | 495 |
| Surveyor, licensed | 5272 | 477 |
| Tax collector | 7257 | 2105 |
| Use | 27 | 7 |
| SEALERS— | | |
| Appointment | 5705 | 1605 |
| Duties | 5723 | 1609 |
| Rules binding on | 5708 | 1606 |
| Standards | 5730 | 1612 |
| SEARCHES AND SEIZURES— | | |
| Commercial fertilizers | 103 | 34 |
| Game | 4038 | 1099 |
| Hides, imported | 6991 | 2001 |
| Infected bees | 553-554 | 201 |
| Liquor | 5105 | 1429 |
| Unbranded stock | 6981-2 | 1998 |
| SEAWALLS— | | |
| Construction and main- | | |
| tenance | 6830-9 | 1957 |

| | Article. | Page. |
|-----------------------------|----------|-------|
| SECRETARY OF STATE— | | |
| A. & M. regents | 2611 | 690 |
| Appointment | 4330 | 1153 |
| Archives, custody of | 254-5 | 201 |
| Blue Sky Law | 579-600 | 207 |
| Board of Education | 2664 | 707 |
| Bond | 4330 | 1153 |
| Bonds, official | 5999 | 1715 |
| Brand list, county | 6894 | 1974 |
| Campaign expense report | 3172 | 881 |
| Candidate, death of | | |
| 2979, 3019 | 824, | 834 |
| Certified copies of records | | |
| 3913 | 1050 | |
| Chief clerk | 4340 | 1156 |
| Commissions, official | 3882 | 1039 |
| Constitutional amendment | | |
| contest | 3071 | 846 |
| Corporation charters | 1313 | 402 |
| Corporation, stock of | 1331 | 406 |
| Distribute laws | 4332-41 | 1154 |
| Duties, general | 4331 | 1153 |
| Election blanks | 2925 | 807 |
| Election returns | | |
| 3033-6, 3083 | 837, | 850 |
| Farmers' hail insurance | | |
| companies | 4952 | 1379 |
| Fees: | | |
| Certified copies | 3913 | 1050 |
| Charter | 3914 | 1051 |
| Co-operative credit as- | | |
| sociations | 2511-12 | 658 |
| Enumeration | 3914 | 1051 |
| Farmers' co-operative | | |
| societies | 2517 | 660 |
| Foreign corporations | 3915 | 1053 |
| Marketing associations | 5764 | 1624 |
| Railroad equipment | | |
| contracts | 5490 | 1548 |
| Record of | 3913 | 1050 |
| Warehouses | | |
| 5581, 5611 | 1570, | 1581 |
| Foreign corporations: | | |
| Charter amendments | 1537 | 450 |
| Fees | 3914-5 | 1051 |
| Permit | 1529 | 449 |
| Franchise taxes | 7084 | 2045 |
| Gross receipts permit | 7080-82 | 2043 |
| Humane Society report | 4600 | 1262 |
| Intangible Tax Board | 7098 | 2052 |
| International trade com- | | |
| panies | 1527 | 448 |
| Legislature, Organizing | 5424 | 1528 |
| Loan corporation report | 2505 | 657 |
| Non-partisan primary | 3159 | 873 |
| Notaries public | 5951 | 1702 |
| Officers' reports | 13 | 5 |
| Official publications | 29 | 8 |
| Prison Commissioner's | | |
| bond | 6169 | 1754 |
| Public utility reports | 1441 | 428 |
| Railroad bonds | 6528 | 1862 |
| Railroad charter | 6264 | 1785 |
| Railroad stock | 6301-02 | 1794 |

| | Article. | Page. | | Article. | Page. |
|---------------------------------|-----------|-------|-----------------------------|---------------|-----------|
| SECRETARY OF STATE— | | | SEPARATE COACHES— | | |
| Continued. | | | General provisions | 6417 | 1825 |
| Railway equipment con- | | | SEPARATE PROPERTY— | | |
| tracts | 5490 | 1548 | Control after death | 3298 | 2388 |
| Salary | 6813 | 1952 | Conveyance of wife's | 1299 | 391 |
| Sale of laws | 4337 | 1155 | Homestead after death | 3498 | 915 |
| Water-users associations | 7586 | 2195 | Husband's | 4613 | 1265 |
| SECURITY— | | | Recovery, parties | 1983 | 542 |
| Bank | 437 | 171 | Registration of wife's | 6647 | 1894 |
| Costs of suit | 2051 | 557 | Suits affecting, parties | 1983-5 | 542 |
| SEDUCTION— | | | Wife's | 4614 | 1265 |
| Divorce granted for | 4630 | 1269 | SEQUESTRATION— | | |
| Suits for damages | 5524(2) | 1558 | Applicant's affidavit | 6841 | 1961 |
| SEEDS— | | | Bond of applicant | 6843 | 1961 |
| Agricultural | 83 | 26 | Claim, On unmatured | 6844 | 1961 |
| Weights, standard | 5734 | 1632 | Grounds for issuance | 6840 | 1960 |
| SEIZURE— | | | Issuance | 6840 | 1960 |
| Cotton salvage | 8324 | 2418 | Issuance on Sunday | 1974 | 540 |
| Distress warrant | 5227 | 1467 | Perishable goods | 6859 | 1964 |
| Game | 4038 | 1099 | Petition | 6842 | 1961 |
| Infected bees | 553 | 201 | Replevy | 6849-59 | 1962 |
| Liquor | 5112 | 1431 | Sale | 6859-64 | 1964 |
| Stock, unbranded | 6981 | 1998 | Venue for damages | 1995(8) | 544 |
| Taxes, For | 7272 | 2112 | Writ, requisites | 6845 | 1961 |
| SENATE— | | | SET-OFF— | | |
| Appointments confirmed | | | Certiorari to justice court | 958 | 285 |
| by: | | | Pleading | 2015 | 551 |
| Adjutant General | 5787 | 1631 | Set-offs allowed | 2017 | 551 |
| Banking Commissioner | 342 | 150 | SEWAGE— | | |
| Board of Control | 601 | 212 | City regulation | 1076 | 321 |
| Commission of Appeals | 1781 | 506 | SEWER COMPANIES— | | |
| Health Officer, State | 4414 | 1173 | City regulation | 1119 | 335 |
| Highway Commission | 6664 | 1898 | Eminent domain | 1439 | 427 |
| Insurance Commission | 4876 | 1354 | Judicial regulation | 1125 | 337 |
| Insurance, Commission- | | | Reports | 1441 | 428 |
| er of | 4679 | 1284 | SHEEP— | | |
| Junior A. & M. Board | 2620 | 694 | Dip | 7031 | 2016 |
| Library Commission | 5434 | 1531 | Free range election | 6930 | 1983 |
| Live Stock Sanitary | | | Importing | 7038 | 2018 |
| Commission | 7009 | 2007 | Quarantine | 7020 | 2012 |
| Market and Warehouse | | | Shearing | 7037 | 2018 |
| Commissioner | 5562 | 1566 | SHERIFFS— | | |
| Notaries public | 5949 | 1702 | Accounts | 1616 | 471 |
| Pilot boards | 8264 | 2381 | Arms, Collect | 5853 | 1648 |
| Prison Commission | 6168 | 1754 | Attachment | 286 | 138 |
| Prison Supervisors | 6202 | 1766 | Automobile | 3899 | 1045 |
| Prosecuting attorneys, | | | Bond | 6866-8 | 1966 |
| State | 1811 | 510 | Collections report | | |
| Rate Making Board | 2540 | 668 | | 1617, 3897 | 471, 1044 |
| Reclamation Engineer | 7960 | 2294 | Conveyances by | 1295 | 390 |
| Regents, college | 2907 | 796 | Costs collected by | 2054-5 | 558 |
| Secretary of State | 4330 | 1153 | Courthouse, control | 6872 | 1967 |
| Tax Commissioner | 7098 | 2051 | Damage suit against | 1988 | 542 |
| Vacancies | 19 | 6 | Deputies | 6869 | 1967 |
| Water Engineers, Board | | | Election | 6865 | 1966 |
| of | 7468 | 2171 | Election supplies | 2992 | 827 |
| Certificates of election | 3038 | 838 | Election writs, service | 2948 | 813 |
| Impachment proceedings | 5963 | 1707 | Escheat proceedings | 3281-82 | 919 |
| Senatorial districts | 193-194 | 69 | Execution, duties | 3785-3828 | 1018 |
| Time of meeting | 5422 | 1528 | Failure to qualify | 6867 | 1966 |
| SENATORS, UNITED STATES— | | | Fees | 3933-34, 2995 | 1026, 828 |
| Election | 3086-3099 | 851 | | | |

INDEX TO CIVIL STATUTES.

2521

| | Article. | Page. |
|-----------------------------|-------------|------------|
| SHERIFFS—Continued. | | |
| Fees, maximum | 3883 | 1039 |
| Garnishment | 4083 | 1109 |
| Guards | 6871 | 1967 |
| Hide inspection | 6972 | 1996 |
| Homestead designation | 3854 | 1030 |
| Impounding stock | 6965 | 1994 |
| Injunction, service | 4655 | 1276 |
| Jail duties | 5116 | 1434 |
| Jury wheel list | 2094 | 570 |
| Legislative process | 6874 | 1968 |
| Levy, bond on | 7403 | 2150 |
| Liquor seizures | 5112 | 1431 |
| Motions against | | |
| | 1910, 1954 | 528, 536 |
| Neglect of duty | 2287 | 609 |
| Oath | 6867 | 1966 |
| Office | 1605 | 468 |
| Party to suit, As | 2024 | 552 |
| Posse | 6876 | 1968 |
| Practicing law | 319 | 143 |
| Process | 6873-7 | 1967 |
| Railroad pass | 4006 | 1087 |
| Removal | 5970, 6868 | 1710, 1966 |
| Rights as surety | 6250 | 1781 |
| Riot, impeding | 5831 | 1643 |
| Tax collections | 7246 | 2103 |
| Tax sales | 7328-30 | 2128 |
| Term | 6865 | 1966 |
| Unfinished business | 6877 | 1968 |
| Vacancy | 2355, 6867 | 628, 1966 |
| SHIPS AND SHIPPING— | | |
| Bills of lading | 885 | 271 |
| Broker's tax | 7047(9) | 2021 |
| Cattle register | 6907 | 1976 |
| Disinfection | 4464 | 1193 |
| Liens on | 5500 | 1552 |
| Marine insurance | 4919 | 1369 |
| Navigation districts | 8198 | 2351 |
| Pilotage | 8274 | 2383 |
| Pilots | 8270 | 2383 |
| Port facilities | 8229 | 2359 |
| Quarantine | 4456-57 | 1193 |
| Railway connections | 6410 | 1822 |
| Stevedores | 5191 | 1457 |
| Tax rendition | 7157 | 2073 |
| Wrecks | 8310-24 | 2416 |
| SHOOTING GALLERIES— | | |
| Tax | 7047(35) | 2021 |
| SHORTHAND REPORTERS— | | |
| Appointment | 2321 | 617 |
| SHOWS— | | |
| Tax | 7047(24-29) | 2021 |
| SIDEWALKS— | | |
| In city | 1015(25) | 301 |
| SIGNATURE— | | |
| Conveyances | 1288 | 389 |
| Defined | 23(6) | 6 |
| Mark, Includes | 23(6) | 6 |
| Proof for record | 6612 | 1885 |
| Wills | 8283 | 2386 |

| | Article. | Page. |
|------------------------------|-----------|-------|
| SIGNS AND SIGNBOARDS— | | |
| County roads | 6732 | 1928 |
| Railroad crossings | 6370 | 1810 |
| SINKING FUNDS— | | |
| Investments authorized | 836 | 254 |
| SKATING RINKS— | | |
| Tax | 7047(34) | 2021 |
| SLANDER— | | |
| Libel | 5430 | 1530 |
| Limitation | 5524 | 1558 |
| Venue | 1995(29) | 544 |
| SLAUGHTER HOUSES— | | |
| City regulation | 1015(8) | 301 |
| Health inspection | 4420 | 1177 |
| Incorporation | 1302(24) | 392 |
| Report | 6904 | 1976 |
| SLEEPING CARS— | | |
| Sanitation | 4477(58) | 1198 |
| Tax | 7047(31) | 2021 |
| SLOT MACHINES— | | |
| Tax | 7047(31) | 2021 |
| SOLDIERS— | | |
| Discrimination against | 5887 | 1666 |
| Limitation of actions | 5518 | 1556 |
| Recording discharge | 1939 | 534 |
| Vote, May not | 2954 | 814 |
| Wills | 8290 | 2387 |
| SOUTHWEST TEXAS | | |
| NORMAL— | | |
| Establishment | 2654 | 705 |
| President | 2839 | 764 |
| SPANISH AMERICAN WAR | | |
| VETERANS— | | |
| Railroad passes | 4006 | 1087 |
| SPEAKER OF THE HOUSE— | | |
| Duties | 5429 | 1529 |
| Election | 5428 | 1528 |
| Election returns to | 3036 | 838 |
| Impeachment proceedings | 5962 | 1705 |
| SPECIAL CHARGES— | | |
| Giving special charges | 2186-2188 | 589 |
| SPECIAL JUDGES— | | |
| Civil Appeals | 1815 | 511 |
| Criminal Appeals | 1803 | 509 |
| County court | 1931-3 | 532 |
| District court | 1885 | 524 |
| Salary | 6821 | 1955 |
| Supreme Court | 1717 | 494 |
| SPECIAL LAWS— | | |
| Passage | 2-9 | 3 |
| Pleading | 2000 | 548 |
| SPECIAL TERMS— | | |
| Commissioners court | 2348 | 625 |
| District court | 1920 | 530 |

| | Article. | Page. | | Article. | Page. |
|--|-----------|-------|---|----------|-------|
| SPECIFIC PERFORMANCE | | | STATE BOARD OF HEALTH— | | |
| Death, After | 3324 | 927 | Appointment | 4414 | 1175 |
| Limitation | 5531 | 1560 | Duties and powers | 4419 | 1176 |
| STANDARDS— | | | Embalming Board | 4576 | 1253 |
| Grades and packs | 109-116 | 36 | Expenses | 4416 | 1253 |
| Surveyor's | 5295 | 1482 | Food and Drug Division | 4465 | 1195 |
| Weights and measures | 5730-34 | 1612 | Inspections | 4420 | 1177 |
| STATE— | | | Investigations | 4421 | 1177 |
| Appropriations, estimates | | | Meetings | 4417 | 1176 |
| for | 688 | 225 | STATE BOARDS AND COMMISSIONS— | | |
| Attorney General for | 4395 | 1224 | Anatomical Board | 4583 | 1255 |
| Budget | 688 | 225 | Banking Board | 439 | 171 |
| Claims against | 4355-7 | 1160 | Bollworm Commission | 75-76 | 24 |
| Costs, security for | 2072 | 560 | Chiropody Examiners | 4568 | 1250 |
| Custody of property | 665 | 221 | Control, Board of | 601 | 212 |
| Escheat | 3272 | 917 | Cotton Board | 5674 | 1596 |
| Flag | 6139 | 1747 | SEVENTY-TWO—Statutes Von | | |
| Forests | 2613 (11) | 691 | Dental Examiners | 4543 | 1242 |
| Injunction to enforce revenue laws | 4669 | 1280 | Depository Board | 2525 | 662 |
| Lands, acquisition of | 5240 | 1779 | Education, Board of | 2664 | 707 |
| Lands, sale | 5306 | 1484 | Embalming | 4576 | 1253 |
| Legislature | 5422 | 1528 | Health, State Board of | 4414 | 1175 |
| Limitation inapplicable | 5519 | 1556 | Highway Commission | 6664 | 1898 |
| Manuscript bonds | 2606 | 689 | Historical Board | 6145 | 1748 |
| Military forces | 5765 | 1625 | Industrial Accident Board | 8307 | 2404 |
| Moneys, custody of | 4374 | 1167 | Insurance Commission | 4876 | 1354 |
| Naval forces | 5891 | 1667 | Law Examiners | 304 | 141 |
| Papers, custody of | 4346 | 1189 | Library Examiners | 1682 | 487 |
| Suit by, official bonds | 1991 | 543 | Library and Historical Commission | 5434 | 1531 |
| Tax sales, bid | 7288 | 2116 | Live Stock Sanitary Commission | 7009 | 2007 |
| Tree | 6143 | 1748 | Medical Examiners | 4495 | 1224 |
| Vehicle registration | 6676 | 1901 | Mining Board | 5892 | 1668 |
| Waters, use of | 7489 | 2174 | Naval Board | 5891 | 1667 |
| STATE BANKING BOARD— | | | Nurse Examiners | 4513 | 1233 |
| Application for protection | 440 | 171 | Optometry Board | 4553 | 1244 |
| Application for charter | 379 | 157 | Pardon Board | 6203 | 1766 |
| State Banking Board | 439 | 171 | Parks Board | 6067 | 1733 |
| Domicile and fixtures | 512 | 190 | Pharmacy | 4529 | 1237 |
| Ratio of capital to deposits | 506 | 188 | Plant Breeder Examiners | 56-67 | 17 |
| May incorporate | 2463 | 649 | Prison Commission | 6168 | 1754 |
| STATE BOARD OF CONTROL— | | | Prison Supervisors | 6202 | 1766 |
| Eleemosynary institutions | 690-695 | 225 | Public Accountancy | 31-41 | 10 |
| Engineering Division | 679-687 | 223 | Railroad Commission | 6447 | 1835 |
| Estimates and appropriations | 688-689 | 225 | Rate Making Board | 2540 | 668 |
| General provisions | 601-606 | 212 | Tax Board, Ad Valorem | 7041 | 2099 |
| Printing Division | 607-630 | 212 | Tax Board, Intangible | 7098 | 2051 |
| Public buildings and grounds | 665-678 | 220 | Teachers' Examiners | 2877 | 780 |
| Purchasing Division | 631-664 | 217 | Textbook Commission | 2839 | 764 |
| STATE BOARD OF EDUCATION— | | | Veterinary Board | 7448 | 2164 |
| A. & M. College fund | 2615 | 693 | Water Engineers | 7468 | 2171 |
| Bonds, purchase | 2670-5 | 708 | STATE CHEMIST— | | |
| Building specifications | 2922 | 801 | Commercial fertilizers | 94-108 | 29 |
| Cotton classing | 2915 | 798 | STATE COLONY FOR FEEBLE MINDED— | | |
| Duties | 2665-9 | 707 | Commitment | 3871 | 1035 |
| Organization | 2664 | 707 | Establishment | 3233 | 902 |
| Textbooks | 2862 | 774 | | | |

| Article. Page. | | Article. Page. | |
|--|------------|----------------|--|
| STATE DEPARTMENTS— | | | |
| Budgets and appropriations | 688 | 225 | |
| Salaries | 6813-15 | 1952 | |
| Supplies for | 634 | 217 | |
| STATE DEPOSITORIES— | | | |
| Application for deposits | 2527 | 663 | |
| Bids | 2526 | 662 | |
| Contract cancelled | 2537 | 667 | |
| Deposit | 2530 | 664 | |
| Depository Board | 2525 | 662 | |
| Failure | 2568 | 678 | |
| Interest | 2539 | 667 | |
| Qualification of depositories | 2529 | 663 | |
| Reserve depositories | 2533 | 665 | |
| Withdrawals | 2534 | 666 | |
| STATE ENTOMOLOGIST— | | | |
| Inspection of bees | 549 | 200 | |
| STATE EXPERIMENT STATIONS— | | | |
| Agricultural farms | 136 | 49 | |
| Apiary | 565 | 203 | |
| Director's duties | 3880 | 1038 | |
| General provisions | 136-149 | 49 | |
| STATE FORESTER— | | | |
| Appointment | 2613(10) | 691 | |
| STATE FIRE MARSHAL— | | | |
| Appointment | 4877 | 1355 | |
| Deputy | 4898 | 1364 | |
| Duties | 4896 | 1362 | |
| Fire escape inspection | 3971 | 1079 | |
| Powers | 4897 | 1363 | |
| STATE HEALTH OFFICER— | | | |
| Appointment | 4414 | 1175 | |
| Assistants | 4418 | 1176 | |
| Bond | 4415 | 1175 | |
| Consumptives, indigent | 4440 | 1183 | |
| Food and drug director | 4465 | 1195 | |
| Lepers | 4439 | 1183 | |
| Meetings | 4417 | 1176 | |
| Railroad pass | 4006 | 1087 | |
| Salary | 6813 | 1952 | |
| Tubercular patients | 3245-48 | 905 | |
| Water inspection | 4444 | 1185 | |
| STATE HIGHWAY DEPARTMENT— | | | |
| Commission | 6664 | 1898 | |
| Convict labor | 6200 | 1765 | |
| Engineer | 6669 | 1899 | |
| General provisions | 6663-97 | 1898 | |
| STATE INSTITUTIONS— | | | |
| Educational | 2584-2654 | 683 | |
| Eleemosynary | 3174-3263 | 883 | |
| Penal | 6166 | 1754 | |
| Supplies for | 634 | 217 | |
| STATE INSURANCE COMMISSION— | | | |
| Appointment | 4876 | 1354 | |
| Compensation | 4904-5 | 1366 | |
| STATE INSURANCE COMMISSION—Continued. | | | |
| Complaints | 4892-3 | 1360 | |
| Expenditures | 4902 | 1365 | |
| Fire Marshal | 4877, 4896 | 1355, 1363 | |
| Hazard, Reducing | 4886 | 1358 | |
| Policies | 4888-91 | 1359 | |
| Rates | 4878-87 | 1355 | |
| Rebates | 4894 | 1362 | |
| Secretary | 4877 | 1355 | |
| Tax | 4906, 4902 | 1366, 1365 | |
| Workmen's compensation insurance | 4906-17 | 1366 | |
| STATE LIBRARY— | | | |
| Archives of | 256 | 130 | |
| Control | 5435 | 1531 | |
| Employes | 5445 | 1534 | |
| Legislative reference section | 5444 | 1534 | |
| Librarian: | | | |
| Appointment | 5440 | 1532 | |
| Duties | 5441 | 1532 | |
| Fees | 3913 | 1050 | |
| Library Board | 1682 | 487 | |
| Salary | 6813 | 1952 | |
| Seal | 5437 | 1531 | |
| STATE MINING INSPECTOR— | | | |
| Appointment | 5893-94 | 1668 | |
| Bond | 5900 | 1669 | |
| Duties | 5898 | 1669 | |
| Salary | 6813 | 1952 | |
| STATE OFFICERS— | | | |
| Bonds of | 5998 | 1715 | |
| Fees | 3913-22 | 1050 | |
| Impeachment | 5961 | 1704 | |
| Ineligibility | 2927 | 807 | |
| Mandamus by Supreme Court | 1733, 1735 | 498 | |
| Nepotism | 5996 | 1714 | |
| Oath | 16 | 5 | |
| Removal by Governor | 5967 | 1709 | |
| Salaries | 6813 | 1952 | |
| Suits on bonds | 1989-1990 | 542 | |
| STATE ORPHANS HOME— | | | |
| Admission to | 3211 | 895 | |
| Management | 3174 | 883 | |
| Removal of child | 3212 | 895 | |
| STATE PARKS— | | | |
| Board | 6067 | 1733 | |
| Control of | 677 | 223 | |
| Gonzales | 6074 | 1734 | |
| San Jacinto | 6071 | 1734 | |
| Washington | 6076 | 1735 | |
| STATE PROSECUTING ATTORNEY— | | | |
| Appointment | 1811 | 510 | |
| Salary | 6813 | 1952 | |
| STATE RAILROAD— | | | |
| Laws affecting | Sec. 13 | 2420 | |

| | Article. | Page. | | Article. | Page. |
|----------------------------------|-----------|------------|--------------------------------|------------|------------|
| STATE RANGERS— | | | STATE TREASURER— | | |
| General provisions | 6560-73 | 1873 | Continued. | | |
| STATE RECLAMATION | | | Insurance securities | 4693 | 1290 |
| ENGINEER— | | | Land office accounts | 5319 | 1489 |
| Advice | 7967-8-9 | 2296 | Paying salaries | 6827 | 1956 |
| Appointment | 7960 | 2294 | Penitentiary audit | 6177 | 1757 |
| District data | 7970 | 2296 | Penitentiary revenues | 6176 | 1756 |
| Expenditures | 7971 | 2296 | Public land revenues | | |
| Levee plans, Approve ..... |  |  | ..... | 5347, 5364 | 1506, 1511 |
| ..... | 7997,8033 | 2308, 2325 | Railroad penalties | 6279 | 1789 |
| Overflow lands | 7962 | 2295 | Report of | 4373 | 1166 |
| Powers | 7961 | 2295 | Salaries, paying | 6827-8 | 1956 |
| Roads on levees | 8023 | 2320 | Salary | 6813 | 1952 |
| Salary | 6813 | 1952 | School fund | 2837-8 | 763 |
| Surveys | 7963 | 2295 | Tax Board, Ad Valorem | 7041 | 2019 |
| STATE SUPERINTENDENT | | | Taxes, Franchise | 7084 | 2045 |
| OF PUBLIC INSTRU- | | | Taxes, Gross receipts | 7058 | 2031 |
| CTION— | | | Taxes, Inheritance | 7143 | 2066 |
| Ballot for county trustees | | | Taxes, Intangible assets | 7113 | 2058 |
| ..... | 2676 | 710 | Term | 4367 | 1165 |
| Building specifications | 2922 | 801 | Trust deposit | 4983 | 1391 |
| Certificates, teachers' | 2877 | 780 | Unclaimed estate funds | 3658 | 990 |
| Cotton classing | 2915 | 798 | University, treasurer of | 2584 | 683 |
| Direct county superin- | | | STATE TREE— | | |
| tendent | 2690 | 715 | The pecan tree | 6143 | 1748 |
| Distribute textbooks | 2864 | 774 | STATE TUBERCULOSIS | | |
| Election | 2655 | 705 | SANTARIUM— | | |
| General duties | 2656 | 705 | Admission | 3240 | 903 |
| Humane Society | 4597 | 1262 | STATE UNIVERSITY— | | |
| Member Textbook Com- | | | Admission fee | 2587 | 683 |
| mission | 2839 | 764 | Donations | 2595 | 685 |
| Prorate funds | 2663 | 707 | Funds | 2590 | 684 |
| Report | 2660 | 706 | Lands | 2596 | 686 |
| Salary | 6813 | 1952 | Regents, | 2584, 3261 | 683, 911 |
| Scholastic census | 2820 | 759 | School of Mines | 2633 | 698 |
| Secretary of Board | 2664 | 707 | STATEMENT OF FACTS— | | |
| STATE TAX COMMIS- | | | Agreed statement | 2244 | 601 |
| SIONER— | | | Approval by successor | 2288 | 609 |
| Appointment | 7098 | 2051 | Bill of exceptions refer- | | |
| Bond | 7099 | 2052 | ring to | 2237 | 598 |
| Duties | 7101-16 | 2052 | Costs for preparing | 2325 | 618 |
| Salary | 6813 | 1952 | Disagreement as to | 2240 | 600 |
| STATE TEXTBOOK | | | Duplicate statement | 2239 | 599 |
| COMMISSION— | | | Filing | 2245-6 | 601 |
| Appointment | 2839 | 764 | Independent statement | 2242 | 600 |
| Contracts for books | 2841-61 | 765 | Party unable to pay | 2241 | 600 |
| STATE TREASURER— | | | Substance and approval | 2243 | 600 |
| Asylum funds | 3180 | 884 | Transcript | 2238 | 599 |
| Banking Board | 439 | 171 | STATISTICS— | | |
| Bond | 4368-9 | 1165 | Agricultural | 51 | 14 |
| Bond Investment Company | | | Child and animal protec- | | |
| deposit | 696 | 228 | tion | 4600 | 1262 |
| Building inspection fund | 687 | 224 | Historical | 5435 | 1531 |
| Casualty insurance de- | | | Labor | 5145 | 1444 |
| posits | 5003 | 1399 | Vital | 4477 (34) | 1198 |
| Depository Board | 2525 | 662 | STATUTES— | | |
| Deposits rendered | 7158 | 2073 | Construed how | 10-11 | 4 |
| Duties, general | 4370-93 | 1166 | Evidence | 3718 | 1001 |
| Election | 4367 | 1165 | Repealing clause | Sec. 2-3 | |
| Fees | 3913 | 1050 | Revised, distribution of | 4338 | 1155 |
| General provisions | 4367-93 | 1165 | | | |

| | Article. | Page. |
|-------------------------------------|------------|------------|
| STAY OF EXECUTION— | | |
| Injunction to stay..... | 4646 | 1274 |
| Supersedeas | 2275 | 607 |
| STENOGRAPHERS— | | |
| Duties | 2324 | 618 |
| Official | 2321 | 617 |
| STEVEDORES— | | |
| General provisions | 5191-5 | 1457 |
| STILLBORN— | | |
| Report of | 4477 (50) | 1198 |
| STOCKHOLDER'S LIABILITY— | | |
| Bank | 455, 535 | 175, 196 |
| In general | 1345 | 408 |
| Joint stock company | 6137 | 1746 |
| Partnerships, limited | 6111 | 1742 |
| Railroad | 6294, 6299 | 1793, 1794 |
| Trust and surety com- pany | 1344 | 408 |
| STOCKHOLDERS— | | |
| By-laws, change | 1326 | 405 |
| Decrease of capital | 1332-33 | 406 |
| Directors elect | 1320 (8) | 404 |
| Increase of capital | 1330 | 406 |
| Married women | 1306 | 401 |
| STOCK LAWS— | | |
| Bill of sale | 6903, 6983 | 1975, 1999 |
| Brands: | | |
| Age of stock for..... | 6896 | 1974 |
| Counterbrand on remov- al | 6893 | 1973 |
| Counterbranding | 6998 | 2003 |
| County | 6891 | 1971 |
| Disputed | 6897 | 1974 |
| Ear mark | 6890 | 1971 |
| Evidence | 6899 | 1974 |
| Minor's | 6895 | 1974 |
| Number of | 6997 | 2003 |
| Owners' | 6890-2 | 1971 |
| Recorded once | 6995 | 2002 |
| Branded, when | 6996 | 2003 |
| Registration | 6898-9 | 1974 |
| Road | 6986 | 2000 |
| Breeder's lien | 5501 | 1552 |
| Cattle: | | |
| Brands and marks..... | 6890-9 | 1971 |
| Counterbranding | 6998 | 2003 |
| Export to Mexico..... | 6987 | 2000 |
| Herds in transit | 6988 | 2000 |
| Hides | 6989-93 | 2000 |
| Importation | 6990 | 2001 |
| Inspection | 6978 | 1997 |
| Road brand | 6986 | 2000 |
| Running at large | 6954 | 1990 |
| Sale | 6903, 6983 | 1975, 1999 |
| Tick dipping | 7032-3 | 2017 |
| Shipment | 6905-7 | 1976 |
| Slaughter | 6908 | 1977 |
| Stolen, notice | 6991 | 2001 |
| Scabies dipping | 7021-2 | 2013 |
| Unbranded, seizure | 6981-2 | 1998 |
| Charbon districts | 4447 | 1189 |

| | Article. | Page. |
|-------------------------------|------------|------------|
| STOCK LAWS—Continued. | | |
| Counterbranding | 6893, 6998 | 1973, 2003 |
| Dip, Stock: | | |
| Scabies | 7031-3 | 2016 |
| Ticks | 7021 | 2013 |
| Estrays: | | |
| Commissioner to return | 6915 | 1979 |
| Notice of estray | 6927 | 1981 |
| Owner may claim | 6913 | 1979 |
| Property in | 6917 | 1980 |
| Sale | 6916-24 | 1980 |
| Taker up, rights | 6921-2 | 1981 |
| Taking up | 6911-2 | 1978 |
| Exports: | | |
| Stock inspected | 7001 | 2004 |
| To Mexico | 6987 | 2000 |
| Farcy | 6900, 7014 | 1974, 2010 |
| Fences: | | |
| Insufficient | 6943 | 1987 |
| Lawful | 6942 | 1986 |
| Glanders | 6900, 7014 | 1974, 2010 |
| Hides: | | |
| Inspection | 6978 | 1997 |
| From Mexico | 6989 | 2000 |
| Sale | 6984, 6993 | 1999, 2002 |
| Seizure | 6981-2 | 1998 |
| Stolen, notice | 6991 | 2001 |
| Unbranded | 6981-2 | 1998 |
| Hogs: | | |
| Exempt from inspection | 6979 | 1998 |
| Free range Limited..... | 6947 | 1988 |
| Running at large | 6930 | 1983 |
| Hoof and mouth disease..... | 7012 | 2008 |
| Horses and mules: | | |
| Dip for ticks | 7021 | 2013 |
| Imported | 6990 | 2001 |
| Inspection | 6978 | 1997 |
| Running at large | 6954 | 1990 |
| Imports: | | |
| Hides from Mexico | 6989 | 2000 |
| Stock inspected | 6990 | 2001 |
| Stolen hides or animals | 6991 | 2001 |
| Injuring stock | 6943 | 1987 |
| Inspection: | | |
| Animals subject to..... | 6979-9 | 1998 |
| Certificate of | 6985 | 1999 |
| Export, Before | 7001 | 2004 |
| Fees | 7008 | 2006 |
| Hides subject to..... | 6978-9 | 1997 |
| Inspector | 6972-7 | 1996 |
| Local option | 7006 | 2006 |
| Personal | 7000 | 2003 |
| Seizure | 6981-2 | 1998 |
| Slaughter house | 6908-9 | 1977 |
| Tick eradication | 7019 | 2012 |
| Limited range: | | |
| Cattle | 6954 | 1990 |
| Fence, Insufficient | 6943 | 1987 |
| Fence, Lawful | 6942 | 1986 |
| Free range limited..... | 6930 | 1983 |

| Article. Page. | | Article. Page. | |
|---------------------------------|-------------------------|-------------------------------|---------------------|
| STOCK LAWS—Continued. | | STOCK RAISING— | |
| Hog law | 6930 1983 | Corporations | 1302(22-4) 392 |
| Horse law | 6954 1990 | Lien, breeder's | 5501 1552 |
| Injuring stock | 6943 1987 | Water supply | 7490 2174 |
| Sheep, goats and hogs | 6930 1983 | STOCKS AND BONDS— | |
| Live Stock Sanitary Commission: | | Blue Sky Law | 579 207 |
| Appointment | 7009 2007 | Brokers | 1513-20 444 |
| County veterinarian | 7029 2016 | Corporations generally | 1321, 1330 405, 406 |
| Duties | 7010 2007 | Execution on | 3795 1020 |
| Quarantine districts | 7011, 7026-8 2007, 2014 | Garnisheeing stock | 4080 1108 |
| Railroads, duty | 7038-40 2018 | Misrepresentations | 4004 1086 |
| Scabies dipping | 7030-7 2016 | Railroad issues | 6520 1859 |
| Tick dipping | 7021-5 2013 | Tax exemptions | 7163 2075 |
| Quarantine: | | Tax, Inheritance | 7117 2060 |
| Charbon districts | 4447 1189 | Tax, Intangible assets | 7105 2053 |
| Districts | 7011 2007 | Tax rendition | 7162(37-8) 2074 |
| Investigation before | 7013 2009 | STOLEN PROPERTY— | |
| Powers of Commission | 7010 2007 | Hides and animals | 6991 2001 |
| Sheep | 7020 2012 | STORAGE— | |
| Tick | 7015-6 2010 | Assessment for taxes | 7243 2102 |
| Zones | 7016 2011 | Freight by railroads | 6394 1817 |
| Railroad cattle-guards | 6400 1818 | Warehouses, public | 5570-7 1568 |
| Road brand | 6986 2000 | Water | 7490 2174 |
| Running at large: | | STORMS— | |
| Cattle | 6954 1990 | County emergency con- | |
| Hogs, sheep and goats | 6930 1983 | tracts | 2368 630 |
| Horses and mules | 6954 1990 | Funding indebtedness | 796 245 |
| Sale of stock 6903, 6983 | 1903, 1999 | Insurance against | 4933 1375 |
| Sheep and goats: | | STORM WATERS— | |
| Dip solution | 7031 2016 | Diversion | 7496-7 2176 |
| Exempt from inspection | 6979 1998 | Impounding | 7502 2177 |
| Importing, unlawfully | 7038 2018 | Use | 7548 2186 |
| Quarantine | 7020 2012 | STREET RAILWAYS— | |
| Running at large | 6930 1983 | Bus lines | 6548 1869 |
| Scabies | 7030-7 2016 | Capital stock | 1311 402 |
| Shearing | 7036 2018 | City regulation | 1015(26) 301 |
| Shipment: | | City tax | 1015(34) 301 |
| Bill of sale | 6903, 6983 1975, 1999 | Fares, Half | 6544 1867 |
| Destination, change | 7004 2005 | Incorporation | 1302(67) 392 |
| Export to Mexico | 6987 2000 | Injuriu sto employes | 6432 1831 |
| List filed | 6906 1976 | Interurban using tracks | 6540 1866 |
| Record | 6905 1976 | Merger | 6543 1867 |
| Register of cattle | 6907 1976 | Passes prohibited | 4005 1087 |
| Road brand | 6986 2000 | Powers | 6545 1868 |
| Seizure | 7002 2004 | Reports | 1441 428 |
| Shipping accommodations | 6361 1808 | Sale of properties | 1268 380 |
| Slaughter: | | Sanitation | 4477(58) 1198 |
| Butchers' bond | 6908 1977 | Separate coaches | 6417 1825 |
| Butchers' report | 6904 1976 | Tax, Gross receipts | 7067 2038 |
| Register | 6907 1976 | Tax, Occupation | 7047(21) 2021 |
| Tax rendition | 7155 2073 | STREETS— | |
| Tick eradication: | | City control | 1016, 1082 306, 322 |
| Dip solution | 7021 2013 | Improvements, city | 1086 323 |
| Election for | 7015 2010 | STRIKES— | |
| Inspection of premises | 7025 2014 | Authority of unions | 5153 1446 |
| Inspectors | 7019 2012 | Blacklisting | 5196 1458 |
| Quarantine 7018, 7026 | 2011, 2014 | Employment agents' duty | 5221 1465 |
| Zones | 7016 2011 | Strike breakers | 5207 1460 |
| Unbranded cattle | 6981-2 1998 | | |

INDEX TO CIVIL STATUTES.

2527

| | Article. | Page. |
|------------------------------|------------|----------|
| SUBCONTRACTORS— | | |
| Liabie for injuries | 8307(6) | 2404 |
| Liens: | | |
| Notice to owner | 5461 | 1541 |
| Oil operations | 5474 | 1544 |
| Securing | 5453 | 1538 |
| SUBPOENAS— | | |
| Form | 3705 | 999 |
| Issuance | 3704 | 999 |
| Service | 3706 | 999 |
| SUBURBAN RAILROADS— | | |
| Capital Stock | 1311 | 402 |
| Incorporation | | |
| 1302(67), 6262(2) | 392, | 1784 |
| Powers | 6545 | 1868 |
| SUCCESSOR— | | |
| Public officer, Revival | | |
| aganist | 2269 | 606 |
| To trial judge | 2288 | 609 |
| SUFFRAGE— | | |
| Absentee voting | 2956 | 815 |
| How to vote | 2981 | 825 |
| Majority, Reaching | 2969 | 821 |
| Poll tax | 2959 | 818 |
| Qualifications | 2954-55 | 814 |
| When to vote | 2930, 3102 | 808, 857 |
| Where to vote | 2936 | 810 |
| SUGAR CANE COMPANIES— | | |
| Incorporation | 1302(25) | 392 |
| SUICIDE— | | |
| Estate of | 2574 | 680 |
| SUITS— | | |
| Abatement | 2078 | 561 |
| Against non-residents | 1975 | 540 |
| Against outgoing officers | 2269 | 606 |
| Appeal | 2249 | 602 |
| Consolidation | 2160 | 584 |
| Costs | 2051 | 557 |
| Discontinuance | 2088 | 562 |
| Injunctions | 4642 | 1273 |
| Institution of | 1971 | 540 |
| Judgment | 2211 | 593 |
| Jury | 2123 | 578 |
| Mandamus | 2328 | 619 |
| Motions | 2291 | 610 |
| New trials, motion | 2232 | 597 |
| Parties to | 1980 | 541 |
| Pleadings | 1997 | 547 |
| Process | 2021 | 552 |
| Receivers | 2293 | 611 |
| Trial | 2152 | 583 |
| Venue for | 1995 | 544 |
| Witnesses | 3704 | 999 |
| SULPHUR— | | |
| Public lands, mining | 5388 | 1519 |
| Tax | 7066 | 2037 |
| SUMMONS— | | |
| Jury | 2117 | 577 |
| Road hands | 6725 | 1926 |
| Talesmen | 2141 | 582 |

| | Article. | Page. |
|---------------------------------------|----------|-------|
| SUNDAY— | | |
| Suits commenced on | 1974 | 540 |
| Train schedules | 6479 | 1846 |
| SUPERSEDEAS— | | |
| Bond for | 2270 | 606 |
| Certiorari operates as a | 935 | 283 |
| Execution | 3772 | 1015 |
| Stays judgment | 2275 | 607 |
| SUPERVISORS OF ELEC- TION— | | |
| Agreed | 2942 | 812 |
| Appointed | 2941 | 811 |
| Qualifications | 2939 | 811 |
| SUPPLIES— | | |
| Election | 2992 | 827 |
| Military | 5798 | 1634 |
| Mines, In | 5918 | 1673 |
| State, purchase | 634 | 217 |
| SUPREME COURT— | | |
| Adjournment | 1727 | 496 |
| Bailiff | 1723 | 496 |
| Briefs | 1757 | 502 |
| Certified questions | 1758 | 502 |
| Clerk: | | |
| Appointment | 1718 | 494 |
| Deputies | 1721 | 495 |
| Duties | 1720 | 495 |
| Execution | 1777 | 505 |
| Fees | 3923 | 1056 |
| Money due other clerk | 1780 | 505 |
| Process | 1761 | 502 |
| Vacancy | 1719 | 495 |
| Commission of Appeals | 1781 | 506 |
| Contempt | 1736 | 498 |
| Habeas corpus | 1737 | 498 |
| Judges: | | |
| Appointment | 1715 | 494 |
| Disqualifications | 1717 | 494 |
| Habeas corpus | 1737 | 498 |
| Practicing law | 319 | 143 |
| Qualifications | 1716 | 494 |
| Salary | 6819 | 1954 |
| Judgment | 1766-80 | 503 |
| Jurisdiction | 1728 | 497 |
| Jurisdiction for removal | 5966 | 1709 |
| Library | 1722 | 495 |
| Licensing attorneys | 306 | 141 |
| Mandamus | 1734-5 | 498 |
| Officers, May remove | 5965 | 1709 |
| Printing reports of | 620-628 | 215 |
| Proceedings | 1755-65 | 501 |
| Rehearing | 1762-5 | 503 |
| Reporter | 1724 | 496 |
| Reports | 1725 | 496 |
| Rules | 1730-1 | 497 |
| Seal | 1720(2) | 495 |
| Stenographer | 1723 | 496 |
| Terms | 1726-7 | 496 |
| Transfers of causes | 1738 | 498 |
| Writ of error | 1739-54 | 499 |
| Writs | 1733-7 | 498 |

| | Article. | Page. | | Article. | Page. |
|------------------------------------|-----------|-------|----------------------------------|-------------|------------|
| SUPREME JUDICIAL DISTRICTS— | | | TAX ASSESSOR, COUNTY— | | |
| Enumeration | 198 | 76 | Continued. | | |
| SURETIES— | | | Neglect of duty | 7225 | 2097 |
| Discharge | 6245 | 1780 | Oath | 7214 | 2094 |
| Discharge, sureties on bond | 6001 | 1715 | Office | 1605 | 468 |
| Levy on | 6247 | 1780 | Rendition | 7145-76 | 2067 |
| Rights | 6248 | 1780 | Statement to Comptroller | 7042 | 2019 |
| Who are | 6252 | 1781 | Supplemental roll | 7209 | 2092 |
| SURETY COMPANIES— | | | Supplies | 7195 | 2085 |
| Agents | 4977 | 1389 | Term | 7177 | 2081 |
| Bond | 4970 | 1386 | Unrendered rolls | 7354-58 | 2140 |
| Capital stock | 4969 | 1384 | Water control districts | 7871 | 2277 |
| Certificate | 4972-3 | 1388 | TAX COLLECTOR, COUNTY— | | |
| Default, claims paid | 4976 | 1389 | Accounts | 1610-15 | 470 |
| General provisions | 4969-81 | 1384 | Acting for school district | 2792 | 748 |
| Penalty | 4978 | 1390 | Back taxes | 7304 | 2120 |
| Powers | 4969 | 1384 | Bond | 7247-51 | 2103 |
| Requirements | 4971 | 1386 | Books furnished | 7259 | 2106 |
| Revocation of authority | 4980 | 1390 | City taxes | 7359 | 2141 |
| Special powers | 4982 | 1390 | Collection date | 7255 | 2105 |
| Stockholder's liability | 1344 | 408 | Collection report | 3897 | 1044 |
| SURFACE WATERS— | | | Delinquent taxes: | | |
| Diversion | 7496-7 | 2176 | Collections | 7264 | 2110 |
| Impounding | 7502 | 2177 | Credit for | 7271 | 2112 |
| SURGEONS— | | | Execution | 7266 | 2110 |
| Registration | 4498 | 1225 | General provisions | 7319-45 | 2123 |
| Veterinary | 7448 | 2164 | List | 7263 | 2110 |
| SURVEYORS— | | | Property liable | 7272 | 2112 |
| County | 5283 | 1480 | Delinquents | 7263-4 | 2110 |
| Licensed land | 5271 | 1477 | Deposit collections | 2549 | 671 |
| SURVEYS, PUBLIC— | | | Deputies | 7252 | 2105 |
| General provisions | 5299-5305 | 1482 | Drainage district | 8143 | 2339 |
| Measure, standards of | 5730 | 1612 | Election | 7245 | 2103 |
| SWAMPS— | | | Fees | 3939-40, | |
| Reclamation | 7962 | 2295 | 7209, 7331 | 1065, 2092, | 2130 |
| SWITCHES— | | | Fees, maximum | 3883 | 1039 |
| Connections | 6511 | 1857 | General provisions | 7245-98 | 2103 |
| Derailing | 6374 | 1811 | Inheritance taxes | 7132-42 | 2064 |
| Interlocking | 6502 | 1855 | Intangible taxes | 7113 | 2058 |
| Lights at | 6373 | 1811 | Irrigation district duties | 7679, 7611 | 2218, 2200 |
| T. | | | Jury wheel list | 2094 | 570 |
| TALESMEN— | | | Levee districts | 8014 | 2315 |
| Summoning | 2141 | 582 | Motor registration: | | |
| TAX ASSESSOR, COUNTY— | | | Delinquent | 6697 | 1906 |
| Acting for school district | 2792 | 748 | Deposit funds | 6691 | 1905 |
| Bond | 7178-80 | 2082 | Fee | 6692 | 1905 |
| City taxes | 7359 | 2141 | Issuing license | 6675, 6690 | 1901, 1905 |
| Collection report | 3897 | 1044 | Occupation taxes: | | |
| Deputies | 7181-2 | 2082 | Bankrupt merchants | 7048 | 2027 |
| Duties | 7184-7244 | 2083 | Books, Record | 7050 | 2028 |
| Election | 7177 | 2081 | Collection | 7052 | 2029 |
| Fee | 3937-38 | 1065 | Receipts | 7053 | 2029 |
| Fees, maximum | 3883 | 1039 | Office | 7256 | 2105 |
| Intangible taxes | 7113 | 2058 | Payment of money | 7294-7 | 2118 |
| Jury wheel list | 2094 | 570 | Poll tax: | | |
| Levee districts | 8013 | 2314 | Collection | 7046 | 2021 |
| | | | Deputy | 2971 | 822 |
| | | | Exemption certificate | 2968 | 820 |
| | | | Fees | 2994 | 828 |
| | | | Receipt | 2965 | 819 |
| | | | Records | 2970 | 821 |
| | | | Statement of receipts | 2977 | 824 |

INDEX TO CIVIL STATUTES.

2529

| | Article. | Page. |
|-------------------------------|--------------|-----------|
| TAX COLLECTOR, COUNTY— | | |
| Continued. | | |
| Voter's list | 3121, 2975 | 863, 823 |
| Receipt, Tax | 7257-8 | 2105 |
| Redemption | 7283-91 | 2115 |
| Reports | 7260-2 | 2106 |
| Sales | 7266-91 | 2110 |
| Sheriff as | 7245 | 2103 |
| Tax deed | 7281 | 2114 |
| Term | 7245 | 2103 |
| Water control districts | 7873 | 2278 |
| Taxation: | | |
| Advalorem rate | 7041-8 | 2019 |
| Assessment: | | |
| Bulk | 7351 | 2139 |
| Corporate property | 7170 | 2079 |
| Date for | 7151 | 2071 |
| Equalization | 7211 | 2092 |
| Insurance reserves | 7244 | 2102 |
| Merchandise | 7148 | 2068 |
| Mode | 7152-4 | 2072 |
| Real property | 7171 | 2079 |
| Re-assessment | 7346-9 | 2137 |
| Reduction | 7350 | 2139 |
| Stored property | 7243 | 2102 |
| Sworn list | 7161-3 | 2074 |
| Back taxes | 7299-7318 | 2119 |
| Board of Equalization | 7206-24 | 2090 |
| City, occupation | 1015 (34-39) | 301 |
| City, powers as to | 1026 | 309 |
| Collection | 7255-8 | 2105 |
| County | 2352, 7048 | 628, 2027 |
| Currency and coin | 7175-6 | 2081 |
| Deed | 7281 | 2114 |
| Delinquent taxes | 7319-45 | 2123 |
| Exemptions: | | |
| Art societies | 7050 (14) | 2028 |
| Benevolent societies | 7094 | 2050 |
| Cemetery lots | 964 | 288 |
| Enumeration | 7150 | 2069 |
| Federal lands | 5248 | 1472 |
| Fraternal benefit societies | 4858 | 1349 |
| Life insurance companies | 4754 | 1309 |
| Militiamen | 5840 | 1645 |
| Poll tax | 2960 | 818 |
| Feed tax tags | 3875 | 1037 |
| Fertilizer tax tags | 97 | 31 |
| Permit to use seine | 4044 | 1101 |
| Franchise: | | |
| Corporations subject | 7084-97 | 2045 |
| Exemptions | | |
| 1407, 2505, 7586 | 421, 657, | 2195 |
| Failure to pay | 7091-7 | 2048 |
| Hail insurance | 4959 | 1381 |
| Reports | 7089 | 2048 |
| Gross receipts: | | |
| Book publishers | 7069 | 2039 |
| Car, Railroad | 7062-3 | 2033 |
| Collecting agency | 7061 | 2033 |
| Express | 7058 | 2031 |
| Gas, light, water | 7060 | 2032 |

| | Article. | Page. |
|-------------------------------|------------|------------|
| TAX COLLECTOR, COUNTY— | | |
| Continued. | | |
| Gas, natural | 6060 | 1731 |
| Gasoline | 7065 | 2035 |
| Insurance, Fire | 4902 | 1365 |
| Insurance, generally | 7064 | 2034 |
| Insurance, Life | 4769 | 1315 |
| Insurance, Storm | 4949 | 1378 |
| Insurance, Workmen's | 4906 | 1366 |
| Interurbans | 7067 | 2038 |
| Oil | 6032, 7071 | 1723, 2040 |
| Payment | 7073 | 2042 |
| Penalties | 7074-83 | 2042 |
| Permit | 7077-82 | 2043 |
| Pistol dealers | 7068 | 2039 |
| Reports | 7058, 7079 | 2031, 2043 |
| Reports by utilities | 1442 | 428 |
| Sulphur | 7066 | 2037 |
| Telegraph | 7059 | 2032 |
| Telephone | 7070 | 2040 |
| Terminal companies | 7072 | 2042 |
| Homestead | 7279 | 2114 |
| Inheritance taxes: | | |
| Amounts | 7118-22 | 2060 |
| Deductions | 7125 | 2062 |
| Fixing tax | 7131 | 2064 |
| Inventory | 7126-30 | 2063 |
| Lien for | 7133-4 | 2065 |
| Offsets | 7138 | 2066 |
| Payment | 7132 | 2064 |
| Property subject | 7117 | 2060 |
| Securities | 7136-7 | 2065 |
| Injunction to enforce | 4669 | 1280 |
| Intangible taxes: | | |
| Capital ascertained | 7112 | 2058 |
| Corporation subject | 7105 | 2053 |
| Relieved of other taxes | | |
| State Tax Board | 7098-7104 | 2051 |
| Statements | 7106-11 | 2054 |
| Lien: | | |
| Delinquent taxes | 7320 | 2124 |
| Foreclosure suit | 7326 | 2127 |
| Prescribed | 7172 | 2079 |
| Priority | 7269 | 2111 |
| Property subject | 7272 | 2112 |
| Supplemental list | 7348 | 2138 |
| Limitation not available | 7298 | 2119 |
| Money | 7175-6 | 2081 |
| New counties | 7242 | 2101 |
| Non-residents: | | |
| Payment of taxes | 7265 | 2110 |
| Suit | 7342 | 2135 |
| Unorganized counties | 7293 | 2118 |
| Occupation: | | |
| Enumeration | 7047 | 2021 |
| License issued | 1615 | 471 |
| License transferred | 7055-6 | 2030 |
| Payment | 7052 | 2029 |
| Oil and gas | 6032, 6060 | 1723, 1731 |
| Payment: | | |
| Date for | 7255 | 2105 |
| Franchise | 7084 | 2045 |
| Gross receipts | 7073 | 2042 |

| | | Article. Page. | | | Article. Page. |
|-------------------------------|--------------|----------------|--------------------------------------|------------|----------------|
| TAX COLLECTOR, COUNTY— | | | TAX COLLECTOR, COUNTY— | | |
| Continued. | | | Continued. | | |
| Inheritance | 7132 | 2064 | Real property, valuation | 7174 | 2080 |
| Intangible | 7105 | 2053 | Sworn list | 7161-3 | 2074 |
| Non-residents, By | | | Telegraphs | 7159 | 2073 |
| ..... | 7265, 7293 | 2110, 2118 | Vessels | 7157 | 2073 |
| Occupation | 7052 | 2029 | Sales: | | |
| Receipt | 7257-8 | 2105 | Allowances | 7269 | 2111 |
| Refusal to make | 7266 | 2110 | Back taxes | 7305-18 | 2120 |
| With what | 7049 | 2028 | Continued | 7278 | 2114 |
| Pension | 6204 | 1768 | Deed | 7281 | 2114 |
| Personal property: | | | Forced collection date | 7266 | 2110 |
| Assessment of bank's | 7165 | 2076 | Homestead | 7279 | 2114 |
| Defined | 7147 | 2067 | Mode | 7266-7 | 2110 |
| Removal, sale | 7268 | 2111 | Notice | 7276-7 | 2113 |
| Rendition | 7151-63 | 2071 | Out of county | 7270 | 2111 |
| Sale | 7273 | 2113 | Personal property | 7273-4 | 2113 |
| Poll tax | 2959, 7046 | 818, 2021 | Property subject | 7272 | 2112 |
| Rate, county | 7048 | 2027 | Real property | 7275-80 | 2113 |
| Rate, State | 7043 | 2019 | Redemption | 7283-91 | 2115 |
| Real property: | | | Reports | 7282 | 2115 |
| Assessment | 7166-71 | 2077 | Unorganized counties | 7232-7 | 2100 |
| Back taxes on | 7299 | 2119 | School districts: | | |
| Canceling subdivisions | 7227 | 2098 | City district tax | 2798 | 750 |
| Defined | 7146 | 2067 | Common school tax | 2793 | 749 |
| Delinquent taxes on | 7319 | 2123 | Delinquent taxes | 7343 | 2136 |
| Exemptions | 7150 | 2069 | Districts affected | 2796 | 750 |
| Homestead | 7279 | 2114 | Election | 2785 | 744 |
| Leasehold interest in | 7173 | 2080 | Independent district assessor | 2791-92 | 748 |
| Lien | 7172 | 2079 | Independent district tax | | |
| Rendition, mode | 7151-4 | 2071 | ..... | 2790 | 747 |
| Rendition, statement | 7164 | 2075 | Powers | 2784 | 743 |
| Sale | 7275 | 2113 | State Tax Board | 7098 | 2051 |
| Unorganized counties, | | | Suits: | | |
| In | 7228-41 | 2099 | Foreclosure | 7326 | 2127 |
| Unrendered | 7299 | 2119 | Injunction | 4669 | 1280 |
| Valuation | 7174 | 2080 | Insurance properties | 4739 | 1303 |
| Receipt tax | 7257-8 | 2105 | Non-resident owner | 7342 | 2135 |
| Redemption: | | | Proceedings | 7328-9 | 2128 |
| Delinquent tax payer | 7339-41 | 2134 | Unknown owner | | |
| Forced sale | 7283-91 | 2115 | ..... | 7342, 7327 | 2135, 2128 |
| Rendition: | | | Unknown owner | 7342 | 2135 |
| Banks | 7165-6 | 2076 | Unorganized counties | 7228-41 | 2099 |
| By other than owner | 7160 | 2073 | TEACHERS— | | |
| Corporate property | 7170 | 2079 | Age | 2880 | 781 |
| Date for | 7151 | 2071 | Agent for publisher | 2910 | 797 |
| Deductions | 7167 | 2077 | Bonds for homes | 2797 | 750 |
| Definitions | 7149 | 2068 | Certificates | 2877-2891 | 780 |
| Deposits of securities | 7158 | 2073 | Colleges for | 2644 | 701 |
| Erroneous | 7292 | 2117 | Contracts: | | |
| Evasion, fraudulent | 7187 | 2083 | Approval | 2693 | 716 |
| Exemptions | 7150 | 2069 | Making | 2750 | 734 |
| Lands on boundary | 7154 | 2072 | Must have certificate | 2882 | 782 |
| Livestock | 7155 | 2073 | Dismissal | 2749 | 734 |
| Merchandise | 7148 | 2068 | Institutes | 2691 | 715 |
| Mode | 7152 | 2072 | Reports | 2912 | 797 |
| Money | 7175-6 | 2081 | Salaries | 2882-3 | 782 |
| Oath | 7184-6 | 2083 | Salary check | 2751 | 734 |
| Place of | 7153 | 2072 | Summer schools | 2913 | 798 |
| Public lands | 7173 | 2080 | TECHNOLOGICAL COLLEGE, TEXAS— | | |
| Railroads | 7159, 7168-9 | 2073, 2077 | Courses | 2631 | 697 |
| Real estate | 7164 | 2075 | | | |

INDEX TO CIVIL STATUTES.

2531

| | Article. | Page. | | Article. | Page. |
|---|------------|----------|---------------------------------|------------|----------|
| TECHNOLOGICAL COLLEGE, TEXAS—Cont'd. | | | THEFT INSURANCE— | | |
| Directors | 2630 | 697 | General casualty companies | 4989 | 1394 |
| Eminent domain | 2632 | 698 | Mutual companies | 4963 | 1382 |
| Purpose | 2629 | 697 | TIMBER— | | |
| TELEGRAPH AND TELEPHONE— | | | Forest inspection | 2613 (10) | 691 |
| Consolidations | 1420, 1423 | 423, 424 | Log brands | 7360-3 | 2142 |
| Deposits, interest on | 1440 | 428 | Lumberjack's lien | 5483 | 1546 |
| Eminent domain | 1417 | 422 | State's sale of | 5322 | 1490 |
| Franks prohibited | 4005 | 1087 | TITLE— | | |
| Judicial regulation | 1125 | 337 | Descent, By | 2570-83 | 679 |
| Municipal regulation | 1422 | 423 | Devise, By | 3314 | 925 |
| Tax rendition | 7159 | 2073 | Escheat, By | 3272 | 917 |
| Tax, Telegraph | 7059 | 2032 | Executor, Through | 3323 | 927 |
| Tax, Telephone | 7070 | 2040 | Guardian, Through | 4219 | 1136 |
| Transfer of messages | 1426 | 424 | Judgment, By | 2214 | 594 |
| TENANTS— | | | Land office archives | 250-253 | 129 |
| Landlord's lien | 5222 | 1466 | Limitation, By | 5513 | 1555 |
| Rent, amount | 5222 | 1466 | May demand abstract | 7376 | 2144 |
| TERMINAL RAILROADS— | | | Partition, By | 6100 | 1740 |
| Capital stock | 1311 | 402 | Presumption of death, By | 5541 | 1561 |
| Incorporation | 1302 (72) | 392 | Trespass to try | 7364 | 2143 |
| Powers | 6549 | 1870 | TOLL BRIDGES— | | |
| Tax | 7072 | 2042 | Construction | 6795 | 1947 |
| TERMS OF COURT— | | | Liability | 1477 | 434 |
| Civil Appeals, Courts of | 1816 | 511 | Rates | 1476 | 434 |
| Commissioners Courts | 2348 | 625 | Rights of owner | 1475 | 434 |
| County courts | 1961 | 537 | TOLL ROADS— | | |
| Court of Criminal Appeals | 1804 | 509 | Corporations | 1448 | 430 |
| District Courts | 199 | 77 | Rates | 1464 | 432 |
| Justice courts | 2380 | 633 | Use | 1465 | 432 |
| Supreme Court | 1726 | 496 | TORTS— | | |
| TERMS OF OFFICE— | | | Feasors contribution | 2212 | 593 |
| County and precinct officers | 17 | 5 | Injuries, fatal | 4671-8 | 1281 |
| Other officers | 18 | 5 | Venue | 1995 (9) | 544 |
| TESTIMONY— | | | Workmen's compensation | 8306 | 2391 |
| Anti-trust suits | 7440 | 2159 | TOWNS— | | |
| Depositions | 3738 | 1007 | Abolition | 1261 | 377 |
| Repeated for jury | 2199 | 591 | Depository | 2566 | 677 |
| Witnesses | 3704 | 999 | General powers | 1146 | 342 |
| TEXAS SECURITIES— | | | Incorporation | 1133 | 339 |
| Defined | 4766 | 1313 | Independent school districts in | 2757 | 735 |
| Investments in | 4767 | 1314 | TRACTORS— | | |
| Transfer of | 4692 | 1290 | Damaging roads | 6716 | 1923 |
| TEXTBOOKS— | | | Registration fee | 6681 | 1902 |
| Continuing or discontinuing | 2842-59 | 765 | TRADE— | | |
| Additional supplementary books | 2862 | 774 | Anti-trust law | 7426 | 2154 |
| Publisher's tax | 7069 | 2039 | International, Corporations for | 1527 | 448 |
| Agents for book publishers | 2910 | 797 | TRADE MARKS— | | |
| Textbook Commission | 2839 | 764 | Securing | 843-51 | 257 |
| THEATRES— | | | TRAFFIC OFFICERS— | | |
| City tax | 1015 (37) | 301 | County may employ | 6699 | 1907 |
| Leases | 179 | 58 | TRAINING SCHOOLS— | | |
| Tax, Occupation | 7047 (22) | 2021 | Boys, negro | 5131 | 1438 |
| | | | Boys, white | 5119 | 1435 |
| | | | Commitment of delinquents | 2338, 2898 | 622, 794 |
| | | | Girls, white | 5132 | 1438 |

| Article. Page. | | Article. Page. | |
|---------------------------------|---------------|-------------------------------|----------------|
| TRANSCRIPT— | | TRAVELING EXPENSES— | |
| Appeal, On | 2278-82 607 | Continued. | |
| Change of venue, On | 2174 587 | Appearing before Commis- | |
| Exceptions to finding | 2210 593 | sion | 2861 773 |
| Party unable to pay | 2241 600 | Water Engineers, Board of | |
| Preparing | 2238 599 | ..... | 7471 2172 |
| Reporter's fee | 2325 618 | Weight inspectors | 5706 1605 |
| TRANSFER COMPANIES— | | TREASURER— | |
| Incorporation | 1302(65) 392 | City | 1001 298 |
| TRANSFER OF CAUSES— | | County | 1703 492 |
| Administration transferred | | State | 4367 1165 |
| ..... | 3684-8 994 | TREES— | |
| Certain district courts, In | | Protection from disease | 119 45 |
| ..... | 2092(22) 563 | TRESPASSES— | |
| Civil Appeals | 1738 498 | Ejectment | 7364 2143 |
| County to district court | 1968 538 | Forcible entry | 3973 1080 |
| Heirship, adjudication | 3592 977 | Limitation | 5526 1558 |
| Plea of privilege | 2019 551 | Venue | 1995(9) 544 |
| TRANSIENTS— | | TRESPASS TO TRY TITLE— | |
| Suits against | 1975 540 | Abstract | 7376-9 2144 |
| Venue | 1995(2) 544 | Answer | 7372-4 2144 |
| TRANSLATION— | | Claim for improvements | |
| County records | 6580 1878 | ..... | 7390-7401 2147 |
| TRANSPORTATION— | | Common source of title | 7382 2145 |
| Dead bodies | 4477(77) 1198 | Damages | 7389 2146 |
| Free, prohibited | 4005 1087 | Death, presumption of | 5541 1561 |
| Game | 4036-7 1099 | Improvements | 7390-7401 2147 |
| Liquor, by carrier | 5092 1425 | Judgment by default | 7383 2146 |
| Liquor, vehicle seized | 5112 1431 | Judgment, The | 7388 2146 |
| Livestock, quarantined | 7028 2015 | Partial claim | 7385 2146 |
| Nursery stock | 127-31 47 | Parties | 7368-71 2144 |
| TRAVELING EXPENSES— | | Petition | 7366-7 2143 |
| District judges and attor- | | Procedure | 7365 2143 |
| neys | 6820 1954 | Proof ex parte | 7384 2146 |
| Experiment station board | 145 50 | Recovery | 7386-8 2146 |
| Forester, State | 2613(10) 691 | Sufficient title | 7375 2144 |
| Health, Board of | 4416 1175 | Survey | 7380-1 2145 |
| Industrial Accident Board | 8307 2404 | TRIAL— | |
| Industrial Commission | 5184 1456 | Appearance day | 2152 583 |
| Insurance Commission | 4904 1366 | By jury | 2123 578 |
| Labor Bureau | 5151 1446 | Change of venue | 2169-74 586 |
| Librarian, State | 5440 1532 | Charge of the court | 2184 588 |
| Library Examiners Board | | Civil Appeals | 1837 515 |
| ..... | 1682 487 | Continuance | 2167-8 585 |
| Markets and Warehouses | | De novo | 2178 587 |
| Department | 5564 1566 | District and county courts | |
| Mining Board | 5897 1668 | ..... | 2175 587 |
| Normal School regents | | Findings | 2208 593 |
| ..... | 2647(6) 701 | Judgment by default | 2154 584 |
| Nursery inspectors | 134 48 | Jury, The | 2195 590 |
| Parks Board | 6070 1733 | Justice courts, In | 2403 639 |
| Presidential electors | 3085 851 | New motion | 2232 597 |
| Prison Commission | 6170 1754 | Non-suit | 2182 588 |
| Prison supervisors | 6202 1766 | Procedure | 2175-83 587 |
| Railroad Commission | 6447 1841 | Right of property | 7402 2150 |
| Rate Making Board, Texas | | Supreme Court, In | 1755-6 501 |
| ..... | 2541 668 | Verdict | 2202 592 |
| Superintendent of Public | | TRIAL OF RIGHT OF | |
| Instruction | 2658 706 | PROPERTY— | |
| | | Affidavit by claimant | 7402 2150 |
| | | Bond | 2403-4 639 |

| | Article. | Page. |
|--|-----------|-------|
| TRIAL OF RIGHT OF PROPERTY—Continued. | | |
| Jurisdiction | 7409 | 2151 |
| Possession of stock | 6903 | 1975 |
| Proceedings | 7410-25 | 2151 |
| TRUCKS, MOTOR— | | |
| Damaging roads | 6716 | 1923 |
| Registration fees | 6679 | 1902 |
| Width of wheels | 6701 | 1909 |
| TRUST COMPANIES— | | |
| Bank and trust companies | 396 | 160 |
| Loan and brokerage companies | 1520 | 446 |
| Special powers 1513, 4985 | 444, 1391 | |
| Stockholder's liability | 1344 | 408 |
| TRUSTEES— | | |
| Appointment, Contesting | 2250 | 603 |
| Bequest to | 7124 | 2062 |
| Common school district | 2745 | 731 |
| County school | 2676 | 710 |
| Death pending execution | 3776 | 1016 |
| Independent district school | 2775 | 741 |
| Inheritance tax report | 7135 | 2065 |
| Tax rendition by | 7152(6) | 2072 |
| TRUSTS— | | |
| Agreements void | 7437 | 2158 |
| Charter forfeited | 7430 | 2155 |
| Conspiracy against trade | 7428 | 2155 |
| Defined | 7426 | 2154 |
| Evidence of | 7439-47 | 2159 |
| Foreign corporation | 7433-5 | 2156 |
| "Monopoly" | 7427 | 2155 |
| Penalties | 7436 | 2158 |
| TUBERCULOSIS— | | |
| Children's county hospital | 4482 | 1218 |
| Indigent consumptives | 4440 | 1183 |
| Sanitariums | 3239-52 | 903 |
| U. | | |
| UNCLAIMED PROPERTY— | | |
| Carrier may sell | 900-4 | 275 |
| Pawnbroker may sell | 6150 | 1750 |
| UNDERTAKERS— | | |
| Certificate of death | 4477(44) | 1198 |
| Reports | 4477(35) | 1198 |
| UNDISCLOSED LANDS— | | |
| Surveyor's duty | 5278 | 1479 |
| UNIFORM INSTRUMENTS— | | |
| Negotiable instruments | 5932 | 1678 |
| Warehouse receipts | 5612 | 1582 |
| UNION DEPOTS— | | |
| Corporations | 6551-54 | 1871 |
| May compel construction | 6499 | 1854 |
| UNIONS, LABOR— | | |
| Organization | 5152 | 1446 |
| Rights | 5153 | 1446 |

| | Article. | Page. |
|--------------------------------|------------|------------|
| UNITED STATES— | | |
| Bonds, investment in | 836, 842 | 254, 256 |
| Courts, judgments of | 5451 | 1537 |
| Flag, Degrading | 6139 | 1747 |
| Irrigation contracts | 7794 | 2258 |
| Lands, acquisition of | 5242 | 1471 |
| Lien record | 6644 | 1893 |
| Mail: | | |
| Railroads carrying | 6392 | 1816 |
| Unlawful use | 592 | 210 |
| Marshal: | | |
| Jail, May use | 5117 | 1434 |
| Railroad pass | 4006 | 1087 |
| Senators, election of | 3086 | 851 |
| Statutes, evidence | 3718 | 1001 |
| Tax exempt | 7150(4) | 2069 |
| Vehicle registration | 6676 | 1901 |
| Water projects | 7584-86 | 2195 |
| UNIVERSITY OF TEXAS— | | |
| Admission fee | 2587 | 683 |
| Archives of | 259-260 | 131 |
| Board of visitors | 2605 | 689 |
| Children's Hospital | 3261 | 911 |
| Donations | 2595 | 685 |
| Faculty | 2585-6 | 683 |
| Fund: | | |
| Manuscript bonds | 2606 | 689 |
| Permanent | 2590 | 684 |
| Revenues, Land | 5417, 5347 | 1526, 1506 |
| Use | 2591 | 684 |
| Highway experiments | 6671 | 1900 |
| Lands: | | |
| Control of | 2596-7 | 686 |
| Oil leases on | 5338 | 1499 |
| Proceeds | 5347 | 1506 |
| Sale | 2599 | 687 |
| Librarian | 1682 | 487 |
| Manuscript bonds | 2606 | 689 |
| Non-sectarian | 2604 | 689 |
| President, duties | 2839 | 764 |
| Regents: | | |
| Appointment | 2907 | 796 |
| Children's Hospital | 3261 | 911 |
| Contracts | 2593 | 685 |
| Control of University | 2584 | 683 |
| Expenditures | 2594 | 685 |
| Expenses | 2589 | 684 |
| Faculty | 2585-6 | 683 |
| Improvements | 2592 | 684 |
| Lands, control of | 2596 | 686 |
| Organization | 2584 | 683 |
| Powers | 2585-6 | 683 |
| Report | 2588 | 683 |
| School of Mines | 2633 | 698 |
| UNKNOWN HEIRS— | | |
| Citation | 2040 | 555 |
| Escheat | 3272 | 917 |
| Estate, Of decedent's | 3590 | 976 |
| UNKNOWN OWNERS— | | |
| Condemnation of lands of | 3264(8) | 912 |

| | Article. | Page. | | Article. | Page. |
|-------------------------------|-------------|-----------|------------------------------|----------|-------|
| UNKNOWN OWNERS—Cont'd. | | | VEHICLES, MOTOR— | | |
| Partition, citation | 6085 | 1737 | Liquor in, seizure | 5112 | 1431 |
| Tax suits, citation | 7342 | 2136 | Wheels, width of | 6701 | 1909 |
| UNORGANIZED COUNTIES— | | | Registration: | | |
| Election officers | 2945 | 813 | Fees | 6778-81 | 1941 |
| Elections in | 2935 | 809 | License and seal | 6688-90 | 1904 |
| Irrigation district in | 7592 | 2196 | When | 6677 | 1901 |
| Moneys of | 7239-42 | 2101 | Where | 6675 | 1901 |
| Officers | 2374 | 632 | VENDOR'S LIENS— | | |
| Organization | 1563, 7242 | 460, 2101 | Executor's sale, retained | 3589 | 976 |
| Poll tax | 7046 | 2021 | Limitation | 5520 | 1556 |
| Registration of instru- | | | VENEREAL DISEASES— | | |
| ments | 6630 | 1889 | Regulation | 4445 | 1186 |
| School book requisitions | 2868 | 774 | VENUE— | | |
| School districts in | 2741 | 729 | Change of | 2170 | 586 |
| Tax assessments | 7228 | 2099 | Contest, Election | 3041 | 839 |
| Tax collections | 7293 | 2118 | County boundaries | 1996 | 547 |
| Tax sales | 7270 | 2111 | General rule | 1995 | 544 |
| UNSURVEYED LANDS— | | | Guardianship | 4111 | 1174 |
| Sale | 5323 | 1490 | Justice courts, In | 2390 | 636 |
| USURY— | | | Plea of privilege 2007, 2019 | 549, 551 | |
| Actionable | 5073 | 1418 | Probate | 3293 | 921 |
| Contract, Avoids | 6165 | 1753 | Receivers | 2311-12 | 615 |
| Pleading | 5074 | 1419 | Trust suits | 7436 | 2158 |
| UTILITIES, PUBLIC— | | | VERDICTS— | | |
| Deposits | 1440 | 428 | By nine jurors | 2204 | 592 |
| General provisions | 1106 | 328 | Defect cured | 2207 | 592 |
| Liable for injuries | 4671 | 1281 | Form | 2203 | 592 |
| Natural gas | 6050 | 1727 | Requisites | 2202 | 592 |
| Reports | 1441 | 428 | VESSELS— | | |
| Sale of properties | 1268 | 380 | Carrier, liability as | 883 | 271 |
| Tax | 7047(17-21) | 2021 | Liens on | 5500 | 1552 |
| | | | Pilotage | 8274 | 2383 |
| V. | | | VETERINARIANS— | | |
| VACANCIES IN OFFICE— | | | Board of Examiners | 7448 | 2164 |
| County offices | 2355 | 628 | County | 7029 | 2016 |
| Election to fill | 2952 | 814 | Defined | 7460 | 2167 |
| State and district offices | 19-21 | 6 | Disqualifications | 7459 | 2167 |
| VACATION— | | | Examination | 7455-7 | 2166 |
| Approval by successor in | 2288 | 609 | License | 7461-5 | 2168 |
| Bills of execution filed in | 2246 | 601 | License revoked | 7458 | 2167 |
| Discontinuance | 2089 | 563 | Registration | 7451 | 2165 |
| Habeas corpus | 1737 | 498 | State | 7010 | 2007 |
| Injunction dissolved | 4658 | 1277 | VIADUCTS— | | |
| Injunction granted in | 4642 | 1273 | City bond issue | 6557 | 1872 |
| Judgment corrected in | 2230 | 597 | County bond issue | 785 | 244 |
| Pleadings amended in | 2001 | 548 | Gulf, Across | 1466 | 432 |
| Statement of facts filed in | | | Joint construction | 6555 | 1872 |
| | 2246 | 601 | VILLAGES— | | |
| VALLEY CITRUS STATION— | | | Depository | 2566 | 677 |
| Establishment | 141 | 50 | General powers | 1146 | 342 |
| VARA— | | | Incorporation | 1133 | 339 |
| Legal standard | 5730 | 1612 | VITAL STATISTICS— | | |
| VEGETABLES— | | | Registrar's salary | 6813 | 1952 |
| Cars for shipment | 6493 | 1852 | Reports | 4477(34) | 1198 |
| Grades and packs | 109-116 | 36 | VOCATIONAL EDUCATION— | | |
| Weights, standard | 5734 | 1613 | Cotton classing | 2915 | 798 |
| | | | Courses in | 2631 | 697 |
| | | | Mines, School of | 2633 | 698 |
| | | | Teachers' certificates in | 2889 | 788 |
| | | | Technological College | 2629 | 697 |

| | Article. | Page. |
|-----------------------------|------------|----------|
| VOTE— | | |
| Absentee | 2956 | 815 |
| Challenge | 3007 | 831 |
| City, In | 2957 | 817 |
| How | 2981, 3012 | 825, 833 |
| List of voters | 2975 | 823 |
| Majority, Reaching | 2969 | 821 |
| Poll tax | 2959 | 818 |
| Privileged from arrest..... | 3023 | 835 |
| When | 2930, 3102 | 808, 856 |
| Where | 2936 | 810 |
| Who may | 2955 | 815 |
| Who may not | 2954 | 814 |

W.

| | | |
|-------------------------------|------------|------------|
| WAGES— | | |
| Assignments of | 6164 | 1753 |
| Bond to secure..... | 5160 | 1447 |
| Exempt from garnishment | 4099 | 1112 |
| Lien, mechanic's | 5452, 5469 | 1537, 1542 |
| Longshoremen's | 5192 | 1457 |
| Payment of | 5155 | 1447 |
| Payment of | 5159 | 1447 |

| | | |
|-----------------------|------|------|
| WAGONS— | | |
| Width of wheels | 6701 | 1909 |

| | | |
|----------------------------|------|-----|
| WAIVER— | | |
| Citation | 2045 | 556 |
| Diligence by assignee..... | 570 | 204 |

| | | |
|------------------------|------|------|
| WAR— | | |
| Home Guard | 6144 | 1748 |
| Militia, Reserve | 5770 | 1568 |

| | | |
|------------------------------------|------|------|
| WARDS— | | |
| Application for guardianship | 4113 | 1115 |

| | | |
|--------------------------------|----------|------|
| WAREHOUSE CORPORATIONS— | | |
| Co-operative | 5578 | 1570 |
| Profit | 1302(82) | 392 |
| Regulation | 5611 | 1581 |
| Tax assessments | 7243 | 2102 |

| | | |
|----------------------------|---------|------|
| WAREHOUSE RECEIPTS— | | |
| Adverse claim | 5629 | 1586 |
| Alteration | 5624 | 1585 |
| Care of goods..... | 5632-5 | 1587 |
| Conditions | 5614 | 1583 |
| Construction of law | 5663 | 1593 |
| Dangerous goods | 5645 | 1590 |
| Definitions | 5664 | 1594 |
| Delivery under | 5619-36 | 1584 |
| Duplicate: | | |
| Effect | 5626 | 1586 |
| Issuance | 5617 | 1584 |
| Form | 5613 | 1583 |
| Implied warranty | 5657 | 1582 |
| Indorsement | 5649-56 | 1591 |
| Innocent purchaser | 5658 | 1592 |
| Issuance | 5612 | 1582 |
| Labels on goods..... | 5631 | 1587 |
| Liability of indorser..... | 5656 | 1592 |

| | Article. | Page. |
|------------------------------------|----------|-------|
| WAREHOUSE RECEIPTS— | | |
| Continued. | | |
| Loss | 5625 | 1586 |
| Negotiable: | | |
| Defined | 5616 | 1583 |
| Duplicate, In | 5617 | 1584 |
| Indorsement | 5649 | 1591 |
| Indorsement, May com- pel | 5654 | 1592 |
| Innocent purchaser | 5658 | 1592 |
| Negotiation | 5648 | 1590 |
| Purchaser for value | 5660 | 1593 |
| Subsequent negotiation | 5659 | 1592 |
| Title by negotiation | 5652 | 1591 |
| Who may negotiate..... | 5651 | 1591 |
| Non-negotiable: | | |
| Defined | 5615 | 1583 |
| Requisites | 5618 | 1584 |
| Title by transfer..... | 5653 | 1591 |
| Transfer | 5650 | 1593 |
| Perishable goods | 5645 | 1590 |
| Purchaser for value..... | 5660 | 1593 |
| Sale of goods | 5647 | 1590 |
| Surrender on delivery..... | 5636 | 1587 |
| Title to goods | 5627 | 1586 |
| Warehouseman's lien | 5638-44 | 1588 |

| | | |
|-------------------------------------|-----------|-----------|
| WAREHOUSES AND WAREHOUSEMEN— | | |
| Bond | 5569 | 1567 |
| Cotton storage | 5678 | 1597 |
| Defined | 5568 | 1567 |
| Incorporation | 5578 | 1570 |
| Liability | 886, 5575 | 271, 1569 |
| Private warehouses | 5662 | 1593 |
| Receipts | 5570 | 1568 |
| Regulation | 5611 | 1581 |
| Tax assessments | 7243 | 2102 |
| Who may be warehouse men | 5661 | 1593 |

| | | |
|----------------------------|------|------|
| WARRANTS— | | |
| City expense | 1264 | 378 |
| County, requisites | 1643 | 477 |
| Distress | 5227 | 1467 |
| State: | | |
| Issuance | 4350 | 1158 |
| Loss of | 4365 | 1164 |
| Mortuary | 6227 | 1774 |
| Special | 4386 | 1169 |
| Warrantor made party | 7368 | 2144 |

| | | |
|---------------------------|----------|------|
| WARRANTY OF TITLE— | | |
| Breach, limitation | 5527 | 1559 |
| Breach, notice | 5546 | 1562 |
| Venue for breach | 1995(15) | 544 |

| | | |
|-------------------------|---------|------|
| WASHINGTON PARK— | | |
| General provisions..... | 6076-77 | 1735 |

| | | |
|---------------------|----------|------|
| WASTE— | | |
| Oil and gas: | | |
| Defined | 6014 | 1718 |
| Prevention | 6015 | 1719 |
| Restaining | 6013 | 1718 |
| Sequestration | 6840 | 1960 |
| Venue | 1995(14) | 544 |
| Water | 7574-5 | 2192 |

| | Article. | Page. | | Article. | Page. |
|---------------------------------|-----------|-------|--------------------------------|------------|-------|
| WATER— | | | WATER ENGINEERS, | | |
| Artesian Wells | 7579 | 2193 | BOARD OF—Continued. | | |
| Commissioners | 7484 | 2174 | Reports by | 7480 | 2173 |
| Control districts | 7808 | 2264 | Salary | 6813 | 1952 |
| Dams | 7499-7500 | 2176 | Settlement of disputes | 7555 | 2188 |
| Priority of date | 7496 | 2176 | WATER IMPROVEMENT | | |
| Fee | 7497 | 2176 | DISTRICTS— | | |
| Drainage districts | 8097 | 2328 | Surety company bond | 7760 | 2244 |
| Engineers, Board of | 7468 | 2171 | Application for permit | 7493 | 2175 |
| Fresh water supply dis- | | | Boundaries | 7618 | 2201 |
| tricts | 7881 | 2280 | Judgment, Certified copy | 7707 | 2227 |
| Improvement districts | 7589 | 2196 | Conservation powers | 7770 | 2247 |
| Irrigation districts | 7589 | 2196 | Division | 7589 | 2196 |
| Navigation districts | 8198 | 2329 | Federal contracts | 7794 | 2258 |
| Overflow, damages | 7577 | 2193 | Powers | 7640 | 2209 |
| Pollution: | | | Bond | 7742 | 2238 |
| Injunction | 4444 | 1185 | Taxes | 7769, 7771 | 3347 |
| Preventing | 6015 | 1719 | WATERWORKS— | | |
| Priority of appropriation | 7501 | 2177 | City owned | 1109 | 329 |
| Storm | 7548 | 2186 | Corporations | 1526 | 447 |
| Supply districts | 7881 | 2280 | Right of way in city | 1110 | 333 |
| Use of State | 7489 | 2174 | Right to water | 7490 | 2174 |
| Waste, disposal of | 1508 | 443 | Tax, Gross receipts | 7060 | 2032 |
| “Water right” | 7527 | 2181 | Tax, Occupation | 7047 (19) | 2021 |
| Wells, In oil | 6010 | 1717 | WEIGHERS, PUBLIC— | | |
| WATER COMPANIES— | | | General provisions | 5680-5704 | 1598 |
| City regulation | 1119 | 335 | WEIGHTS AND MEASURES— | | |
| Contracts | 1434 | 426 | City sealer, suspension | 5721 | 1608 |
| Deposits, interest on | 1440 | 428 | Commercial fertilizers | 106 | 35 |
| Eminent domain | 1433 | 426 | Contracts governed by | 5736 | 1615 |
| Judicial regulation | 1125 | 337 | False devices | 5717 | 1607 |
| Reports | 1441 | 428 | Feeding stuff | 3881 | 1038 |
| Sale of properties | 1268 | 380 | Fees for testing | 5728 | 1612 |
| Tax, Gross Receipts | 7060 | 2032 | Fraud in sale | 5735 | 1615 |
| Tax, Occupation | 7047 (19) | 2021 | Inspection | 5725 | 1610 |
| WATER CONTROL DIS- | | | Lineal | 5730 | 1612 |
| TRICTS— | | | Liquids | 5732 | 1613 |
| Application for permit | 7493 | 2175 | Marking | 5724-7 | 1609 |
| Board of directors | 7837 | 2270 | Sealers | 5705-10 | 1605 |
| Bonds | 7859 | 2275 | Sealing | 5724 | 1609 |
| Establishment | 7808 | 2264 | Solids | 5733 | 1613 |
| Powers | 7847 | 2272 | Standards: | | |
| Purpose | 7809 | 2264 | Legal | 5730 | 1612 |
| Taxes | 7870 | 2277 | Lineal | 5730 | 1612 |
| WATER ENGINEERS, | | | Liquids | 5732 | 1613 |
| BOARD OF— | | | Solids | 5733 | 1613 |
| Appoint commissioners | 7484 | 2174 | Testing | 5712-19 | 1606 |
| Appointment | 7468 | 2171 | Units of weight | 5734 | 1613 |
| Bond | 7469 | 2172 | Weights | 5731 | 1613 |
| Duties | 7473-7583 | 2172 | Tests | 5726 | 1611 |
| Fees: | | | Tolerances | 5714 | 1607 |
| Accounts | 7479 | 2173 | Weights | 5731 | 1613 |
| Enumeration | 7494 | 2175 | WELLS— | | |
| Maximum | 7495 | 2175 | Abandoned | 6005 | 1716 |
| Hearings | 7552 | 2188 | Artesian | 7579-83 | 2193 |
| Investigate plans | 7476 | 2173 | Contractor's lien | 5473 | 1543 |
| Irrigation districts in sev- | | | Drilling regulations | 6004-6016 | 1716 |
| eral counties | 7593-98 | 2197 | Salt water in | 1508 | 443 |
| Organization | 7471 | 2172 | WHEEL, JURY— | | |
| Permit to use water | 7518 | 2180 | Use | 2094 | 570 |
| Removal | 7470 | 2172 | | | |

| | Article. | Page. |
|-------------------------------|--------------|-----------|
| WHEELS, VEHICLE— | | |
| Width prescribed | 6701 | 1909 |
| WIDOWS— | | |
| Allowance from estate | 3476, 3485 | 955, 957 |
| Confederate, pension | 6211 | 1770 |
| Firemen's, pension | 6237 | 1777 |
| Indigent, pension | 6228 | 1774 |
| WILLS— | | |
| Administration under | 3433-51 | 948 |
| After-born children | 8292 | 2387 |
| Bequest to witness | 8296-7 | 2388 |
| Cancellation | 8285 | 2386 |
| "Children" | 8294 | 2388 |
| Contest, limitation | 5534 | 1560 |
| Custody | 8299 | 2388 |
| Death of legatee | 8295 | 2388 |
| Execution | 8281-4 | 2386 |
| Foreign: | | |
| Executor | 3365-6 | 935 |
| Filing | 3352, 8301-5 | 933, 2389 |
| Forgery, limitation | 5536 | 1560 |
| General provisions | 8281-8305 | 2386 |
| Guardian, Appointing | 4119 | 1116 |
| Nuncupative | 8286-9 | 2386 |
| Posthumous children | 8291 | 2387 |
| Probate of: | | |
| Another State, In | 3352 | 933 |
| Appeals | 3698 | 997 |
| Application for | 3328, 3339 | 928, 930 |
| Jurisdiction | 3290 | 921 |
| Limitation | 3326 | 928 |
| Nuncupative will | 3347 | 932 |
| Order | 3351 | 933 |
| Proof of will | 3344-50 | 931 |
| Venue | 3293 | 921 |
| Void | 3292 | 921 |
| Withholding will | 3308 | 924 |
| Proof of witness | 8297 | 2388 |
| Registration | 8300 | 2389 |
| Requisites | 8283-4 | 2386 |
| Revocation | 8285 | 2386 |
| Separate property | 8298 | 2388 |
| Soldier or sailor | 8290 | 2387 |
| Validity | 8293 | 2387 |
| Witnesses: | | |
| Attestation | 8284 | 2386 |
| Bequest to | 8296 | 2388 |
| Number | 8283 | 2386 |
| Nuncupative will | 8287 | 2386 |
| Proof by | 8297 | 2388 |
| WITNESSES— | | |
| Arbitration proceedings | 244 | 126 |
| Arrest, privileged from | 3710 | 1000 |
| County suits, In | 1574 | 462 |
| Court martial, Before | 5865 | 1661 |
| Depositions | 3738 | 1007 |
| Executors, etc. | 3716 | 1000 |
| Failure to attend | 3707 | 999 |
| Fees | 3708 | 1000 |
| Fees restricted | 2057 | 558 |

| | Article. | Page. |
|-----------------------------|-----------|-------|
| WITNESSES—Continued. | | |
| Husband or wife | 3715 | 1000 |
| Interest, Color or | 3714 | 1000 |
| Party as | 3711 | 1000 |
| Re-examining | 2199 | 591 |
| Refusal to testify | 3709 | 1000 |
| Religious opinions | 3717 | 1001 |
| Subpoena | 3704 | 999 |
| Wills | 8283-8297 | 2386 |

| WOMEN— | | |
|-------------------------------|---------|------|
| Convicts | 6185 | 1761 |
| Hours of work | 5168-70 | 1450 |
| Mother's pension | 6228 | 1774 |
| Protection in factories | 5173-80 | 1451 |
| Salaries | 6825 | 1956 |
| Seats in factories | 5171 | 1451 |

| WORDS AND PHRASES— | | |
|--------------------------------|---------|------|
| Affidavit | 23(18) | 6 |
| Colored | 2900 | 795 |
| Comptroller | 23(11) | 6 |
| Courthouse door | 3809 | 1022 |
| Effects | 23(17) | 6 |
| Governing body | 23(9) | 6 |
| Habitual drunkard | 4104(4) | 1113 |
| Homestead | 3833 | 1039 |
| Justice | 23(7) | 6 |
| Land Commissioner | 23(12) | 6 |
| Minor | 4104(2) | 1113 |
| Month | 23(15) | 6 |
| Oath | 23(4) | 6 |
| Official oath | 23(10) | 6 |
| Person | 23(2) | 6 |
| Personal property | 7147 | 2067 |
| Preceding | 23(13) | 6 |
| Preceding Federal census | 23(8) | 6 |
| Property | 23(1) | 6 |
| Real property | 7146 | 2067 |
| Signature | 23(6) | 6 |
| Succeeding | 23(14) | 6 |
| Swear | 23(5) | 6 |
| Writing | 23(3) | 6 |
| Year | 23(16) | 6 |

| WORK— | | |
|-----------------------------|------------|------------|
| Convict labor | 6167, 6200 | 1754, 1765 |
| Disputes, labor | 5186 | 1457 |
| Employment agents | 5208 | 1460 |
| Hours of | 5165 | 1449 |
| Lien, laborer's | 5452 | 1537 |
| Wages, bond to secure | 5160 | 1447 |
| Wages, payment of | 5155 | 1447 |
| Women | 5168-5170 | 1450 |

| WORKMEN'S COMPEN- SATION INSURANCE— | | |
|--|------|------|
| Compensation | 8306 | 2391 |
| Employers' Insurance As- sociation | 8308 | 2409 |
| General provisions | 8309 | 2412 |
| Industrial Accident Board | 8307 | 2404 |

| | Article. | Page. | | Article. | Page. |
|-------------------------------|------------|----------|-----------------------------------|------------|-----------|
| WORKMEN'S COMPENSA- | | | WRIT OF ERROR—Cont'd. | | |
| TION INSURANCE—Cont'd. | | | Filing | 1742 | 499 |
| Insurance Commission | 4916 | 1316 | Sent up | 1883 | 523 |
| Supervision and control | | | WRITS— | | |
| ..... | 4907-17 | 1366 | Alias | 2035 | 554 |
| Tax | 4906 | 1366 | Attachment | 275 | 136 |
| WRECKS— | | | Certiorari to county court | 936 | 283 |
| Cotton salvage | 8319-24 | 2417 | Certiorari to justice court | 941 | 284 |
| Fee for salvaging | 8317 | 2417 | Election | 2948 | 813 |
| Sale of property | 8314 | 2416 | Garnishment | 4076 | 1107 |
| Salvage | 8312 | 2416 | Habeas corpus | 1737 | 498 |
| Stealing from | 8318 | 2417 | Injunction | 4651 | 1275 |
| Wreck-masters | 8310-18 | 2416 | Issuancee by Supreme | | |
| WRIT OF ERROR— | | | Court | 1733 | 498 |
| Civil Appeals, To: | | | Partition | 3609, 6082 | 981, 1737 |
| Application | 2256 | 603 | Possession | 2219 | 578 |
| Bond, Cost | 2265 | 605 | Requisites | 2286 | 609 |
| Bond, Error | 2258 | 606 | Scire facias | 2079 | 561 |
| Bond, Supersedeas | 2270 | 606 | Sequestration | 6840 | 1960 |
| In what cases | 2249 | 602 | Style | 2286 | 609 |
| Perfected | 2253, 2267 | 603, 605 | Sunday, Issued on | 1974 | 540 |
| Reversal, citation on | 2049 | 557 | WRITTEN INSTRUMENTS— | | |
| Time limit | 2255 | 603 | Conveyances | 1288 | 389 |
| Transcript | 2278 | 607 | Loss of | 6592 | 1881 |
| Death pending: | | | Negotiable instruments | | |
| In Civil Appeals | 1850 | 517 | Act | 5932 | 1678 |
| In district and county | | | Registration | 6596-6662 | 1881 |
| courts | 2277 | 607 | Seals on | 27 | 7 |
| In Supreme Court | 1760 | 502 | Suits on, parties | 1986 | 542 |
| Supreme Court, To: | | | Y. | | |
| Application | 1739, 1881 | 499, 523 | YEAR— | | |
| Bond | 1747 | 500 | Defined | 23 | 6 |
| Costs | 1767 | 503 | Scholastic | 2903 | 796 |
| Defendant served | 1882 | 523 | State fiscal | 12 | 5 |